Diana Gone

PROVIDED TO GLADES CORRECTIONAL INSTITUTION ON 2-10-09 A.I FOR MAILING

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, STATE OF FLORIDA

ALBERIC ISREAL,
& SHEILA MASADIEU,
Plaintiffs,

-vs-

CITY OF NORTH MIAMI,
Chief of Police **Clint Shannon**;
Detective **Joseph Kissel**; Asst. State Attorney **Helen Page**,
(Officially and individually)
Defendants.
_____/

10. 7915 CA 01 (23)
Case No.:
C.C. Case No.: F05-35807

FILED FOR RECORD
2010 FEB -5 AM 11:52
CLERK'S OFFICE CIRCUIT COURT
MIAMI-DADE COUNTY, FLA.
CIVIL DIVISION

Complaint

JURY TRIAL DEMAND

TORT CLAIM FOR MONEY DAMAGES

Plaintiffs in the above styled action, having served proper notice to all Defendants herein, does now submit their claim for money damages pursuant to § 768.28(6), Fla. Stat., and in support, the Plaintiffs set forth the following:

STATEMENT OF FACTS FOR CLAIM I

1) On November 16, 2005 Plaintiff was involved in a shooting in which the victim, Sheila Masadieu (Plaintiff's wife), suffered injuries requiring medical treatment.

2) Plaintiff placed the victim/wife in Plaintiff's 1995 Lexus LS400, VIN #: JT8UF11E6L0046578, license plate # P405XT, and drove the victim to Parkway Regional Hospital, 160 N.W. 170th Street, North Miami Beach, FL 33169.

3) While Plaintiff was at the hospital awaiting official word on his wife's condition, the police arrived and arrested Plaintiff for the shooting.

4) Ultimately, Kissel took charge of both Plaintiff and the investigation into the shooting. Plaintiff was subsequently transported to the police station and, although the Lexus referenced above played no role in the shooting, bore no relevance to the case, and could yield nothing of evidentiary value as its only connection to the case was the family's ownership, Kissel had the car towed and impounded. *City of Miami v. Wellman*, 976 So.2d 22 (3rd DCA 2008) (due

process procedures set forth in city ordinances that empowered police to seize and impound vehicles the police had probable cause to believe had been used to facilitate crimes were inadequate where city ordinances did not allow for an innocent owner to be immune from loss of property or additional monetary penalties). See also, Article I, § 9, Florida Constitution. (Suppression Hearing March 14, 2006, pgs. 65, 66).

5) Once Plaintiff had been driven to the police station and interrogated by Kissel, Plaintiff was subsequently transported to the Dade County Jail. However, for esoteric reasons, Kissel informed Plaintiff that Plaintiff's Movado watch, which also played no role in the shooting, had no relevance to the case, and could yield nothing of evidentiary value, could not be transported to the jail in Plaintiff's possession. Kissel then removed the watch from Plaintiff's wrist, and did not permit it to transport to the jail with Plaintiff.

6) Plaintiff was simply told that he could not be transported wearing the watch, nor would Plaintiff's cell phone be permitted to transport with Plaintiff to the jail.

7) On November 28, 2005 Plaintiff's wife, Ms. Sheila Masadieu, requested from Kissell the return of the car and all other property confiscated from Plaintiff incident to the November 16, 2005 arrest, including Plaintiff's watch, cell phone, and an unrelated .357 caliber handgun and holster which was registered to Plaintiff and stored in the trunk of the car (Lexus).

8) Kissel advised Ms. Masadieu that because she was the victim in the case for which Plaintiff had been arrested, she would not be allowed to retrieve the property unless she first obtained a power of attorney, even though by law the property in fact also belonged to Ms. Masadieu as Plaintiff's common-law wife.

9) On December 9, 2005 Ms. Masadieu again, with power of attorney in hand, requested Plaintiff's property from Kissel, but was advised by Kissel at that time that property was no longer available and the car had been sold.

10) Finally, on October 4, 2006 Plaintiff by and through trial counsel filed a motion for the return of property.

11) On October 4, 2006 a hearing was held in the Trial Court on the motion to return property where all parties agreed that the car was of no evidentiary value, however it was alleged that there was no information regarding the watch, cell phone, or firearm.

12) Also, during the hearing, the prosecutor, Helen Page, alleged that she agreed the car, which had been confiscated incident to Plaintiff's arrest, was of no evidentiary value, but further

alleged that the car had sat at the police station for months even though Page had signed a release for the car.

13) However, Page admits that she did not notify Plaintiff or his counsel of the release and the car was subsequently sent to a tow-yard and sold. Again, without notice. See § 713.78, Florida Statutes (2006) (notice of sale of vehicle shall be sent by certified mail, return receipt requested, to owner of the vehicle... and shall be mailed not later than 15 days before the date of the sale).

14) On October 4, 2006 the trial court ordered the car returned to Plaintiff. However, when counsel went to determine if the car was in fact still available, he was told by Kissel that the car had in fact been sold.

STATEMENT OF THE CLAIMS
FOR CLAIM I

THE CITY:

The city of North Miami failed to properly monitor, supervise, and correct its police with regards to the unnecessary impoundment of property not reasonably or logically related to or even remotely involved in, or used to facilitate a crime. *Williams v. State*, 903 So.2d 974 (4th DCA 2005) (since validity of an inventory search of an automobile relies on its purpose, a court must determine whether the impoundment of the vehicle was justified and not just a pretext to an exploratory search of vehicle).

Further, as was decided in *City of Miami v. Wellman*, 976 So.2d 22 (3rd DCA 2008), the city's ordinance provided inadequate due process to the innocent co-owner, Ms. Masadieu, who should have been immune from both the loss of her husband's property as well as the car.

Moreover, Ms. Masadieu, had she been provided adequate due process, could have: (a) demonstrated that her common-law status as Plaintiff's wife qualified her as a co-owner, (b) that she was immune from the loss of the car, and (c) would be spared transportation expenses for herself and her minor children by its return. *Wellman*, supra, (due process procedures set forth in city ordinances that empower police to seize and impound vehicles that police had probable cause to believe had been used to facilitate crimes were inadequate where city ordinances did not

allow for an innocent owner to be immune from loss of property or additional monetary penalties); *Mulligan v. City Hollywood*, 34 Fla. L. Weekly D245 (4th DCA 2009) (same).

Additionally, the city failed to instruct and/or to otherwise train its police in regards to what specific act or acts involving private personal property would or could constitute probable cause for impoundment or special need to seize. The evidence in the criminal case clearly indicate that Plaintiff executed a consent to search, and there was no indication that there was any contraband involved or possibly secreted in the car. Therefore, no basis constituting probable cause existed to search or seize the vehicle. *Solomos v. Jenne*, 776 So.2d 953 (4th DCA 2000).

Finally, it is without question that the car was impounded incident to arrest and ostensibly for evidentiary purposes related to the criminal offense alleged in the arrest report, and subsequent information.

As such, the city and its police knew or should have known that the car as "evidence" was never available to be sold, as evidence in a criminal offense may not be sold or appropriated or destroyed prior to the conclusion of the proceedings – whenever that may occur (TR – pgs. 645-647).

Further, even after the conclusion of the proceedings, a 60-day window of opportunity exists for the retrieval of the property if released. See § 705.105, Florida Statutes; *White v. State*, 926 So.2d 473 (2nd DCA 2006).

The record in our case appears to suggest that as early as December 9, 2005 – less than 30 days after it was seized – Kissel was alleging to Ms. Masadieu that the car had been sold, and no other property belonging to Plaintiff existed.

However, there is no ambiguity as to the fact that on the date the Trial Court released the personal property – October 4, 2006 – well before the conclusion of the proceeding, the car and property were said by Kissel to no longer exist. The city therefore, negligently supervised, corrected, monitored, and otherwise failed in its duty to insure that its police abstained from the practice of confiscating the personal property of private citizens where there has been no showing of a legitimate judicial interest in the confiscation or any evidentiary value in the property.

CHIEF OF POLICE:

Chief Clint Shannon, as the chief of the city's police department, had a duty to the city and the private citizens within his jurisdiction to insure that those citizens were not subjected to unreasonable seizures of their personal and private property.

Moreover, as Kissel's direct supervisor, Shannon knew or should have known that Kissel had not articulated a reasonable or even logical basis for seizure, confiscation, or forfeiture of the property.

In fact, Shannon knew or should have known that, under the facts and circumstances of this case, that Kissel had presented basis for nothing more intrusive than a cursory inspection of the vehicle in the hospital's parking lot, where nothing in evidence or in Kissel's direct knowledge of the case even remotely suggested that the car, watch, or cell phone had been used to commit a crime. *Williams v. State*, 903 So.2d 974 (4th DCA 2005).

Additionally, Shannon knew or should have been trained to know that property seized as evidence could be neither sold, nor appropriated, destroyed, or otherwise made unavailable prior to the disposition of the criminal proceedings, or a release by the Trial Court.

However, as early as December 9, 2005 – less than 30 days after its seizure – Kissel was alleging to Ms. Masadieu that the property had been sold, and/or otherwise made unavailable.

Chief Shannon acquired the position of chief through superior skill, qualification, and experience as a police official whose experience should have instinctively shown him that Kissel was not dealing with a criminal element, and was unlikely to discover anything of evidentiary value by confiscating and impounding the property of heretofore, law abiding citizenry.

Contrary to what his experience most surely would have at some point dictated to him however, Chief Shannon stood idly by while Kissel engaged in a senseless and unnecessary fishing expedition resulting in the costly deprivation of the family's only source of transportation.

Therefore, Chief Shannon's liability extends well beyond mere vicariousness, as Kissel's actions had to have the direct approval of Chief Shannon, who affirmatively or tacitly gave such approval by virtue of Chief Shannon's failure to correct, monitor, supervise, train, retrain, or in anywise to discipline Kissel in regards to any actions taken in direct regards to this case.

HELEN PAGE (PROSECUTOR):

Helen Page (Page), who prosecuted the criminal cause which resulted in the instant action, had direct supervision of the investigation into the shooting, and moreover had direct supervision over Kissel who acted as Page's investigator. Further, Page had discretion over any and all evidence collected by Kissel in determining its value and necessity as evidence in Page's criminal prosecution.

In addition to this discretion however, Page had an obligation and responsibility to insure that private and personal property lacking in evidentiary value necessary to the successful prosecution of the State's case was returned to its respective owners. Particularly property in custodia legis. *Eight Hundred, Inc. v. State*, 781 So.2d 1187, 1191-92 (5th DCA 2001).

Page took no such actions however, but waited until October 4, 2006 during the hearing on Plaintiff's motion to return the property to allege that Page had signed a release for the car on a previous date unknown, and that the car sat at the police station for "months" before being subsequently sold to the tow-yard for costs.

Page however, knew or should have known that even if *arguendo*, such allegations were factual, there exists no rule of law which permits the sale or destruction of property seized as evidence which is subsequently determined returnable, without proper and adequate notice to the owner thereof. § 713.78(6), Florida Statutes, (notice of sale of vehicle shall be sent by certified mail, return receipt requested, to owner of the vehicle... and shall be mailed not less than 15 days before the date of the sale).

Notwithstanding the self-serving, burden shifting allegations by Page, cited supra, Page's liability is emphasized by the clear and unmistakable authority vested in here position as the prosecutor where said authority supersedes even that of Chief Shannon's with regard to the disposition of the property taken as evidence, i.e., Chief Shannon, nor Detective Kissel could not dispose of the property without the prior approval of Page.

Moreover, beginning on March 3, 2006 until the literal end of the criminal proceeding, Page had direct contact with Ms. Masadieu and had ample means, motive, opportunity, and responsibility to advise Ms. Masadieu of the release and pending sale of the car, when on March 3, 2006 Page sought and was granted an order of the court requiring Ms. Masadieu to be in daily contact with Page. § 713.78, Florida Statutes.

Page's actions and/or inactions were deliberate as opposed to mere inadvertence, and was motivated by, and in the furtherance of her malicious prosecution of the criminal cause in total and absolute disregard for the rights and property of Plaintiff and Plaintiff's family. Page knew or should have known that her actions and/or inactions were in derogation of both Plaintiff's 4th and 14th Amendment rights prohibiting seizure absent probable cause, and disposition absent due process.

DETECTIVE KISSEL:

From the outset, Detective Kissel was fully aware of, and had sufficient information before him to know, that neither Plaintiff's watch, car, nor cell phone had any significant or discernable evidentiary value in the criminal cause.

However, despite being given a consent to search the vehicle on location at the hospital, Kissel nevertheless, and for no readily apparent reason or legitimate police interest, seized the property in question.

Furthermore, although Defendant Page sought diligently to exclude any mention of the fact that Kissel had no articulable or reasonable basis for the confiscation of the car and other property, the record nevertheless contains sufficient evidence to support the fact that no actual basis existed for the initial confiscations nor the subsequent failure to return and disposal of the property (Suppression Hearing, pgs. 65, 66) (TR – pgs. 645-647).

Moreover, assuming *arguendo*, that Detective Kissel could have somehow believed that the car would contain, or actually was evidence in a shooting which occurred, by all reports, inside of the residence, thereby justifying the seizure, it is unlikely, and illogical to believe, and no evidence supports a conclusion that Kissel also expected Plaintiff's watch and cell phone to yield valuable evidence in the shooting.

Furthermore, because no policy within the North Miami Police procedures prohibits the transfer of prisoners from the police station to the jail with their watches, Kissel acted outside the scope of his employment when he confiscated Plaintiff's watch. And, although a legitimate police interest may be *presumed* in regards to the confiscation of Plaintiff's cell phone and handgun, permanent deprivation is incomprehensible under any logical or reasonable stretch of the imagination, even assuming the items were of some evidentiary value.

Moreover, it is readily apparent that Kissel's actions were derived from some personal and misguided motivation where, as stated supra, Kissel had no actual and articulable basis for the seizure from the outset, but even after, as she alleged, Defendant Page released the property sometime prior to the October 4, 2006 court order, Kissel went out of his way to block the return of the property.

On November 28, 2005 when Ms. Masadieu originally requested the return of her car, she was told by Kissel that because she was the victim in the shooting, she would need a power of attorney from Plaintiff.

However, on December 9, 2005 when Ms. Masadieu returned – power of attorney in hand – Kissel, incredibly, advised Ms. Masadieu that the car had been sold.

First of all, Kissel knew or should have known that, pursuant to Florida law, a wife needs nothing more than a signed release from her husband to retrieve his property from the police if the property has been cleared. Secondly, Kissel knew that the car could not possibly have been sold less than a month from when it was confiscated, and only a matter of a week since Kissel had required Ms. Masadieu to obtain a power of attorney.[1]

Because the articles of property in question here were not confiscated for evidentiary purposes, it is reasonable to conclude that they were confiscated for the sole purpose of deriving some personal or corporate gain, and in wanton disregard for the rights of others. *W.R. Grace & Company - - Conn v. Waters*, 638 So.2d 502 (Fla. 1994).

The property was therefore misappropriated and/or stolen by Kissel under the guise of the color of law, with the deliberate intent to permanently deprive Plaintiff and his family of the use and benefit of the property in total disregard of both the U.S. and Florida Constitution's prohibition against deprivation without probable cause.

STATEMENT OF THE FACTS FOR CLAIM II

1) On March 1, 2006 in connection with the criminal proceedings involving the parties, an Arthur hearing was held in the Circuit Court and presided over by the Honorable Fred Seraphin.

2) During the course of the hearing, Ms. Masadieu testified that the shooting in this matter was totally accidental and possibly caused by her own actions (A.H. pg. 63).

[1] When Ms. Masadieu initially requested the car, it was clearly visible and parked in the police station's parking lot. However, on December 9, 2005 the car was no longer visible.

3) Ms. Masadieu refused – despite repeated attempts by defendant Page to persuade her – to admit that the shooting was anything more than an unfortunate accident.

4) Because Ms. Masadieu refused to be persuaded by any other means – including bribery – defendant Page had Ms. Masadieu arrested by defendant Kissel on March 3, 2006 (B.H. pg. 3).

5) Just prior to her arrest on March 3, 2006 Ms. Masadieu was at work at her job as a cashier for the Publix Food Store chain when she received a telephone call from Mr. Lenzie Masadieu, Plaintiff's brother, requesting that Ms. Masadieu come home immediately (T.R. pg. 426).

6) Upon her arrival Ms. Masadieu discovered from Mr. Masadieu, who was the children's babysitter, that the Plaintiffs' minor children Alberta age 11 years old, and Erica age 7 years old, had been removed from the Plaintiffs' home by Detective Kissel, who demanded that Plaintiff Masadieu report to the police station in order to retrieve her children (T.R. pg. 426).

7) Mr. Masadieu was 25 years old at the time of the incident, the residence was well kept, the children were well fed, clean, clothed and exhibited no outward signs of neglect or abuse.

8) However, when Mr. Masadieu initially refused to turn the children over to Kissel, Mr. Masadieu was advised by Kissel, acting under the color of law, that if Masadieu did not turn the children over, Mr. Masadieu would be arrested.

9) After Mr. Masadieu turned the children over to Kissel, he was advised to tell Plaintiff Masadieu that if she wanted her children back, she would need to come to the police station.

10) Plaintiff Masadieu arrived at the police station with Plaintiff's sister, Ms. Pharah Masadieu, and was arrested as a material witness in the case against Plaintiff Israel (T.R. pg. 426).

11) During the course of the criminal proceedings, Detective Kissel was asked on cross-examination by Plaintiff Israel's trial counsel, why he – Kissel – found it necessary to remove the children from the home. Kissel, in a blatant and deliberate act of perjury, denied that he removed the children at all (T.R. pgs. 640-643).

12) Kissel's actions so traumatized the Plaintiffs and their children that for more than two years the children would not live in Miami at all, and had to be relocated to Naples, Florida to live with their maternal grandmother until the grandmother's health necessitated their return to Miami.

STATEMENT OF THE CLAIM:
THE CITY OF MIAMI

While it is true that in her discretion as prosecutor, Helen Page acted within the scope of her employment in seeking a court order to have Plaintiff Masadieu arrested as a material witness, Page however, sought no such order, nor was any order issued, for the "arrest" and/or "false imprisonment" of the Plaintiffs' children by Kissel.

Moreover, there is not now, nor has there ever been a corresponding principle in Florida law which permits police to kidnap, arrest, falsely imprison, or to otherwise wrongfully remove children from their homes as ransom for the surrender of a parent.

As stated supra, the children were well supervised, exhibited no signs of neglect or abuse, and therefore, presented no lawful justification for their removal from their home.

However, because Plaintiff Masadieu refused to assist Kissel and Page in their malicious prosecution of her husband – Plaintiff Israel – Kissel and Page, as a part of their campaign of terror and coercion, wrongfully removed the minor children without any lawful justification whatsoever (T.R. pg. 426 and 640-643).

The Plaintiffs' children were traumatized and embarrassed by (a) being falsely arrested from their home and neighborhood in the presence of their playmates; (b) being arrested at all, and taken away by strangers; and (c) being "exchanged" for their mother.

So traumatized by this event and the stigma incident therewith were these children, that for two years, they simply refused to live in Miami for fear that "the bad white man is gonna come and get us and mommy again."

The city negligently trained, monitored, instructed, and/or otherwise supervised its police with regards to the handling of the children of parents it intends to arrest.

Moreover, the city negligently instructed its police with regards to what circumstances could or would necessitate the removal of minor children from their homes.

The city's failure to train and monitor its police in this regard is evident in the fact that once Kissel realized that his actions were not in accordance with Florida law, Kissel, incredibly, denied the event even occurred (R. pgs. 640-643).

Furthermore, the city has to date, failed to retrain or instruct Kissel with regards to his cowboy manner in conducting himself in the homes of private citizens.

Plaintiff Masadieu was not and is not a criminal, and neither was her brother Lenzie who was baby sitting the children.

Therefore, Kissel's overzealous, gung-ho tactics were inappropriate and ill-conceived where Kissel entered the home of a "witness," threatened her family, and kidnapped her children for the sole purpose of winning a case against her husband whose only infraction was culpable negligence.

The city's acquiescence and sanctioning of this new brand of police work, is further emphasized by the fact that the city has failed to so much as offer an apology to this family nor to in any wise discipline and reign in its renegade cop.

CHIEF SHANNON: Similarly, Police Chief Shannon has to date, taken no action whatsoever with regards to training, instructing, supervising, and disciplining Kissel in regards to what fact or factors constitute justification for the removal of minor children from the home of a witness, without a court order to do so.

Furthermore, these failures constituted acquiescence to a known infringement and disregard for the rights of private citizens.

Chief Shannon knew or should have known that Kissel's actions under the color of law violated the Plaintiffs' 4th and 14th Amendment rights where the seizure of their children was both unreasonable, and without due process.

Moreover, the purpose of the kidnap was solely to coerce and to otherwise induce the witness to testify in a manner more favorable to the State's position, in exchange for the return of her children and her liberty, with the threat of forfeiture of both should there be any perception that the Plaintiff failed to follow Page's script, and version of events.

This threat was made never more clear than by Kissel's act of "generosity" in driving the Plaintiff/victim/witness to her husband's/Plaintiff's/accused's trial, with the admonition that if she states in trial that she touched the gun prior to discharge, she would go back to jail and lose her children permanently (T.R. pgs. 642-643).

Therefore, Shannon's acquiescence to what he knew or should have known was a flagrant and gross abuse of police powers, where Shannon acquiesced and approved of the tactic – even if tacitly – in that he too has failed to take any action, including apologizing to the family or to make any attempt to assist the family in allaying the fears of the children that the "bad white man" may take them and mommy to jail again, or for the disrespect shown to Mr. Lenzie

Masadieu, who in the privacy of the home sought only to protect the children who were in no wise the subjects of any warrant or court order presented to Mr. Masadieu by Kissel.

There was nothing atypical in Mr. Masadieu's reaction to a perceived unreasonable and obviously unnecessary police intrusion into the lives of the children, Kissel's actions and attitude of superiority and disrespect to Mr. Masadieu was completely inappropriate and uncalled for.

Mr. Masadieu, as stated supra is not a criminal and had had only one prior encounter with police. However, because Shannon has allowed Kissel free reign and discretion as opposed to discipline and training, Mr. Masadieu also does not wish to reside within, or even visit Miami.

HELEN PAGE: As to the prosecutor, and the actual affiant of the bond, Page knew and should have instructed Kissel as her investigator, that the bond was not a criminal warrant, nor a search warrant, and could only be executed within the boundaries of its purpose.

Furthermore, Page had an obligation and responsibility to instruct and advise that Plaintiff Masadieu was not a criminal and not suspected of any crime and therefore, she and her family should be treated with the same courtesy and respect of any other citizen or witness.

However, Page sought only to win her case, and utilized Kissel and his brand of police misconduct to her full advantage in tormenting and terrorizing the Plaintiffs and their family where she too acquiesced to the kidnapping for ransom and also sought to keep the criminal court and jury from hearing of it (R. 640-643).

Because Page sanctioned and tacitly agreed to Kissel's actions, failed to advise against the tactic, offered no apology, requested no psychological assistance for Plaintiff Masadieu or the minor children, sought no remedial training for Kissel or disciplinary action against himl, but instead sought only to benefit from the character and proclivity towards police abuse by Kissel, Page is directly liable and responsible for Kissel's actions, where those actions were in the furtherance of Page's malicious prosecution and desire to induce the witness to endorse Page's version of events.

The Plaintiffs' contentions here are unquestionably supported by the fact that, although Page alleged that Plaintiff Masadieu would not show up for trial, and was planning to leave town, (a) the trial was not conducted for more than a year after Page sought the bond; (b) the prosecutor never had a proceeding scheduled for which she issued a notice that Plaintiff Masadieu failed to attend; and (c) Page deliberately chose the harshest, most intimidating means

available to bring Plaintiff Masadieu before the court for no readily apparent reason where the only purpose for Plaintiff's presence in court was to be released from custody (B.H. pg. 3).

However, an additional basis for finding Page's actions in seeking the warrant from the outset were retaliatory, malicious and abusive, can be found in the fact that on February 12, 2006, Page requested of Plaintiff Masadieu by letter that Masadieu attend depositions at Page's office on February 15, 2006.

Plaintiff did not attend the depositions, and in fact refused to do so, but without consequence.

Despite this fact, Page made no comment or complaint regarding Plaintiff's failure at, during, or before any subsequent proceedings, nor yet, mentioned the refusal or failure to appear in her request for the material witness bond.

It was only after Plaintiff Masadieu testified at the Arthur hearing in a manner inconsistent with the State's version of events, that Kissel and Page began their campaign of abusive and retaliatory actions against Plaintiff and her family.

In other words, Page had no actual or legal basis for having Plaintiff Masadieu arrested and her children kidnapped, but did so solely in retaliation for Plaintiff Masadieu's refusal to testify at the Arthur hearing in accordance to Page's "script." Plaintiff had not failed to appear, because there was no proceeding to appear at (A.H. pgs. 63-67).

FALSE ARREST AND FALSE IMPRISONMENT

The arrest itself was based on nothing more than some false allegations by Valerie Manard, who claimed Plaintiff had plans to move from her residence and fail to appear.

Page, based solely on this bold allegation and nothing more had Plaintiff arrested, ostensibly to remind Plaintiff of the trial date (B.H. pg. 5, T.R. pg. 640).

Further, Page alleged that she had been trying to subpoena the Plaintiff as cited as cause for the arrest by the Honorable Judge Victoria Sigler (B.H. pg. 4).

Not only did Page know that there had been no attempt made at any time prior to subpoena the Plaintiff, but also knew that only two days prior to the arrest, Page had the Plaintiff in her presence and on the witness stand at the Arthur hearing, and did not even mention a subpoena or a trial date, all of which took place a mere 6 days prior to the material witness bond hearing.

Moreover, Page presented no evidence whatsoever that the Plaintiff had made statements to a counselor that the Plaintiff planned to move.

The alleged police department counselor who made the allegation, did not testify, and has not to date testified at any proceeding that the Plaintiff made such statement. The only person to ever make this allegation on any public record is the very person seeking to justify the wrongful arrest – Helen Page (B.H. pg. 4, T.R. pg. 436).

However, what is abundantly clear, is that the Plaintiff was completely unaware of any plans to move from her residence, but believed she was required to do so.

Plaintiff's belief that she was required to move was due primarily to the fact that she had been offered, among other gratuities, including the return of the family's car, money and any other assistance needed, a new residence in exchange for her conformed testimony (B.H. pg. 7).

Although Plaintiff rejected the State's gratuities out of hand, she did not, nor was it ever alleged, refuse to testify at trial.

As a matter of fact, Plaintiff specifically states on the record, without any prompting or in response to any inquiry that she had an "appointment" at 9:00 (B.H. pg. 7).

It is readily apparent here, as it will likely be to the jury that the Plaintiff was fully aware of, and had full intentions, to attend the trial of her husband. And, not a single word in any proceeding as testified to by any witness has ever contradicted that fact.

It was only when the victim testified as she had at the Arthur hearing – another scheduled "appointment" – and rejected the State's offers, that Page suddenly, for no readily apparent reason, became "concerned" that the Plaintiff would not show up for trial.

Undoubtedly then, a jury will most probably find, as is evident here, that Page had no lawful basis for having Plaintiff arrested, and certainly nothing even remotely approaching a lawful, logical, or even reasonable basis for imprisoning her for 4 days and nights in jail (B.H. pg. 3).

Page did however, have an agenda, which was to exert total domination over the Plaintiff, and to have total control over the testimony offered during the trial, and, in an appalling display of prosecutorial misconduct, acting under the color of law, Page so frightened and intimidated the Plaintiff/victim, until the Plaintiff was finally faced with – as she believed – a choice between going back to jail and losing her children by telling the truth, or lying and losing her husband (T.R. pgs. 413, 414).

So successful was the campaign conducted by Kissel and Page that even the Plaintiff's own mother advised Plaintiff to do as Page wanted, particularly in light of the fact that Page and Kissel had no compunction about terrorizing even the children in order to secure a conviction.

Page knew and was well aware of the fact that arbitrarily arresting the Plaintiff on a mere supposition with no factual or evidentiary basis in support of the supposition, and imprisoning her for 4 days without cause, had no corresponding principle of law in Florida justifying such action. Page therefore acted in retaliation and solely to intimidate, in deliberate derogation of Plaintiffs' and their children's 4th and 14th Amendment rights, and in the abuse of the authority vested in the office of the prosecutor, for which there lies no immunity or protection from this suit where these acts were wanton, malicious, perverse and in deliberate disregard for the laws of this state, the integrity of her office, and the rights of the citizens of this jurisdiction and municipality.

DETECTIVE KISSEL: Kissel knew emphatically that the warrant he possessed was not a fugitive warrant but merely a warrant to bring in an interested party and/or material witness.

As such, Kissel's warrant did not carry with it the full parameters and force of a fugitive warrant, but was basically an on-site pick-up order, and did not permit some full fledge search, city-wide dragnet, or listing on America's Most Wanted.

The person of interest was a victim in a shooting, a part-time housewife/part-time working mother.

Because of an obvious lack of training however, Kissel approached the execution of the warrant just as if he were dealing with a fugitive or some sort of criminal, while knowing full well he did not possess a criminal warrant.

When Kissel arrived at the Plaintiff's residence and discovered Plaintiff Masadieu was not at home, Kissel had before him a number of options, each of which were in accord with protocol and procedure: (1) Kissel could have left his contact card and asked that the Plaintiff contact him; (2) Kissel could have waited outside the residence until the Plaintiff arrived home; (3) Kissel could have asked Mr. Masadieu to call the Plaintiff at her job and request that she return home to meet with Kissel; or (4) Kissel could have gone to the Publix store where the Plaintiff worked and spoken to her there or brought her in from there.

The point is, Kissel has any number of less intrusive alternatives, but chose to engage in an option which was clearly neither available nor in accordance with any laws or police procedures of this state.

Kissel calculated correctly that barging into the residence and bullying the occupants, and throwing the weight of the city/police around, would have the desired intimidating effect on Plaintiff Masadieu.

Moreover, Kissel knew that not only did his warrant not permit the actions heretofore described, but Kissel was fully aware of the fact that a warrant can only be executed upon the person or articles described therein.

Nevertheless, Kissel took it upon himself to frighten and abduct the Plaintiffs' children in order to ensure that Plaintiff Masadieu would report to the police station, and to ensure her cooperation in ratifying Page's version of events.

Nothing however, could possibly justify such cowboy police tactics as such tactics are not in accordance with any policy or procedure of the city of N. Miami police, and the actions were solely contrived by Kissel, and motivated by his and Page's desire to win a case.

While it is true that Plaintiff Masadieu did not *want* to testify against Plaintiff Isreal with regards to the shooting, that fact, standing alone, did not justify her arrest nor that of the minor children. Plaintiff Masadieu was not in contempt of any court order, nor had she failed to appear. But for the sole purpose of coercion and intimidation Page sought the warrant, and Kissel kidnapped the Plaintiffs' children as an act of terror and unnecessary torment to a family already tormented.

Therefore, as stated supra, Kissel knew or should have known that he had no legal or even logical basis for removing the children from the home.

The home was in order, the children well kept and adequately supervised by an adult.

Kissel's actions violated and were contrary to the principles mandated in the 4th and 14th Amendment and the comparable mandates of the Florida Constitution at Article I, § 12, where the children were arrested and/or seized without probable cause, and the family was not provided adequate due process.

However, even if arguendo, Kissel could somehow present a plausible explanation justifying the abduction of the Plaintiffs' children, such an explanation though interesting, would

nevertheless be viewed with a heightened degree of skepticism where Kissel, under oath, denied removing the children at all (R. pgs. 640-643).

However, nothing within Kissel's purview presented him with a circumstance requiring the removal of the children. The children were taken for the sole purpose of intimidation and in retaliation against Plaintiff Masadieu who had her freedom and that of her children "conditionally ransomed" to her.

CLAIMS FOR DAMAGES FOR CLAIM I

Plaintiff claims compensatory and punitive damages in the following amounts:

1.) **City of Miami:** Movado Watch - $5,000.00; cell phone - $175.00; 1995 Lexus LS400 - $20,000.00; .357 Magnum - $500.00.

2.) Deprivation of transportation reimbursement and luxury of ownership from November 2005 to present - $42,000.00 (derived from a $150.00 weekly rate).

3.) Punitive damages for mental and emotional stress, humiliation and embarrassment, and lost wages of family - $100,000.00.

4.) Cost and attorney fees – To be determined.

Defendants:

1.) **Chief Shannon:** Compensatory damages - $25,675.00; punitive damages - $74,325.00

2.) **Detective Kissel:** Compensatory damages - $25,675.00; punitive damages - $74,325.00

3.) **Helen Page:** Compensatory damages - $25,675.00; punitive damages - $74,325.00

CLAIM FOR DAMAGES FOR CLAIM II

In the case of Alberta Israel, Plaintiffs seek damages from the city of Miami, Joseph Kissel, Chief Shannon, and Helen Page in the amount of **1.5 million dollars** for wrongful arrest and/or removal from the home, emotional distress, and continuing mental anguish.

In the case of Erica Israel, Plaintiffs seek damages from the city of Miami, Joseph Kissel, Chief Shannon, and Helen Page in the amount of **1.5 million dollars** for wrongful arrest and/or removal from the home, emotional distress, and continuing mental anguish.

In the case of Sheila Masadieu, Plaintiffs seek damages from the city of Miami, Joseph Kissel, Chief Shannon, and Helen Page in the amount of **2.75 million dollars** for the wrongful

arrest and false imprisonment of herself, and the wrongful arrest of her children, emotional distress, and continuing mental anguish.

In the case of Alberic Israel, Plaintiff seeks damages from the City of North Miami, Joseph Kissel, Chief Shannon, and Helen Page in the amount of **1.5 MILLION DOLLARS** for wrongful arrest of his children, emotional distress, and continuing mental anguish, plus costs and attorney fees – to be determined.

CONCLUSION

Further, if a settlement cannot be reached in this matter, take note that the Plaintiff demand will seek to have the matter resolved by Jury Trial.

Respectfully submitted,

Alberic Israel

Alberic Israel

CERTIFICATE OF NOTARY

Case # 05-3507

STATE OF FLORIDA
COUNTY OF PALM BEACH

SWORN TO AND SUBSCRIBED BEFORE ME this 10th day of December 2009.

NOTARY PUBLIC - STATE OF FLORIDA
Alan L. Weaver
Commission # DD631589
Expires: JAN. 21, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Public

Produced Identification DL 10th

Type of Identification: DC #M58911

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing "Tort Claim for Money Damages" has been furnished by certified mail to City of North Miami: c/o Clarence Patterson, City Manager, 776 N.E. 125th Street, North Miami, Florida 33161 and by first class U.S. Mail to Joseph Kissel, Detective, North Miami Police Department, 700 N.E. 124th Street, North Miami, Florida 33161; Clint Shannon, Chief, North Miami Police Department, 700 124th Street, North Miami, Florida 33161; and Helen Page, Assistant State Attorney, 1350 N.W. 12th Street, Miami, Florida 33136-2111, this 10 day of December 2009, by the undersigned.

Alberic Israel

Alberic Israel, DC #M58911
Glades Correctional Institution
500 Orange Avenue Circle
Belle Glade, Florida 33430