

AMS,CASREF,MEDIATION,REF_DISCOV

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:10-cv-23677-CMA**

Lelieve v. Timoney et al
Assigned to: Judge Cecilia M. Altonaga
Referred to: Magistrate Judge Andrea M. Simonton
Demand: \$240,000
Case in other court: Miami-Dade Circuit Court, 10-49281
CA (6)
Cause: 42:1983 Civil Rights Act

Date Filed: 10/12/2010
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Gerald Lelieve
Prisoner ID: DC #L11928
Hamilton Correctional Institution-
Annex
11419 S.W. County Road #249, Jasper
FL
32052-3735
US

represented by **Diane J. Zelmer**
Zelmer Law
150 N. Federal Highway
Suite 230
Ft. Lauderdale, FL 33301
954-400-5055
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher Allan Green
Miami City Attorney's Office
Miami Riverside Center
444 SW 2nd Avenue
Suite 945
Miami, FL 33130-1910
305-416-1800
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Email: CAGreen@miamigov.com

V.

Defendant

Police Chief John F Timoney
individual and in his official capacity
TERMINATED: 01/05/2012

Defendant**Detective Odney Belfort**

represented by **John Anthony Greco**
City of Miami
Office of the City Attorney
444 S.W. 2nd Avenue,

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 9th Floor
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Christopher Allan Green
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant

Detective John Doe
 TERMINATED: 01/05/2012

Defendant

Detective John Doe #2
 in their individual capacities
 TERMINATED: 01/05/2012

Defendant

Chief of Police City of Miami
 Manuel Oroso

represented by **Christopher Allan Green**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/12/2010	<u>1</u>	NOTICE OF REMOVAL Filing fee \$ 350.00 receipt number 113C-3226871, filed by Odney Belfort. (Attachments: # <u>1</u> Exhibit Complaint filed in state court, # <u>2</u> Civil Cover Sheet, # <u>3</u> Exhibit Order of Dismissal in 09-cv-20547-JAL)(Green, Christopher) (Entered: 10/12/2010)
10/12/2010	<u>2</u>	Judge Assignment RE: Electronic Complaint to Judge Cecilia M. Altonaga (lh) (Entered: 10/13/2010)
10/13/2010	<u>3</u>	Notice of Pendency of Other Action by Odney Belfort (Green, Christopher) (Entered: 10/13/2010)
10/13/2010	<u>4</u>	WITHDRAWN per DE <u>39</u> . ORDER REFERRING CASE to Magistrate Judge Patrick A. White for a Report and Recommendation. Signed by Judge Cecilia M. Altonaga on 10/13/2010. (ps1) Modified text to reflect referral withdrawn on 8/9/2011 (tas). (Entered: 10/13/2010)
10/13/2010	<u>5</u>	MOTION to Dismiss the State Court Complaint contained within the Notice of Removal <u>1</u> Notice of Removal, by Odney Belfort. Responses due by 11/1/2010 (Green, Christopher) (Entered: 10/13/2010)
10/13/2010	<u>6</u>	MOTION to Take Judicial Notice of Record by Odney Belfort. (Green, Christopher) (Entered: 10/13/2010)

10/26/2010	<u>7</u>	ORDER denying <u>5</u> Motion to Dismiss; granting <u>6</u> Motion to Take Judicial Notice of Record. Signed by Judge Cecilia M. Altonaga on 10/26/2010. (ps1) (Entered: 10/26/2010)
10/28/2010	<u>8</u>	SCHEDULING ORDER: Amended Pleadings due by 3/11/2011. Discovery due by 2/25/2011. Joinder of Parties due by 3/11/2011. Motions due by 4/1/2011.. Signed by Magistrate Judge Patrick A. White on 10/27/2010. (tw) (Entered: 10/28/2010)
11/09/2010	<u>9</u>	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Odney Belfort.(Green, Christopher) (Entered: 11/09/2010)
11/24/2010	<u>10</u>	MOTION to Dismiss for Lack of Jurisdiction <u>1</u> Notice of Removal, by Gerald Lelieve. Responses due by 12/13/2010 (lk) (Entered: 11/29/2010)
11/30/2010	<u>11</u>	ORDER dismissing <u>10</u> Motion to Dismiss for Lack of Jurisdiction, this motion appears to be a copy of a pleading filed in the state courts.. Signed by Magistrate Judge Patrick A. White on 11/30/2010. (cz) (Entered: 11/30/2010)
12/08/2010	<u>12</u>	MOTION for Summary Judgment by Odney Belfort. Responses due by 1/3/2011 (Attachments: # <u>1</u> Exhibit Declaration of Odney Belfort, # <u>2</u> Exhibit Judgment of conviction, # <u>3</u> Exhibit Complaint in 08-21164, # <u>4</u> Exhibit Order of dismissal in 08-21164, # <u>5</u> Exhibit Complaint in 09-20547, # <u>6</u> Exhibit Order of dismissal in 09-20547)(Green, Christopher) (Entered: 12/08/2010)
12/10/2010	<u>13</u>	ORDER OF INSTRUCTING TO PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT. (Responses due by 12/30/2010). Signed by Magistrate Judge Patrick A. White on 12/9/2010. (tw) Modified text on 12/10/2010 (bb). (Entered: 12/10/2010)
01/03/2011	<u>14</u>	RESPONSE to Motion re <u>12</u> MOTION for Summary Judgment filed by Gerald Lelieve. (lh) (Entered: 01/03/2011)
01/04/2011	<u>15</u>	Defendant's MOTION for Extension of Time to File Response/Reply as to <u>14</u> Response to Motion <i>for Summary Judgment</i> by Odney Belfort. (Attachments: # <u>1</u> Text of Proposed Order)(Greco, John) (Entered: 01/04/2011)
01/05/2011	<u>16</u>	ORDER granting <u>15</u> Motion for Extension of Time to File Response/Reply re <u>15</u> Defendant's MOTION for Extension of Time to File Response/Reply as to <u>14</u> Response to Motion <i>for Summary Judgment</i> Responses due by 1/14/2011. Signed by Magistrate Judge Patrick A. White on 1/5/2011. (cz) (Entered: 01/05/2011)
01/12/2011	<u>17</u>	REPLY to Response to Motion re <u>12</u> MOTION for Summary Judgment filed by Odney Belfort. (Attachments: # <u>1</u> Text of Proposed Order)(Green, Christopher) (Entered: 01/12/2011)
02/23/2011	<u>18</u>	NOTICE of Filing Discovery: Request for Production of Documents by Gerald Lelieve.(ls) (Entered: 02/23/2011)
02/28/2011	<u>19</u>	MOTION to Compel <i>Production of Medical Records</i> by Gerald Lelieve. (lh) (Entered: 03/01/2011)

03/02/2011	<u>20</u>	ORDER deferring ruling on <u>19</u> Motion to Compel medical records. The defendants shall file their response forthwith to this motion.. Signed by Magistrate Judge Patrick A. White on 3/2/2011. (cz) (Entered: 03/02/2011)
03/02/2011	<u>21</u>	RESPONSE to Motion re <u>19</u> MOTION to Compel <i>Production of Medical Records</i> filed by Odney Belfort. Replies due by 3/14/2011. (Green, Christopher) (Entered: 03/02/2011)
03/03/2011	<u>22</u>	ORDER denying <u>19</u> Motion to Compel for the reasons stated in defendant's response. Further, it does not appear the plaintiff's medical records are required to determine the outcome of the motion for summary judgment pending.. Signed by Magistrate Judge Patrick A. White on 3/3/2011. (cz) (Entered: 03/03/2011)
04/14/2011	<u>23</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Notice of Removal, filed by Odney Belfort. Recommending (1) the claims against Defendants Police Chief John F. Timoney be dismissed for failure to state a claim;(2) the claims against John Doe Detectives #1 and #2 be dismissed for failure to adequately identify the defendants and serve them within 120 days of the complaints filing; and(3) Gerald Belfort's Motion for Summary Judgment (DE# 12) be denied as to the claim he used excessive force, and granted as to the claim that he violated Florida Statutes Section 893.25(1). Objections to R&R due by 5/2/2011. Signed by Magistrate Judge Patrick A. White on 4/14/2011. (tw) (Entered: 04/14/2011)
04/18/2011	<u>24</u>	PRETRIAL STATEMENTS by Gerald Lelieve (lh) (Entered: 04/19/2011)
04/28/2011	<u>25</u>	OBJECTIONS to <u>23</u> Report and Recommendations by Odney Belfort. (Green, Christopher) (Entered: 04/28/2011)
04/29/2011	<u>26</u>	Statement of: <i>Defendant</i> by Odney Belfort (Green, Christopher) (Entered: 04/29/2011)
04/29/2011	<u>27</u>	OBJECTIONS to <u>23</u> Report and Recommendations by Gerald Lelieve. (mg) (Entered: 04/29/2011)
05/05/2011	<u>28</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>23</u> Report and Recommendations,, <u>12</u> Motion for Summary Judgment, filed by Odney Belfort, ORDER REFERRING CASE to Magistrate Judge for Report and Recommendation. Signed by Judge Cecilia M. Altonaga on 5/4/2011. (lh) (Entered: 05/05/2011)
05/31/2011	<u>29</u>	NOTICE/Request to Proceed with Original Complaint by Gerald Lelieve re <u>1</u> Notice of Removal, (lh) (Entered: 05/31/2011)
06/01/2011	<u>30</u>	ORDER granting <u>29</u> Request for Proceed With Original Complaint; Jury Trial set for 2 week trial period beginning 8/15/2011 before Judge Cecilia M. Altonaga; Calendar Call set for 8/9/2011 09:00 AM in Miami Division before Judge Cecilia M. Altonaga. Pretrial Stipulation due by 7/15/2011. Signed by Judge Cecilia M. Altonaga on 6/1/2011. (ps1) (Entered: 06/01/2011)
06/02/2011	<u>31</u>	Writ of Habeas Corpus ad Testificandum Issued as to Gerald Lelieve DC#L11928 for August 9, 2011 through the two week Trial period commencing on August 15, 2011. Signed by Judge Cecilia M. Altonaga on

		6/1/11. (tas) (Entered: 06/02/2011)
07/01/2011	<u>32</u>	JOINT PRETRIAL STIPULATION by Gerald Lelieve (jua) (Entered: 07/05/2011)
07/01/2011	<u>33</u>	Proposed Jury Instructions by Gerald Lelieve. (Please see DE <u>32</u> for Image) (jua) (Entered: 07/05/2011)
07/14/2011	<u>34</u>	PRETRIAL STIPULATION <i>Proposed</i> by Odney Belfort (Green, Christopher) (Entered: 07/14/2011)
07/15/2011	<u>35</u>	Proposed Jury Instructions by Odney Belfort. (Green, Christopher) (Entered: 07/15/2011)
08/08/2011	<u>36</u>	NOTICE of Attorney Appearance by Diane J. Zelmer on behalf of Gerald Lelieve (Zelmer, Diane) (Entered: 08/08/2011)
08/08/2011	<u>37</u>	First MOTION to Continue <i>Trial</i> , First MOTION for Extension of Time to extend pretrial deadlines re <u>30</u> Scheduling Order, <u>8</u> Scheduling Order by Gerald Lelieve. Responses due by 8/25/2011 (Attachments: # <u>1</u> Affidavit Gerald Lelieve)(Zelmer, Diane) (Entered: 08/08/2011)
08/09/2011	<u>38</u>	Minute Entry for proceedings held before Judge Cecilia M. Altonaga: Calendar Call held on 8/9/2011. Court Reporter: Barbara Medina, 305-523-5518 / Barbara_Medina@flsd.uscourts.gov (jpr) (Entered: 08/09/2011)
08/09/2011	<u>39</u>	ORDER granting <u>37</u> Motion to Continue Trial Date and for Enlargement of Time of Pre-Trial Deadlines. Signed by Judge Cecilia M. Altonaga on 8/9/11. (tas) (Entered: 08/09/2011)
08/09/2011	<u>40</u>	RESET DEADLINES/HEARINGS per DE <u>39</u> : (Amended Pleadings due by 9/23/2011., Discovery due by 11/14/2011., Expert Discovery due by 11/14/2011., Fact Discovery due by 11/14/2011., Joinder of Parties due by 9/23/2011., Mediation Deadline 11/28/2011., Deadline for submitting consent due by 12/6/2011., In Limine Motions due by 1/30/2012., All Pretrial Motions due by 12/6/2011., Pretrial Stipulation due by 1/30/2012., Calendar Call set for 3/6/2012 09:00 AM in Miami Division before Judge Cecilia M. Altonaga., Jury Trial set for 3/12/2012 before Judge Cecilia M. Altonaga.), CASE REFERRED to Magistrate Judge Andrea M. Simonton., CASE REFERRED to Mediation. (Mediation Deadline 11/28/2011.) The referral to Magistrate Judge Patrick A. White [ECF No. 4] is WITHDRAWN. (tas) (Entered: 08/09/2011)
08/09/2011	<u>41</u>	MOTION to Take Deposition from Gerald Lelieve by Odney Belfort. (Green, Christopher) (Entered: 08/09/2011)
08/10/2011	<u>42</u>	ORDER denying without prejudice <u>41</u> Motion for Leave of Court to Depose Plaintiff. Signed by Judge Cecilia M. Altonaga on 8/10/2011. (ps1) (Entered: 08/10/2011)
08/11/2011	<u>43</u>	Unopposed MOTION to Take Deposition from Gerald Lelieve by Odney Belfort. (Green, Christopher) (Entered: 08/11/2011)
08/12/2011	<u>44</u>	ORDER granting <u>43</u> Motion for Leave to Take Deposition from Gerald Lelieve. Signed by Judge Cecilia M. Altonaga on 8/12/2011. (ps1) (Entered: 08/12/2011)

		08/12/2011)
08/15/2011	<u>45</u>	ORDER directing the return of Plaintiff to his assigned facility. Signed by Judge Cecilia M. Altonaga on 8/15/2011. (ps1) (Entered: 08/15/2011)
08/16/2011	<u>46</u>	Writ of Habeas Corpus ad Testificandum Issued as to Gerald Lelieve for March 6, 2012. Signed by Judge Cecilia M. Altonaga on 8/15/2011. (ps1) (Entered: 08/16/2011)
08/29/2011	<u>47</u>	NOTICE of Change of Address by Diane J. Zelmer (Zelmer, Diane) (Entered: 08/29/2011)
08/30/2011	<u>48</u>	First MOTION for Extension of Time to File Proposed Order Scheduling Mediation re <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time by Gerald Lelieve. Responses due by 9/16/2011 (Attachments: # <u>1</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 08/30/2011)
08/30/2011	<u>49</u>	MOTION to Appoint Mediator <i>Pro Bono</i> by Gerald Lelieve. Responses due by 9/16/2011 (Attachments: # <u>1</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 08/30/2011)
08/30/2011	<u>50</u>	Unopposed MOTION re <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time <i>to be Excused from Attendance at Mediation</i> by Gerald Lelieve. (Attachments: # <u>1</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 08/30/2011)
08/30/2011	<u>51</u>	ORDER granting <u>49</u> for Court to Appoint Pro Bono Mediator; Plaintiff is to supply a list of names who will accept the assignment. Signed by Judge Cecilia M. Altonaga on 8/30/2011. (ps1) (Entered: 08/30/2011)
08/30/2011	<u>52</u>	ORDER granting <u>50</u> Motion to be Excused from Attendance at Mediation. Signed by Judge Cecilia M. Altonaga on 8/30/2011. (ps1) (Entered: 08/30/2011)
08/30/2011	<u>53</u>	ORDER granting <u>48</u> Motion for Extension of Time to File Proposed Order Scheduling Mediation. Signed by Judge Cecilia M. Altonaga on 8/30/2011. (ps1) (Entered: 08/30/2011)
09/06/2011	<u>54</u>	MOTION to Shorten Time to Respond to Plaintiff's Second Set of Interrogatories by Gerald Lelieve. (Attachments: # <u>1</u> Exhibit Second Set of Interrogatories, # <u>2</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 09/06/2011)
09/07/2011	55	ENDORSED ORDER Setting Telephonic Hearing on <u>54</u> Plaintiff's Motion to Shorten Time for Defendant to Respond to Plaintiff's Second Set of Interrogatories for Wednesday, September 7, 2011 at 4:00 PM before Magistrate Judge Andrea M. Simonton. Counsel for the Plaintiff shall initiate the telephone call to the chambers of the undersigned (305-523-5930) with all Parties on the line. Signed by Magistrate Judge Andrea M. Simonton on 9/7/2011. (par) (Entered: 09/07/2011)
09/07/2011	56	TEXT Minute Entry for proceedings held before Magistrate Judge Andrea M. Simonton: Telephonic Discovery Hearing held on 9/7/2011. Attorney Diane Zelmer telephonically appeared on behalf of the Plaintiff. Attorney Christopher

		telephonically appeared on behalf of the Defendant. Defendant to respond by 9/19/2011 to interrogatories within the terms discussed. Any return of service should be redacted to limit any address. Written order to follow. (Digital 16:22:18 - 16:38:22.) (aw) (Entered: 09/07/2011)
09/08/2011		SYSTEM ENTRY - Docket Entry 57 restricted/sealed until further notice. (ps1) (Entered: 09/08/2011)
09/08/2011	<u>58</u>	Clerks Notice of Docket Correction re 57 Order Appointing Mediator. Document Restricted Due to Error ; The correct document has been attached to this notice. Order Appointing Brian Spector as Mediator; the parties are to file a proposed order scheduling mediation by 9/16/11 (ps1) (Entered: 09/08/2011)
09/09/2011		Set/Reset Deadlines/Hearings as per DE <u>32</u> : Miscellaneous Deadline 9/16/2011. (lk) (Entered: 09/09/2011)
09/09/2011	<u>59</u>	ORDER granting <u>54</u> Plaintiff's Motion to Shorten Time to Respond to Plaintiff's Second Set of Interrogatories. Signed by Magistrate Judge Andrea M. Simonton on 9/9/2011. (par) (Entered: 09/09/2011)
09/14/2011	<u>60</u>	NOTICE by Gerald Lelieve re <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time, <u>53</u> Order on Motion for Extension of Time, <u>58</u> Clerks Notice of Docket Correction - Chambers and Clerks, <i>of Filing Proposed Order Scheduling Mediation</i> (Attachments: # <u>1</u> Text of Proposed Order) (Zelmer, Diane) (Entered: 09/14/2011)
09/15/2011	<u>61</u>	ORDER Scheduling Mediation before Brian F. Spector. Mediation Hearing set for 11/16/2011 02:00 PM. Signed by Judge Cecilia M. Altonaga on 9/15/2011. (tas) (Entered: 09/15/2011)
09/23/2011	<u>62</u>	MOTION for Leave to File <i>Amended Complaint</i> , MOTION to Adopt/Join <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time <i>Parties</i> by Gerald Lelieve. (Attachments: # <u>1</u> Exhibit Proposed Amended Complaint) (Zelmer, Diane) (Entered: 09/23/2011)
10/07/2011	<u>63</u>	MOTION for Extension of Time to Exchange Expert Summaries and/or Reports re <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time, Second MOTION to Continue <i>Trial Date and Reset Pretrial Deadlines</i> by Gerald Lelieve. Responses due by 10/24/2011 (Attachments: # <u>1</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 10/07/2011)
10/07/2011	<u>64</u>	NOTICE of telephonic Hearing on <u>63</u> MOTION for Extension of Time to Exchange Expert Summaries and/or Reports and <u>62</u> MOTION for Leave to File <i>Amended Complaint</i> : Telephone Conference set for 10/13/2011 09:15 AM in Miami Division before Judge Cecilia M. Altonaga. The parties are to schedule a conference call and file the contact information on the docket by 12:00 p.m. on 10/12/11(ps1) (Entered: 10/07/2011)
10/10/2011	<u>65</u>	NOTICE by Gerald Lelieve re 64 Notice of Hearing on Motion, <i>of Filing Contact Information for Hearing on October 13, 2011</i> (Zelmer, Diane) (Entered: 10/10/2011)
10/11/2011	<u>66</u>	RESPONSE in Opposition re <u>62</u> MOTION for Leave to File <i>Amended</i>

		<i>Complaint</i> MOTION to Adopt/Join <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time <i>Parties</i> filed by Odney Belfort. (Green, Christopher) (Entered: 10/11/2011)
10/13/2011	<u>67</u>	Minute Entry for proceedings held before Judge Cecilia M. Altonaga: Motion Hearing held on 10/13/2011 re <u>63</u> MOTION for Extension of Time to Exchange Expert Summaries and/or Reports re <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time Second MOTION to Continue <i>Trial Date and Reset Pretrial Deadlines</i> filed by Gerald Lelieve, <u>62</u> MOTION for Leave to File <i>Amended Complaint</i> MOTION to Adopt/Join <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time <i>Parties</i> filed by Gerald Lelieve. Court Reporter: Barbara Medina, 305-523-5518 / Barbara_Medina@flsd.uscourts.gov (jpr) (Entered: 10/13/2011)
10/13/2011	<u>68</u>	ORDER denying <u>63</u> Motion for Extension of Time; denying <u>63</u> Motion to Continue. Signed by Judge Cecilia M. Altonaga on 10/13/2011. (ps1) (Entered: 10/13/2011)
10/21/2011	<u>69</u>	REPLY to Response to Motion re <u>62</u> MOTION for Leave to File <i>Amended Complaint</i> MOTION to Adopt/Join <u>39</u> Order on Motion to Continue, Order on Motion for Extension of Time <i>Parties</i> filed by Gerald Lelieve. (Zelmer, Diane) (Entered: 10/21/2011)
10/21/2011	<u>70</u>	MOTION to Withdraw as Attorney by William Earl Ploss. by Gerald Lelieve. Responses due by 11/7/2011 (Attachments: # <u>1</u> Affidavit, # <u>2</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 10/21/2011)
10/24/2011	<u>71</u>	ORDER denying <u>70</u> Motion to Withdraw as Attorney. Under Local Rule 7.1 (A)(2) of the U.S. District Court for the Southern District of Florida, certain motions identified in Local Rule 7.1 (A)(1) must be accompanied by a proposed order. It is not enough, however, to attach proposed orders to the motion filed on CM/ECF. Attorneys need to be mindful that pursuant to the CM/ECF Administrative Procedures, proposed orders shall be filed as an attachment to a motion, notice, or other filing. The proposed document must also be e-mailed to the judge at the email address of the judge. The proposed document shall be submitted by e-mail in WordPerfect or Word format. The e-mail line and the name of the attachment should include the case number, followed by a short description of the attachment (e.g., 00-cv-00000 Order). Failure to follow the above outlined procedure may result in denial of the motion without prejudice. The CM/ECF Administrative Procedures may be viewed at http://www.flsd.uscourts.gov . Signed by Judge Cecilia M. Altonaga (CMA) (Entered: 10/24/2011)
10/24/2011	<u>72</u>	MOTION for Reconsideration re 71 Order on Motion to Withdraw as Attorney,,,, by Gerald Lelieve. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Text of Proposed Order)(Zelmer, Diane) (Entered: 10/24/2011)
10/24/2011	<u>73</u>	ORDER granting <u>72</u> Motion for Reconsideration. Signed by Judge Cecilia M. Altonaga on 10/24/2011. (ps1) (Entered: 10/24/2011)
10/27/2011	<u>74</u>	ORDER granting in part and denying in part <u>62</u> Motion to Join Parties and Amend the Complaint; Plaintiff is to file an amended complaint by 11/4/11. Signed by Judge Cecilia M. Altonaga on 10/27/2011. (ps1) (Entered: 10/27/2011)

		10/27/2011)
11/04/2011	<u>75</u>	AMENDED COMPLAINT against All Defendants filed in response to Order Granting Motion for Leave, filed by Gerald Lelieve.(Zelmer, Diane) (Entered: 11/04/2011)
11/07/2011	<u>76</u>	Clerks Notice to Filer re <u>75</u> Amended Complaint. Parties Not Added; ERROR - The Filer failed to add all parties indicated on [de#75]. Filer is instructed to add the additional parties by filing a Notice of Entry of Parties. (lh) (Entered: 11/07/2011)
11/09/2011	<u>77</u>	Notice of Entry of Parties Listed on <u>75</u> Amended Complaint, <u>76</u> Clerks Notice of Docket Correction and Instruction to Filer - Attorney into CM/ECF. New Filer(s)/Party(s): Chief of Police City of Miami. (Zelmer, Diane) (Entered: 11/09/2011)
11/14/2011	<u>78</u>	NOTICE by Gerald Lelieve re <u>68</u> Order on Motion for Extension of Time, Order on Motion to Continue of <i>Readiness to Proceed to Trial</i> (Zelmer, Diane) (Entered: 11/14/2011)
11/18/2011	<u>79</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Odney Belfort.(Green, Christopher) (Entered: 11/18/2011)
11/22/2011	<u>80</u>	FINAL REPORT of Mediation by Brian Spector. Disposition: Impasse. (Spector, Brian) (Entered: 11/22/2011)
12/06/2011	<u>81</u>	MOTION for Summary Judgment <i>on Counts III and VI of the Amended Complaint</i> by Odney Belfort. Responses due by 12/23/2011 (Attachments: # <u>1</u> Exhibit Complaint filed in 09-20574-CIV-Lenard/White)(Green, Christopher) (Entered: 12/06/2011)
12/23/2011	<u>82</u>	RESPONSE in Opposition re <u>81</u> MOTION for Summary Judgment <i>on Counts III and VI of the Amended Complaint</i> filed by Gerald Lelieve. (Attachments: # <u>1</u> Exhibit)(Zelmer, Diane) (Entered: 12/23/2011)
01/03/2012	<u>83</u>	REPLY to Response to Motion re <u>81</u> MOTION for Summary Judgment <i>on Counts III and VI of the Amended Complaint</i> filed by Odney Belfort. (Green, Christopher) (Entered: 01/03/2012)
01/06/2012	<u>84</u>	ORDER requiring service to be perfected on Defendant Oroso by 2/6/2012. Signed by Judge Cecilia M. Altonaga on 1/5/2012. (ps1) (Entered: 01/06/2012)
01/09/2012	<u>85</u>	Summons Issued as to Chief of Police City of Miami. (jua) (Entered: 01/10/2012)
01/21/2012	<u>86</u>	NOTICE by Gerald Lelieve re <u>84</u> Order to Show Cause, <u>85</u> Summons Issued of <i>Filing Proof of Service on Chief Manuel Oroso</i> (Attachments: # <u>1</u> Exhibit) (Zelmer, Diane) (Entered: 01/21/2012)
01/21/2012	<u>87</u>	SUMMONS (Affidavit) Returned Executed on <u>75</u> Amended Complaint by Gerald Lelieve. Chief of Police City of Miami served on 1/13/2012, answer due 1/27/2012. (lh)see DE# <u>86</u> for image (Entered: 01/23/2012)
01/23/2012	<u>88</u>	Clerks Notice to Filer re <u>86</u> Notice (Other). Wrong Event Selected; ERROR - The Filer selected the wrong event. The document was re-docketed by the

		Clerk, see [de#87]. It is not necessary to refile this document. (lh) (Entered: 01/23/2012)
01/27/2012	<u>89</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by Chief of Police City of Miami.(Green, Christopher) (Entered: 01/27/2012)
01/27/2012	<u>90</u>	Unopposed MOTION for Extension of Time to file dispositive motions by Chief of Police City of Miami. Responses due by 2/13/2012 (Attachments: # <u>1</u> Text of Proposed Order Granting Unopposed Motion for Extension of Time for Dispositive Motions)(Green, Christopher) (Entered: 01/27/2012)
01/27/2012	<u>91</u>	ORDER denying <u>90</u> Motion for Extension of Time to File Dispositive Motions. Signed by Judge Cecilia M. Altonaga on 1/27/2012. (ps1) (Entered: 01/27/2012)
01/30/2012	<u>92</u>	Joint MOTION for Extension of Time to file joint pretrial stipulation, proposed jury instructions, proposed findings of fact and conclusions of law, and motions in limine by Odney Belfort, Chief of Police City of Miami, Gerald Lelieve. Responses due by 2/16/2012 (Attachments: # <u>1</u> Text of Proposed Order Granting Extension of time to file Joint Pretrial Stipulation and Motions in Limine)(Green, Christopher) (Entered: 01/30/2012)
01/30/2012	<u>93</u>	ORDER granting <u>92</u> Motion for Extension of Time to file joint pre-trial stipulation, proposed jury instructions, and motions in limine. Signed by Judge Cecilia M. Altonaga on 1/30/2012. (ps1) (Entered: 01/30/2012)
01/30/2012		Set/Reset Scheduling Order Deadlines: In Limine Motions due by 2/6/2012. Pretrial Stipulation due by 2/6/2012. (ps1) (Entered: 01/30/2012)
02/02/2012	<u>94</u>	MOTION to Bifurcate by Odney Belfort, Chief of Police City of Miami. Responses due by 2/21/2012 (Attachments: # <u>1</u> Text of Proposed Order) (Green, Christopher) (Entered: 02/02/2012)
02/06/2012	<u>95</u>	MOTION in Limine by Gerald Lelieve. (Zelmer, Diane) (Entered: 02/06/2012)
02/06/2012	<u>96</u>	PRETRIAL STIPULATION <i>JOINT</i> by Odney Belfort, Chief of Police City of Miami, Gerald Lelieve (Attachments: # <u>1</u> Exhibit Plaintiff's Exhibit List, # <u>2</u> Exhibit Defendant's Exhibit List, # <u>3</u> Exhibit Plaintiff's Witness List, # <u>4</u> Exhibit Defendant's Witness List)(Zelmer, Diane) (Entered: 02/06/2012)
02/06/2012	<u>97</u>	MOTION in Limine by Odney Belfort, Chief of Police City of Miami. (Green, Christopher) (Entered: 02/06/2012)
02/06/2012	<u>98</u>	Proposed Jury Instructions by Odney Belfort, Chief of Police City of Miami, Gerald Lelieve. (Zelmer, Diane) (Entered: 02/06/2012)
02/07/2012	<u>99</u>	CERTIFICATE of Counsel re <u>97</u> MOTION in Limine by Christopher Allan Green on behalf of Odney Belfort, Chief of Police City of Miami (Green, Christopher) (Entered: 02/07/2012)

PACER Service Center

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.:

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE CHIEF
JOHN F. TIMONEY, individual
and in his official capacity, and
CITY OF MIAMI DETECTIVE
ODNEY BELFORT, JOHN DOE
#1 and JOHN DOE #2, in their
individual capacities,

Defendants.

DEFENDANT BELFORT'S NOTICE OF REMOVAL

Defendant DETECTIVE ODNEY BELFORT, by and through undersigned counsel, and pursuant to Title 28 U.S.C. Section 1441, et seq., hereby gives notice of removal of this cause by the filing and service of this notice, and states:

1. On or about September 10, 2010, Plaintiff filed a pleading titled "Intentional Tort Complaint" in the Miami-Dade Circuit Court, Case No.: 10-49281 CA (6). Plaintiff did not personally serve Defendant Belfort with a summons and complaint, but instead mailed a copy of the complaint to the City Attorney's Office.
2. The above-referenced complaint was the first receipt by Defendant of a pleading from which it could be ascertained that the case is one which has

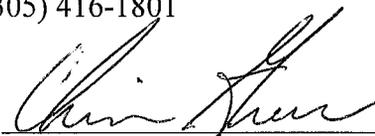
become removable, as at page 2 Plaintiff alleged that the Defendants "...owed Plaintiff a duty of care pursuant to the Fourteenth Amendment."

3. The instant lawsuit is a re-filing of a prior complaint in two other federal cases: *09-20547-CIV-Lenard/White*, and *08-21664-CIV-King*.
4. Copies of all the pleading mailed to undersigned counsel in the action being removed are attached hereto in compliance with 28 U.S.C. Section 1441(a).

RESPECTFULLY SUBMITTED on this 12th day of October, 2010.

JULIE O. BRU, City Attorney
CHRISTOPHER A. GREEN,
Assistant City Attorney
Miami Riverside Center, Suite 945
444 Southwest 2nd Avenue
Miami, Florida 33130-1910
cagreen@miamigov.com
Tel.: (305) 416-1800
Fax: (305) 416-1801

By:



Christopher A. Green
Assistant City Attorney
Fla. Bar No. 957917

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to: **Gerald Lelieve** #L11928-E2143, Hamilton Correctional Institution – Annex, 11419 S.W. County Road #249, Jasper, Florida 32052-3735, on this 12 day of October, 2010.

By:



CHRISTOPHER A. GREEN,
Assistant City Attorney

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

Gerald Lelieve,
Plaintiff,

v.

City of Miami Police Chief John F. Timony, individual and in his official capacity, and City of Miami Detectives Odney Belfort, John Doe #1, and John Doe #2, in their individual capacities,
Defendants.

401
Ret # 11-5810 10-49281 CA 6

CASE NO:

RECEIVED
CIRCUIT COURT
DADE COUNTY
FLORIDA
OCT 16 2010

PROVIDED TO HAMILTON C.I. ON
10-12-10 FOR MAILING

INTENTIONAL TORT COMPLAINT

On April 20th, 2010, Plaintiff, Gerald Lelieve, had notified this Court and Defendants Police Chief John F. Timony, Detectives Odney Belfort, John Doe #1, and John Doe #2 of the commencement of this action and requested that the Defendants waive service of a summons pursuant to Fla. R. Civ. P. 1.070(i)(2), and 1.070(i)(2)(A) to (G). However, Defendants have failed to comply with the request for waiver within the time provided. Plaintiff requests this court to impose the costs subsequently incurred in effecting service on the Defendants.

Comes Now, Plaintiff, Gerald Lelieve, after filing a Notice of Intent and Waiver of Service with Defendants, and because Defendants failed to timely return request for waiver, Plaintiff now files his complaint.

This claim arises from the following occurrence: During an arrest on October 11, 2006, at approximately 6:00 p.m. on 62nd N.W. 2nd Avenue, Detectives John Doe #1 and John Doe #2 while in the course of their employment with the City of Miami Police Department, repeatedly punched Plaintiff in the face and shoved him on the ground after being handcuffed. While Claimant was on the ground, Detective Odney Belfort began stomping on Claimant's stomach

Date: 10-08-10
Assigned to: CAG
Matter No.: 102
Client: POB
Signature: [Handwritten Signature]

repeatedly with his feet while Detectives John Doe #1 and John Doe #2 stood by and watched. Claimant also claims that Detectives John Doe #1 and John Doe #2 failed to intervene to prevent the aforementioned alleged constitutional violations from occurring. In addition, Detective Belfort violated section 839.25(1), Florida Statutes (2006) by falsely reporting in the arrest affidavit that Claimant was arrested without incident. Claimant suffered severe bodily injury caused by Detective Odney Belfort unreasonable actions. Surgery was performed on Claimant at Jackson Hospital for internal bleeding. He was stapled from the top of his abdomen to below his navel (12 inches in length and ½ inch in width), and he still suffers today with constant stomach pain, and irritable bowel movements. Claimant remained in the hospital for almost 2 weeks before he was taken to the medical infirmary section in the Miami County Jail where he was being held pending criminal charges.

Furthermore, it was the Chief of Police official policy to cede a thorough investigation of officers-involved use of excessive force to the District Attorney. Police Chief John F. Timony failed to thoroughly investigate the detectives involved use of excessive force. Chief of Police John F. Timony inadequately investigated the detectives who were involved in the use of excessive force and assault/battery, and made an arbitrarily determination that no criminal indictment be issued and the detectives would not further be investigated or disciplined.

As a result of the occurrence, claimant incurred injuries and damages for which this claim is now made. Claimant's injury were proximately caused by Defendants acting in bad faith, or with malicious purpose, or in a manner-exhibiting wanton and willful disregard of human rights, and safety, or property, while within the course and scope of their employment.

Defendants owe Plaintiff a duty of care pursuant to the Fourteenth Amendment.

Defendant's duty of care was breached through the intentional acts or omission of Detective Odney Belfort, John Doe #1, and John Doe #2, as described above.

The intentional acts of the officers were within the scope of their employment with City of Miami Police Department.

The intentional conduct of Defendants Detectives Odney Belfort, John Doe #1, and John Doe #2, as described above, effects a waiver of Defendants sovereign immunity under the Florida Tort Claims Act. The acts or omissions of Defendants causing Plaintiff's injury were operational level decisions not immune from suit. Defendants conduct was none discretionary in that Defendants acted in bad faith, or with malicious purpose, or in a manner-exhibiting wanton and willful disregard of human rights, and safety, or property.

Plaintiff states that Detectives Odney Belfort, John Doe #1, and John Doe #2, abused their position as officers, which were given to them by the City of Miami Police Department. Detectives Odney Belfort, John Doe #1, and John Doe #2, misconduct occurred while they were on duty, wearing their uniforms, badge, carrying guns, utilizing a marked police vehicle, and that Detectives Odney Belfort, John Doe #1, and John Doe #2, stopped Plaintiff by use of their authority as officers for the City of Miami Police Department. In the instant case, the alleged act occurred during the performance of Detectives Odney Belfort, John Doe #1, and John Doe #2 job and in conjunction with the authority given to them as a result of the position as officers.

WHEREFORE, Plaintiff seeks the following:

A. Compensatory damages in the following amounts:

1. \$200,000 (two-hundred thousand dollars) jointly and severally against Police Chief John F. Timony, Detectives Odney Belfort, John Doe #1, and John Doe #2, for the physical and emotional injuries sustained as a result of Plaintiff's

use of force and, assault and battery.

B. Punitive damages in the following amount:

2. \$40,000 (forty-thousand dollars) each against Defendants, Detectives Odney Belfort, John Doe #1, and John Doe #2, as a result of Plaintiff's beating.

Dated: July 12, 2010.

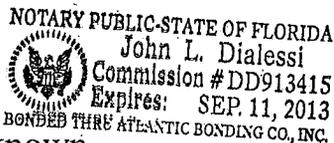
Respectfully submitted,

Gerald Lelieve
Gerald Lelieve #L11928-E2143
Hamilton C.I. Annex

STATE OF FLORIDA

COUNTY OF HAMILTON

Sworn to or affirmed and signed before me on 7/12/10 by Gerald Lelieve



John L. Dialessi
Notary Public or Deputy Clerk

 Personally known
 / Produced Identification
Florida Doc ID # L11928
Type of Identification Produced

[Print, type, or stamp commissioned name of notary or clerk.]

CERTIFICATE OF SERVICE

I Hereby Certify that I placed a copy of this foregoing Intentional Tort Complaint in the hands of Hamilton Correctional Institution Annex officials for mailing to: Chief of Police John F. Timony; City of Miami Detective Odney Belfort; City of Miami Detective John Doe #1; and City of Miami Detective John Doe #2, (All Defendants Address) 400 N.W. 2nd Ave., Miami, FL 33128

On this 12th day of July, 2010

/s/ Gerald Lelieve
Gerald Lelieve #L11928-E2143
Hamilton Correctional Inst. - Annex
11419 S.W. County Road #249
Jasper, Florida 32052-3735

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Gerald Lelieve

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hamilton Correctional Institution, Annex
11419 S.W. County Road #249
Jasper, Florida 32052-3735

DEFENDANTS

City of Miami Police Chief John F. Timoney, individual and in his official capacity, and City of Miami Detectives Odney Belfort, John

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

Christopher A. Green, City Attorney's Office
444 S.W. 2nd Avenue, Suite 945

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input checked="" type="checkbox"/> 440 Other Civil Rights			
		<input type="checkbox"/> 510 Motions to Vacate Sentence		
		<input type="checkbox"/> 530 General Habeas Corpus:		
		<input type="checkbox"/> 535 Death Penalty		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed- (see VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page): a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE Lenard DOCKET # 09-20547
89-20547-CIV-Lenard/White

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Fourteenth Amendment

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 240,000.00 **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Chris Green

October 12, 2010

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-20547-CIV-LENARD/WHITE

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE, et al.,

Defendants.

**ORDER REJECTING REPORT OF MAGISTRATE JUDGE (D.E. 30) AND
DISMISSING CASE**

THIS CAUSE is before the Court on the Report and Recommendation of the Magistrate Judge (“Report,” D.E. 30), issued on August 26, 2009. The Report recommends that Defendant Belfort’s Motion to Dismiss (“Motion to Dismiss,” D.E. 22), filed on July 24, 2009, should be denied. On August 28, 2009, Defendant Belfort filed objections to the Report (“Objections,” D.E. 31). On September 14, 2009, Plaintiff Gerald Lelieve (“Lelieve”), filed his Response to the Objections (“Response,” D.E. 32). Having considered de novo the Motion to Dismiss, the Report, the Objections, the Response, and the record, the Court finds as follows.

Plaintiff filed the Complaint in this action on March 4, 2009. The instant lawsuit is a re-filing of a prior complaint in another case, Case No. 08-21664-CIV-King. That case was **dismissed with prejudice** on January 30, 2009, for failure to comply with the court’s orders. (See D.E. 10, Case No. 08-21664-King.) As a result, on July 24, 2009, Defendant Belfort

filed his Motion to Dismiss the Complaint on *res judicata* grounds. The Motion to Dismiss was referred to the Magistrate Judge who subsequently issued his Report on August 26, 2009.

The Report acknowledges the procedural history of the case, but finds the January 30, 2009, Order dismissing the prior case with prejudice was an “apparent scrivener’s error.” (Report at 3.) Thus, the Report recommends the Motion to Dismiss be denied and the case proceed as “[t]here has never been a final judgment on the merits of this case.” (*Id.*) Defendant Belfort objects that “[n]othing in the original proceeding reflected that the January 30, 2009 Order was a scrivener’s error” and asks that the Court overrule the Report. (Objections at 1-2.) Plaintiff’s Response states that the January 30, 2009, Order dismissing his case with prejudice was due to scrivener’s error because he complied with the court’s orders but was simply late, and thus asks for the Court to adopt the Report.

Pursuant to Rule 72(b)(3) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)(C), the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” “The doctrine of *res judicata* bars the filing of claims that were raised or could have been raised in an earlier proceeding.” Tuscano v. Evening Journal Ass’n, 179 Fed. Appx. 621, 625 (11th Cir. 2006); see Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th Cir. 1999). A dismissal with prejudice for failure to comply with court orders is an adjudication on the merits. Matthews v. Wolvin,

266 F.2d 722, 728 (5th Cir. 1959).¹

This case is a re-filing of a case that has previously been **dismissed with prejudice**. There is nothing in the record or Judge King's January 30, 2009, Order to indicate that it was not his intention to dismiss the case with prejudice. There is nothing in the record to indicate the January 30, 2009, Order contained a scrivener's error. Accordingly, consistent with this Order, it is hereby **ORDERED AND ADJUDGED** that:

1. The Report and Recommendation of the Magistrate Judge (D.E. 30), issued on August 26, 2009, is **REJECTED**;
2. Defendant Belfort's Motion to Dismiss the Complaint on *res judicata* grounds (D.E. 22), filed on July 24, 2009, is **GRANTED**;
3. All other motions and the Preliminary Report and Recommendation of the Magistrate Judge (D.E. 13), issued on May 14, 2009, are **DENIED AS MOOT**;
4. The Complaint is **DISMISSED**;
5. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of November, 2009.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

¹ The Eleventh Circuit in Bonner v. City of Prichard, 661 F.2d 1206, 1207 (1981) (en banc), adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-cv-23677-CMA

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE CHIEF
JOHN F. TIMONEY, et al.,

Defendants.

**DEFENDANT BELFORT'S NOTICE OF PENDING, REFILED,
RELATED OR SIMILAR ACTIONS**

Defendant Officer Belfort, by and through undersigned counsel, and pursuant to the requirements of Local Rule 3.8, hereby files this notice of re-filed actions and identifies the following cases:

1. Gerald Lelieve vs. City of Miami Police, et al., case no. 08-23463-CIV-
GRAHAM/WHITE.
2. Gerald LeLieve vs. Officer Fernandez, et al., case no. 08-21664-CIV-
KING/WHITE.
3. Gerald Lelieve vs. City of Miami Police, et al., case no. 09-20547-CIV-
LENARD/WHITE.

Christopher A. Green, Assistant City Attorney
444 S.W. 2nd Avenue, Suite 945
Miami, FL 33130-1910
Tel.: (305) 416-1800
Fax: (305) 416-1801
CAGreen@ci.miami.fl.us

By: **s/ Christopher Green**
Christopher A. Green
Florida Bar No. 957917

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 13, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: **s/ Christopher Green**
Christopher A. Green
Assistant City Attorney
Florida Bar No. 957917

SERVICE LIST

Gerald Lelieve vs. City of Miami Police Chief John F. Timoney, et al.
Case no. 10-cv-23677-CMA
United States District Court, Southern District of Florida

Gerald Lelieve

DC # L11928
Hamilton Correctional Institution
11419 S.W. County Road #249
Jasper, FL 32052-3735
Via U.S. Mail

Christopher Green, Esq.

Assistant City Attorney
Counsel for Defendant Belfort
City of Miami City Attorney's Office
444 S.W. 2nd Avenue, Suite 945
Miami, Florida 33130
(305) 416-1800 Telephone
(305) 416-1801 Fax
CAGreen@miamigov.com
Via notice of electronic filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-23677-CIV-ALTONAGA/WHITE

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE
CHIEF JOHN F. TIMONEY, et al.,

Defendants.

_____ /

DEFENDANT BELFORT'S MOTION TO DISMISS

Defendant, DETECTIVE ODNEY BELFORT, by and through undersigned counsel, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves to dismiss the complaint with prejudice as it fails to state a claim upon which relief can be granted. Plaintiff's claim is barred under the doctrine of *res judicata*. The instant action is Plaintiff's third attempt to raise the same allegations. Plaintiff previously filed the identical cause of action against this Defendant and others, and Judge King dismissed the action with prejudice on January 30, 2009. [08-CV-21664-JLK, D.E. 10]. Plaintiff re-filed his action and Judge Lenard dismissed that action November 6, 2009, finding that, "...this case is a re-filing of a case that has previously been dismissed with prejudice.." [09-20547-CIV-JAL, D.E. 33]. Based on the prior dismissals with prejudice, Defendant Belfort was entitled to rely on the dismissals with prejudice as an adjudication of the action on its merits. Consequently, the instant action is barred under the doctrine of *res judicata*.

MEMORANDUM OF LAW

I. Plaintiff's Action is Barred under the Doctrine of Res Judicata.

“A district court may take judicial notice of certain facts without converting a motion to dismiss into a motion for summary judgment.” *Universal Express, Inc. v. U.S. S.E.C.* 177 Fed.Appx. 52, 53-54 (11th Cir. 2006). “This is because such documents are capable of accurate and ready determination. Thus, the Court may review documents filed in other judicial proceedings for the limited purpose of recognizing the “judicial act” taken, or the subject matter of the litigation and issues decided.” *Mack v. Metropolitan Life Ins. Co.* 2008 WL 2952887 (M.D. Fla. 2008)(internal citations omitted).

Res judicata is a doctrine of claim preclusion. It refers to the preclusive effect of a judgment in foreclosing relitigation of matters that should have been raised in an earlier suit. *Hart v. Yamaha-Parts Distributors, Inc.* , 787 F.2d 1468, 1470 (11th Cir. 1986). “For res judicata to bar appellant's second action, four elements must be present: (1) a final judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must be identical in both suits, and (4) the same cause of action must be involved in both cases. *Id.* Additionally, a dismissal with prejudice operates as a judgment on the merits unless the court specifies otherwise. *Id.*

In this matter, all of the elements of *res judicata* have been met to bar Plaintiff's claim. Plaintiff initially filed this action against Defendant Belfort with the same allegations and cause of action. [See 08-CV-21664-JLK, D.E. 9]. On January 30, 2009, Judge King dismissed Plaintiff's amended complaint with prejudice. If there was any doubt about Judge King's dismissal, it was clarified when Judge Lenard dismissed Plaintiff's lawsuit arising from the same operative facts. [09-20547-CIV-JAL, D.E. 33].

The prior dismissals of Plaintiff's claim adjudicated the merits of Plaintiff's claim. The instant action against Defendant Belfort, and all other similarly situated defendants, is now barred.

WHEREFORE, Defendant Detective Odney Belfort requests that this Court enter an Order granting his motion to dismiss with prejudice.

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By: **s/ Christopher Green**
Christopher A. Green
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on October 13, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: **s/ Christopher Green**
Christopher A. Green
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SERVICE LIST

Gerald Lelieve vs. City of Miami Police, et al.
Case no. 10-23677-CIV-Altonaga/White
United States District Court, Southern District of Florida

Gerald Lelieve

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-23677-CIV-ALTONAGA/White

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE CHIEF
JOHN F. TIMONEY, *et al.*,

Defendants.

ORDER

THIS CAUSE is before the Court upon Defendant Odney Belfort's ("Detective Belfort['s]") Motion to Dismiss ("Motion") [ECF No. 5] and Motion to Take Judicial Notice of Record [ECF No. 6], filed on October 12, 2010. Detective Belfort seeks to dismiss the Complaint [ECF No. 1-1] filed by the *pro se* Plaintiff, Gerald Lelieve,¹ on grounds of *res judicata*. The Court has reviewed the Motions, the file and the applicable law.

Mr. Lelieve is a *pro se* litigant currently imprisoned at Hamilton Correctional Institution in Jasper, Florida. For nearly two and a half years, he has persistently attempted to navigate the rule-bound terrain of the judicial process to pursue claims of physical abuse against the City of Miami Police Department stemming from his arrest in October 2006. Four cases — three federal and one state — and four dismissals later, Mr. Lelieve once again faces possible dismissal of his claims. A meticulous review of Mr. Lelieve's cases reveals that because of both judicial and filing errors, his claim has never been adjudicated on the merits.

¹ Mr. Lelieve's surname is spelled "LeLieve" in some filings, and "Lelieve" in others. For consistency, the Court uses "Lelieve."

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Mr. Lelieve filed his first case, number 08-cv-21664-JLK (“First Case”), a Complaint Under the Civil Rights Act, 42 U.S.C. § 1983 (“Section 1983”), on June 12, 2008. (*See* First Case, Compl. [ECF No. 1]). The Complaint describes events that allegedly transpired on or about October 10, 2006 when Mr. Lelieve “was stopped without probable cause or resonable [sic] suspicion from [his] van and illegally searched in the presence of four passenger witnesses” (*id.* 4), and was “maliciously (and) sadistically & without cause, & (beaten) for the very purpose of causing harm” (*id.*), which resulted in “internal bleeding, swollen face & lips, chin & etc. etc. and was hospitalized for two weeks at Jackson Memorial” (*id.* 4). The First Case was initially dismissed without prejudice for lack of prosecution (*see* First Case, Oct. 22, 2008 Order [ECF No. 8]), following a report of Magistrate Judge Patrick A. White (*see* First Case, Report 1 [ECF No. 7]). Mr. Lelieve had failed to respond to the Court’s instructions to file his six-month prison account statement in support of his Motion to Proceed *In Forma Pauperis* (“IFP”), which was filed with his initial complaint. (*See id.* 1).

On December 16, 2008, Mr. Lelieve filed another Section 1983 complaint based on the same October 2006 events; this case was assigned the number 08-cv-23463-DLG (the “Second Case”). (*See* Second Case, Compl. 4 [ECF No. 1]). Mr. Lelieve also filed a Motion to Proceed IFP [ECF No. 2], which was denied with instructions that he amend his Motion to include the required financial affidavit. (*See* Second Case, Dec. 22, 2008 Order 2–3 [ECF No. 4]). On January 5, 2009, Mr. Lelieve filed a request to withdraw his claims and IFP motion in the Second Case because he made “improper and incomplete claim assessments.” (Second Case, Mot. to Withdraw 1 [ECF No. 6]).

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Magistrate Judge White denied the request and directed Mr. Lelieve to either amend his pleading and IFP forms, or file a motion for voluntary dismissal before January 30, 2009.

As directed, Mr. Lelieve filed an Amended Complaint on January 27, 2009. However, the Amended Complaint was filed in the First Case. *Sua sponte*, the court dismissed Mr. Lelieve's First Case with prejudice on January 30, 2010. In its Order, the court stated: "it appears from the face of the document that it is no different than the original filing. Accordingly, the Court has determined that this document is a repeat filing of the Plaintiff's original action." (First Case, Jan. 30, 2009 Order 1 [ECF No. 10]). While the Amended Complaint addressed the same October 2006 incident, it was significantly different from both the initial complaint filed in the First Case and the initial complaint filed in the Second Case in that the Amended Complaint included much more detail and was typewritten. (*See* First Case, Am. Compl. [ECF No. 9]).

Meanwhile, not having received an amended complaint or the IFP form requested from Mr. Lelieve in the Second Case, Judge White recommended dismissing Mr. Lelieve's Second Case for lack of prosecution [ECF No. 8] on February 9, 2009. In his Report, Judge White advised Mr. Lelieve he could file an amended complaint and an application to proceed IFP with his objections to the Report. (*See* Second Case, Report 2). Mr. Lelieve responded in a timely manner to Judge White's directions of February 9, 2009 by filing an amended complaint and his IFP motion (with the correct documents included) on February 26, 2009. Attached to the papers was a copy of Judge White's Report in the Second Case. However, once again, Mr. Lelieve's filings found their way to the docket of the First Case. (*See* First Case, Mot. [ECF No. 11], Second Am. Compl. [ECF No. 12]).

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Addressing the newly-filed documents in the First Case, Judge White ordered the Clerk to file the Second Amended Complaint and the IFP motion “as a new civil rights case and assigned [sic] it a new case no. [sic].” (First Case, Mar. 3, 2009 Order of Magistrate Judge 1 [ECF No. 13]). Thus commenced Mr. Lelieve’s Third Case, number 09-cv-20547-JAL. Because Mr. Lelieve’s amended complaint and IFP motion were never received in his Second Case, the court adopted the recommendations of Judge White’s February 9, 2009 Report and dismissed Mr. Lelieve’s Second Case without prejudice on April 13, 2009. (*See* Second Case, Apr. 13, 2009 Order [ECF No. 9]).

Mr. Lelieve’s Third Case finally began moving through the legal pipeline; summons were issued (*see* Third Case, Summons Issued [ECF Nos. 8–11]), and a preliminary report recommended Mr. Lelieve’s claims be allowed to proceed against the officers involved in the alleged arrest (*see* Prelim. Report 11 [ECF No. 13]). Forward momentum stopped, however, when Detective (then, Officer) Belfort filed a motion to dismiss asserting Mr. Lelieve’s complaint was barred by *res judicata* because of the court’s dismissal of Mr. Lelieve’s First Case with prejudice. (*See* Third Case, Mot. to Dismiss [ECF No. 22]). Mr. Lelieve filed his Response [ECF No. 23] to the motion and Judge White recommended the motion be denied, suggesting Judge King’s dismissal with prejudice was an “apparent scrivener’s error.” (Third Case, August 26, 2009 Report of Magistrate Judge 3 [ECF No. 30]). Detective Belfort objected to the Report (*see* Third Case, Objections [ECF No. 31]), and Mr. Lelieve filed a response in opposition (*see* [ECF No. 32]). The court ultimately rejected Judge White’s Report, stating “[t]here is nothing in the record or Judge King’s January 30, 2009, Order to indicate that it was not his intention to dismiss the case with prejudice. There is nothing in the record to indicate the January 30, 2009, Order contained a scrivener’s error.” (Third

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Case, Nov. 11, 2009 Order 3 [ECF No. 33]). The court granted Detective Belfort's Motion to Dismiss and closed the case. (*See id.*).

Mr. Lelieve — denied his day in federal court — apparently decided to pursue his claims in state court. He filed yet another complaint, which is the basis for the current suit, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida on July 12, 2010. (*See* Compl. 1). Because the Complaint includes an assertion the Defendants owed Mr. Lelieve a duty of care under the Fourteenth Amendment (*see id.* 2), and also to press the current motion in federal court, Detective Belfort removed the case on October 12, 2010. (*See* Notice of Removal [ECF No. 1]). The following day, Detective Belfort filed the present motions to dismiss and to take judicial notice. As in the Third Case, Detective Belfort asserts Mr. Lelieve's claim is barred under the doctrine of *res judicata* and must be dismissed. (*See* Mot. 1).

At least four errors have occurred in the legal tale of Mr. Lelieve's single claim, which has not yet been decided on the merits, let alone proceeded beyond the pleading stage. First, Mr. Lelieve's efforts to remedy the deficiencies in the First Case were incorrectly filed as the Second Case. Second, the court dismissed the First Case with prejudice when it should have properly dismissed the complaint without prejudice as no decision had been reached on the merits. Next, the Third Case was opened upon receipt of documents intended to respond to the Report in the Second Case. And finally, the Third Case was dismissed with prejudice in reliance on the erroneous dismissal of the First Case.

Detective Belfort asserts *res judicata* warrants dismissal of Mr. Lelieve's claim because the court dismissed Mr. Lelieve's complaints with prejudice in the First and Third Cases. (*See id.*).

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However, *res judicata* is designed to give preclusive effect “by foreclosing *re litigation* of matters that should have been raised in an earlier suit.” *Hart v. Yamaha-Parts Distributors, Inc.*, 787 F.2d 1468, 1470 (11th Cir. 1986) (quoting *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984)) (emphasis added). Detective Belfort accurately cites the four elements necessary for *res judicata* to bar a litigant’s second or subsequent action. (*See* Mot. 2). They are: “(1) a final judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must be identical in both suits, and (4) the same cause of action must be involved in both cases.” *Hart*, 787 F.2d at 1470 (citing *Ray v. TVA*, 677 F.2d 818, 821 (11th Cir. 1982)).

But while Detective Belfort asserts all of the elements of *res judicata* have been met, he fails to explain how or when a final judgment on the merits was reached. (*See* Mot. 2). Nor could he. To date, no court has rendered a final judgment on the merits of Mr. Lelieve’s claim. In short, Mr. Lelieve cannot be foreclosed from relitigating his claim when he has not litigated it in the first place.

For these reasons, it is

ORDERED AND ADJUDGED that

1. The Defendant’s Motion to Take Judicial Notice of Record [ECF No. 6] is **GRANTED**.
2. The Defendant’s Motion to Dismiss [ECF No. 5] is **DENIED**.
3. But for the undersigned’s intervention in addressing the present Motions, the case is returned to Judge White consistent with the Order of Referral [ECF No. 4].

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4. This case is referred to the Volunteer Lawyer's Project for their consideration and in the event they consider it appropriate to represent Mr. Lelieve.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of October, 2010.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

Gerald Lelieve, *pro se*
DC # L11928
Hamilton Correctional Institution-Annex
11419 S.W. County Road, #249
Jasper, Florida 32052-3735

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-23677-CIV-ALTONAGA/WHITE

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE
CHIEF JOHN F. TIMONEY, et al.,

Defendants.

_____ /

DEFENDANT BELFORT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant Detective Odney Belfort hereby files his answer and affirmative defenses to the complaint and states as follows:

Plaintiff's "intentional tort complaint" does not have sequentially numbered paragraphs. Consequently Defendant enters a general denial to the allegations of the complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As to Plaintiff's federal cause of action, Plaintiff did not suffer a constitutional deprivation.

Second Affirmative Defense

Defendant Belfort is entitled to qualified immunity. At all times material hereto, Defendant was acting in his discretionary capacity as a police officer. Plaintiff cannot show that Defendant's conduct violated clearly established law.

Third Affirmative Defense

The complaint fails to state a claim upon which relief can be granted.

Fourth Affirmative Defense

Plaintiff's claim is barred under the doctrines of *res judicata* and collateral estoppel

Fifth Affirmative Defense

Any injury to Plaintiff was due to and caused by his own unlawful actions under Florida Statute section 776.051(1) in resisting arrest and said actions were the proximate cause of his damages .

Sixth Affirmative Defense

Plaintiff's claim is barred by Florida Statute section 776.085 in that he was injured during the commission of a forcible felony, and Defendant is entitled to attorney's fees if he prevails on this defense. Fla. Stat. § 776.085.

Seventh Affirmative Defense

The Defendant's actions were not the proximate cause of Plaintiff's damages.

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury.

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By: **s/ Christopher Green**
Christopher A. Green
Florida Bar No. 957917

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on November 9, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-23677-CIV-ALTONAGA/WHITE

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE
CHIEF JOHN F. TIMONEY, et al.,

Defendants.

_____ /

DEFENDANT BELFORT'S MOTION FOR SUMMARY JUDGMENT

Defendant DETECTIVE ODNEY BELFORT, by and through undersigned counsel, and pursuant to Rule 56(b) of the Federal Rules of Civil Procedure and Local Rule 7.5, hereby moves for summary judgment.

This is a claim for an alleged constitutional violation arising out of Plaintiff's October 11, 2006 arrest. Plaintiff filed his "Intentional Tort Complaint" in the Miami-Dade County Circuit Court alleging that Defendant Belfort breached a duty of care owed to Plaintiff under the Fourteenth Amendment. Specifically, Plaintiff alleged that Defendant Belfort breached his duty of care when he stepped on Plaintiff's stomach during the course of Plaintiff's arrest. In addition, Plaintiff alleged that Defendant Belfort violated section 839.25(1) of the Florida Statutes by falsely reporting in the arrest affidavit that Plaintiff was arrested without incident. Defendant removed this action to federal court pursuant to the Court's federal question jurisdiction.

As to claims raised in the complaint, as detailed herein, the pleadings, together with the declaration of Defendant Belfort, and the Court's own records show that there is no genuine issue as to any material fact and that the Defendant is entitled to summary judgment as a matter of law. First, Defendant Belfort is entitled to summary judgment because Plaintiff fails to state a claim for relief under the Fourteenth Amendment. Furthermore, the Plaintiff fails to state a claim for relief pursuant to Florida Statute section 839.25(1) because it is a repealed criminal statute which does not give rise to a civil cause of action. Secondly, in the event the Court liberally construes Plaintiff's *pro se* pleadings as stating a Fourth Amendment claim for excessive force, Defendant Belfort is entitled to qualified immunity because he was not physically present for Plaintiff's arrest and he had no contact with Plaintiff. Finally, Defendant Belfort contends that he is entitled to summary judgment on grounds of *res judicata* because Judge King dismissed Plaintiff's claim with prejudice and Plaintiff failed to pursue any appellate remedies challenging the dismissal.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Defendant Belfort is a police officer employed by the City of Miami Police Department, and has been employed with the Miami Police Department for sixteen years. (Declaration of Odney Belfort).
2. In October 2006 Defendant Belfort was assigned to the Crime Suppression Unit of the Miami Police Department. (Declaration of Odney Belfort).
3. The Crime Suppression Unit investigated narcotics sales within the City of Miami. (Declaration of Odney Belfort).

4. On October 11, 2006, Defendant Belfort was conducting surveillance of a duplex apartment located at 5929 N.E. 1st Avenue. (Declaration of Odney Belfort).

5. The duplex under surveillance was known for narcotics sales. (Declaration of Odney Belfort).

6. At the time of the surveillance, Defendant Belfort was located in a van parked in front of the duplex to observe suspected narcotics sales. (Declaration of Odney Belfort).

7. Defendant Belfort's assignment on October 11, 2006, was surveillance; he was not assigned the duty of apprehending suspects. (Declaration of Odney Belfort).

8. Defendant Belfort observed Plaintiff arrive in a white van at the location under surveillance. (Declaration of Odney Belfort).

9. Defendant Belfort observed Plaintiff exit the van and walk up to the front door of the duplex. (Declaration of Odney Belfort).

10. Defendant Belfort observed Plaintiff give another person inside the duplex an unknown amount of money. (Declaration of Odney Belfort).

11. After taking the money, the person walked inside the house while Plaintiff waited at the door. (Declaration of Odney Belfort).

12. The person inside the duplex returned a short time later and handed Plaintiff a clear plastic bag containing a white substance which Defendant believed to be narcotics.

13. Plaintiff took the clear plastic bag and put it inside his pants front waistband. (Declaration of Odney Belfort).

14. Plaintiff exited the duplex property, returned to the white van, and drove away from the scene. (Declaration of Odney Belfort).

15. Defendant used his police radio to give other police officers a description of Plaintiff and his vehicle. (Declaration of Odney Belfort).

16. Other officers advised Defendant Belfort over the radio that they had stopped Plaintiff. (Declaration of Odney Belfort).

17. Defendant Belfort did not observe the other police officers stop Plaintiff's vehicle. (Declaration of Odney Belfort).

18. Defendant Belfort was not present when other police officers arrested Plaintiff. (Declaration of Odney Belfort).

19. Defendant Belfort never came into physical contact with Plaintiff. (Declaration of Odney Belfort).

20. Defendant Belfort never saw Plaintiff after he drove away from the duplex which was under surveillance. (Declaration of Odney Belfort).

21. Plaintiff was ultimately convicted of trafficking in cocaine. (Judgment of conviction).

22. Plaintiff previously filed a lawsuit against Defendant Belfort arising from the same incident. [Complaint filed in 08-CV-21664-JLK].

23. Judge King dismissed the action with prejudice on January 30, 2009. [08-CV-21664-JLK, D.E. 10].

24. Plaintiff did not appeal Judge King's order dismissing his action with prejudice.

25. Plaintiff re-filed his action against Defendant asserting allegations previously raised in the case assigned to Judge King's division. [Complaint filed in 09-CV-20547-JAL].

26. Judge Lenard dismissed that action November 6, 2009, specifically finding that Judge King dismissed Plaintiff's lawsuit for, "...failure to comply with the court's orders." [09-CV-20547-JAL, D.E. 33].

27. Plaintiff did not appeal Judge Lenard's order dismissing his lawsuit.

28. Plaintiff re-filed the instant action in state court against Defendant Belfort repeating the allegations previously made in the lawsuits dismissed by District Court Judges King and Lenard.

MEMORANDUM OF LAW

I. Summary Judgment Standard

The court, in reviewing a motion for summary judgment, is guided by the standard set forth in Federal Rule of Civil Procedure 56(c), which states, in relevant part, as follows:

The judgment sought shall be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. F. R. Civ. P. 56(c).

The moving party bears the burden of meeting this exacting standard. *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2552 (1986). "The moving party may discharge this 'initial responsibility' by showing that there is an absence of evidence to support the nonmoving party's case or by showing that the nonmoving party will be unable to prove its case at trial." *Hickson Corp., v. Northern Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir. 2004). To survive summary judgment, the nonmoving party bearing the ultimate burden of proof at trial must come forward with evidence sufficient to withstand a directed verdict motion. *Id.* "At the summary judgment stage, facts must be viewed in

the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.” *Scott v. Harris*, 127 S.Ct. 1769, 1776 (2007). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.*

II. Plaintiff fails to state a claim upon which relief can be granted.

“Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 1949. A plausible entitlement to relief exists “when the allegations in the complaint traverse the thresholds separating the ‘conclusory’ from the ‘factual’ and the ‘factually neutral’ from the ‘factually suggestive.’” *Barton v. Florida*, 2007 WL 1724943 (N.D. Fla. 2007) (citing *Bell Atlantic Corp.*, 127 S.Ct. at 1958, n. 5). The Court need not accept unsupported conclusions of law or of mixed law and fact in a complaint. *Marsh v. Butler County, Ala.*, 268 F.3d 1014, 1022 (11th Cir. 2001).

Plaintiff’s complaint fails to state a constitutional claim arising under the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amended prevents the state from depriving any person of life, liberty, or property without due process of law. **U. S. Const. amend XIV.** Two types of claims can arise under the Due Process Clause: substantive or procedural due process claims. *Zinermon v. Burch*, 110 S.Ct. 975, 125 (1990). Substantive due process protects fundamental rights including most of

the rights specified in the Bill of Rights, and any right that is “implicit in the concept of ordered liberty.” *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994). . In *Albright v. Oliver*, 114 S.Ct. 807 (1994), the Supreme Court stated that the scope of substantive due process claims has been traditionally limited to areas relating to family, procreation, marriage and bodily integrity. *Id.* at 812. “[T]he Supreme Court has clarified that *all* claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other “seizure” of a free citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard, rather than under a “substantive due process” approach. Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of “substantive due process,” must be the guide for analyzing these claims.” *Carr v. Tatangelo*, 338 F.3d 1259, 1267 (11th Cir. 2003). Based on the foregoing, Plaintiff fails to meet the *Iqbal* pleading standard for stating a Fourteenth Amendment substantive due process claim.

Procedural due process requires the existence of fair procedures and an impartial decision maker before depriving a person of their life, liberty or property. *McKinney v. Pate*, 20 F.3d 1550, 1561 (11th Cir. 1994). In his complaint, Plaintiff fails to specifically allege the manner in which he was denied procedural due process. Again, this omission fails to comply with *Iqbal* and is fatal to Plaintiff’s Fourteenth Amendment claim.

Likewise, the complaint does not state a claim arising under the Fourteenth Amendment’s Equal Protection Clause. The Equal Protection Clause directs that persons similarly situated should be treated alike. *Williams v. Bramer*, 180 F.3d 699, 705 (5th Cir. 1999). To state a claim under the Equal Protection Clause, a section 1983 plaintiff

must allege that a state actor intentionally discriminated against the plaintiff because of membership in a protected class. *Id.* The complaint fails to set forth any facts showing the plaintiff was the subject of intentional discrimination because of his membership in a protected class. Consequently, plaintiff's complaint fails to state a claim for relief arising under the Equal Protection Clause. More importantly, the complaint fails to state a claim for relief arising under any portion of the Fourteenth Amendment.

With respect to Plaintiff's allegations related to Florida Statute section 839.25(1), the complaint fails to state a claim upon which relief can be granted. Section 839.25 provided that official misconduct by a public servant was a third degree felony punishable as provided by section 775.02, 775.083, or 775.084. Fla. Stat. § 839.25 (2000). However, this statute was repealed in 2003, and it did not provide for a civil remedy. Consequently, Plaintiff's complaint fails to state a claim for relief under Florida Statute section 839.25.

III. Defendant Belfort is entitled to qualified immunity.

In the event that this Court liberally construes Plaintiff's complaint as one stating a claim for excessive force in violation of the Fourth Amendment, Defendant contends he is entitled to qualified immunity. "Qualified immunity shields government officials from liability for civil damages for torts committed while performing discretionary duties unless their conduct violates a clearly established statutory or constitutional right." *Hadley v. Gutierrez* 526 F.3d 1324, 1329 (11th Cir. 2008). Once a defendant establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate. *Crenshaw v. Lister*, 556 F.3d 1283, 1290 (11th Cir. 2009). In *Crenshaw*, a section 1983 civil rights claim for excessive force

involving a police dog bite, the Eleventh Circuit held that it was clear that a K-9 officer and sheriff's deputy were performing discretionary duties in pursuing and apprehending a robbery suspect. As a preliminary matter, Defendant submits that it is undisputed he was performing discretionary duties while working as a police officer for the City of Miami on the date of this incident. Therefore, the burden now shifts to Plaintiff to show that Defendant is not entitled to qualified immunity.

Qualified immunity is not just a mere defense to liability but an entitlement not to stand trial. *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2815 (1985). Previously, the Supreme Court applied a two-step process in determining whether qualified immunity shielded a state actor from liability. See *Saucier v. Katz*, 121 S.Ct. 2151, 2156 (2001). The first step was to determine whether the plaintiff has actually asserted a violation of a constitutional right. *Scott v. Harris*, 127 S.Ct. 1769, 1774 (2007); *Saucier v. Katz*, 121 S.Ct. 2151, 2156 (2001). If the plaintiff's allegations could make out a constitutional violation, then the second step was to determine whether the constitutional right was clearly established in light of the specific context of the case. *Scott v. Harris*, 127 S.Ct. 1769, 1774 (2007)(internal citations omitted). However, in January of 2009 the Supreme Court receded from the rule requiring the two-step analysis in qualified immunity cases. "On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory. The judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 129 S.Ct. 808, 818 (2009). In the case at

bar, Defendant submits that the record evidence does not establish his actions violated the Plaintiff's constitutional rights.

“A person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of Section 1983 if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” *Greffey v. State of Ala. Dept. of Corrections*, 996 F.Supp. 1368, 1376 (N.D. Ala. 1998); *Johnson v. Duffy*, 588 F.2d740, 743 (9th Cir. 1978). Here, Defendant did not engage in any affirmative action which deprived the Plaintiff of any constitutional right. The record evidence establishes that Defendant Belfort was not present when Plaintiff was apprehended by other police officers. Defendant was merely the “eyeball” in a narcotics surveillance operation who reported what he observed to other police officers via his police radio¹. The record further establishes that Defendant Belfort had no physical contact with the Plaintiff and never saw him after he left the area which was under surveillance. On the basis of the record evidence, Plaintiff cannot establish a causal link between Defendant Belfort's actions or omissions and the alleged deprivation of Plaintiff's constitutional rights. Defendant Belfort is entitled to qualified immunity and summary judgment as a matter of law.

IV. Plaintiff's Action is barred under the doctrine of *res judicata*.

Res judicata is a doctrine of claim preclusion. It refers to the preclusive effect of a judgment in foreclosing relitigation of matters that should have been raised in an earlier

¹ In addition to Defendant Belfort's declaration, these facts are set forth in a published appellate opinion affirming Plaintiff's conviction for trafficking in cocaine. *Lelieve v. State*, 7 So. 3d 624, 627 (Fla. 3rd DCA 2009).

suit. *Hart v. Yamaha-Parts Distributors, Inc.*, 787 F.2d 1468, 1470 (11th Cir. 1986). “For res judicata to bar appellant's second action, four elements must be present: (1) a final judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must be identical in both suits, and (4) the same cause of action must be involved in both cases. *Id.* Additionally, a dismissal with prejudice operates as a judgment on the merits unless the court specifies otherwise. *Id.* Furthermore, Rule 41 of the Federal Rules of Civil Procedure provides: “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). *See also Bierman v. Tampa Elec. Co.*, 604 F.2d 929, 931 (5th Cir. 1979)²(district court’s involuntary dismissal of action on its own motion for plaintiff’s failure to comply with local rule acted as an adjudication on the merits and subsequently filed action based on the same claim was barred by *res judicata*).

In this matter, all of the elements of *res judicata* have been met to bar Plaintiff’s claim. Plaintiff initially filed this action against Defendant Belfort with the same allegations and cause of action. [See 08-CV-21664-JLK, D.E. 9]. On January 30, 2009, Judge King dismissed Plaintiff’s amended complaint with prejudice. Judge Lenard found

² “[D]ecisions of the United States Court of Appeals for the Fifth Circuit (the “former Fifth” or the “old Fifth”), as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the circuit...” *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

that Judge King's dismissal with prejudice was rendered for Plaintiff's failure to comply with the Court's orders. Based on the holding in *Bierman v. Tampa Elec. Co.*, 604 F.2d 929, 931 (5th Cir. 1979), the prior dismissal of Plaintiff's claim adjudicated the merits of Plaintiff's claim. Plaintiff could have appealed the dismissals by Judges King and Lenard, yet he did not. Instead, Plaintiff chose to forego the appellate process, ignore the dismissal with prejudice, and file the instant action in state court in an apparent attempt at forum shopping. Based on the foregoing, the instant action against Defendant Belfort is barred under the doctrine of *res judicata*.

WHEREFORE, Defendant Detective Odney Belfort requests that this Court enter an Order granting his motion for summary judgment.

Christopher A. Green, Assistant City Attorney
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By: **s/ Christopher Green**
Christopher A. Green
Florida Bar No. 957917

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December 8, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: **s/ Christopher Green**
Christopher A. Green
Assistant City Attorney
Florida Bar No. 957917

SERVICE LIST

Gerald Lelieve vs. City of Miami Police, et al.
Case no. 10-23677-CIV-Altonaga/White
United States District Court, Southern District of Florida

Gerald Lelieve

DC # L11928
Hamilton Correctional Institution
11419 S.W. County Road #249
Jasper, FL 32052-3735
Via U.S. Mail

Christopher Green, Esq.

Assistant City Attorney
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Via notice of electronic filing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-23677-CIV-ALTONAGA/WHITE

GERALD LELIEVE,

Plaintiff,

vs.

CITY OF MIAMI POLICE
CHIEF JOHN F. TIMONEY, et al.,

Defendants.

DECLARATION OF ODNEY BELFORT

Pursuant to 28 U.S.C. §1746, Odney Belfort declares under penalty of perjury as follows:

1. My name is Odney Belfort. I am a police officer employed by the City of Miami Police Department (MPD). I have been employed with the MPD for sixteen years.
2. In October 2006 I was assigned to the Crime Suppression Unit of the MPD. The Crime Suppression Unit investigated narcotics sales within the City of Miami.
3. On October 11, 2006, I was conducting surveillance of a duplex located at 5929 N.E. 1st Avenue. The duplex was known for narcotics sales.
4. I was inside a van parked in front of the duplex to observe suspected narcotics sales.

5. My assignment on that date was exclusively surveillance. I was not assigned the duty of apprehending or arresting suspects.
6. I observed the Plaintiff, Gerald Lelieve, arrive at the location in a white van.
7. Plaintiff Lelieve exited the van and walked up to the front door of the duplex.
8. Plaintiff Lelieve gave another person inside the duplex an unknown amount of money. After taking the money, the person walked inside the house while Plaintiff Lelieve waited at the front door.
9. The person inside the house returned a short time later and hand Plaintiff a clear plastic bag containing a white substance which I believed to be narcotics.
10. Plaintiff Lelieve took the clear plastic bag and put it inside his pants front waistband.
11. Plaintiff Lelieve existed the yard, returned to the white van and rode away from the scene.
12. I used my radio to give other police officers a description of Plaintiff Lelieve and his vehicle.
13. I was advised over the radio that other police officers stopped Plaintiff Lelieve.
14. I did not observe the other police officers stop Plaintiff's vehicle.
15. At no time was I present when other police officers arrested Plaintiff Lelieve.
16. I never came into physical contact with Plaintiff Lelieve.
17. I never saw Plaintiff Lelieve after he drove away from the duplex which was under surveillance.

I declare under penalty of perjury that foregoing is true and correct. Executed on
this 15th day of November, 2010.


ODNEY BELFORT

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.		
DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> OTHER	CHARGES/COSTS/FEEES	CASE NUMBER: 2010 J13 13 F06-34231C CLOCK IN 11:3:15
THE STATE OF FLORIDA VS. <div style="text-align: center;">GERALD LELIEVE</div>		
PLAINTIFF	DEFENDANT	
<p>The Defendant is hereby ordered to pay the following sum if checked:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Fifty dollars (\$50.00) pursuant to F.S. 938.03 (Crimes Compensation Trust Fund). <input type="checkbox"/> Five dollars (\$5.00) as a court cost pursuant to F.S. 938.01 (1) \$3.00, F.S. 938.15 \$2.00 (Criminal Justice Trust & Education Funds). <input type="checkbox"/> A fine in the sum of \$_____ pursuant to F.S. 775.0835. (This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as a part of a sentence to F.S. 775.083 are to be recorded on the Sentence page(s). <input type="checkbox"/> Twenty dollars (\$20.00) pursuant to F.S. 938.09 (Handicapped and Elderly Security Assistance Trust Fund). <input type="checkbox"/> A sum of \$_____ pursuant to 938.05 (Local Government Criminal Justice Trust Fund). <input type="checkbox"/> Restitution in accordance with attached order. <input type="checkbox"/> Three dollars (\$3.00) Juvenile Assessment Center pursuant to Dade County Ordinance 96-182, F.S. incorporating F.S. 938.17. <input type="checkbox"/> A sum of \$_____ pursuant to F.S. 27.52 (Public Defender Application Fee). <input type="checkbox"/> A sum of \$_____ pursuant to F.S. 939.18 (Court Facilities Cost). <input type="checkbox"/> A sum of \$_____ pursuant to F.S. 938.06 (Crime Stopper's Programs). <input type="checkbox"/> A sum of \$_____ pursuant to F.S. 938.19 (Teen Courts). <input type="checkbox"/> A sum of \$_____ pursuant to F.S. 775.083 (Crime Prevention Programs). <p>Other <u>COURT COST DEFERRED UNTIL SENTENCING</u></p>		
DONE AND ORDERED in Open Court in Dade County, Florida this <u>28th</u> day of <u>June</u> , 20 <u>07</u> .		
		_____ JUDGE WILLIAM THOMAS
Clerk's web address: www.miami-dadeclerk.com		Page <u>2</u> of <u>3</u>

CLK/CT 413 REV. 9/06

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

DIVISION
 CRIMINAL
 OTHER

FINGERPRINTS OF DEFENDANT

THE STATE OF FLORIDA VS.
Gerald Lelievre
 PLAINTIFF DEFENDANT

CASE NUMBER: *F06-34231C*

I herby certify that the foregoing fingerprints on this judgment are the fingerprints of the defendant named above, and that they were placed thereon by said defendant in my presence, in open court, on this date and that the defendant provided the below Social Security Number or was unable to provide said number as indicated.

CLOCK IN
FILED
 JUN 28 2007
 CLERK

Fingerprints taken by: _____
 Name Title

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little
				

Social Security Number of Defendant *X* [REDACTED]

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this _____ day of _____, 20____

JDG-R-DIAZ
 Judge
 Page 3 of 3
 Clerk's web address: www.miami-dadeclerk.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-21664-CIV-KING/WHITE

**The attached hand-written
document
has been scanned and is
also available in the
SUPPLEMENTAL
PAPER FILE**