

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MURRAY CELESTINE

Plaintiff

CIVIL ACTION

vs.

DOCKET NO.:

MICHAEL J. FOLEY, JR.,
MICHAEL BIELSKI,
JOSEPH PIERSON and
JOHN DICK

JURY TRIAL DEMANDED

Defendants

COMPLAINT

Plaintiff, Murray Celestine, by and through his attorney, George R. Szymanski, Esquire, brings this complaint against the Defendants and in support thereof, alleges as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. §§1981, 1983, 1985, 1986, and the Fourth, Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution, and therefore, jurisdiction is founded on 42 U.S.C. §1988 and 28 U.S.C. §§1331 and 1334 (3).

2. Venue is appropriately laid in the United States Court for the District of New Jersey, pursuant to 28 U.S.C. §1391 (b), as it is the judicial district in which the claims asserted herein arose, and because all of the defendants reside in this district.

PARTIES

3. Plaintiff, Murray Celestine, is an adult individual and a citizen of the State of New Jersey, residing within Gloucester County at 437 North Delsea Drive, Apartment B, Clayton, New Jersey 08312.

4. Defendant, Officer Michael J. Foley, Jr., is a police officer with the Clayton Boro Police Department, 125 North Delsea Drive, Clayton, New Jersey 08312, who at all times relevant hereto acted under color of state law and within the course and scope of his employment and pursuant to his authority as a police officer with the Clayton Boro Police Department.

5. Defendant, Officer Michael Bielski, is a police officer with the Elk Township Police Department, 667 Whig Lane Road, Monroeville, New Jersey 08343, who at all times relevant hereto acted under color of state law and within the course and scope of his employment and pursuant to his authority as a police officer with the Elk Township Police Department.

6. Defendant, Officer Joseph Pierson, is a police officer with the Elk Township Police Department, 667 Whig Lane Road, Monroeville, New Jersey 08343, who at all times relevant hereto acted under color of state law and within the course and scope of his employment and pursuant to his authority as a police officer with the Elk Township Police Department.

7. Defendant, Sergeant John Dick, is a police sergeant officer with the Clayton Boro Police Department, 125 North Delsea Drive, Clayton, New Jersey 08312, who at all times relevant hereto acted under color of state law and within the course and scope of his employment and pursuant to his authority as a police officer with the Clayton Boro Police Department.

FACTS

8. On Saturday, April 8, 2008, at approximately 6:00 p.m., the plaintiff, Murray Celestine, was sitting on the front porch of his home in Clayton, Gloucester County, New Jersey. He and his girlfriend, Marlena Hunsinger, had just argued and they were out on their porch talking calmly. The defendant, Officer Michael J. Foley, Jr., of the Clayton Boro Police Department, arrived there.

9. Mr. Celestine and Officer Foley went to the back yard to discuss the situation. Mr. Celestine told Officer Foley that everything was fine at that time, and Mr. Celestine placed his hands on a van in the back driveway to allow Officer Foley to frisk him.

10. The defendant, Officer Michael Bielski from Elk Township Police Department, had arrived at the location before Mr. Celestine was frisked by Officer Foley. Officer Bielski went to the back yard, and he immediately began putting black gloves onto both of his hands. Mr. Celestine told Officer Foley that this made him uncomfortable. Consequently, Officer Foley told Officer Bielski to go to the front yard, which he did.

11. After Officer Foley frisked Mr. Celestine, Mr. Celestine started to turn to his right in an effort to speak with Officer Foley. However, Officer Foley then grabbed Mr. Celestine's right wrist and told Mr. Celestine that he was under arrest for domestic violence.

12. Officer Foley started to turn Mr. Celestine around and exerted excessive force on Mr. Celestine, pushing Mr. Celestine so hard that Mr. Celestine's left hand snapped the antenna off of a white Ford Windstar van in the back yard, which belonged to Ms. Hunsinger.

13. Officer Foley put his arms around Mr. Celestine's waist in a bear hug. He picked up Mr. Celestine and slammed him to the ground. This caused a fracture of Mr. Celestine's left wrist when his hand went out to break the fall, and also this caused Officer Foley to dislocate his left shoulder.

14. Officer Bielski jumped onto Mr. Celestine's back with his knee. He started pushing Mr. Celestine's head into the ground. Mr. Celestine turned his head to the right side as Officer Bielski started hitting Mr. Celestine with his right fist.

15. A third officer, defendant, Officer Joseph Pierson, of Elk Township Police Department, came over and handcuffed the plaintiff, Murray Celestine.

16. Other police officers came over, and the defendant, Officer John Dick, wrote the complaint that initiated the false criminal charges against the plaintiff.

17. Mr. Celestine was taken to the Clayton Boro Police Station and subsequently he was transported to the Gloucester County Jail where he spent the night.

18. The next morning, April 8, 2008, Mr. Celestine saw the doctor at the jail.

19. Mr. Celestine was bailed out of Gloucester County Jail on April 22, 2008.

20. Mr. Celestine went to Kennedy Memorial Hospital, Washington Township, on May 2, 2008, where he was diagnosed with a concussion, wrist fracture, and lumbar strain. He was prescribed Vicodan for his pain, and a half cast (splint) was put on his left wrist.

21. The actions of the defendants have caused the plaintiff great physical injuries, emotional suffering and economic damages.

FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS

22. The defendants arrested the plaintiff without just and legal cause, falsely imprisoned and maliciously prosecuted him, and used excessive and unnecessary force against him, thereby violating the plaintiff's rights under the laws and Constitution of the United States of America, in particular, the Fourth, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983, 1985 (3), 1986 and 1988.

SECOND CAUSE OF ACTION
VIOLATIONS OF NEW JERSEY COMMON LAW

23. The actions of the defendants violated the common law of the State of New Jersey, as the acts of the defendants constituted assault and battery, false arrest, false imprisonment and malicious prosecution.

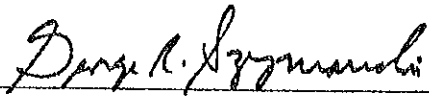
THIRD CAUSE OF ACTION
NEW JERSEY CIVIL RIGHTS VIOLATIONS

24. The actions of the defendants violated the plaintiff's rights under the New Jersey Civil Rights Act of 2004, N.J.S.A. 10:6-1, et seq.

WHEREFORE, the plaintiff, Murray Celestine, demands judgment against the defendants, jointly and severally, for an amount including compensatory and punitive damages as will fully and adequately compensate the plaintiff, Murray Celestine, including attorney fees, interest and costs of suit.

LAW OFFICES OF GEORGE R. SZYMANSKI

By:



George R. Szymanski, Esquire
Attorney for Plaintiff

Dated: April 6, 2010

GENERAL RELEASE

This General Release is made to confirm settlement, and is given by Murray Celestine, his heirs, assigns, assignees, agents, servants, and/ or representatives, (hereinafter referred to as the "Releasor"), and is given to:

- Borough of Clayton and Elk Township;
- the Borough of Clayton and Elk Township Police Departments;
- Michael J. Foley, Jr.;
- Michael Bielski; and,
- Joseph Pierson;

their agents, servants, employees, insurance carriers, attorneys, jointly, severally, or in the alternative, as well as Sgt. John Dick of the Clayton Police Department who has been dismissed from the pending litigation prior to the execution of this release (hereinafter referred to as the "Releasees").

1. **Release.** The Releasor releases and gives up any and all claims, demands, actions, and causes of action which he now or may hereafter have for any personal injury and/ or property damage of any kind arising out of, or as a result of, a certain accident or any other incident which occurred on or about April 8, 2008, as more particularly delineated in an action entitled Murray Celestine v Michael J. Foley, Jr., Michael Bielski, Joseph Pierson and John Dick, venued in the United States District Court for the District of New Jersey, Camden Vicinage, bearing Civil Action Number 10-cv-1775.

Neither this Agreement, nor the payment of the settlement funds, shall be construed as an admission by the Defendants of any liability or unlawful conduct whatsoever. The Releasor acknowledges that the Defendants consistently denied, and continue to deny, any allegations of wrongdoing. The Releasor further acknowledges that the Defendants enter into this General Release and Settlement Agreement solely to avoid further expensive, burdensome, distracting, and protracted litigation.

This General Release and Settlement Agreement is not intended to be used, and shall not be used, as evidence, or for any other purpose in any

other action or proceeding. This General Release and Settlement Agreement is only evidence of the compromise by the Releasor and the Releasees, as set forth herein, and may be admissible in evidence only to enforce the terms of this General Release and Settlement Agreement.

It is further understood that in executing this General Release, the Releasor is releasing each and every Releasee from any and all claims, demands, actions, and causes of action that I now or may hereafter have for any and all personal injury and/or any and all loss of income and/or any and all harm of any other nature, type and/or quantity, of any type of damage whatsoever, arising out of or as a result of any incident and/or event complained of, or which may have been complained of, in an action in the United States District Court entitled Murray Celestine v Michael J. Foley, Jr., Michael Bielski, Joseph Pierson and John Dick, venued in the United States District Court for the District of New Jersey, Camden Vicinage, bearing Civil Action Number 10-cv-1775.

I release and give up any and all claims and rights, including any and all claims for litigation expenses, attorneys' fees and/or court fees or other fees related to litigation which I may have against you, including, but not limited to, any claims for economic and/or non economic damages, including, but not limited to, pain and suffering, emotional distress, lost wages, loss of profits, loss of business opportunity, loss of consortium, doctors' bills, hospital bills, physical therapy treatment expenses, medical supplies and drugs, and any other economic and/or non economic damages that I have incurred or will incur because of personal injuries to me from an incident that occurred on or about April 8, 2008. This releases all claims, including those of which I am now aware, or should have been aware of, and those not mentioned in this General Release and Settlement Agreement. This General Release and Settlement Agreement applies to claims resulting from anything which has happened up to now in regard to the Releasees.

I specifically agree that I will take all necessary action and cooperate with my attorney (or attorneys) to effectuate the dismissal and the withdrawal of any charge and/or any complaint and/or any cause of action against

any Releasee named herein for any matter in connection with the United States District Court action under Civil Action Number 10-cv-1775.

I have had the opportunity to consult with my own attorney and I understand that, in accepting the sum to be paid as described in this Release, I am compensated for any claims which I had, have, or may have against the Releasees for anything which has happened up until now. I specifically understand and acknowledge that the payment described herein is in full and complete satisfaction of any and all attorneys' fees and costs related to any claims which I have, had, or may have against the Releasees for anything which has happened up until now.

2. **Payment.** In consideration for entering into this General Release, the Releasees have agreed to pay the Releasor a total sum of ~~Five~~ ^{Twenty} Thousand Dollars (\$20,000.00) which includes attorney fees and costs. The Releasor understands and agrees that he will not seek anything further, including any other payments, from the Releasees. As further consideration for this release, the Gloucester, Salem and Cumberland Counties Joint Insurance Fund as subrogee of Michael Bielski, Michael J. Foley, Jr., Borough of Clayton and Elk Township agrees to a dismissal of the subrogation Complaint in Gloucester County Superior Court under docket number L-506-10.

3. **No Admission of Liability.** The Releasor hereby acknowledges and understands that the Releasees do not make any admissions of any liability by making payment in accord with the terms of this General Release.

4. **Parties Bound.** The Releasor is bound by this General Release and anyone who succeeds to his rights and responsibilities, is also bound to this General Release. This General Release is made for the benefit of the Releasees and shall inure to the benefit of all who succeed to the rights and responsibilities of the Releasees.

5. **Dismissal of Action.** The entire action against Releasees filed under the United States District Court Civil Action Number 10-cv-1775 shall be **dismissed with prejudice** as a condition of payment. I agree to take any and all steps necessary to effectuate the foregoing, including but not

limited to the filing of a Stipulation of Dismissal with Prejudice, executing an Affidavit, executing a Consent Order and/or making an appearance before a Judge.

6. **Covenant to Indemnify Re: Tax Liability.** I specifically agree to indemnify and hold harmless the Releasees for any and all claims which may be assessed, levied or otherwise charged against Releasees by any taxing and/or government or authority, including any charge, assessment and/or levy for additional taxes, fees, penalties on account of any obligation which I may have for State or Federal income taxes, withholding taxes, and/or employee FICA taxes arising from payments made pursuant to this General Release and Settlement Agreement.

7. **Consultation with Counsel.** I acknowledge that I have read and that I understand this General Release and Settlement Agreement. I represent and acknowledge that I have fully discussed or I have had the opportunity to discuss this General Release and Settlement Agreement with an attorney of my choosing and that I have been fully advised of the legal consequences of this General Release and Settlement Agreement. I accept the money received pursuant to this General Release and Settlement Agreement and I acknowledge that I receive the payment herein in exchange for a full and complete release of all Federal and State claims which I may have had against the Releasees. I intend to be bound by this Release. The terms and conditions of this Release were the result of full disclosure and negotiations between the parties. I acknowledge that the Releasees have not made any representation to me which has not been specifically stated in this General Release and Settlement Agreement.


Murray Celestine

Dated: 6/25/12

STATE OF NEW JERSEY :
 : SS.
COUNTY OF Camden :

On 6/25/12, Murray Celestine personally came before me and acknowledged under oath, to my satisfaction, that:

- 1. he is the person named in this General Release;
- 2. he personally signed this General Release; and
- 3. he signed, sealed, and delivered this General Release as act and deed and without coercion.

Laura Granger
Notary Public
My Commission Expires:

