

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

JOYE WALFORD,)
)
 Plaintiff,) Case No. 2001-6666
)
 v.)
)
 CARL MITCHELL,)
)
 Defendant.)
 _____)

Prepared by:

**Judge Jerry R. Parker
Second District Court of Appeal
801 Twiggs Street
Suite 600
Tampa, FL 33602**

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-and-
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JOYE WALFORD

v.

CARL MITCHELL

Table of Contents

Statement of the Case and Stipulations -----	1
Witness List -----	6
Complaint -----	7
Answer -----	9
Depositions:	
Jordan Hayes -----	11
Joye Walford -----	17
Carl Mitchell -----	22
Dana Woods -----	27
Exhibits:	
Composite Exhibit A (affidavit, warrant, and return) -----	30
Exhibit B (certified copy of judgment of dissolution) -----	35
Exhibit C (letter of termination) -----	41
Exhibit D (nolle prosequi) -----	42
Preliminary Jury Instructions -----	43
Final Jury Instructions -----	46
Verdict Form -----	50

STATEMENT OF THE CASE

Plaintiff Joye Walford, the former wife of Defendant Carl Mitchell, has filed a malicious prosecution complaint against Mitchell. Walford will testify that her apartment was searched during the afternoon of September 7, 2001, after Mitchell visited the apartment that same morning. Detective Jordan Hayes will testify that Hayes searched the apartment based upon a sworn affidavit prepared by Mitchell, a police officer, which alleged that Mitchell saw a two-pound brick of marijuana located in Walford's bathroom. Hayes will testify that Hayes found a misdemeanor amount of marijuana in Walford's bathroom. Walford will testify that a criminal charge was filed against her, but the state attorney dismissed that criminal charge. Mitchell will testify that he did see the brick of marijuana. Walford's neighbor will testify to Walford's lifestyle and Walford's reputation among fellow apartment residents.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiff prevail on liability, the question of damages, including punitive damages, shall be reserved for the jury to be heard with additional evidence and additional jury instructions on a later date.

3. All witnesses called to testify who have in depositions identified the defendant, other individuals, or tangible evidence can, if asked, identify the same at trial.

4. Each witness who gave a deposition did agree under oath at the outset of his/her deposition to give a full and complete description of what occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.

5. All depositions were signed under oath.

6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.

7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses or the defendant that would bolster or detract from their credibility.

8. This competition does not permit a listed witness or the defendant, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that invented individual.

9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall utilize cross-examination as to inferences from material facts. Pursuant to National Rules VII(4)(C), and (D) and VIII(5), any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(5).

10. The plaintiff and the defendant must call the two witnesses listed on their respective witness list.

11. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Judge Parker, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2002 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiff shall have four minutes to present any pretrial motions; (2) the defense shall have four minutes to respond to the plaintiff's motion(s); (3) the defense shall have four minutes to present any pretrial motions; and (4) the plaintiff shall have four minutes to respond to the defense's motion(s).

15. This competition does permit teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence at the trial of any photographs or the videotape of the search of Walford's apartment or the seized marijuana from the apartment.

Substantive Matters

1. Lone Star Statutes (1998) provide the following:

398.13 Prohibited acts; penalties.--

.....

- (2) The following are controlled substances:

.....

- (k) cannabis, also known as marijuana;

.....

(6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable by probation or a term in state prison not to exceed five years and/or a fine of \$5,000.

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable by probation or a term in the county jail not to exceed one year and/or a fine of \$1000.

2. It is stipulated by the plaintiff and the defendant that an information was filed on September 28, 2001, against Joye Walford charging misdemeanor possession of marijuana in county court case number 2001-5005.

3. It is stipulated by the attorneys for the plaintiff and the defendant that the evidence seized by Jordan Hayes from the apartment of Joye Walford on September 7, 2001, was tested by the State of Lone Star Crime Laboratory and that the test determined that all nineteen grams of the seized evidence tested positive for marijuana. The attorneys for the plaintiff and the defendant further stipulate that no positive fingerprint identifications could be made from the partial fingerprints found on the baggie containing the marijuana.

4. It is stipulated by the attorneys for the plaintiff and the defendant that, according to the criminal records divisions of both the FBI and the State of Lone Star, neither the plaintiff nor the defendant has any listed criminal convictions.

WITNESS LIST

Witnesses for the Plaintiff:

1. Jordan Hayes *
2. Joye Walford **

Witnesses for the Defense:

1. Carl Mitchell ***
2. Dana Woods *

Each team must call witnesses 1 and 2 listed for their respective party.

* This witness may be either a male or female.

** This person must be a female.

*** This person must be a male.

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JOYE WALFORD,)
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 Plaintiff,)
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 CARL MITCHELL,)
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 Defendant.)
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Case No. 2001-6666

COMPLAINT

Plaintiff, Joye Walford, sues Defendant, Carl Mitchell, and alleges:

1. This is an action for damages that exceed \$15,000.
2. On September 7, 2001, the Defendant executed an affidavit for search warrant alleging that the Plaintiff possessed a brick of marijuana weighing approximately two pounds.
3. The Defendant prepared a proposed search warrant and encouraged the Austin Police Department to seek a judge to sign the search warrant.
4. The search warrant, based upon the affidavit executed by the Defendant, was submitted to a circuit judge and a search warrant was issued.
5. The search warrant was served upon the Plaintiff, and the Plaintiff was arrested for misdemeanor possession of marijuana.

6. The Plaintiff was thereafter charged with misdemeanor possession of marijuana.


7. Thereafter, the criminal charge filed against the Plaintiff was dismissed prior to any trial on the criminal charge.

8. The Defendant instituted the search warrant application without probable cause.

9. The Defendant procured the prosecution of the Plaintiff maliciously and with the intent of injuring the Plaintiff.

10. As a result, the Plaintiff paid or incurred attorney's fees in defending the Plaintiff from the criminal charge, was terminated from her employment based upon her arrest, suffered mental anguish, humiliation personally, and suffered loss of earnings and loss of ability to earn money.

WHEREFORE, the Plaintiff demands judgment for damages, including punitive damages, against the Defendant and a trial by jury.



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Austin, State of Lone Star 78701
Lone Star Bar 0001118886
Attorney for Plaintiff

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JOYE WALFORD,)
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)
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 _____)

Case No. 2001-6666

ANSWER AND DEFENSES TO COMPLAINT

Defendant, Carl Mitchell, by and through his undersigned attorney, files this, his Answer and Defenses to the Complaint filed by the Plaintiff, and states as follows:

1. Admit jurisdiction.
2. Admit paragraph 2.
3. Deny paragraph 3 and demand strict proof thereof.
4. Admit paragraph 4.
5. Admit paragraph 5.
6. Admit paragraph 6.
7. Deny paragraph 7 and demand strict proof thereof.
8. Deny paragraph 8 and demand strict proof thereof.


9. Deny paragraph 9 and demand strict proof thereof.
10. Deny paragraph 10 and demand strict proof thereof.

AFFIRMATIVE DEFENSE

Defendant further asserts the following affirmative defense.

1. That on September 7, 2001, the Defendant had a reasonable ground of suspicion, supported by circumstances sufficiently strong to warrant a cautious man to believe that the Plaintiff possessed an amount of marijuana weighing over twenty grams in the Plaintiff's residence.

The undersigned certifies that a copy of this Answer and Defenses has been furnished to Julian Rivera, Esquire, by U. S. Mail, this 30th day of November, 2001.


ALEX J. STELLY, JR.
5766 Balcones Drive, Suite 101
Austin, State of Lone Star 73731
Lone Star Bar 001119797
Attorney for Defendant

DEPOSITION OF JORDAN HAYES

- Q. Please state your name.
- A. Jordan Hayes.
- Q. Where are you employed?
- A. I am a detective with the Austin Police Department in the City of Austin, State of Lone Star.
- Q. Please briefly describe your work history.
- A. I received a B.A. degree in criminology from the University of Oklahoma. I immediately went to work as a uniformed patrol officer for the City of Austin. I spent eight years as a uniformed patrol officer. I was then promoted to detective. I have been a detective for six years, going on seven.
- Q. Have you had any disciplinary or administrative actions taken against you by your department?
- A. On three occasions I was placed upon administrative leave with pay because I was involved in shootings where a suspect was killed. On each occasion, the internal affairs division of my department and the state attorney's office ruled that the shootings were justified, and I was returned to active duty.
- Q. Do you know Carl Mitchell?
- A. Yes. He is a patrol officer with my department.
- Q. What do you think of him?
- A. Not much.
- Q. Why?
- A. In my opinion, he is a loose cannon. He drives fellow employees nuts over his divorce, how the judge screwed him, and how his ex-wife is a poor mother. I don't even work with him daily and I have heard his ravings on these subjects a dozen times. The rumor is that the department has trouble finding officers willing to work with Mitchell.
- Q. Have you had occasion to work with Mitchell?

- A. Yes. On some occasions he was the responding officer at a crime scene and maintained the crime scene until the detectives got there and, thereafter, detectives would direct Mitchell's work at the crime scene.
- Q. How did Mitchell perform?
- A. Very well. Always very professional in his police work.
- Q. So do these ravings about his divorce and wife ever affect Mitchell's job performance.
- A. I couldn't answer that because I was never his supervisor. I have never seen it affect his job performance. However, when there was no immediate police task to be performed, I have seen and have heard Mitchell fall back into the same broken record that he got screwed in his divorce.
- Q. How old is Mitchell?
- A. I think twenty-eight or twenty-nine years.
- Q. Do you recall an incident on Friday, September 7, 2001, involving Carl Mitchell?
- A. Yes.
- Q. Please tell me about it.
- A. I was in my office and Mitchell appeared with a typed affidavit for search warrant and a proposed search warrant for the apartment of his ex-wife.
- Q. What time was this?
- A. About 2 p.m.
- Q. What did Mitchell say to you?
- A. Mitchell said that he was at his ex-wife's residence that morning and saw her smoking marijuana in front of his young child and saw a large amount of marijuana in the residence. He said he prepared the affidavit and proposed search warrant and wanted the detective division to get the warrant signed and executed.
- Q. What did you do?
- A. I asked Mitchell if he was sure that he wanted to proceed in this way. I mentioned the possibility of getting the child welfare involved first before it became a full police investigation.
- Q. What did Mitchell say?

- A. He said no, he wanted full police involvement up front to, in his words, "nail the bitch."
- Q. What did you do?
- A. I took the affidavit and proposed warrant to the chief of police of my department.
- Q. Why did you do that?
- A. Because I knew of the bad blood between Mitchell and his ex-wife. I knew Mitchell often discussed trying to get custody of his child. Lastly, the affidavit and the warrant didn't pass my smell test.
- Q. What is your smell test?
- A. All police officers have a smell test. It simply means that when facts brought to your attention do not feel right or sit well with your assessment of the situation, you proceed very cautiously.
- Q. Did you meet with the chief?
- A. Yes.
- Q. What happened?
- A. The chief read the affidavit and the proposed warrant, listened to me fill him in on the background of the marriage split, and then he called Mitchell in and questioned Mitchell thoroughly.
- Q. What happened next?
- A. The chief authorized me to take Mitchell with me to find a judge to sign the warrant, but only after a stern warning to Mitchell.
- Q. What exactly was the warning?
- A. The chief told Mitchell that if he lied about anything in the affidavit, the chief would personally see that Mitchell would never again work in law enforcement in this state.
- Q. What happened next?
- A. I took Mitchell to a circuit judge to get the warrant issued. I then told Mitchell to get lost and that I did not want him around the ex-wife's residence. I then found another detective and a uniformed officer in police headquarters to accompany me to search the residence.

- Q. From the time you received the signed warrant until you arrived at the apartment, how much time had elapsed?
- A. About an hour and a half.
- Q. What time did you arrive to search the residence?
- A. About 4:30 p.m.
- Q. What was the address you searched?
- A. Apartment 4, 1010 Daniel Drive, City of Austin.
- Q. Did anything strike you as unusual when you arrived to search the apartment?
- A. Yes. There was a mobile television unit from Channel 8 News on the scene.
- Q. How would the television unit have known?
- A. Only Mitchell, the chief, me, the judge, and the two officers helping me knew about the warrant. I know I didn't contact the news team and there was never any police radio traffic about the warrant or the address where it would be served.
- Q. What did you do next?
- A. We determined that there was no back door to the apartment. I took the two other officers and knocked on the front door. Joye Walford answered the door. I showed her the warrant and advised her that we must search the apartment.
- Q. What happened next?
- A. Walford invited us in and asked to read the warrant which I provided. Once she saw that the affiant on the affidavit was Carl Mitchell, Walford said, "That son-of-a bitch. He will never give up."
- Q. What happened next?
- A. Walford told us that Mitchell was there that day and she had to order Mitchell out. Walford then said if there was any dope in the apartment, you could be sure that Mitchell planted it.
- Q. Describe how Walford looked.
- A. A little glassy-eyed. She smelled slightly of alcohol. There was no slurred speech. My hunch would be that she recently had one or two drinks. She functioned fine in her balance and conversation. But I would have cautioned her

against driving. Since she made no attempt to leave the apartment, I didn't worry about her movements or her ability to care for her child.

Q. Did you and the other officers search the apartment?

A. Yes.

Q. Did you locate any contraband?

A. Yes.

Q. Where.

A. Inside of a round talcum powder container in the top drawer of the vanity in the bathroom was a baggie containing marijuana. I later weighed it at the police station and the total amount was nineteen grams.

Q. Did you or your fellow officers find any other contraband?

A. No.

Q. What did you do next?

A. I told Walford that I had to take her in for booking but that I would return her home. I asked Walford if she wanted anyone to come and stay with her child for the hour the booking process would take. She arranged for a neighbor named Woods to come over.

Q. What happened next?

A. I drove Walford to the jail. I filled out the complaint/advisory form listing the crime with which she had been charged. I authorized a release-upon-recognizance and drove Walford home.

Q. What was the charge?

A. Misdemeanor possession of cannabis.

Q. What is the maximum penalty for the crime?

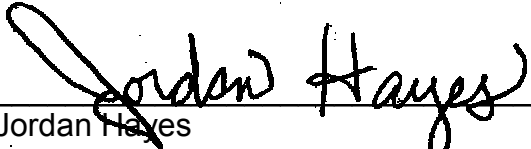
A. A year in county jail and/or a \$1000 fine.

Q. What is the usual penalty for first-time offenders?

A. Court diversion program and, after completion of the program, dismissal of the charge.

Q. After you returned Walford home, what other part did you play in the case?

- A. I wrote a report. I delivered the baggie and its contents to the crime laboratory. I filed the search warrant return with the judge. I received a telephone call from an assistant state attorney asking me to fill her in on any facts in the case not included in my report. The assistant state attorney also told me that Mitchell had telephoned her encouraging prosecution of Walford. According to the assistant state attorney that seldom happens, and the assistant state attorney wanted to ask me about the stability of Mitchell. I was subpoenaed to testify at the criminal trial but was later released from that subpoena.
- Q. During your time with Walford, did she ever indicate that she was guilty of drug possession?
- A. No. She continually said that Mitchell planted it.
- Q. Why did you arrange a release for Walford?
- A. She was a school teacher. I decided that she could better use her money hiring an attorney. And after all of the bitter feelings between Mitchell and Walford, I had a hunch that Walford might be telling the truth.
- Q. I now show you what has been marked as Composite Exhibit A. Do you recognize it?
- A. Yes. That is the affidavit for search warrant, the search warrant for Joye Walford's residence, and the return I completed before I filed it with the court.


Jordan Hayes

Sworn to and subscribed before me
this 17th day of December, 2001.


Notary Public

DEPOSITION OF JOYE WALFORD

Q. Please state your name.

A. Joye Walford.

Q. What is your address?

A. Apartment number 4, 1010 Daniel Drive, City of Austin.

Q. What is your marital status?

A. I have been divorced from Carl Mitchell for two years.

Q. How old are you?

A. Twenty-five years old.

Q. Are you employed?

A. I work as a clerk in a 7-11 convenience store. I was a second-grade school teacher, but the school board fired me when I was arrested on the marijuana charge. The television news coverage was too much for the school board to ignore.

Q. Describe your marriage to Carl Mitchell.

A. We were married in 1996. I was still in college. I finished college in 1998. Our child Angela was born in 1999. Carl filed for divorce in late 1999.

Q. Please describe your marriage.

A. It was never pleasant after the first six months. Carl wasn't ready to be married. He constantly found fault with me. I retaliated by intentionally doing things to upset him. The end came when I got pregnant. I had promised Carl that I wouldn't get pregnant.

Q. I now show you what is marked as Exhibit B. Can you identify it?

A. Yes. It is a certified copy of my final judgment of dissolution.

Q. How long were you separated before the final judgment was entered?

A. About eight months.

Q. Was the separation and dissolution amicable?

- A. No. It was pure Hell. We both taunted each other and made life as unpleasant as possible. Every visitation exchange of Angela was a fight. The judge finally made the exchange occur in the parking lot of the police station.
- Q. Tell me about the events of September 7, 2001.
- A. It was a Friday. I had taken a day off because Angela had a cold. Around 11 a.m., Carl Mitchell knocked on my apartment door. I told Carl that the court order didn't permit him to be at the apartment. Carl refused to leave until I let him see Angela to make sure she was all right.
- Q. How did Mitchell know Angela was ill?
- A. He had telephoned me that morning to say that it was his weekend to have custody of Angela. I told Carl that she had a cold and asked if he would switch weekends so that I could keep a close eye on Angela.
- Q. Did you let Mitchell see Angela?
- A. Yes.
- Q. Did you stay with him?
- A. Yes.
- Q. Did he appear satisfied upon seeing Angela?
- A. Yes.
- Q. What happened next?
- A. Carl said he needed to use my bathroom before he left.
- Q. Did you give him permission?
- A. No. I ordered him to leave, but he said he needed to use the bathroom and went into the bathroom and closed the door. He came out about two minutes later.
- Q. Were there guests staying at your apartment when Mitchell was there on September 7, 2001?
- A. I am not sure. My brother may have been sleeping over and still there.
- Q. What happened next?
- A. Carl came out of the restroom and said he would agree to leaving Angela with me for the weekend and would take Angela next weekend.
- Q. What happened next?

- A. Carl departed.
- Q. Was Carl on or off duty?
- A. He was off duty. He wasn't in uniform.
- Q. What event do you remember next on that day?
- A. Sometime between four and five in the afternoon, Detective Hayes and two other officers came to my door and told me that there was a search warrant to search my apartment.
- Q. What did you do?
- A. I asked to see the warrant. After I read the affidavit signed by Carl Mitchell, I knew that my ex-husband had reached a new low.
- Q. What happened next?
- A. I just watched the officers search.
- Q. Had you been drinking?
- A. I had finished a beer and had just opened a second when the detective knocked on my door.
- Q. What happened next?
- A. The officers found marijuana in my bathroom.
- Q. What happened next?
- A. The detective apologized to me but said I had to be booked at the jail. The detective made it as painless as possible. The detective permitted me to get a sitter for Angela and promised to bring me back soon.
- Q. What happened next?
- A. When I walked outside with the detective, a Channel 8 News team was standing next to the police cars. They started filming me and stuck a microphone in my face and asked me if I thought someone caught with marijuana should be teaching young children.
- Q. Did you answer the question?
- A. No. I was crying too hard.
- Q. What happened next?

- A. The detective was true to the detective's word. The booking process was short, although I had to be fingerprinted. The detective then drove me home. The detective then left.
- Q. What happened next?
- A. The following Tuesday, I was fired by the school board.
- Q. I now show you what is marked Exhibit C. Do you recognize it?
- A. Yes. It is the letter terminating me from my teaching position.
- Q. Were you charged with a crime?
- A. Yes. An information for misdemeanor possession of marijuana was filed against me, and I had to appear at an arraignment to plead not guilty and a trial date was set.
- Q. I now show you what is marked Exhibit D. Do you recognize it?
- A. Yes. It is a nolle prosequi entered by the state attorney in my criminal case.
- Q. How did that occur?
- A. After my separation, I had a few dates with an assistant state attorney named Charles Samarkos. I told him about what had happened in my arrest. Charles arranged for me to take a lie detector test. Charles told me that I passed. I understand Charles asked Carl Mitchell to take a lie detector test, and Carl refused. At any rate, Samarkos talked his boss into entering the nolle prosequi.
- Q. Were you dating Samarkos at the time the charges were dismissed?
- A. No.
- Q. Have you dated him since the charges were dismissed?
- A. No.
- Q. Were you able to regain your teaching job?
- A. No. Not in the City of Austin and not anywhere else in the State of Lone Star.
- Q. What was your relationship with Brad Pitt?
- A. Brad and I taught at the same elementary school. We were good friends. We never saw each other away from work while we taught together. After Carl and I separated, Brad and I dated. We did not live together. He does not sleep over, and I don't stay over at his place. Brad has been a source of strength to me during some very trying times. We are very good friends.

- Q. Did you retain an attorney to represent you on the criminal charge?
- A. Yes. I couldn't afford one, but my Mom gave me \$5000 to pay the retainer.
- Q. Is there any justification to claims by your neighbors that your apartment is a drug hang out?
- A. No. My brother, who is in his first year in junior college, often comes by with his friends. They wear black with dangling chains and some wear studded dog collars. Some wear earrings and nose rings and color their hair bright colors. But they are good kids who don't do drugs. They just like to be nonconforming. I would never permit any drugs or drinking in my apartment by these kids.


Joye Walford

Sworn to and subscribed before me
this 8th day of January, 2002.


Notary Public

DEPOSITION OF CARL MITCHELL

- Q. Please state your name.
- A. Carl Mitchell.
- Q. How old are you?
- A. Twenty-nine.
- Q. What is your home address?
- A. I am a police officer. I don't have to disclose it.
- Q. Where are you employed?
- A. I am a uniformed officer for the City of Austin Police Department.
- Q. How long have you been employed there?
- A. Between eight and nine years.
- Q. What is your level of education?
- A. I graduated high school and completed two years of junior college.
- Q. I now show you what is marked as Exhibit B. Do you recognize it?
- A. Yes. It is a certified copy of the final judgment in my marital dissolution case.
- Q. What caused your divorce?
- A. Joye was getting too cozy with Brad Pitt, a physical education teacher at her school.
- Q. So your wife's pregnancy didn't contribute to the dissolution?
- A. I can't say that. Joye promised me she wouldn't get pregnant. She intentionally deceived me. I ended up with a child I didn't want at that point in my life.
- Q. Describe your marriage.
- A. We got married before we were ready. Joye had college to finish, and I wasn't making much money. There were lots of fights over money. I was very jealous of Joye's relationship with Brad Pitt. The pregnancy was too much for me to take. I filed for divorce, and we split.


- Q. Were there any problems during the separation?
- A. Several. Joye always had Pitt around when it was my turn to have the baby. It ticked me off. The police got called several times when Pitt and I went nose-to-nose.
- Q. What were the other problems during the separation?
- A. I thought Joye should spend less money during this period. Joye seemed to ignore my suggestions.
- Q. Tell me about Friday, September 7, 2001.
- A. Joye telephoned my apartment around 9 a.m. She said Angela had a cold and wanted me to not take Angela although it was my weekend to have her. I couldn't trust Joye, so I drove to her apartment to check for myself.
- Q. Didn't the final judgment of dissolution prohibit you from going to Joye's apartment?
- A. Yes, but I was so upset I forgot about the court paper.
- Q. What happened when you arrived at the apartment?
- A. I knocked on the door. Joye answered. She was drunk. I insisted on seeing the baby. Joye resisted. I pushed my way in and checked on the baby. Angela did have a stuffy nose and felt feverish. I told Joye I would not take the baby if Joye would promise me to not take another drink. Joye promised me she wouldn't.
- Q. What happened next?
- A. I started to leave but needed to use the bathroom. I went into the bathroom and saw a door ajar in the vanity. I looked inside and saw a compressed brick of marijuana wrapped in a clear plastic wrap. I picked it up and determined that it weighed about two pounds. I smelled the package and knew it was marijuana. I have seen marijuana hundreds of times in my work. I put it down and left the bathroom. I exited the apartment without mentioning the marijuana to Joye.
- Q. Did you open any drawers in the bathroom vanity?
- A. No.
- Q. Did you place marijuana in the powder container in the bathroom?
- A. No.

(Revised: 03/19/02)

- Q. Are you sure?
- A. Yes.
- Q. Was there anyone else in the apartment that morning?
- A. Three dope heads were sleeping in sleeping bags in the living room. None of them moved when I walked through.
- Q. How do you know they were dope heads?
- A. Believe me, they looked like what I see daily.
- Q. During your marriage, did you ever know your wife to possess marijuana?
- A. I suspected it, but I never had any solid proof.
- Q. As a police officer, do you ever seize marijuana during a citizen encounter or an arrest?
- A. Sure.
- Q. Do you always turn that seized marijuana into the police department property custodian?
- A. No. Sometimes I might give a young kid a break and seize the marijuana and then throw it into a commode or sewer opening to dispose of it.
- Q. So you could have kept some marijuana and placed it into your wife's apartment?
- A. I could have, but I didn't.
- Q. Going back to September 7, 2001, what happened next?
- A. I left the apartment.
- Q. What did you do next?
- A. I immediately went to my police department headquarters and typed an affidavit for a search warrant with me as the affiant. I also typed a proposed search warrant listing the location of Joye's apartment.
- Q. What was the basis of your affidavit?
- A. The marijuana in the bathroom.
- Q. What happened next?

- A. I took the affidavit and the warrant to Detective Hayes. Hayes tried to talk me out of it. I refused. Hayes then took me to the chief. The chief tried to talk me out of it. I refused again. Then the chief authorized Detective Hayes to take me to a judge to get the search warrant signed.
- Q. What happened next?
- A. Detective Hayes and I went to Judge Kirk Crutcher. The judge swore me in, and I signed the affidavit in his presence. Judge Crutcher signed the warrant.
- Q. What happened next?
- A. Detective Hayes told me to go home and that Hayes would execute the warrant without me.
- Q. Where did you go?
- A. I went to get lunch.
- Q. What did you do next?
- A. I went to the police department because I was working the 3 p.m. to 11 p.m. shift.
- Q. Who alerted Channel 8 News of the search warrant being served at your ex-wife's residence?
- A. I don't know.
- Q. So you didn't notify Channel 8 News?
- A. No.
- Q. Do you date Stephanie Alvarez, a news reporter for Channel 8 News?
- A. Yes.
- Q. How long have you dated her?
- A. A little over a year.
- Q. Did you alert Stephanie Alvarez of the search of your ex-wife's residence?
- A. No.
- Q. Around your fellow officers, did you often complain about how you were treated by the judge and your ex-wife's attorney during your dissolution court proceeding?

- A. I'm sure I did.
- Q. How were you mistreated in these proceedings?
- A. The judge was prejudiced. She should have given me custody of Angela. I was the better parent. She also nailed me with alimony. Joye got the best of everything.
- Q. When you told Detective Hayes about the affidavit, did you tell the detective that your ex-wife was smoking marijuana that day?
- A. No, I did not.
- Q. After Joye Walford was arrested, did you contact the State Attorney's Office to encourage that formal charges be filed?
- A. After Joye was arrested, I telephoned the supervisor of the misdemeanor division in the State Attorney's Office. Although I felt that my child's safety was at stake, I decided only to tell the prosecutor that I was the affiant on the search warrant, but I could not ethically comment further because I might face departmental discipline for trying to influence a prosecutor.
- Q. So you are telling me under oath that you did not try to influence the prosecutor of this case by calling the prosecutor.
- A. Well we talked a lot, but I think that a fair reading of our exchange was that I did not try to press for prosecution of my ex-wife.



Carl Mitchell

Sworn to and subscribed before me
this 31st day of January, 2002.



Notary Public

DEPOSITION OF DANA WOODS

Q. Please state your name.

A. Dana Woods.

Q. What is your address?

A. Apartment number 6, 1010 Daniel Drive, City of Austin, State of Lone Star.

Q. Are you employed?

A. I am a retired school teacher.

Q. Do you live alone?

A. Yes. My spouse is deceased. We raised four children, the youngest of which is twenty-six.

Q. Do you know Joye Walford?

A. Yes. She and her daughter moved into my building in late 1999 or early 2000.

Q. What is your relationship with Walford?

A. I baby-sit for her. It started as occasional, but I now baby-sit every day Joye works. She works at the 7-11.

Q. Would you classify yourself as a close friend of Walford?

A. No. Just a responsible neighbor.

Q. In your opinion, is Walford a good mother?

A. She could be better.

Q. How?

A. I have smelled alcohol on her breath when I have come to baby-sit.

Q. Have you ever seen Walford drunk?

A. No. Just a little giddy.

Q. How else has Walford failed in your expectations as a mother?

A. She has a boyfriend who probably stays overnight. His car is still there when I go to bed at 10:30 p.m.

Q. Have you ever seen his car there in the early morning?

A. No. I sleep until 7:30 a.m., and it is always gone by then.

- Q. How else does Walford fail your mother test?
- A. She wears revealing swimsuits to the swimming pool, and she lets weird-looking kids hang out at her apartment.
- Q. Do you like Walford?
- A. Of course I do.
- Q. Have you ever seen the child when she was not clean, fed, or properly clothed?
- A. No.
- Q. Have you ever notified child welfare authorities that Walford was not properly caring for the child?
- A. Of course not. The child has always exhibited proper care.
- Q. Do you know Carl Mitchell?
- A. Yes.
- Q. How do you know him?
- A. He has come to Walford's apartment to pick up the child. Sometimes he is in a policeman's uniform. He has also come to speak at our Neighborhood Watch Program.
- Q. What do you think of Mitchell?
- A. I respect all police officers. I don't personally know Mitchell.
- Q. What do you know about Mitchell?
- A. There were some messy incidents when he came to pick up the child.
- Q. Please explain.
- A. Well, the boyfriend was often there and there was a lot of yelling and screaming, and the child would cry. I saw Mitchell and the boyfriend push each other in the walkway. Several neighbors came out to look.
- Q. Have you talked to your neighbors about Joye Walford and/or Carl Mitchell?
- A. Yes.
- Q. Have you talked to these neighbors about Walford's alcohol consumption?
- A. Yes.
- Q. Do these neighbors have an opinion about the alcohol consumption?

- A. Yes.
- Q. What is that opinion?
- A. The neighbors' collective opinion is that Walford is often under the influence of alcohol or drugs.
- Q. Do these same neighbors have any opinion concerning Carl Mitchell?
- A. Yes. Their collective opinion is that he is loud and confrontational.
- Q. Do you agree with these opinions as to Walford and Mitchell?
- A. No. I don't agree Walford is under the influence of drugs although she might ought to drink less. I do agree that Mitchell can be loud.
- Q. Do you drink alcohol?
- A. No. I am an alcoholic. I have not had a drink in twenty-five years.
- Q. Can you provide me any other information about Walford or Mitchell?
- A. Walford has been under a lot of stress for months. The separation and divorce took a lot out of her. Getting fired and having to take a minimum-wage job has added to that stress. With that amount of stress, it is remarkable how she keeps it all together.
- Q. Have you seen visitors come to Walford's apartment?
- A. Yes. Some spiked-haired kids wearing metal chains hang around the apartment when Walford is there. The kids have never come around while I am baby-sitting.
- Q. Have you ever seen these kids with any drugs?
- A. No, but I have the feeling they would be into that sort of lifestyle. They smoke a lot of cigarettes and they don't look twenty-one. On one occasion, I also saw cold hand-rolled cigarettes in ashtrays in Walford's apartment when I arrived to baby-sit. I have never smelled marijuana, but I placed these cigarettes near my nose and they smelled different from regular tobacco.


Dana Woods

Sworn to and subscribed before me
this 14th day of February, 2002.


Notary Public

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

**AFFIDAVIT AND APPLICATION
FOR
SEARCH WARRANT**

BEFORE ME, a CIRCUIT COURT JUDGE of the State of Lone Star, personally appeared Carl Mitchell of the City of Austin Police Department, who being by me duly sworn, deposes and says that he believes and has good reason to believe that the Laws of the State of Lone Star relative to the possession of controlled substances to wit, Marijuana, which is in violation of Lone Star Statute 398.13, are being violated in the following described dwelling and that the evidence of said crime is contained in the dwelling which is described as the premises to be searched. The premises to be searched is located at Apartment Number 4, 1010 Daniel Drive, City of Austin, State of Lone Star.

The premises to be searched is further described as an apartment in a white four-story wooden building located on the north side of Daniel Drive in the 1000 block of Daniel Drive. The number "1010" and "White House Apartments" appear facing south in six-inch letters and numbers on a six-foot and a four-foot wall located next to the main sidewalk leading to the front of the apartment building. The apartment to be searched is located on the second floor at the end of an open walkway at the west end of the building and has a five-inch gold numeral "4" located on the front door. Apartment number 4 is reached by walking up stairs located at both the east and the west end of the building. The front door of apartment number 4 is painted red and has a door mat in front of the front door which states, "Teachers Make the Difference." The door to apartment number 4 opens in and there is no other entry door to the apartment.

The evidence to support this search is set forth as follows. Between 9 a.m. and 10:30 a.m. on Friday, September 7, 2001, Affiant Carl Mitchell was inside apartment number 4 at 1010 Daniel Drive in the City of Austin, State of Lone Star. The residence is occupied by Joye Walford, Affiant's former wife, and Angela, Affiant's two-year-old daughter. Affiant entered the bathroom in the apartment and saw in a cabinet an object shaped like a brick which your affiant determined was pressed marijuana and weighed approximately two pounds. As a police officer, Affiant has seen marijuana hundreds of times during investigations and training sessions.

Composite Exhibit A (pg.1)

WHEREFORE, Affiant prays that a search warrant be issued, commanding all and singular the Sheriff of Travis County and his Deputies, the Police Officers of the City of Austin, acting within their jurisdiction, in the State of Lone Star, either in the daytime or in the nighttime, on Sundays or on holidays, as the exigencies of the occasion may demand or require, with proper and necessary assistance, to search the aforementioned dwelling, referred to as the premises to be searched, and any and all persons found therein, who are reasonably believed to be involved in the crime or crimes, and seize as evidence any and all controlled substances, to wit, any and all illegal narcotics, and any devices or paraphernalia used with the controlled substances, in order that said evidence may be procured to be used in the prosecution of the Criminal Laws of the State of Lone Star.


AFFIANT, Carl Mitchell

COUNTY OF TRAVIS
STATE OF LONE STAR

SWORN TO AND SUBSCRIBED before me
this 7th day of September, 2001.


Circuit Court Judge

Composite Exhibit A (pg.2)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

SEARCH WARRANT

IN THE NAME OF THE STATE OF LONE STAR, to all and singular the Sheriff's and their Deputies and Police Officers acting within their jurisdiction, of the State of Lone Star. Greetings:

WHEREAS, I have received an affidavit and application for a search warrant this date, made before me by Carl Mitchell, an officer on the Police Department of the City of Austin, State of Lone Star, and

WHEREAS, I have examined the facts set forth in support of said application for a search warrant, and

WHEREAS, said facts have caused me to certify and to find that there is probable cause to believe that the Laws of the State of Lone Star, relative to the possession of controlled substances, to wit, Marijuana, in violation of Lone Star Statute 398.13, are being violated on or in the following described premises known and described as a residence located at Apartment Number 4, 1010 Daniel Drive, City of Austin, State of Lone Star. The premises to be searched is further described as an apartment in a white four-story wooden building located on the north side of Daniel Drive in the 1000 block of Daniel Drive. The number "1010" and "White House Apartments" appear facing south in six-inch letters and numbers on a six-foot and a four-foot wall located next to the main sidewalk leading to the front of the apartment building. The apartment to be searched is located on the second floor at the end of an open walkway at the west end of the building and has a five-inch gold numeral "4" located on the front door. Apartment number 4 is reached by walking up stairs located at both the east and the west end of the building. The front door of apartment number 4 is painted red and has a door mat in front of the front door which states, "Teachers Make the Difference." The door to apartment number 4 opens in and there is no other entry door to the apartment.

THESE PRESENTS, THEREFORE, are to command you with the proper and necessary assistance, either in the daytime or in the nighttime, on Sundays or on holidays, as the exigencies of the occasion may demand or require, to search the aforementioned dwelling, referred to as the premises to be searched, and any and all persons found therein, who are reasonably believed to be involved in the crime or

Composite Exhibit A (pg.3)

crimes, for any and all controlled substances, to wit, any and all illegal narcotics, or any paraphernalia used within the controlled substance, and you are hereby authorized to seize and secure the same and to make a return of your doings under this warrant within 10 days of the date hereof. You are directed to give proper receipts for any seized property and to deliver a copy of this warrant to any person from whom taken or in whose possession it is found, or in the absence of any such person, to leave said copy in the place where said property or material was found, and you are further directed to bring any and all items seized, if any be found, to a secure evidence facility to hold such evidence for further court proceedings, and to bring the person or persons in possession thereof before me or any other Court having jurisdiction of the offense.

WITNESS MY HAND and official seal this 7th day of September, 2001, in Travis County, State of Lone Star.

Kirk Crutcher
Circuit Judge (SEAL)

Composite Exhibit A (pg.4)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

**RETURN OF SEARCH WARRANT
AS DIRECTED BY ISSUING JUDGE**

I, JORDAN HAYES, a law enforcement officer in the State of Lone Star employed by the CITY OF AUSTIN POLICE DEPARTMENT, swear that on September 7, 2001, I was placed in possession of a search warrant to search Apartment 4, 1010 Daniel Drive, City of Austin, State of Lone Star, and that I conducted the search at that residence.

I further swear that I seized the following evidence at the above-described premises:

ONE BAGGIE CONTAINING SMALL
AMOUNT OF SUSPECTED MARIJUANA

I further swear that I left a receipt for the seized evidence with the following person(s):

JOYE WALFORD

Jordan Hayes
Law Enforcement Officer

Sworn to and subscribed before me
this 10th day of September,
20 01.

V. L. True
Notary Public

Composite Exhibit A (pg.5)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

Family Law Division

IN RE: THE MARRIAGE OF:)
CARL MITCHELL,)
)
Petitioner/Husband,)
)
and)
)
JOYE MITCHELL,)
)
Respondent/Wife.)
_____)

CASE NO. 99-1996-T

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE came on to be heard for Final Hearing on June 16, 2000. The court, having heard testimony from both parties; testimony from the parties' experts; hearing arguments of counsel; and otherwise being duly advised in the premises, finds as follows:

1. **Jurisdiction.** The Court has jurisdiction over the parties and over the subject matter herein.
2. **Residency.** Both parties have been residents of the State of Lone Star more than one year prior to the Petitioner, CARL MITCHELL (hereinafter "Husband"), filing his Petition for Dissolution of Marriage herein on October 13, 1999.
3. **Marriage Irretrievably Broken.** Based upon the parties' testimony, the Court finds that the marriage is irretrievably broken. It is therefore,

ORDERED AND ADJUDGED as follows:

- A. **MARRIAGE DISSOLVED.** The parties' marriage is hereby dissolved, because it is irretrievably broken.

Exhibit B (pg.1)

B. **RESTORATION OF WIFE'S MAIDEN NAME.** The Respondent, Joye Mitchell (hereinafter "Wife), is restored her maiden name of Joye Walford.

C. **EQUITABLE DISTRIBUTION.**

(1) **Funds and personal property.** Prior to this final judgment, the Husband and the Wife have equitably divided the funds contained in bank savings accounts held in joint names. Further, the Husband and the Wife have each waived forever any rights the Husband or the Wife may have to the other spouse's retirement fund.

The Husband has waived all rights to the house furniture and it is hereby ordered that the Wife shall be awarded all of the household furniture.

(2) **Wife's Nonmarital Property.** The Court hereby awards to the Wife as her nonmarital property those items of jewelry given to her by the Husband's mother during the Husband's mother's lifetime, as well as all items of jewelry received by the Wife from the Husband's mother's estate after the Husband's mother's death.

(3) **Sale of Former Marital Home -- 4011 Texas Circle.** Prior to the final hearing, the parties closed on the sale of the residence where they resided as husband and wife and with the money gained, they paid off all credit card debt and thereafter equally divided the money gained from the sale of the residence after payment of all closing expenses.

(4) **Jewelry.** Each party shall receive and retain their separate items of personal jewelry.

(5) **Clothing.** Each party shall receive and retain their own separate clothing.

(6) **Automobiles.** The Husband is awarded the 1994 Jeep he drives, and the Husband shall make all payments on this vehicle and hold the Wife harmless for

Exhibit B (pg.2)

any delinquent payments. The Wife is awarded the 1998 Nissan Altima she drives, and the Wife shall make all payments on this vehicle and hold the Husband harmless for any delinquent payments.

D. **ALIMONY.** Because this marriage lasted only four years and the Wife has the education to regain a salary level equal to the salary of the Husband, the Court awards no alimony to either party.

E. **CHILD CUSTODY AND SUPPORT.**

1. The parties shall have shared parental responsibility of the minor child, Angela Mitchell, born March 13, 1999, with the primary physical residence with the Wife. The Husband shall have visitation as follows:

a. **Weekends:** The nonresidential parent shall have alternative weekends from Friday at 6 p.m. until Sunday at 7 p.m.

b. **One Evening During the Week:** The nonresidential parent may have one evening during the week from 6 p.m. to 8 p.m. The specific day shall be agreed to by both parties.

c. **Holidays:** In odd-numbered years, mother has Easter vacation, July 4th weekend, Thanksgiving weekend, and the first week of Christmas vacation. Father shall have Memorial Day weekend, Labor Day weekend, and the second weeks of Christmas vacation. In even-numbered years, the schedules are reversed.

d. 48-hour notice shall be given by the nonresidential parent to the residential parent of intentions about the holidays.

Exhibit B (pg.3)

e. Mother's Day shall be with the mother. Father's Day shall be with the father. These are as agreed or 9 a.m. to 7 p.m.

f. Other days of specific meaning, such as religious holidays, etc., shall be decided together, written down, and alternated as above.

g. Each party shall attempt to work out a schedule with the other party on said holidays. If, however, the parties cannot agree, then such Easter and Christmas holidays shall be divided as follows: Easter vacation shall be 6 p.m. of the last school day until 7 p.m. on the evening before school begins again; the first week of Christmas shall be 6 p.m. of the last school day until noon Christmas Day; the second week of Christmas vacation shall be from noon Christmas Day until 7 p.m. on the evening before school begins.

h. **Birthdays:** A child's birthday shall be celebrated in the home of the parent with whom the child is to be for that day. The other parent may also celebrate the birthday at another time if desired.

i. Because the Husband and the Wife have, during the separation from one another, exhibited unacceptable behavior when exchanging the child for visitation, resulting in the intervention of law enforcement officers to restore civility, it is the order of this court that all exchanges of the child between the Husband and the Wife shall take place in the visitors' parking lot of the City of Austin Police Department within fifty feet of the entrance door of that police

Exhibit B (pg.4)

department. The Husband is directed to never appear at the residence of the Wife and the Wife is directed to never appear at the residence of the Husband. Severe sanctions will be considered by this court if either party violates this provision.

j. **Cancellations:** If a child is ill, the residential parent should give 24-hour notice, if possible, so alternative plans can be made. The nonresidential parent should give 24-hour notice to cancel. The time cancelled by the nonresidential parent is forfeited.

k. **Summer Vacations:** This provision shall become effective when the child reaches the age of six years. The Husband shall have the child for three continuous weeks during the summer at a time when school is not in session. The Husband and the Wife shall agree on the weeks. If the Husband and the Wife cannot agree on the three-week period, either party may file a motion and schedule a hearing before the court to resolve the dispute.

2. The Husband shall pay to the Wife, as and for child support for the minor child of the parties, the sum of \$500 per month, commencing August 1, 2000, and continuing on the first of each month thereafter. Child support shall continue until the child reaches majority, dies, marries, or becomes self-supporting. Child support may continue beyond the age of eighteen and until graduation from high school, but only as long as a child is still in high school, performing in good faith with a reasonable expectation of graduation before age nineteen. Child support shall be payable through the Clerk of the Court, Central Government Depository with the Husband paying all applicable fees.


Exhibit B (pg.5)

F. **LIFE INSURANCE TO SECURE CHILD SUPPORT.** The child support award shall be secured by the life insurance policy currently in effect on the Husband's life, which provides for a current net death benefit value of \$500,000. The child, Angela Mitchell, shall be named as irrevocable beneficiary of such policy for so long as the Husband has a child support obligation hereunder. The Husband shall make such beneficiary designation change to the child as irrevocable beneficiary within thirty (30) days from the date of this Final Judgment and shall provide proof thereof to the Wife's counsel immediately after a change of designation has been made. The Husband shall pay the premiums on such policy.

G. **ATTORNEY'S FEES.** The parties shall bear their own attorney's fees.

H. **RESERVATION OF JURISDICTION.** The Court hereby reserves jurisdiction to enter such other and further and future Orders as may be necessary to carry out the provisions of this Final Judgment of Dissolution of Marriage, including the entry of a Qualified Domestic Relations Order(s) if necessary, and all other matters as may be just, necessary, and proper.

DONE AND ORDERED in Chambers at Austin, Travis County, State of Lone Star, this 7th day of July, 2000.



THE HONORABLE AMY SANDERS
Circuit Court Judge

Copies furnished to:
William Eleazer, Esquire
Bernard McCabe, Esquire
Carl Mitchell
Joye Walford

**CERTIFIED COPY
TRACY BROWN
CLERK OF COURT**

Exhibit B (pg.6)

TRAVIS COUNTY SCHOOL BOARD
1510 Red Bud Trail
Austin, State of Lone Star 78709

September 11, 2001

Ms. Joye Walford
Apartment 4
1010 Daniel Drive
City of Austin, State of Lone Star 73731

RE: Termination

Dear Ms. Walford:

Based upon your arrest by the Austin Police Department on September 7, 2001, and the county-wide publicity concerning this arrest, this is to notify you that by unanimous vote of the school board, your employment with the Travis County School System has been terminated immediately. Your pay and benefits will continue through the last day of September 2001.

Respectfully,


Joseph F. Brophy
Superintendent

Exhibit C

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CRIMINAL DIVISION

STATE OF LONE STAR,)
)
v.) Case No. 2001-5005
)
JOYE WALFORD,)

)

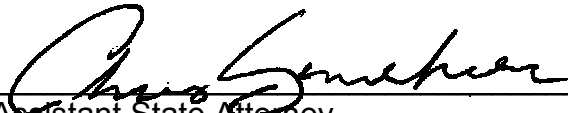
NOLLE PROSEQUI

TO THE CLERK OF THE ABOVE-STYLED COURT:

You will please enter a Nolle Prosequi as to the Defendant, Joye Walford, in the above-entitled cause for the reason that further investigation of this case by the State Attorney's Office has revealed that further prosecution is not warranted.

Dated this 1st day of November, 2001.

RUSSELL T. JAMES, State Attorney
Sixth Judicial Circuit in and for Travis County,
State of Lone Star



Assistant State Attorney

**CERTIFIED COPY
TRACY BROWN
CLERK OF COURT**

Exhibit D

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as a jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you return to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention.

Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you are retired to the jury room to consider your verdict, after having heard all of these matters.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. When I sustain or uphold an objection, the witness cannot answer the question. If I sustain an objection, you must not speculate on what might have happened, or what the witness might have said, had I permitted the witness to answer. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be

required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in the case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to weigh and consider the evidence, to decide the disputed issues of fact, and to apply the law to the facts as you find them from the evidence.

First, remember that you are deciding whether or not the evidence establishes Carl Mitchell's liability for committing malicious prosecution against Joye Walford. Once you have decided whether Mr. Mitchell is or is not liable, you have completed your task. If you determine Mr. Mitchell is liable, you will return another day to determine the issue of damages.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

The issue for your determination on the claim of Miss Walford against Carl Mitchell is whether Mr. Mitchell maliciously and without probable cause instituted a criminal proceeding against Miss Walford which later terminated in favor of Miss Walford.

Probable cause to have instituted the prior judicial proceeding is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense charged. Since lack of probable cause for initiating a prior judicial proceeding is an essential element of a cause of action for malicious prosecution, the existence of probable cause is necessarily a complete defense.

One acts maliciously in instituting a criminal proceeding against another if he does so for the primary purpose of injuring the other, or recklessly and without regard for whether the proceeding is justified, or for any primary purpose except to bring an offender to justice. In determining whether Mr. Mitchell acted maliciously, you may consider all the circumstances at the time of the conduct complained of, including any lack of probable cause to institute the proceeding.

One is regarded as having instituted a criminal proceeding against another if the proceeding resulted directly and in natural and continuous sequence from his actions, so that it reasonably can be said that, but for his actions, the proceedings would not have been instituted. One is not regarded as having instituted a criminal proceeding against another if, in good faith, one made a full and fair disclosure to the proper

(Revised: 03/19/02)

authorities and did not thereafter make any attempt to influence the prosecution of the case.

If the greater weight of the evidence does not support the claim of Miss Walford, your verdict should be for Mr. Mitchell. However if the greater weight of the evidence does support the claim of Miss Walford, then your verdict should be for Miss Walford.

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

(Revised: 03/19/02)

When you retire to the jury room, you should select one of your number to act as foreperson to preside over your deliberations and to sign your verdict. Your verdict must be unanimous; that is, your verdict must be agreed to by each of you.

You will be given one form of verdict which I shall now read to you:

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the appropriate form of verdict. You may now retire to consider the verdict.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

JOYE WALFORD,)
)
 Plaintiff,)
)
 v.)
)
 CARL MITCHELL,)
)
 Defendant.)
 _____)

Case No. 2001-6666

VERDICT

WE, THE JURY, RETURN THE FOLLOWING VERDICT:

1. Did the actions of Carl Mitchell constitute malicious prosecution of Joye Walford without probable cause? If your answer is YES, you have found in favor of Joye Walford and have determined by your verdict that Carl Mitchell is liable for the malicious prosecution of Joye Walford. If your answer is NO, you have found for Carl Mitchell and have determined by your verdict that the actions taken by Carl Mitchell were taken based upon a reasonable belief that Joye Walford had committed a crime.

YES _____

NO _____

SO SAY WE ALL this ____ day of _____, 2002.

Foreperson

(Revised: 03/19/02)