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DATE: April 19, 2001

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SPECIAL MASTER'S FINAL REPORT

The Honorable Tom Feeney
Speaker, The Florida House of Representatives
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: HB 609 - Representative Harper
Relief of Willie Police, III; Cora Donaldson, Willie Police, Sr.; and the estate of
Willie Police, Jr.

**THIS IS A VIGOROUSLY CONTESTED EXCESS
JUDGMENT WRONGFUL DEATH CLAIM FOR
\$381,649 BASED ON A JURY VERDICT AGAINST THE
CITY OF BELLE GLADE FOR INJURIES AND
DAMAGES SUSTAINED BY THE CLAIMANTS, AS A
RESULT OF THE DEATH OF WILLIE POLICE, JR.**

FINDING OF FACT:

On February 13, 1993, Anthony Williams shot Willie Police, Jr., to death at a dance being held at a civic center owned and operated by the City of Belle Glade. At the time of his death, Willie Police, Jr., was 17 years old and a student in the eleventh grade at Glades Central High School.

On the night of February 13, 1993, a group of disc jockeys known as The Miami Boys held a dance at the Belle Glade Municipal Civic Center located at 725 Northwest 4th Street, Belle Glade, Florida. Apparently The Miami Boys broke into the facility, set up a cash table to accept admission, and held a dance. For several days prior to the actual event, The Miami Boys drove around neighborhoods in Belle Glade, distributed flyers, and announced through a speaker system the upcoming dance.

The Miami Boys did not rent the facility from the Belle Glade Parks and Recreation Department nor did they have permission to be holding a dance at the facility.

At 9:20 p.m., on the night of February 13th, the dispatcher for the Belle Glade Police Department received an anonymous phone call from an individual who lodged a complaint regarding

noise coming from the vicinity of the civic center. The dispatcher called Officer Wheelihan to respond to the complaint.

Officer Wheelihan drove to the Municipal Civic Center, the apparent location of the loud music, and pulled into a grassy area on the west side of the civic center. Officer Wheelihan entered the facility and asked to speak to the person in charge. The police officer saw the table where money was being collected for admission in the front portion of the facility. However, Officer Wheelihan never entered the portion of the civic center where the dance was taking place. A man in his early twenties appeared and the police officer explained that the police had received a loud music complaint and stated that the music needed to be turned down. The individual who represented himself as in charge advised the police officer that they would turn the music down.

Officer Wheelihan testified at trial that he did not observe any criminal activity or anything that gave him cause for alarm. While he had heard of The Miami Boys, he was not aware that they had been banned from the civic center and would not be able to identify any individuals associated with the group. He left the civic center at 9:30 p.m., cleared the call with the department dispatcher, and continued his road patrol until his shift ended at 11:00 p.m. He did not drive by the civic center again during the remainder of his patrol.

Just before midnight, and several hours after Officer Wheelihan left the civic center, Willie Police, Jr., and Kamara Woodson were shot outside in the parking lot of the civic center. Willie Police, Jr., died as a result.

Facts Relevant to Issue of Foreseeability

There was no evidence presented that the city or any law enforcement personnel had knowledge of any shooting incidents at the civic center that had occurred prior to the incident at hand, which past activity might have formed the basis of foreseeability.

Regarding the incident central to this claim bill, the City of Belle Glade Parks and Recreation Department is responsible for operating the Belle Glade Civic Center. The city operates two municipal civic centers, the Belle Glade Civic Center and the Lake Shore Civic Center. In 1993, the facilities were available to be rented by the general public for meetings, wedding receptions, and dances. The administrative secretary of the Parks and Recreation Department would collect a fee and enter into a calendar the date of the upcoming event. On Monday of each week, a schedule would be prepared showing all of the events scheduled for the two civic centers for the week. A copy of the weekly schedule was sent to the City of Belle Glade Police Department. In 1993, it was not necessary for the individual or organization booking one of the civic centers to procure security. However, if the group renting the civic center

wished to provide for security, they would have to pay the police department \$15 an hour for the service.

At trial an issue was made over the meaning of a notation in the Parks and Recreation appointment book that stated: "Police security mandatory/\$15 per hour starting at 9:00 p.m. until party ends, city police." According to the testimony of Mike Underwood, Parks and Recreation Administrator, the city required mandatory security on site at the civic center for certain functions, including some of the dances held at one of the facilities. However, that practice was discontinued because the public complained about the expense and it was difficult to get police officers to work on their night off.

Once the schedule of events was received at the police department, a copy of the schedule was routed to the desk sergeant, who would let the road patrol officers know what events were going on, and which sponsors had requested security.

In this case, the February 13th party at the Belle Glade Municipal Civic Center was not on the schedule of events. The sponsors (The Miami Boys) broke in to the civic center to hold the event.

While The Miami Boys 'advertised' the event by posting flyers and announcing the party via loudspeaker in the back of a U-Haul that traveled around town, there was no testimony that the city had notice of the event until Officer Wheelihan arrived at the scene to respond to the noise complaint. While Officer Wheelihan had knowledge of the event, he did not have knowledge that the sponsors of the party had not properly rented the civic center. Similarly, Kamara Woodson testified at trial that he believed that the event was authorized, and did not know that The Miami Boys had in fact broken into the building.

The Miami Boys

The Miami Boys never rented the Belle Glade Civic Center for the night of February 13, 1993. However, The Miami Boys had on several occasions rented the Lake Shore Civic Center in the past. During one event sponsored by The Miami Boys, vandalism of the building occurred where doors were pulled off the bathroom walls. According to the testimony of Mike Underwood, after this incident, The Miami Boys were informed by the Parks and Recreation Department that they could no longer play in the civic centers. After the shooting involving Mr. Police, in March 1993, a memo was sent to the Chief of Police informing the police department that The Miami Boys were not permitted to play in the civic centers.

The Shooting

At the time Willie Police, Jr., and his friend Kamara Woodson arrived at the dance on Saturday night, February 13, 1993, the parking lot was full and cars were parked across the street. The friends went inside to find out the admission charge and

then went back outside. During their first visit to the dance, Mr. Woodson observed a police car arrive at the civic center, and then leave approximately 5 minutes later. Once outside, several girls asked for a ride home, so they gave the girls a ride home and returned to the civic center. When they returned to the civic center, they entered the facility and participated in the dance. Later in the evening, Mr. Woodson observed people running outside. Mr. Woodson looked for Mr. Police and was informed that he was also outside. Mr. Woodson proceeded to go outside. Once outside, he observed Willie Police, Jr., and Anthony and Rufus Williams arguing in the parking lot at the front of the civic center. Mr. Woodson told Mr. Police that "he don't need to be arguing with him, let's leave." Next, Anthony Williams pulled out a gun and started shooting. Mr. Woodson left the scene, running to his vehicle. Mr. Woodson sustained gunshot wounds to his face and stomach. Mr. Police was shot in the chest and fell to the ground. Mr. Police was transported to the hospital where he was declared dead.

There was conflicting witness testimony regarding who started the fight and whether it appeared as though Willie Police, Jr., was armed. There was no evidence presented at the Special Master's hearing or at the trial that indicated that the claimant was armed.

Kamara Woodson and Willie Police, Jr., had experienced problems with the Williams brothers prior to this shooting incident. Two days prior to the dance, Kamara Woodson had been suspended from school because of a fight that he had with Rufus and Anthony Williams.

The Shooter

Anthony Williams was 17 years old at the time of the shooting. In his deposition, Officer Dowdell, the investigating officer, stated that Anthony Williams was arrested and initially charged with first-degree murder, which was later dropped to second-degree murder. Anthony Williams pled to manslaughter with a firearm and was ultimately placed on probation for 10 years.

The Victim

Willie Police, Jr., was an eleventh grade student at Glades Central High School. Prior to his death, he indicated that he was interested in a career in electronics. He lived with his mother, and had regular contact with his father, who lives in Texas. (Note that the father did not appear in any way for the Special Master hearing, despite being asked to appear by phone by the Special Masters.)

Willie Police, Jr., was also a father himself. His son, Willie Police, III, was 16 months old at the time of his father's death, and lived with the child's mother, Stephanie Johnson. The victim's mother, Cora Donaldson, stated in sworn deposition testimony, that she supported her grandson, Willie Police, III, prior to her son's death and continues to do so now.

Stephanie Johnson, who is now 26 years old, (mother of Willie Police, III, victim's son), has been appointed as the legal guardian of her son's property. The bill contemplates compensation to Willie Police, III, (the victim's son.) The Special Masters asked for a conference call with Ms. Johnson, via letter to the claimant's attorney, which request went unanswered.

Further, while the jury verdict roughly awarded the victim's minor son 2/3 of the proceeds and each of his parents 1/3, the 'closing statement' provided by the claimant's attorney indicated that the initial \$100,000 payment was distributed in equal thirds (\$20,634.68 each) rather than the proportions of distribution ordered by the court. When asked, claimant's attorney responded that the parties agreed to this distribution. The Special Masters asked for written documentation of such agreement; no such document has been received. The Special Masters find it troubling that a minor child's portion of the initial settlement was not distributed pursuant to court order, and in a manner that would appear to be unfavorable to the minor.

PROCEDURAL BACKGROUND OF CASE:

This case was tried by jury in Palm Beach County, Florida on April 14-17, 1997. The jury issued a comparative negligence verdict, finding the negligence of the City of Belle Glade 95 percent responsible for the death of Willie Police, Jr., and Willie Police, Jr., 5 percent responsible for his own death. Anthony Williams, the shooter, was not included on the jury verdict form; thus the jury had no opportunity to apportion any liability to the intentional tortfeasor, in accordance with s. 768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla. 1997).

The jury assessed the following damages:

DAMAGES	AMOUNT
Cora Donaldson, mother	\$ 95,000.00
Willie Police, Sr., father	\$ 99,023.25
Willie Police, III, son	\$285,000.00
Estate of Willie Police	\$ 2,624.85
TOTAL DAMAGES:	\$481,648.10

On April 28, 1997, the City of Belle Glade filed a Motion for Remittitur, Motion for Directed Verdict, Motion for Judgment Notwithstanding the Verdict, and Motion for New Trial. These motions were denied by the circuit court on August 8, 1997. The City of Belle Glade filed an appeal to the Fourth District Court of Appeal. On April 21, 1999, the Fourth District Court of Appeal issued an opinion upholding the judgment of the circuit court in denying the directed verdict motion and holding that the verdicts were not excessive.

The city then appealed to the Florida Supreme Court. On

October 1, 1999, the Supreme Court declined to accept jurisdiction.

CLAIMANT'S MAIN ARGUMENTS:

1. The city had a duty to properly maintain the Belle Glade Municipal Civic Center. The city failed to do this by not providing security at the dance.
2. The police officer that was dispatched for the noise complaint failed to ascertain whether the civic center had been properly rented.
3. The city knew of a dangerous condition on their property and failed to ameliorate that condition.
4. As a result of improper security, the claimant was shot and killed.
5. The amount of damages for the victim's parents and minor son are reasonable, as found by a jury.
6. There is a jury verdict that was supported by the facts in this case. The city's Motion for Summary Judgment based on sovereign immunity was denied, which denial was upheld on appeal.

RESPONDENT'S MAIN ARGUMENTS:

1. There is no causation. There was no evidence that the owner of the civic center had actual or constructive knowledge of the party.
2. Knowledge cannot be imputed to the police officer that responded to the noise complaint, as the actions of police officers are clearly immune pursuant to the public duty doctrine.
3. The testimony was clear that security was provided at the option of the sponsors of events held at the civic center. Regardless of the security policy, the city didn't know about the party.
4. Ownership does not impose strict liability; a private landowner would not have a duty to prevent an unforeseeable intentional criminal act by a third party.
5. Even if liability could be imputed based upon the knowledge ascertained by the police officer who responded to the noise complaint, the evidence was clear that the officer did not know that the civic center had not been properly rented and that he saw no evidence of any illegal or suspect activity

CONCLUSION OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others see the Legislature's role as a *de novo* responsibility to review, evaluate, and weigh the total circumstances and the type of the public entity's liability, and to consider those factors that might not have been perceived by or introduced to the jury or court.

Whichever of these two views each lawmaker holds, at the Special Master's level every claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence: duty, breach of duty, proximate cause, and damages. If, and only if, all four elements are satisfied, can liability be found.

Duty: The Fourth District Court of Appeal opined that the city had a duty to maintain the property in a reasonably safe condition. In spite of the fact that foreseeability is also a factor in the consideration of duty (see discussion of proximate causation, below), and in light of the fact that foreseeability is questionable in this case, the Special Master finds that the city had a duty to maintain the property in a reasonably safe condition.

Note however, that the duty regarding the police officer that responded to the noise complaint is to the public at large, and not to any individual. "A law enforcement officer's duty is a general duty owed to the public as a whole. The victim of a criminal offense, which might have been prevented through reasonable law enforcement action, does not establish a common law duty of care to the individual citizen and resulting tort liability, absent a special duty to the victim." *Everton v. Willard*, 468 So.2d 936 at 938(Fla. 1985). No special duty was alleged or found in this case.

Breach of Duty: The Fourth District Court of Appeal found that the city had a duty to properly maintain and operate the property. If the Legislature finds that the city had a duty to the claimant, it is questionable whether an unforeseen and unforeseeable intentional criminal act of a third party can be found to be a breach of duty. The claimant argued that the city breached its duty by failing to provide security for an event that the city had no knowledge was taking place. Should the Legislature find that failure to provide security constitutes a breach of duty, it might also find that such failure is a discretionary decision made by the city, for which the city would be entitled to immunity.

Proximate Cause: The two essential elements of proximate cause are causation in fact and foreseeable consequences. Foreseeability can be relevant both to the element of duty and the element of proximate cause. See *McCain v. Florida Power Corp.*, 593 So.2d 500, 502 (Fla.1992). "The duty element of

negligence focuses on whether the defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others." *Id.* The issue of duty is a question of law. "The proximate causation element, on the other hand, is concerned with whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred." *Id.* The issue of proximate cause is generally a question of fact. *Florida Power & Light Co. v. Periera*, 705 So.2d 1359 (Fla. 1998).

I find that the injury to Willie Police, Jr., was not foreseeable, nor substantially caused by any negligent act or omission by the city. Thus, the proximate cause element is not satisfied.

Damages: In light of the above findings regarding proximate cause, discussion of damages seems unnecessary. However, should the Legislature make the policy decision to compensate this claimant, several issues regarding damages should be addressed:

- Because damages regarding pain and suffering were not specifically itemized in the jury's verdict, it is impossible to know how much of the verdict was for non-economic damages.
- This case addresses the policy issue of whether the actions of an intentional tortfeasor should be considered as comparative negligence in the legislative arena. In light of the fact that Anthony Williams caused the claimant's death, there is an argument that he should be responsible for some or all of the liability. The jury, in accordance with s. 768.81, F.S., and relevant case law, did not make such consideration. However, the Legislature is not bound by such determination.
- Lastly, if the Legislature decides to compensate these claimants, special care should be taken to ensure that the minor child of the decedent receives an award that is proportional to the jury's distribution. Further questions remain concerning the distribution of the initial \$100,000.

ATTORNEYS FEES:

The claimant's attorney has submitted an affidavit indicating that the attorney's fee will be limited to 25 percent of any recovery as required by s. 768.28, F.S. The 'closing statement' indicates that an appellate fee of \$5,000 will be returned to the claimants, as it was apparently collected in addition to the 25 percent cap on attorney's fees. The Special Master asked for documentation of the return of the \$5,000, which documentation has not been received

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 609 be reported UNFAVORABLY.

Respectfully submitted,

Stephanie Birtman
House Special Master

cc: Representative Harper, House Sponsor
Senator Dawson, Senate Sponsor
Janet Bowman, Senate Special Master
House Claims Committee