

Malenne Joseph Files Lawsuit For Mistaken Identity Wrongful Conviction

Malenne Joseph has a pending lawsuit against the City of Orlando, Florida, Orlando Police Department Officer Jose Varela, and Orange/Osceola County Public Defender Robert Wesley related to her wrongful conviction in June 2010 of felony criminal mischief.

A jury convicted Joseph in June 2010 of being the woman who caused \$10,000 in damage to a house in Orlando after the contractor didn't pay the woman for her work painting the house.

At the time of the incident in December 2007 the contractor told Varela he thought the woman's name was "Marlene" and he provided her telephone number. Varela called the number and the woman who answered admitted causing the damage. However, Varela didn't make any effort to either identify the woman he talked with or the person who owned the telephone number. Unbeknownst to Varela the woman he talked with was Merline Keller and he had called her telephone number.

However, during a search of Florida's driver's-license database Malenne Joseph, a mother of three, came up as a woman living in Orlando, so Varela assumed she was the culprit he only knew as Marlene. Varela provided an Affidavit of Probable Cause for an Arrest Warrant that identified Joseph as the person who allegedly committed the felony criminal mischief. Joseph was arrested by Varela in January 2008 and she was released on bond. In February 2008 the State's Attorney filed a "No Information Notice" that it would not proceed with the case.

More than a year later, in April 2009 Varela again arrested Joseph on the same charge, and she was assigned a public defender to represent her.

During her June 2010 trial Joseph testified she was not working as a painter in December 2007 and she was not the "Marlene" who damaged the house.

The contractor who built the house testified, and even though he had not seen the culprit for 2-1/2 years, he identified Joseph. Based primarily on his identification the jury convicted her of felony criminal mischief.

While awaiting sentencing Joseph insisted to her new lawyers that she was innocent. Her



Malenne Joseph holding one of her children after her release on September 15, 2010. (Joshua C. Cruey, Orlando Sentinel)

lawyers decided to interview the contractor and when told that Joseph was 5'-2" tall, he said she couldn't have committed the crime because the woman who damaged the house was taller than him and he is 5'-6". Ms. Joseph's lawyers also found new evidence that during the week of the crime she was working two jobs -- one at Burger King and the other at a nursing-home facility -- but not as a painter.

Her lawyer's filed a motion for a new trial based on the new evidence, and the *Orlando Sentinel* [published a story](#) about her case on September 1, 2010. After reviewing the motion and investigating its claims, the Orange-Osceola State Attorney's Office agreed to release Ms. Joseph on bail on September 15, 2010, after she had been jailed for 3 months. The State's Attorney's Office [filed a motion on](#) September 28, 2010, to set aside her conviction that was subsequently granted.

Ms Joseph would have been acquitted if her public defender had simply had her stand up when the contractor testified at trial, because he would have known then that she was the wrong person.

Joseph subsequently filed a lawsuit in Orange County Superior Court that alleges the City of Orlando via its police department falsely arrested, imprisoned and detained her when she was first arrested in January 2008 and again in April 2009. Joseph makes the same allegations against Varela with the additional claims that he maliciously prosecuted her and that he intentionally inflicted emotional distress on her. Joseph alleges that public defender Wesley was negligent in his representation of her, that he intentionally and negligently inflicted emotional distress on her. The lawsuit also made claims of federal civil rights violations under 42 USC §1983. Click here to read [Malenne Joseph v. Orange County, et al.](#) (Orange County Superior Court, 12-20-2011)

Because Joseph's lawsuit made federal civil rights claims, on January 27, 2012 her lawsuit was moved to federal court in Orlando and her state lawsuit was dismissed. Her case number in federal court is: [Joseph v. City of Orlando et al.](#), No. 6:12-cv-00131-JA-DAB (USDC MDF, 1-27-2012).

On March 29, 2012 Joseph's lawyer filed a

motion to amend her complaint removing the allegations her federal civil rights were violated and requesting remand of her case back to state court. That motion was granted on April 10, 2012.

Joseph's case was resumed in the Ninth Judicial Circuit, Orange County, Florida under [Case No. 2011-CA-017201-O](#). As of early 2013 a trial date hasn't been ordered.

Joseph is represented by [Orlando attorney](#) Jason J. Recksiedler.

After the lawsuit was filed Public Defender Wesley [told the Orlando Sentinel](#) that "there was a great mistake made in this case to the detriment of this lady," but he said that while the judge and prosecutor in the case are immune from being sued, it is "a big loophole in Florida law" that Joseph can sue the public defender's office. He also complained that the lawsuit comes at a bad time because his office that has had to cut staff because of "budgetary problems," will have to hire a lawyer to defend against the lawsuit.

Wesley has been the Orange-Osceola County Public Defender since 2000. He is quoted on the Orange-Osceola County [Public Defender's website](#):

"The public defender office exists to guarantee that the poor, or indigent, have the right to a fair trial.

The lawyers and staff of your Orange/Osceola Public Defender's Office represent indigent people in criminal cases, involuntary mental health and addictions commitments and juvenile delinquency cases in our community.

I am pleased to report that the average cost per case is \$196. We are proud to professionally and competently represent citizens for less than an hourly consultation in a local law firm."

Joseph got exactly the kind of defense that can be expected from a public defender's office that brags it spends an average of *\$196 per case*.

[Click here to read](#) *Justice Denied's* October 2010 article about Malenne Joseph's case, "Orlando Woman Too Short To Be Criminal Exonerated."

Sources:

Joseph v. City of Orlando et al., No. 6:12-cv-00131-JA-DAB (USDC MDF, 1-27-2012)

[Malenne Joseph v. Orange County, et al.](#), Orange County Superior Court, Case No. 2011-CA-017201-O
[Woman wrongly convicted files suit](#), *Orlando Sentinel*, December 19, 2011

[Wrongfully convicted woman's suit moves to federal court](#), *Orlando Sentinel*, February 10, 2012