

APPEAL, CASREF, PAW

**U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:08-cv-61721-WJZ**

Warren v. City of Sunrise Police Department et al
Assigned to: Judge William J. Zloch
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 10/24/2008
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff**Richard L Warren**

represented by **Richard L Warren**
501000893 DC #6
Main Jail Bureau
P.O. Box 9356
Fort Lauderdale, FL 33310
PRO SE

V.

Defendant

City of Sunrise Police Department
TERMINATED: 12/02/2008

Defendant

William Bettencourt
Officer/ I.D. # 3556

represented by **Christopher J. Stearns , Jr.**
Johnson Anselmo Murdoch Burke Piper
& Hochman PA
2455 E Sunrise Boulevard
Suite 1000
Fort Lauderdale, FL 33304
954-463-0100
Fax: 954-463-2444
Email: stearns@jambg.com
ATTORNEY TO BE NOTICED

Michael Ross Piper

Johnson Anselmo Murdoch Burke Piper
& Hochman, P.A.
2455 E Sunrise Boulevard
Suite 1000
PO Box 030220
Fort Lauderdale, FL 33304-0220
954-463-0100
Fax: 954-463-2444
Email: piper@jambg.com

ATTORNEY TO BE NOTICED

Defendant

Kevin Sweat
Officer / I.D. # 3521

represented by **Christopher J. Stearns , Jr.**
 (See above for address)
ATTORNEY TO BE NOTICED

Michael Ross Piper
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jerald Davis
Officer / I.D. # 3598

represented by **Christopher J. Stearns , Jr.**
 (See above for address)
ATTORNEY TO BE NOTICED

Michael Ross Piper
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Anthony Rosa
Officer / I.D. # 3527
TERMINATED: 01/11/2010

represented by **Christopher J. Stearns , Jr.**
 (See above for address)
ATTORNEY TO BE NOTICED

Michael Ross Piper
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Officer Handwecker
TERMINATED: 01/11/2010

represented by **Christopher J. Stearns , Jr.**
 (See above for address)
ATTORNEY TO BE NOTICED

Michael Ross Piper
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/24/2008	<u>1</u>	COMPLAINT against all defendants, filed by Richard L Warren.(cqs) (Entered: 10/27/2008)
10/24/2008	<u>2</u>	MOTION for Leave to Proceed in forma pauperis with Inmate Account Statement and Affidavit attached. by Richard L Warren. (cqs) (Entered: 10/27/2008)
10/24/2008	<u>3</u>	Clerks Notice Referring Case to Magistrate Judge Patrick A. White (dj) (Entered: 10/27/2008)

10/30/2008	<u>4</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 10/30/2008. (br) (Entered: 10/31/2008)
10/30/2008	<u>5</u>	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of \$350.00; granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 10/30/2008. (br) (Entered: 10/31/2008)
11/05/2008	<u>7</u>	PRELIMINARY REPORT on 42 USC 1983 case re 1 Complaint filed by Richard L Warren; Recommending that 1)The claims of excessive force under the Fourth Amendment proceed against the defendants Bettencourt, Davis and Sweat, in their individual capacities; 2) the remaining claims and defendants be dismissed pursuant to 28 U.S.C. Section 1915(e)(2)(B)(ii), for failure to state a claim upon which relief may be granted. Objections to R&R due by 11/24/2008. Signed by Magistrate Judge Patrick A. White on 11/5/2008. (br) (Entered: 11/06/2008)
11/06/2008	<u>6</u>	ORDER Re: Service of Process Requiring Personal Service upon: Officer W. Bettencourt; Office K. Sweat; and Officer J. Davis. Signed by Magistrate Judge Patrick A. White on 11/6/2008. (br) (Entered: 11/06/2008)
11/07/2008	<u>8</u>	Summons Issued as to William Bettencourt. (br) (Entered: 11/07/2008)
11/07/2008	<u>9</u>	Summons Issued as to Jerald Davis. (br) (Entered: 11/07/2008)
11/07/2008	<u>10</u>	Summons Issued as to Kevin Sweat. (br) (Entered: 11/07/2008)
11/24/2008	<u>11</u>	MOTION for Leave of Court to Amend <u>1</u> Complaint by Richard L Warren. Responses due by 12/12/2008 (vjk) (Entered: 11/24/2008)
12/02/2008	<u>12</u>	ORDER, defendants City of Sunrise Police Department and Anthony Rosa are DISMISSED pursuant to 28 USC 1915 (e) (2) (B) (ii) for failure to state a claim upon which relief can be granted. Signed by Judge William J. Zloch on 12/2/2008. (jc) (Entered: 12/02/2008)
12/02/2008	<u>13</u>	ORDER, defendants City of Sunrise Police Department, Freestone and Anthony Rosa are DISMISSED pursuant to 28 USC 1915 (e) (2) (B) (ii) for failure to state a claim upon which relief can be granted.. Signed by Judge William J. Zloch on 12/2/2008. (jc) (Entered: 12/02/2008)
12/04/2008	<u>14</u>	ORDER RE: SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON INDIVIDUALS. The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Officer Handwecker and Officer Anthony Rosa (ID# 3527)located at: City of Sunrise Police Department, 1044 W. Oakland Park Boulevard, Sunrise, FL 33313. Signed by Magistrate Judge Patrick A. White on 12/4/2008. (tw) (Entered: 12/04/2008)
12/08/2008	<u>15</u>	SUPPLEMENTAL REPORT OF MAGISTRATE JUDGE. Objections to R&R due by 12/26/2008. Signed by Magistrate Judge Patrick A. White on 12/4/2008. (tw) (Entered: 12/08/2008)
12/16/2008	<u>16</u>	Summons Issued as to Anthony Rosa. (br) (Entered: 12/17/2008)

12/16/2008	17	Summons Issued as to Handwecker. (br) (Entered: 12/17/2008)
12/22/2008	18	ORDER ADOPTING Supplemental Report of Magistrate Judge 15 . Signed by Judge William J. Zloch on 12/22/2008. (bc) (Entered: 12/22/2008)
02/25/2009	19	ORDER OF DIRECTIONS TO MARSHAL TO FILE RETURNS FOR ALL DEFENDANTS. The Marshal shall file returns of service as to defendants Rosa and Handwecker forthwith. Signed by Magistrate Judge Patrick A. White on 2/25/2009. (tw) (Entered: 02/25/2009)
03/05/2009	20	SUMMONS (Affidavit) Returned Executed by Richard L Warren. Kevin Sweat served on 2/17/2009, answer due 3/9/2009. (ail) (Entered: 03/05/2009)
03/05/2009	21	SUMMONS (Affidavit) Returned Executed by Richard L Warren. William Bettencourt served on 2/17/2009, answer due 3/9/2009. (ail) (Entered: 03/05/2009)
03/05/2009	22	SUMMONS (Affidavit) Returned Executed by Richard L Warren. Jerald Davis served on 2/17/2009, answer due 3/9/2009. (ail) (Entered: 03/05/2009)
03/05/2009	23	SUMMONS (Affidavit) Returned Executed Handwecker served on 2/17/2009, answer due 3/9/2009. (ail) (Entered: 03/05/2009)
03/19/2009	24	<i>Defendant Kevin Sweat's</i> ANSWER to Complaint with Jury Demand by Kevin Sweat.(Piper, Michael) (Entered: 03/19/2009)
03/19/2009	25	<i>Defendant William Bettencourt's</i> ANSWER to Complaint with Jury Demand by William Bettencourt.(Piper, Michael) (Entered: 03/19/2009)
03/19/2009	26	<i>Defendant Handwecker's</i> ANSWER to Complaint with Jury Demand by Handwecker.(Piper, Michael) (Entered: 03/19/2009)
03/19/2009	27	<i>Defendant Jerald Davis's</i> ANSWER to Complaint with Jury Demand by Jerald Davis.(Piper, Michael) (Entered: 03/19/2009)
03/19/2009	28	<i>Defendant, Anthony Rosa's</i> ANSWER to Complaint with Jury Demand by Anthony Rosa.(Piper, Michael) (Entered: 03/19/2009)
03/30/2009	29	MOTION for Clerks Entry of Default as to William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa by Richard L Warren. (tb) (Entered: 03/31/2009)
03/30/2009	30	MOTION for Default Judgment by Richard L Warren. (tb) (Entered: 03/31/2009)
03/31/2009	31	RESPONSE to Motion re <u>30</u> MOTION for Default Judgment, <u>29</u> MOTION for Clerks Entry of Default as to William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa filed by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. Replies due by 4/10/2009. (Piper, Michael) (Entered: 03/31/2009)
04/01/2009	32	ORDER denying <u>30</u> Motion for Default Judgment and entry of Clerk's default. (DE#29). The defendants have filed an Answer. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 4/1/2009. (cz) (Entered: 04/01/2009)

04/02/2009	<u>33</u>	REBUTTAL to <u>27</u> Answer to Complaint, <u>24</u> Answer to Complaint, <u>28</u> Answer to Complaint, <u>25</u> Answer to Complaint, <u>26</u> Answer to Complaint by Richard L Warren. (ail) (Entered: 04/03/2009)
04/30/2009	<u>34</u>	SCHEDULING ORDER: Amended Pleadings due by 8/17/2009. Discovery due by 8/3/2009. Joinder of Parties due by 8/17/2009. Motions due by 9/8/2009.. Signed by Magistrate Judge Patrick A. White on 4/29/2009. (tw) (Entered: 04/30/2009)
05/04/2009	<u>35</u>	NOTICE of filing objections to defendant Handwrecker's notice of service of interrogatories by Richard L Warren (vp) (Entered: 05/05/2009)
05/04/2009	<u>36</u>	NOTICE of filing objections to Defendant Rosa's notice of service of interrogatories by Richard L Warren (vp) (Entered: 05/05/2009)
05/04/2009	<u>37</u>	NOTICE of filing objections to Defendant Sweat's notice of service of interrogatories by Richard L Warren (vp) (Entered: 05/05/2009)
05/04/2009	<u>38</u>	NOTICE of filing objections to Defendant Davis' notice of service of interrogatories by Richard L Warren (vp) (Entered: 05/05/2009)
05/04/2009	<u>39</u>	NOTICE of filing objections to Defendant Bettencourt's notice of service of interrogatories by Richard L Warren (vp) (Entered: 05/05/2009)
05/08/2009	<u>40</u>	NOTICE by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa of <i>Withdrawal of Interrogatories and Response to Plaintiff's Objections to Interrogatories</i> (Stearns, Christopher) (Entered: 05/08/2009)
05/14/2009	<u>41</u>	NOTICE of Service of Interrogatories to Defendants by Richard L Warren (nc) (Entered: 05/15/2009)
06/26/2009	<u>42</u>	MOTION to Compel <i>discovery</i> by Richard L Warren. Responses due by 7/16/2009 (tb) (Entered: 06/26/2009)
06/26/2009	<u>43</u>	MOTION to Compel <i>discovery of Sgt. Anthony Rosa</i> by Richard L Warren. Responses due by 7/16/2009 (tb) (Entered: 06/26/2009)
06/26/2009	<u>44</u>	MOTION to Compel <i>discovery of defendant Officer William Bettencourt</i> by Richard L Warren. Responses due by 7/16/2009 (tb) (Entered: 06/26/2009)
06/26/2009	<u>45</u>	MOTION to Compel <i>discovery of defendant Officer Kevin Sweat</i> by Richard L Warren. Responses due by 7/16/2009 (tb) (Entered: 06/26/2009)
06/26/2009	<u>46</u>	MOTION to Compel <i>discovery of defendant Officer Joshua Handworker</i> by Richard L Warren. Responses due by 7/16/2009 (tb) (Entered: 06/26/2009)
07/01/2009	<u>47</u>	ORDER granting <u>42</u> Motion to Compel; granting <u>43</u> Motion to Compel; granting <u>44</u> Motion to Compel; granting <u>45</u> Motion to Compel; granting <u>46</u> Motion to Compel ONLY TO THE EXTENT that the defendants shall respond or file objections to the Court. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 7/1/2009. (cz) (Entered: 07/01/2009)
07/20/2009	<u>48</u>	MOTION to Compel <i>Discovery</i> Sgt. Anthony Rosa Sunrise Police Dept. by Richard L Warren. Responses due by 8/6/2009 (mg) (Entered: 07/21/2009)

07/20/2009	<u>49</u>	MOTION to Compel <i>Discovery</i> Sunrise Police Dept. Internal Affairs (Lt. Gelennon by Richard L Warren. Responses due by 8/6/2009 (mg) (Entered: 07/21/2009)
07/20/2009	<u>50</u>	MOTION to Compel <i>Discovery Sunrise Police Dept. Records Department</i> by Richard L Warren. Responses due by 8/6/2009 (mg) (Entered: 07/21/2009)
07/20/2009	<u>51</u>	MOTION to Compel <i>Discovery Detective Sean Viseners</i> by Richard L Warren. Responses due by 8/6/2009 (mg) (Entered: 07/21/2009)
07/22/2009	<u>52</u>	ORDER deferring ruling on <u>48</u> Motion to Compel; deferring ruling on <u>49</u> Motion to Compel; deferring ruling on <u>50</u> Motion to Compel; deferring ruling on <u>51</u> Motion to Compel. The defendants shall file a notice of compliance, and or objections to the Court. The plaintiff is cautioned that he may only file a motion to compel against named parties. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 7/22/2009. (cz) (Entered: 07/22/2009)
08/03/2009	<u>53</u>	RESPONSE to Motion re <u>43</u> MOTION to Compel <i>discovery of Sgt. Anthony Rosa</i> filed by Anthony Rosa. Replies due by 8/13/2009. (Piper, Michael) (Entered: 08/03/2009)
08/03/2009	<u>54</u>	NOTICE by City of Sunrise Police Department, William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa <i>of Limited Appearance and Motion to Strike Motions to Compel</i> (Piper, Michael) (Entered: 08/03/2009)
08/04/2009	<u>55</u>	ORDER denying <u>48</u> Motion to Compel; denying <u>49</u> Motion to Compel; denying <u>50</u> Motion to Compel; denying <u>51</u> Motion to Compel. All motions to compel are denied WITHOUT PREJUDICE. The plaintiff shall re-serve his discovery requests upon the defendants since they state they have not received them. Further the plaintiff's requests that he require a conference with defendants is not a valid discovery request at this point. The defendants shall file a notice of compliance with the Court and or specific objections as to why they have not responded to the new requests. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 8/4/2009. (cz) (Entered: 08/04/2009)
08/05/2009	<u>56</u>	ORDER 1. The non party defendants are not required to respond to the plaintiffs motions to compel discovery. 2. The defendants named are required to provide the plaintiff with requested discovery. A Notice of compliance has not been filed with the Court as required in the Courts Order DE# 47, and shall be supplied forthwith. Signed by Magistrate Judge Patrick A. White on 8/5/2009. (tw) (Entered: 08/05/2009)
08/05/2009	<u>57</u>	NOTICE by Anthony Rosa re <u>56</u> Order, <i>and Response to Order to Clarify</i> (Stearns, Christopher) (Entered: 08/05/2009)
08/06/2009	<u>58</u>	MOTION to Appoint Counsel by Richard L Warren. Responses due by 8/24/2009 (mg) (Entered: 08/06/2009)
08/11/2009	<u>59</u>	MOTION for Summary Judgment by Richard L Warren. Responses due by 8/28/2009 (tb) (Entered: 08/12/2009)

08/13/2009	<u>60</u>	ORDER denying 58 Motion to Appoint Counsel without prejudice. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 8/13/2009. (cz) (Entered: 08/13/2009)
08/13/2009	<u>61</u>	RESPONSE to Motion re <u>59</u> MOTION for Summary Judgment filed by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. Replies due by 8/24/2009. (Piper, Michael) (Entered: 08/13/2009)
08/17/2009	<u>62</u>	REPORT AND RECOMMENDATIONS re 59 MOTION for Summary Judgment filed by Richard L Warren. Recommending denying without prejudice. Objections to R&R due by 9/3/2009. Signed by Magistrate Judge Patrick A. White on 8/13/2009. (tw) (Entered: 08/17/2009)
08/18/2009	<u>63</u>	MOTION to Compel <i>discovery</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>64</u>	MOTION to Compel <i>discovery</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>65</u>	MOTION to Compel <i>discovery</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>66</u>	MOTION to Compel <i>discovery regarding defendant Officer Joshua Handworker</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>67</u>	MOTION to Compel <i>discovery regarding defendant Officer Kevin Sweat</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>68</u>	MOTION to Compel <i>discovery regarding defendant Officer Jerald Davis</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>69</u>	MOTION to Compel <i>discovery regarding defendant Officer William Bettencourt</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>70</u>	MOTION to Compel <i>discovery regarding defendant Sgt. Anthony Rosa</i> by Richard L Warren. Responses due by 9/4/2009 (tb) (Entered: 08/18/2009)
08/18/2009	<u>71</u>	MOTION for Summary Judgment by Richard L Warren. Responses due by 9/4/2009 (mg) (Entered: 08/18/2009)
08/18/2009	<u>72</u>	MOTION for Summary Judgment by Richard L Warren. Responses due by 9/4/2009 (mg) (Entered: 08/18/2009)
08/18/2009	<u>73</u>	MOTION for Summary Judgment against Officer Jerald Davis # 3598 by Richard L Warren. Responses due by 9/4/2009 (mg) (Entered: 08/18/2009)
08/18/2009	<u>74</u>	MOTION for Summary Judgment against Officer Anthony Rosa # 3527 by Richard L Warren. Responses due by 9/4/2009 (mg) (Entered: 08/18/2009)
08/18/2009	<u>75</u>	MOTION for Summary Judgment Against Officer Joshua Handwecker by Richard L Warren. Responses due by 9/4/2009 (mg) (Entered: 08/18/2009)
08/18/2009	<u>76</u>	Pretrial Statement in regards to Officer William Bettencourt # 3556 by

		Richard L Warren. (mg) (Entered: 08/18/2009)
08/18/2009	<u>77</u>	Pretrial Statement in regards to Officer Kevin Sweat # 3521 by Richard L Warren. (mg) (Entered: 08/18/2009)
08/18/2009	<u>78</u>	PRETRIAL STATEMENT by Richard L Warren. (tb) (Entered: 08/19/2009)
08/18/2009	<u>79</u>	PRETRIAL STATEMENT by Richard L Warren. (tb) (Entered: 08/19/2009)
08/18/2009	<u>80</u>	PRETRIAL STATEMENT by Richard L Warren. (tb) (Entered: 08/19/2009)
08/19/2009	<u>81</u>	ORDER deferring ruling on <u>63</u> Motion to Compel; deferring ruling on <u>64</u> Motion to Compel; deferring ruling on <u>66</u> Motion to Compel; deferring ruling on <u>67</u> Motion to Compel; deferring ruling on <u>68</u> Motion to Compel; deferring ruling on <u>69</u> Motion to Compel; deferring ruling on <u>70</u> Motion to Compel; The defendants shall reply to the plaintiff's motions to compel and or file objections to the Court, denying <u>71</u> Motion for Summary Judgment; denying <u>72</u> Motion for Summary Judgment; denying <u>73</u> Motion for Summary Judgment; denying <u>74</u> Motion for Summary Judgment; denying <u>75</u> Motion for Summary Judgment. A Report was entered explaining to the plaintiff how to file a motion for summary judgment (DE#62). These motions are insufficient. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 8/19/2009. (cz) (Entered: 08/19/2009)
08/24/2009	<u>82</u>	MOTION of Inquiry by Richard L Warren. (nc) (Entered: 08/24/2009)
08/28/2009	<u>83</u>	MOTION for Extension of Time to File <i>Defendants' Motion for Summary Judgment</i> by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. (Piper, Michael) (Entered: 08/28/2009)
08/31/2009	<u>84</u>	ORDER granting <u>83</u> Motion for Extension of Time to File summary judgment to on or before 9/18/09. THE DEFENDANTS WERE ALSO ORDERED TO RESPOND TO THE PLAINTIFF'S MULTIPLE MOTIONS TO COMPEL BY COMPLYING AND FILING A NOTICE OF COMPLIANCE AND/OR FILING OBJECTIONS TO THE COURT. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 8/31/2009. (cz) (Entered: 08/31/2009)
09/04/2009	<u>85</u>	RESPONSE in Opposition re <u>68</u> MOTION to Compel <i>discovery regarding defendant Officer Jerald Davis</i> , <u>66</u> MOTION to Compel <i>discovery regarding defendant Officer Joshua Handworker</i> , <u>67</u> MOTION to Compel <i>discovery regarding defendant Officer Kevin Sweat</i> , <u>69</u> MOTION to Compel <i>discovery regarding defendant Officer William Bettencourt</i> , <u>70</u> MOTION to Compel <i>discovery regarding defendant Sgt. Anthony Rosa</i> filed by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. (Stearns, Christopher) (Entered: 09/04/2009)
09/08/2009	<u>86</u>	ORDER dismissing <u>63</u> Motion to Compel; dismissing <u>64</u> Motion to Compel; dismissing <u>65</u> Motion to Compel; dismissing <u>66</u> Motion to Compel; dismissing <u>67</u> Motion to Compel; dismissing <u>68</u> Motion to Compel; dismissing <u>69</u> Motion to Compel; dismissing <u>70</u> Motion to Compel; granting <u>82</u> Motion, motion of inquiry. All motions to compel are dismissed without prejudice based upon defendants' response. The plaintiff shall send his

		discovery requests directly to the defendants who shall respond and or file objections. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 9/8/2009. (cz) (Entered: 09/08/2009)
09/16/2009	<u>87</u>	MOTION for Summary Judgment by Richard L Warren. Responses due by 10/5/2009 (Attachments: # <u>1</u> Exhibit)(lh) (Entered: 09/17/2009)
09/18/2009	<u>88</u>	MOTION for Summary Judgment by William Bettencourt. Responses due by 10/5/2009 (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>89</u>	MOTION for Summary Judgment by Jerald Davis. Responses due by 10/5/2009 (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>90</u>	MOTION for Summary Judgment by Handwecker. Responses due by 10/5/2009 (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>91</u>	MOTION for Summary Judgment by Anthony Rosa. Responses due by 10/5/2009 (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>92</u>	MOTION for Summary Judgment by Kevin Sweat. Responses due by 10/5/2009 (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>93</u>	Statement of: Concise Statement of Undisputed Material Facts by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa re <u>91</u> MOTION for Summary Judgment, <u>92</u> MOTION for Summary Judgment, <u>90</u> MOTION for Summary Judgment, <u>88</u> MOTION for Summary Judgment, <u>89</u> MOTION for Summary Judgment. (Stearns, Christopher) (Entered: 09/18/2009)
09/18/2009	<u>94</u>	APPENDIX to <u>91</u> MOTION for Summary Judgment, <u>92</u> MOTION for Summary Judgment, <u>90</u> MOTION for Summary Judgment, <u>88</u> MOTION for Summary Judgment, <u>89</u> MOTION for Summary Judgment by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. (Attachments: # <u>1</u> Appendix A2, # <u>2</u> Appendix A3, # <u>3</u> Appendix A4, # <u>4</u> Appendix A5, # <u>5</u> Appendix A6, # <u>6</u> Appendix A7, # <u>7</u> Appendix A8, # <u>8</u> Appendix A9, # <u>9</u> Appendix A10)(Stearns, Christopher) (Entered: 09/18/2009)
09/21/2009	<u>95</u>	MOTION to Amend <u>87</u> MOTION for Summary Judgment by Richard L Warren. Responses due by 10/8/2009 (mg) (Entered: 09/21/2009)
09/22/2009	<u>96</u>	ORDER OF INSTRUCTIONS TO PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT. Due on or before 10/16/09. Signed by Magistrate Judge Patrick A. White on 9/21/2009. (tw) (Entered: 09/22/2009)
09/22/2009	<u>97</u>	ORDER granting <u>95</u> Motion to Amend/Correct plaintiff's motion for summary judgment granted to add exhibits. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 9/23/2009. (cz) (Entered: 09/22/2009)
09/24/2009	<u>98</u>	ORDER denying <u>59</u> Motion for Summary Judgment; adopting Report and Recommendations re <u>62</u> Report and Recommendations.. Signed by Judge William J. Zloch on 9/24/2009. (jgn) (Entered: 09/24/2009)

09/25/2009	99	ORDER OF INSTRUCTIONS TO PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT. Response due on or before 10/16/09. Signed by Magistrate Judge Patrick A. White on 9/25/2009. (tw) (Entered: 09/25/2009)
09/25/2009		Set/Reset Deadlines per Order at DE 99 as to <u>90</u> MOTION for Summary Judgment, <u>88</u> MOTION for Summary Judgment, <u>91</u> MOTION for Summary Judgment, <u>92</u> MOTION for Summary Judgment, <u>89</u> MOTION for Summary Judgment. Responses due by 10/16/2009 (bb) (Entered: 09/28/2009)
10/05/2009	<u>100</u>	Statement of: Pretrial by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. (Piper, Michael) (Entered: 10/05/2009)
10/05/2009	<u>101</u>	OBJECTION to Defendants Summary Judgement; re <u>91</u> MOTION for Summary Judgment, <u>92</u> MOTION for Summary Judgment, <u>90</u> MOTION for Summary Judgment, <u>88</u> MOTION for Summary Judgment, <u>89</u> MOTION for Summary Judgment filed by Richard L Warren. (asl) (Entered: 10/06/2009)
10/08/2009	<u>102</u>	Defendant's MOTION to Strike <u>101</u> Response in Opposition to Motion by William Bettencourt, Handwecker, Kevin Sweat, Jerald Davis, Anthony Rosa. Responses due by 10/26/2009 (Stearns, Christopher) (Entered: 10/08/2009)
11/12/2009	<u>103</u>	NOTICE of Change of Address by Richard L Warren.Address Updated (jcy) (Entered: 11/12/2009)
11/19/2009	<u>104</u>	ORDER denying <u>102</u> Motion to Strike. Signed by Magistrate Judge Patrick A. White on 11/19/2009. (eky) (Entered: 11/19/2009)
12/03/2009	<u>105</u>	REPORT AND RECOMMENDATIONS. Recommending that: (1) the motion for summary judgment by plaintiff Warren [DE# 87] be denied; (2) the motions for summary judgment by defendants Handwerker [DE# 90], and Rosa [DE#91] be granted;(3) the motions for summary judgment by defendants Bettencourt [DE# 88], and Davis [DE# 89] be denied; and(4) the motion for summary judgment by defendant Sweat [DE# 92], be granted in part and denied in part. Objections to R&R due by 12/21/2009. Signed by Magistrate Judge Patrick A. White on 12/3/2009. (tw) (Entered: 12/03/2009)
12/03/2009	<u>106</u>	NOTICE of Change of Address by Richard L Warren. Address Updated (jcy) (Entered: 12/04/2009)
12/18/2009	<u>107</u>	NOTICE of Inquiry by Richard L Warren. Copy of Docket Sheet Mailed to Petitioner. (jcy) (Entered: 12/18/2009)
01/08/2010	<u>108</u>	NOTICE of Change of Address by Richard L Warren (system updated) (lbc) (Entered: 01/08/2010)
01/11/2010	<u>109</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS. Signed by Judge William J. Zloch on 1/11/2010. (bc) (Entered: 01/11/2010)
01/11/2010	<u>110</u>	JUDGMENT in favor of the Defendants Joshua Handwerker and Anthony Rosa and against the Plaintiff, Richard L. Warren. Signed by Judge William J. Zloch on 1/11/2010. (bc) (Entered: 01/11/2010)

01/13/2010	111	Petition for Subpoena Duces Tecum by Richard L Warren. (jcy) (Entered: 01/13/2010)
01/13/2010	<u>112</u>	NOTICE OF (Interlocutory) APPEAL as to <u>109</u> Order Adopting Report and Recommendations, 110 Judgment by Richard L Warren Within ten days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Fee- Not Paid) (cqs)Text Modified on 1/14/2010 (cqs). (Entered: 01/14/2010)
01/13/2010		Transmission of Notice of Appeal, Judgment, Order and Docket Sheet to US Court of Appeals re <u>112</u> Notice of Appeal, (cqs) (Entered: 01/14/2010)
01/19/2010	<u>113</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case. Recommending that this case be placed on the calendar of the District Judge. Objections to R&R due by 2/5/2010. Signed by Magistrate Judge Patrick A. White on 1/19/2010. (tw) (Entered: 01/19/2010)
01/26/2010	<u>114</u>	RESPONSE/REPLY to <u>111</u> Statement (<i>Plaintiff's Petition for Subpoena Duces Tecum</i>) by William Bettencourt, Jerald Davis, Handwecker, Anthony Rosa, Kevin Sweat. (Stearns, Christopher) (Entered: 01/26/2010)
02/01/2010	115	TRANSCRIPT INFORMATION FORM by Richard L Warren re <u>112</u> Notice of Appeal. No Transcript Requested. (mc) (Entered: 02/01/2010)
02/01/2010	116	DESIGNATION of Record on Appeal by Richard L Warren re <u>112</u> Notice of Appeal, (mc) (Entered: 02/01/2010)
02/02/2010	<u>117</u>	ACKNOWLEDGMENT OF RECEIPT FROM USCA re 112 Notice of Appeal, receipt of: NOA, date received by USCA 1/19/2010. USCA number 10-10228-D (mc) (Entered: 02/02/2010)
02/16/2010	<u>118</u>	NOTICE of Change of Address by Richard L Warren (system updated) (lbc) (Entered: 02/16/2010)

PACER Service Center			
Transaction Receipt			
03/19/2010 09:11:20			
PACER Login:	v10006	Client Code:	
Description:	Docket Report	Search Criteria:	0:08-cv-61721-WJZ
Billable Pages:	8	Cost:	0.64

[Court Home](#) [Case Search](#) [Calendar](#) [Opinions](#) [Orders/Judgments](#) [Billing History](#) [Court Information](#) [XML](#) [TXT](#)

If you view the you will be charged for 1 Pages \$0.08

General Docket
United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 10-10228	Docketed: 01/19/2010
Nature of Suit: 3550 Prisoner-Civil Rights Richard L. Warren v. William Bettencourt, et al	
Appeal From: Southern District of Florida	
Fee Status: Fee Not Paid	
Case Type Information: 1) Private Civil - Prisoner 2) State Civil Rights 3) -	
Originating Court Information: District: 113C-0 : 0:08-cv-61721-WJZ Civil Proceeding: William J. Zloch, U.S. District Judge Secondary Judge: Patrick A. White, - Date Filed: 10/24/2008	

01/19/2010	 PRISONER (PLRA) APPEAL DOCKETED. Notice of appeal filed by Appellant Richard L Warren on 01/13/2010. Fee Status: Fee Not Paid.
02/08/2010	APPEARANCE of Counsel filed by Attorney Michael Ross Piper for Appellee Kevin Sweat in 10-10228.
02/17/2010	Letter from Pro Se Appellant : re: change of address. Jan. 27, 2010 notice forwarded to corrected addr
02/25/2010	Letter from Pro Se Appellant : advising that DC had informed him that the appeal package and any necessary portions of the record would be sent here.

PACER Service Center			
Transaction Receipt			
03/19/2010 09:24:45			
PACER Login:	vl0006	Client Code:	
Description:	Case Summary	Search Criteria:	10-10228
Billable Pages:	1	Cost:	0.08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-61721-Civ-ZLOCH
MAGISTRATE P. A. WHITE

RICHARD L. WARREN, :
 :
 Plaintiff, :
 :
 v. :
 :
 WILLIAM BETTENCOURT, et al. :
 :
 Defendants. :

REPORT OF
MAGISTRATE JUDGE

I. Introduction

Richard Warren filed a pro se civil rights complaint [DE#1], and amended complaint [DE# 11], pursuant to 42 U.S.C. §1983. He seeks damages for Sunrise Police Department ("SPD") officers' alleged use of excessive force when they arrested him on April 29, and October 17, 2005. Warren claims officers beat him on both occasions and allowed a police dog to bite him on the second.

Claims against several defendants have been dismissed as were claims alleging property damage and false arrest/malicious prosecution. [DE# 7, 15]. The Amended Complaint [DE# 11] has been deemed the operative pleading. [DE# 15, 18]. The case remains pending against SPD officers Joshua Handwerker (#3495), Anthony Rosa (#3527), William Bettencourt (#3556), Jerald Davis (#3598) and Kevin Sweat (#3521).

This cause is before the Court on the defendants' Motions for Summary Judgment [DE# 88-92], supported by a joint appendix of exhibits [DE# 94] and statement of undisputed fact [DE# 93]. Orders of Instruction informed Warren of his right to respond to the summary judgment motions [DE# 96, 99]. His unsworn "Objection" [DE# 101] attaches no affidavits and fails to create any dispute of material fact. Warren had previously filed a "Motion for Summary Judgment" [DE# 87], containing sworn factual allegations and

appendix of exhibits. Warren's motion for summary judgment should be denied because this Court denied relief on a prior motion,¹ however, the Court will consider it a Response to the defendants' motions for summary judgment to the extent it raises any material issues of disputed fact.²

A. Plaintiff's Claims

In his amended complaint [DE# 11] Warren alleges police used excessive force on two occasions, both resulting in serious permanent injury.

First Incident: On April 29, 2005, Warren's fiancée, Debbie Beckwith, called police during a domestic fight. Warren claims he went outside to cool off when he saw flashing lights and was ordered to get down. He complied but was nevertheless struck from behind. He claims Officers Bettencourt and Handwerker repeatedly pummeled and kicked him all over his body and kicked in the face, resulting in a gash over his eye requiring nine stitches. He claims his injuries included permanent scarring, nerve damage, partial loss of eyesight in one eye, and mental and emotional anguish. [DE# 11 at 5-7].

Second Incident: On October 17, 2005, Warren alleges he entered Beckwith's house at her request and fell asleep on the bed. He woke up to the sound of keys and whispering. A dog attacked him, biting onto his arm. Officers said to show them his hands and he complied. Officer Sweat grabbed and jerked Warren's arm while the dog was still attached. Sweat eventually removed the dog from

¹ Warren's first motion for summary judgment [DE# 59] was denied without prejudice in an order explaining how to file a legally sufficient motion [DE# 62]. Warren sought summary judgment a second time [DE# 71-75] on the same grounds previously raised. The court denied summary judgment due to legal insufficiency [DE# 81]. Warren presently seeks summary judgment for the third time [DE# 87].

² See Perry v. Thompson, 786 F.2d 1093, 1095 (11th Cir. 1986) (facts alleged by the plaintiff in a sworn pleading are sufficient to defeat motion for summary judgment); Sammons v. Taylor, 967 F.2d 1533, 1544-45 (11th Cir. 1992) (separate affidavit is unnecessary so long as the allegations in the plaintiff's sworn pleading are not conclusory).

Warren's arm and it bit his shoulder. Officer Davis allegedly handcuffed Warren backwards to cause pain then punched him. Officers dragged Warren out of the house while kicking and pummeling him. He was placed face-down in the grass, then someone heavy stood on him with their full weight. Officer Davis stood on his head. He was hog tied and his face was smashed. Warren claims he offered no resistance. He was hospitalized for four days and required surgery. His alleged injuries included emotional distress, psychological trauma, nerve and muscle damage to his arm and eye, and scarring on face, eye, arm and shoulder.

B. Police Reports and Affidavits

The police reports, affidavits, and victim's sworn statement indicate officers responded to Beckwith's residence because she called police to report Warren was attacking her. [DE# 94-6] (Bettencourt's police report). Beckwith told the dispatcher Warren often carried a weapon and might have armed himself with a kitchen knife. Beckwith had taken refuge in a bedroom and Warren was punching himself in the face in a fit of rage.

Officers Bettencourt and Freeston arrived as Warren exited Beckwith's front door. When Warren saw the officers he tried to flee into the house but the woman inside shut the door. He turned and charged the officers with his fists clenched. Warren was ordered to the ground due to the violent nature of the call and possibility he was armed. Bettencourt noticed Warren had blood on his face. He refused to get on the ground and yelled threats at the officers so they employed a takedown maneuver. He landed on his stomach in the grass. Officers ordered him to put his hands behind his back. Warren refused and continued to yell threats. Officers pried Warren's hands out from underneath him and secured them with handcuffs. During this struggle, Warren kicked at officers and struck Bettencourt in the leg several times. He continued to struggle as fire rescue attempted to treat him and had to be secured to a stretcher for transportation. He continued to resist and attempted to kick Sergeant Rosa in the face with his boot. A three-centimeter cut over Warren's eye was treated at a medical

center and he was cleared for jail.

As officers prepared to transport Warren from the medical center to the Sheriff's Office, he verbally threatened the officers and attempted to flick blood and bite. He tried to pull away as Bettencourt and Handwerker adjusted his handcuffs. Warren was charged with domestic battery and battery on a law enforcement officer.

A medical report describes Warren's injury as a superficial three-centimeter laceration to his left eyebrow. [DE# 87 at 12, Ex. A]. The report indicates he was intoxicated.

Second Incident: Warren was placed on pretrial release following the first incident and was ordered to stay away from Beckwith. [DE# 87, Ex. B]. Beckwith got a restraining order against Warren and changed the locks on her doors. [DE# 94-9]. On October 10, 2005, Warren escaped from a mental facility where he was to undergo court-ordered psychiatric evaluation, resulting in a warrant for probation violation. [DE# 94-7]. Warren ambushed Beckwith in her home on October 14, 2005. He beat her until unconscious, drove her around in her car and refused to take her to the hospital. He took her back to her house and continued to beat her. He finally forced her to shower and dropped her off at the hospital. He left with her car, cash and other property. Beckwith was hospitalized and required surgery. On October 17, 2005, Beckwith, still hospitalized, asked her daughter to stop by her home. The daughter became suspicious Warren was inside and called police. [DE# 94-7 at 14; 94-8 at 2].

Canine Officer Sweat responded to the house with knowledge Warren had an active warrant for violation of probation and a restraining order. [DE# 94-8 at 9] (Sweat's report). He was advised there was probable cause to arrest Warren for aggravated battery, kidnaping and occupied burglary. Sweat unlocked the front door of Beckwith's house and made two announcements to come out or a canine would be sent in. There was no response so he released the dog into

the home. The dog located Warren hiding in the back bedroom and held Warren's left forearm. Warren failed to immediately show his hands to officers. [DE# 94-8 at 2] (Officer Byrne-Cuesta's³ report). He kicked, swung his arms and scratched Officer Davis' forearm. The dog was removed as soon as Warren complied with the order to lie flat on the bed. [DE# 94-8 at 9]. Warren struggled when he was taken outside to the front lawn in handcuffs. [DE# 94-8 at 6] (Officer Cooke's⁴ report). He attempted to get off the ground even though two officers tried to control him. He stopped resisting after a few minutes.

A straight razor was found in Warren's pocket and a large knife was within his reach in the bedroom. Warren was transported to the hospital for possible ligament and nerve damage to his arm. While he was being treated, Warren laughed and told a nurse that "cops don't like it when you grab their dog." [DE# 94-8 at 6].

Medical reports indicate Warren sustained multiple lacerations from severe, deep dog bites on his left forearm. [DE# 87 at 24, Ex. B]. He required debridement of the skin, tissue and muscle, repair of the injured structures, and closure of lacerations totaling twelve centimeters. [DE# 87 at 25, Ex. B]. He tested positive for cocaine. [DE# 87 at 29, Ex. B].

II. Summary Judgment Standard

Summary judgment is proper "if the pleading, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The inquiry is whether the evidence viewed in the light most favorable to the party opposing the motion "presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986); Skrtich v.

³ Officer Byrne-Cuesta is not a defendant in this action.

⁴ Officer Cooke is not a defendant in this action.

Thornton, 280 F.3d 1295, 1299 (11th Cir. 2002).

The party moving for summary judgment bears the initial responsibility of informing the court of the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party must go beyond the pleadings with evidentiary materials such as his own affidavits, depositions, answers to interrogatories and admissions on file, and designate specific facts showing there is a genuine issue for trial. Celotex, 477 U.S. at 324; Fed. R. Civ. P. 56. Summary judgment is granted against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial" because the complete failure of proof of an essential element necessarily renders all other facts immaterial. Celotex, 477 U.S. at 323. If the nonmoving party presents evidence that is merely colorable or not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249. Moreover, "when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern." Griffin Indus. v. Irvin, 496 F.3d 1189, 1206 (11th Cir. 2007). Summary judgment is not a procedure for resolving a swearing contest. Chandler v. Baird, 926 F.2d 1057 (11th Cir. 1991). "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge...." Anderson, 477 U.S. at 255.

III. Excessive Force Standard

Claims that police officers used excessive force to seize a citizen, or were present and failed to intervene, are cognizable under section 1983. Graham v. Connor, 490 U.S. 386 (1989); Fundiler v. Cooper City, 777 F.2d 1436, 1442 (11th Cir. 1985); Hadley v. Gutierrez, 526 F.3d 1324, 1329 (11th Cir. 2008). Fourth Amendment jurisprudence "has long recognized that the right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Graham v. Connor, 490 U.S. 386, 396 (1989). Whether a use of force is "reasonable" under the Fourth Amendment requires balancing

the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests. Tennessee v. Garner, 471 U.S. 1, 7-8 (1985); United States v. Place, 462 U.S. 696, 703 (1983). When a court balances the necessity for force against the arrestee's constitutional rights it considers the facts and circumstances of each particular case including "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396.

In determining whether the use of force in a particular case was reasonable, a court must consider whether the officer's actions were objectively reasonable in light of the facts and circumstances confronting him without regard to underlying intent or motivation. See Scott v. United States, 436 U.S. 128, 137-39 (1978) (officer's subjective state of mind does not invalidate action as long as the circumstances, viewed objectively, justify it); Terry v. Ohio, 392 U.S. 1, 20-22 (1968) (reasonableness is viewed from the perspective of a reasonable officer on the scene without the benefit of hindsight). Factors used to determine whether force was objectively reasonable include: "(1) the need for the application of force, (2) the relationship between the need and the amount of force used, (3) the extent of the injury inflicted, and (4) whether the force was applied in good faith or maliciously and sadistically." Hadley, 526 F.3d at 1329.

Qualified immunity applies if the force a police officer applied was reasonable under the circumstances and not excessive, entitling the officer to summary judgment. Moore v. Gwinnett County, 967 F.2d 1495, 1498 (11th Cir. 1992); see Saucier v. Katz, 533 U.S. 194 (2001) (government officials insulated from personal liability for actions taken pursuant to their discretionary authority), receded from by, Pearson v. Callahan, 129 S.Ct. 808 (2009). Qualified immunity applies to a city official's 1983 violation unless the plaintiff can demonstrate the official's actions violated clearly established constitutional law of which a

reasonable person would have known. Priester v. City of Riviera Beach, 208 F.3d 919, 925 (11th Cir. 2000). A constitutional right is clearly established if the state law at the time of the incident gave officials fair warning their behavior was unlawful. Hope v. Pelzer, 536 U.S. 730, 741 (2002). Law is "clearly established" for official immunity purposes by decisions of the United States Supreme Court, Eleventh Circuit Court of Appeals or the highest state court. Wilson v. Strong, 156 F.3d 1131, 1135 (11th Cir. 1998). To show an official is not entitled to immunity, the plaintiff must point to earlier case law that is "materially similar ... and therefore provided clear notice of violation," or to "general rules of law from a federal constitutional or statutory provision or earlier case law that applied with obvious clarity to the circumstances" and clearly established the conduct was unlawful. Trammell v. Thomason, 2009 WL 1706591 at *5 (11th Cir. 2009) (quoting Long v. Slaton, 508 F.3d 576, 584 (11th Cir. 2007)). If use of force was objectively reasonable under the circumstances, there is no need to address whether the constitutional right at issue was clearly established. Crenshaw v. Lister, 556 F.3d 1283, 1293 (11th Cir. 2009). A narrow exception to the requirement for particularized case law exists where "the official's conduct lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was readily apparent to the official, notwithstanding the lack of caselaw." Priester, 208 F.3d at 926.

IV. Discussion

A. Handwerker

According to Officer Handwerker's affidavit, Warren was already in custody on the first incident when he arrived at the scene. He denies using or witnessing any force. [DE# 94-2]. The affidavits and police reports indicate that Handwerker arrived after Warren had been taken into custody and simply helped transport Warren from the hospital to the Sheriff's Office.

Warren's vague allegation that Handwerker was "hands on directly participating in the April 29, 2005 arrest," fails to

rebut the affidavits' and reports' description of Handwerker's limited involvement after the alleged use of force occurred. See [DE# 87]; see Crenshaw, 556 F.3d at 1283 (court did not credit plaintiff's conclusory and speculative allegation in summary judgment motion where police reports attached to the complaint refuted the allegation). Summary judgment should be granted as to Handwerker.

B. Bettencourt

Officer Bettencourt explains in his affidavit that he was personally involved in arresting Warren in the first incident. [DE# 94-4]. Bettencourt knew he was responding to a domestic situation, that Warren often carried weapon, and that he was repeatedly punching himself in the eye. When officers confronted Warren outside the house they ordered him to the ground due to the violent nature of call and possible weapons. Warren refused. Officers took him to the ground and handcuffed him.

Warren refutes this version of events by claiming Bettencourt kicked him in the eye after he was handcuffed, lying on his belly and helpless. [DE# 87, Ex. A]. This specific factual allegation conflicts with the police reports and affidavits and creates a dispute as to whether Bettencourt used force after Warren ceased to be a threat to officers. See, e.g., Lee v. Ferraro, 284 F.3d 1188 (11th Cir. 2002) (use of force after arrestee was handcuffed and not posing a risk of flight or threat to officers was excessive). Summary judgment should be denied as to Bettencourt.

C. Rosa

Warren alleges Rosa is liable for excessive force during the first and second incidents. As to the first incident, Rosa asserts in his affidavit that Warren was already in custody when he arrived at the scene and he did not use or witness any force. [DE# 94-3].

Warren counters that Rosa failed to act when Bettencourt kicked him in the eye after he was handcuffed. [DE# 87]. He claims Rosa, as a supervisor, created a policy or custom of permitting

illegal acts and negligently supervised the other officers.

In a case alleging nonfeasance, the non-intervening officer must have been present at the scene in a position to intervene and failed to take reasonable steps to protect the victim from another officer's use of excessive force. Hadley, 526 F.3d at 1330-31. Warren only alleges that Rosa was present when Bettencourt kicked him. He fails to allege that Rosa observed Bettencourt's behavior, could have anticipated that Bettencourt would kick him and prevented the kick. See, e.g., Baltimore v. City of Albany, 183 Fed. Appx. 891 (11th Cir. 2006) (police corporal entitled to qualified immunity where there was no evidence he was individually responsible for a trainee's quick, surprise blow to plaintiff's head with a flashlight); compare Priester, 208 F.3d at 925 (evidence suggested officer could have intervened during incident that lasted up to two minutes).

Warren's allegations that Rosa had a "policy" of encouraging illegal acts or failed to adequately supervise Bettencourt are insufficient. Police policies can form the basis for a municipality's liability if they are a persistent and widespread practice of which the municipality's governing body has actual or constructive knowledge. Depew v. St. Marys, 787 F.2d 1496, 1499 (11th Cir. 1986). Here, Warren claims that Rosa, a police supervisor, created a policy of using excessive force is insufficient because he fails to allege official policymakers created or maintained such a custom. See Campbell v. Rainbow City, 434 F.3d 1306 (11th Cir. 2006) (only municipal officers or groups who have final policymaking authority may subject the municipality to section 1983 liability). Similarly, Warren suggests Rosa failed to adequately supervise Bettencourt. A city may be liable for failing to adequately supervise officers if there is an express written or oral policy of inadequately supervising employees, or the failure to supervise amounts to deliberate indifference. Gold v. City of Miami, 151 F.3d 1346 (11th Cir. 1998). Warren's allegation that Rosa failed to adequately supervise Bettencourt on a single occasion fails to establish the city knew of the need for

supervision and deliberately chose not to take any action. Based on the foregoing, Rosa should be granted summary judgment as to the first incident.

As to the second incident, Rosa's affidavit indicates he knew there was an active warrant for Warren's restraining order violation and probable cause to arrest him for aggravated battery, kidnaping and occupied burglary of same residence. [DE# 94-3]. Canine Officer Sweat yelled a warning loudly into house and waited several minutes before releasing his dog. When officers entered the house, the dog was latched onto Warren's arm and Warren was twisting and fighting the dog. Sweat gave repeated commands to stop fighting but Warren refused and tried to kick the officers and fight the dog. Once he stopped resisting the dog was removed and Warren was handcuffed. Rosa claims Warren was not beaten in his presence.

Warren fails to refute the foregoing with any specific sworn facts regarding Rosa's actions during the second incident. Therefore, summary judgment should also be granted as to Rosa's alleged involvement in the second incident.

D. Sweat

Canine Officer Sweat's affidavit explains he responded to Beckwith's house in the second incident. He knew Warren had an active warrant for violating a restraining order and there was probable cause to arrest him for aggravated battery, kidnaping and occupied burglary. [DE# 94-1]. He released his police dog after announcing twice at the front door: "Sunrise Police K-9 come out right now or the dog will be sent, and you will be bit." He claims he removed the dog as soon as Warren complied with the order to lay flat on the bed and display his hands.

Warren counters that he heard no announcement before the dog was released. He also claims the dog was not immediately taken off after he showed the officers his hands, that Sweat straddled Warren while jerking the arm the dog was biting and let the dog bite his

shoulder. [DE# 87, Ex. B].

Summary judgment should be granted to the extent Warren claims Sweat failed to announce a warning before the dog was released because there is no clearly established right to such a warning. No case from the Eleventh Circuit, United States Supreme Court, or Florida Supreme Court establishes a warning is required before officers release a police dog. See Trammell, 2009 WL 1706591 at *6.

Summary judgment should be denied to the extent Warren claims Sweat's use of the police dog was unreasonable under the circumstances. The use of police dogs to find, seize, and hold suspects by biting, if necessary, has been upheld. See Kerr v. West Palm Beach, 875 F.2d 1546 (11th Cir. 1989). However, the use of a dog must be reasonable under the circumstances. Warren has created a dispute of material fact as to whether Sweat intentionally provoked the dog by grabbing Warren's arm while the dog was still attached and by failing to call off the dog in a timely manner. See, e.g., Crenshaw, 556 F.3d at 1293 (reasonable under the circumstances to handcuff potentially dangerous suspect before calling dog off, but would be unreasonable to allow the dog to continue attacking after suspect was secured). Accordingly, summary judgment as to the reasonableness of Sweat's use of the police dog should be denied.

E. Davis

Davis' affidavit explains he responded to Beckwith's house in the second incident. He was advised that Warren is a violent offender with a history of violence toward officers, had an active warrant for violating a restraining order, and there was probable cause to arrest him for aggravated battery, kidnapping and occupied burglary. [DE# 94-5]. He confirmed Sweat yelled a warning loudly into house before releasing the dog. When officers entered the house, Warren was flailing around and kicking at officers. Warren kicked and cut Davis' arm while Davis was attempting to control him. He handcuffed Warren when he stopped resisting. Davis denied striking Warren or that Warren was beaten in his presence.

Warren counters that he offered no resistance yet Davis put the handcuffs on backwards to cause him pain and kicked and hit him as he dragged Warren out of the house. He also claims that, once he was handcuffed face-down outside, Davis stood on Warren's head and ground his face in the dirt. [DE# 87, Ex. B].

Warren has created a material factual dispute regarding whether Davis continued to use force after Warren had been subdued and whether the force he used to subdue Warren was reasonable under the circumstances. Accordingly summary judgment as to Davis should be denied.

V. Conclusion

It is therefore recommended that: (1) the motion for summary judgment by plaintiff Warren [DE# 87] be denied; (2) the motions for summary judgment by defendants Handwerker [DE# 90], and Rosa [DE#91] be granted; (3) the motions for summary judgment by defendants Bettencourt [DE# 88], and Davis [DE# 89] be denied; and (4) the motion for summary judgment by defendant Sweat [DE# 92], be granted in part and denied in part.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

Dated: December 3rd, 2009.


UNITED STATES MAGISTRATE JUDGE

cc: Richard L. Warren, pro se
DC# 601912
Hendry Correctional Institution
12551 Wainwright Drive
Immokalee, FL 34142-4797

Christopher J. Stearns, Jr.
Michael Ross Piper
Johnson Anselmo Murdoch Burke Piper & Hochman PA
2455 E. Sunrise Blvd.
Suite 1000
Fort Lauderdale, FL 33304

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-61721-CIV-ZLOCH

RICHARD L. WARREN,

Plaintiff,

vs.

O R D E R

WILLIAM BETTENCOURT, et al.,

Defendants.

THIS MATTER is before the Court upon the Report Of Magistrate Judge (DE 105) filed herein by United States Magistrate Judge Patrick A. White. No objection to said Report has been filed by Plaintiff. The Court has conducted a de novo review of the entire record herein and is otherwise fully advised in the premises. The Court agrees with Magistrate Judge White's reasoning and conclusions.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Report Of Magistrate Judge (DE 105) filed herein by United States Magistrate Judge Patrick A. White be and the same is hereby approved, adopted and ratified by the Court;
2. Plaintiff Richard Warren's Motion For Summary Judgment (DE 87) be and the same is hereby **DENIED**;
3. Defendant Joshua Handwerker's Motion For Summary Judgment (DE 90) be and the same is hereby **GRANTED**;
4. Defendant Anthony Rosa's Motion For Summary Judgment (DE 91) be and the same is hereby **GRANTED**;

5. Defendant William Bettencourt's Motion For Summary Judgment (DE 88) be and the same is hereby **DENIED**;

6. Defendant Jerald Davis's Motion For Summary Judgment (DE 89) be and the same is hereby **DENIED**; and

7. Defendant Kevin Sweat's Motion For Summary Judgment (DE 92) be and the same is hereby **GRANTED** in part and **DENIED** in part consistent with the Report Of Magistrate Judge (DE 105) filed herein by United States Magistrate Judge Patrick A. White; and

8. Final Judgment as to Defendants Handwerker and Rosa will be entered by separate Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 11th day of January, 2010.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

The Honorable Patrick A. White
United States Magistrate Judge

All Counsel of Record

Richard Lee Warren, PRO SE
DC # 601912
Dade Correctional Institution
19000 S.W. 377th St. Suite 300
Florida City, FL 33034

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-61721-CIV-ZLOCH

RICHARD L. WARREN,

Plaintiff,

vs.

WILLIAM BETTENCOURT, et al.,

Defendants.

FINAL JUDGMENT AS TO
DEFENDANTS JOSHUA
HANDWERKER AND ANTHONY ROSA

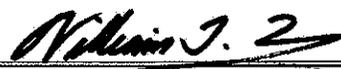
THIS MATTER is before the Court upon the Report Of Magistrate Judge (DE 105) filed herein by United States Magistrate Judge Patrick A. White. For the reasons expressed in this Court's Order adopting said Report, entered separately, and pursuant to Federal Rule of Civil Procedure 58, it is

ORDERED AND ADJUDGED as follows:

1. Final Judgment be and the same is hereby **ENTERED** in favor of Defendants Joshua Handwerker and Anthony Rosa and against Plaintiff Richard L. Warren upon the Complaint (DE 1), filed herein. Plaintiff Richard L. Warren shall take nothing by this action as to Defendants Handwerker and Rosa, and said Defendants shall go hence without day; and

2. To the extent not otherwise disposed of herein, all pending motions as to Defendants Joshua Handwerker and Anthony Rosa are hereby **DENIED** as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 11th day of January, 2010.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
See Attached Mailing List

Richard L. Warren v. William Bettencourt, et al.
Case No. 08-61731-CIV-ZLOCH

All Counsel of Record

Richard Lee Warren, PRO SE
DC # 601912
Dade Correctional Institution
19000 S.W. 377th St. Suite 300
Florida City, FL 33034

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RICHARD WARREN
PLAINTIFF,

VS.

SGT. ANTHONY ROSA
DEFENDANT,

CASE NO: 08-CV-61721-WJZ

FILED BY: [Signature]
2010 JAN 13 PM 1:06
STEVEN M. LAEMORE
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL.

BELATED APPEAL TO DEFENDANT'S
GRANTED SUMMARY JUDGEMENT

COMES NOW PLAINTIFF RICHARD WARREN BELATELY
APPEALING COURTS GRANTING DEFENDANT ROSA'S
SUMMARY JUDGEMENT.

PLAINTIFF WARREN STATES:

POSSIBLY DUE TO TRANSFER AND RELOCATION PLAINTIFF
NEVER RECEIVED REPORT AND RECOMMENDATION NOTICE,
UNTIL SUBMITTING AN INQUIRY.

THE RESPONSE TO SAID INQUIRY IS DATED 18 DEC 09.

DATE OF POSTAGE 23 DEC 09.

DATE OF DELIVERY 6 JAN 10.

THEREFORE PLAINTIFF WARREN WAS UNABLE TO RESPOND
TO R+R BY DUE DATE 21 DEC 09.

PLAINTIFF RICHARD WARREN STATES:

1.) ACCORDING TO DEFENDANT ROSA'S DEPOSITION HE WAS HANDS
ON PRESENT AT THE 29 APR 05 INCIDENT WHEN PLAINTIFF WARREN
WAS KICKED IN THE EYE (REQUIRING HOSPITALIZATION), AND EVEN
STATED HE HELPED "CUFF UP" PLAINTIFF WARREN.

Richard Warren

- 2.) ACCORDING TO DEFENDANT ROSA'S DEPOSITION HE DIRECTLY CLAIMED HE WAS THE SUPERIOR OFFICER IN CHARGE OF "THE ATTACK" ON 17 OCT 05 WHEN ONCE AGAIN PLAINTIFF RICHARD WARREN HAD TO BE HOSPITALIZED DUE TO INJURIES SO SEVERE WARREN REMAINED IN THE HOSPITAL 4 DAYS REQUIRING SURGERY.
- 3.) DEFENDANT ANTHONY ROSA FAILED TO WRITE AND FILE AN INCIDENT REPORT PERTAINING TO "THE ATTACK" ON PLAINTIFF RICHARD WARREN 17 OCT 05.
- 4.) PLAINTIFF STATES THAT DEFENDANT ANTHONY ROSA WAS HANDS ON DIRECTLY INVOLVED IN BOTH 29 APR 05 / 17 OCT 05 INCIDENTS WHERE PLAINTIFF RICHARD LEE WARREN WAS ASSULTED AND HOSPITALIZED THEREFORE DISQUALIFYING DEFENDANT ANTHONY ROSA FROM QUALIFIED IMMUNITY.

PLAINTIFF RICHARD WARREN OBJECTS TO COURTS DECISION IN THIS BELATED APPEAL HUMBLY REQUESTING DENIAL OF DEFENDANT ROSA'S SUMMARY JUDGEMENT, BASED ON THE FACTS STATED 1-4.

Richard Lee Warren

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to United States District Court, Southern District of Florida, Clerk of Court, 299 E. Broward Blvd., Suite 108, Ft. Lauderdale, Florida 33301; and Michael R. Piper, Esq., Johnson, Anselmo, et al. 2455 E. Sunrise Blvd., Suite 1000, P.O. Box 030220, Ft. Lauderdale, Florida 33304-0220 by regular U.S. Mail, by placing same in the hand of prison officials for mailing on this 11TH day of JANUARY, 2009.



Richard Lee Warren # 601912
~~Hendry Correctional Institution~~
~~12551 Wainwright Drive~~
~~Immokalee, Florida~~

DADE CORRECTIONAL INSTITUTION
19000 SW, 377TH ST, SUITE 300
FLORIDA CITY, FL 33034

NOTE * PLAINTIFF WARREN WILL BE RESIDING AT BROWARD COUNTY MAIN JAIL 15TH AND 18TH STATUS AND EVIDENTIARY COURT PROCEEDINGS IN HIS CRIMINAL CASE,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-61721-Civ-ZLOCH
MAGISTRATE JUDGE P. A. WHITE

RICHARD L. WARREN, :
 :
Plaintiff, :
 :
v. :
 :
WILLIAM BETTENCOURT, et al., :
 :
 :
Defendants. :

REPORT THAT CASE IS
READY FOR TRIAL

In this *pro se* civil rights action pursuant to 42 U.S.C. §1983, a separate Report was entered on December 3, 2009, recommending that: (1) the Plaintiff's motion for summary judgment (DE# 87) be Denied; (2) defendants Handwerker and Rosa's motions for summary judgment (DE# 90, 91) be Granted; defendants Bettencourt and Davis' motions for summary judgment (DE# 88, 89) be Denied; and defendant Sweat's motion for summary judgment (DE# 92) be Granted in part and Denied in part. The District Judge has adopted the Report (DE# 109) and entered judgment in favor of defendants Handwerker and Rosa and against the Plaintiff. (DE# 110). Defendants Bettencourt, Davis, and Sweat are the only defendants remaining in the case.

The Plaintiff and Defendants have filed their unilateral pretrial statements (DE# 76-80 and 100, respectively). The case is otherwise now at issue and the parties have not consented to trial before a Magistrate Judge pursuant to 28 U.S.C. §636(c). The undersigned respectfully recommends that this case be placed on the trial calendar of the District Judge.¹

Dated: January 19th, 2010.



UNITED STATES MAGISTRATE JUDGE

cc: The Honorable William J. Zloch,
United States District Judge

¹ The matter appears to be on appeal in the Eleventh Circuit Court of Appeals at present. See (DE# 112). The case should be placed on the District Judge's trial calendar upon completion of the appellate proceedings.

Richard L. Warren, Pro Se
Dade Correctional Institution
19000 SW 377 St., Suite 300
Florida City, FL 33034

Counsel of Record