CASREF, MEDREQ, PAW

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:10-cv-62100-FAM

Augustin v. Condoleo et al
Assigned to: Chief Judge Federico A. Moreno
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 11/01/2010
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Jonas R. Augustin represented by **Jonas R. Augustin**
DC#L52830
Florida State Prison
West Unit
7819 N.W. 228th Street
Raiford, FL 32026-3000
PRO SE

V.

Defendant

Paul Condoleo
Detective

represented by **Daniel Lee Losey**
Billing Cochran Lyles Mauro & Ramsey PA
SunTrust Center 6th Floor
515 E Las Olas Boulevard
Fort Lauderdale, FL 33301
954-764-7150
Fax: 764-7279
Email: dll@bclmr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Tom Manerney
Detective

represented by **Daniel Lee Losey**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/01/2010	1	COMPLAINT against Paul Condoleo, Tom Manerney. Filing fee $ 350.00. IFP Filed, filed by Jonas R. Augustin.(rgs) (Entered: 11/01/2010)

11/01/2010	2	Judge Assignment RE: Electronic Complaint to Chief Judge Federico A. Moreno (rgs) (Entered: 11/01/2010)
11/01/2010	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (rgs) (Entered: 11/01/2010)
11/01/2010	4	MOTION for Leave to Proceed in forma pauperis by Jonas R. Augustin. (rgs) (Entered: 11/01/2010)
11/30/2010	5	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUR PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF $350.00 and Granting 4 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 11/29/2010. (tw) (Entered: 11/30/2010)
11/30/2010	6	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL.The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Paul Condoleo, CCN #9497, Detective Broward County Sheriffs Office, Public Safety Building, 2601 West Broward Boulevard, Fort Lauderdale, FL 33311 and Tom McInerney, CCN #4919, DetectiveBroward County Sheriffs Office, Public Safety Building, 2601 West Broward Boulevard, Fort Lauderdale, FL 33311. Signed by Magistrate Judge Patrick A. White on 11/29/2010. (tw) (Entered: 11/30/2010)
11/30/2010	7	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 11/29/2010. (tw) (Entered: 11/30/2010)
12/07/2010	8	Summons Issued as to Paul Condoleo. (br) (Entered: 12/09/2010)
12/07/2010	9	Summons Issued as to Tom Manerney. (br) (Entered: 12/09/2010)
12/17/2010	10	SUMMONS (Affidavit) Returned Executed Tom Manerney served on 12/17/2010, answer due 1/7/2011. (asl) (Entered: 12/20/2010)
12/17/2010	11	SUMMONS (Affidavit) Returned Executed Paul Condoleo served on 12/17/2010, answer due 1/7/2011. (asl) (Entered: 12/20/2010)
12/17/2010	12	ACKNOWLEDGMENT OF SERVICE Executed as to 6 Order. (asl) (Entered: 12/20/2010)
01/14/2011	13	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Paul Condoleo, Tom Manerney.(Losey, Daniel) (Entered: 01/14/2011)
01/24/2011	14	SCHEDULING ORDER: Amended Pleadings due by 5/18/2011. Discovery due by 5/4/2011. Joinder of Parties due by 5/18/2011. Motions due by 6/9/2011.. Signed by Magistrate Judge Patrick A. White on 1/21/2011. (tw) (Entered: 01/24/2011)
01/25/2011	15	NOTICE by Paul Condoleo, Tom Manerney re 13 Answer to Complaint *Amended Certificate of Service* (Losey, Daniel) (Entered: 01/25/2011)
01/25/2011	16	AMENDED CERTIFICATE OF SERVICE by Paul Condoleo, Tom Manerney

		re 13 Answer to Complaint (ls)(See Image at DE # 15) (Entered: 01/25/2011)
01/25/2011	17	Clerks Notice to Filer re 15 Notice (Other). **Wrong Event Selected**; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#16]. It is not necessary to refile this document. (ls) (Entered: 01/25/2011)
01/31/2011	18	MOTION to Take Deposition from Plaintiff, Jonas R. Augustin *by Videotape* by Paul Condoleo, Tom Manerney. (Losey, Daniel) (Entered: 01/31/2011)
02/01/2011	19	ORDER granting 18 Motion to Take Deposition from Jonas Augustin by video. This is a pro se plaintiff and a copy must be provided to him or made available.. Signed by Magistrate Judge Patrick A. White on 2/1/2011. (cz) (Entered: 02/01/2011)
02/04/2011	20	SCHEDULING ORDER: (Jury Trial set for 8/15/2011 before Chief Judge Federico A. Moreno., Calendar Call set for 8/9/2011 02:00 PM before Chief Judge Federico A. Moreno., Amended Pleadings due by 3/4/2011., Discovery due by 6/15/2011., Joinder of Parties due by 3/4/2011., In Limine Motions due by 7/13/2011., Dispositive Motions due by 6/29/2011., Pretrial Stipulation due by 8/2/2011.), ORDER REFERRING CASE to Mediation. (Mediation Deadline 7/13/2011). Signed by Chief Judge Federico A. Moreno on 2/3/2011. (asl) (Entered: 02/07/2011)
02/09/2011	21	MOTION for Protective Order *Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information* by Paul Condoleo, Tom Manerney. (Losey, Daniel) (Entered: 02/09/2011)
02/09/2011	22	ORDER granting 21 Motion for HIPPA Qualified Protective Order. Signed by Magistrate Judge Patrick A. White on 2/9/2011. (cz) (Entered: 02/09/2011)
02/10/2011	23	Order Vacating 20 Scheduling Order. Signed by Chief Judge Federico A. Moreno on 2/9/2011. (mmi) (Entered: 02/10/2011)
02/17/2011	24	Clerk's Notice of Undeliverable Mail re 19 Order on Motion to Take Deposition. US Mail returned for: return to sender not in custody unable to forward. *The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.*US Mail returned for Jonas r Augustin. First return /attempt (rb) (Entered: 02/17/2011)
02/17/2011	25	NOTICE of Change of Address by Daniel Lee Losey (Losey, Daniel) Modified on 2/18/2011 (tp). System updated (Entered: 02/17/2011)
03/03/2011	26	Clerk's Notice of Undeliverable Mail re 22 Order on Motion for Protective Order, 23 Order Vacating Order Terminating Document and Reopening Document. US Mail returned for: return to sender inmate released unable to forward. *The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.*US mail returned for Jona Augustin,Second return/attempt (rb) (Entered: 03/03/2011)
03/03/2011	27	RESPONSE/REPLY to 26 Clerk's Notice of Undeliverable Mail,, by Paul Condoleo, Tom Manerney. (Losey, Daniel) (Entered: 03/03/2011)

06/09/2011	28	MOTION for Summary Judgment by Paul Condoleo, Tom Manerney. Responses due by 6/27/2011 (Losey, Daniel) (Entered: 06/09/2011)
06/09/2011	29	Statement of: of Material Facts in Support of Motion for Summary Judgment by Paul Condoleo, Tom Manerney re 28 MOTION for Summary Judgment (Losey, Daniel) (Entered: 06/09/2011)
06/09/2011	30	NOTICE by Paul Condoleo, Tom Manerney re 29 Statement, 28 MOTION for Summary Judgment *Notice of filing Documents in Support of Motion for Summary Judgment* (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit)(Losey, Daniel) (Entered: 06/09/2011)
06/10/2011	31	NOTICE OF CONVENTIONAL FILING by Paul Condoleo, Tom Manerney (jua) (Entered: 06/10/2011)
06/15/2011	32	ORDER OF INSTRUCTING PRO SE PLAINTIFF as to 28 MOTION for Summary Judgment.(Responses due by 7/11/2011). Signed by Magistrate Judge Patrick A. White on 6/14/2011. (tw) (Entered: 06/15/2011)
06/28/2011	33	NOTICE by Paul Condoleo, Tom Manerney re 14 Scheduling Order *of Plaintiff's Failure to Comply* (Losey, Daniel) (Entered: 06/28/2011)

PACER Service Center

Transaction Receipt

07/15/2011 11:14:26

PACER Login:	vl0006	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	0:10-cv-62100-FAM
Billable Pages:	3	**Cost:**	0.24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-62100-CV Moreno/White

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

cat / div 550 | 1983 | Broward
Case # _____
Judge _____ Mag White
Motn lfp Yes Fee pd $ No
Receipt # _____

(Rev. 09-2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 09019271CF10A

FILED by _____ D.C.
NOV - 1 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

Jonas R. Augustin
(Enter the full name of the plaintiff in this action)

v.

Paul Condoleo CCN# 9497
Tom Mcinerny CCN# 4919
Detective Police Department
Broward Sheriff Office
from Broward County
(Above, enter the full name of the defendant(s) in this action)

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

There is a filing fee of $350.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 400 North Miami Avenue, Room 8N09, Miami, Florida 33128-7788.

I. Parties

In Item A below, place your name in the first blank and place your present address in the third blank.

A. Name of plaintiff: Jonas R. Augustin

Inmate #: 120 902554

Address: north Broward bureau 1550 N.W 30th Ave
Pompano bch fl. 33069

In Item B below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item C for the names, positions, and places of employment for any additional defendants.

B. Defendant: paul condoleo ccN#9497

is employed as Detective police officer from

at Broward county sheriff office

C. Additional Defendants: Tom McMerney ccN#4919
Detective Police officer as well
from Broward county

II. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an additional blank page if necessary.

10,16,2009 I was terrified of police officers chasing me so I Pled to my antee house the officers apprehended me in handcuffed me. then Proceeded to beat me up while I was on handcuffed no longer a violent or doing any violent to them not even a threat to no one now they broken my Pinky right hand finger in my ney injure also caused me a severe back injuries as well I m suffer in pain no one can't help me with not thing to help all those pain

III. Relief

State briefly exactly what you want the court do to do for you. Make no legal arguments. Cite no cases or statutes.

I want those officers punish to the point of termination. I also think that I should be justly compensated for my injuries because I'm in pain now I'm not get any treatment for all that these officers had done to me.

IV. Jury Demand

Do you demand a jury trial? X Yes No

Signed this october day of tuseday 26, 2010

(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct. *(optional)*

Executed on: _____

(Signature of Plaintiff)

USA28

USA28

USA28

US

Frank U.S.

JONAS R. AUGUSTIN #120902554
North broward bureau 1550 N.W. 30th
Ave Pompano bch FL 33069

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

COME NOW the Defendants, PAUL CONDOLEO ("CONDOLEO") AND TOM MCINERNEY ("MCINERNEY"), in their individual capacities, by and through their undersigned counsel and pursuant to the Federal Rules of Civil Procedure, hereby answer the Plaintiff's Complaint as follows:

1. With respect to the parties identified in the Complaint, the Defendants, CONDOLEO and MCINERNEY, admit that they were employed as Deputy Sheriffs by the Broward Sheriff's Office on October 16, 2009; and that at all times material hereto, they were acting under color of state law, regulation, custom or usage within the scope of their employment as police officers with the Broward County Sheriff's Office.

2. The Defendants, CONDOLEO and MCINERNEY, admit that the Complaint purports to seek relief pursuant to 42 U.S.C. § 1983, but each Defendant denies the Plaintiff's entitlement thereto and demands strict proof thereof.

3. The Defendants, CONDOLEO and MCINERNEY, deny each and every other allegation contained in the Plaintiff's Complaint unless it has been specifically admitted to herein and further demand strict proof thereof.

4. The Defendants, CONDOLEO and MCINERNEY, request trial by jury on all issues so triable as of right by a jury.

AFFIRMATIVE DEFENSES

5. Defendants, CONDOLEO and MCINERNEY, would show that the Complaint fails to state a cognizable claim for violation of any clearly established constitutional rights under either state or federal law.

6. Defendants, CONDOLEO and MCINERNEY, would show that any damages complained of by the Plaintiff were caused by his own wrongful acts, as a result of which he is barred from recovery.

7. Defendants, CONDOLEO and MCINERNEY, would show that the Plaintiff has failed to mitigate his damages which should be reduced in direct proportion to such failure to mitigate.

8. Defendants, CONDOLEO and MCINERNEY, would show that the Plaintiff has not been deprived by these Defendants of any right, privilege or immunity secured by the United States Constitution, federal statutory law, state constitution, or state statutory law.

9. Defendants, CONDOLEO and MCINERNEY, are entitled to a set-off or reduction of damages for any and all benefits paid to or on Plaintiff's behalf by any and all collateral sources of indemnity.

10. Defendants, CONDOLEO and MCINERNEY, would show that the only force utilized to effect the arrest of the Plaintiff was that force which was reasonable and necessary under the circumstances.

11. Defendants, CONDOLEO and MCINERNEY, would show that Plaintiff's claim is barred by sovereign immunity to which these Defendants are entitled as a matter of law.

12. Defendants, CONDOLEO and MCINERNEY, would further show that their actions were objectively reasonable in light of the circumstances and were undertaken in good faith, as a result of which they are entitled to qualified immunity.

13. Defendants, CONDOLEO and MCINERNEY, would show that any damage complained of by the Plaintiff was *de minimis*, as a result of which the Defendants are entitled to qualified immunity.

WHEREFORE, having fully answered the Plaintiff's Complaint, and having raised full and complete affirmative defenses thereto, Defendants, CONDOLEO and MCINERNEY, individually request that the instant action be dismissed in its entirety, and that the Defendants be awarded their costs, reasonable attorney's fees, pursuant to 42 U.S.C. §1988, and Rule 11, Federal Rules of Civil Procedure.

Dated on: Janury 14, 2011

Respectfully submitted,

By: s/ Daniel L. Losey

Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

Augustin v. Condoleo , et al.
Case No. 10-62100-CIV-MORENO/WHITE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on January 14, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel L. Losey
Daniel L. Losey

Jonas R. Augustin
Jail #120902554
Broward County Detention Center (North)
1550 N.W. 30th Avenue
Pompano Beach, FL 33069
Plaintiff, Pro Se
VIA CERTIFIED MAIL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO
MAGISTRATE JUDGE P. A. WHITE

JONAS R. AUGUSTIN,

Plaintiff,

v.

PAUL CONDOLEO, et al.,

Defendants.

ORDER SCHEDULING PRETRIAL PROCEEDINGS WHEN PLAINTIFF IS PROCEEDING PRO SE

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **May 4, 2011.** This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **May 18, 2011.**

3. All motions to dismiss and/or for summary judgment shall be filed by **June 9, 2011.**

4. On or before **June 23, 2011,** the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

(a) A brief general statement of what the case is about;

(b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;

(c) A list of all exhibits to be offered into evidence at the trial of the case;

(d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);

(e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and

(f) A summary of the testimony that the plaintiff expects <u>each</u> of his witnesses to give.

5. On or before **July 7, 2011**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

(a) discuss the possibility of settlement;

(b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;

(c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

(d) mark all exhibits and prepare an exhibit list;

(e) initial and date opposing party's exhibits;

(f) prepare a list of motions or other matters which require Court attention; and

(g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 21st day of January, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Jonas R. Augustin, Pro Se
Jail #120902554
Broward County Detention Center (North)
1550 N.W. 30th Avenue
Pompano Beach, FL 33069

Daniel Lee Losey, Esquire
Billing, Cochran, et al.
SunTrust Center, 6th Floor
515 East Las Olas Boulevard
Fort Lauderdale, FL 33301

Hon. Federico A. Moreno, Chief Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND INCORPORATED SUPPORTING MEMORANDUM OF LAW

COME NOW the Defendants, PAUL CONDOLEO ("Condoleo") and TOM MCINERNEY ("McInerney"), by and through their undersigned counsel and pursuant to Rule 56, Federal Rules of Civil Procedure, and Rule 7.5, Local Rules of the United States District Court for the Southern District of Florida, hereby submit this Motion for Summary Judgment and Incorporated Supporting Memorandum of Law, and state as follows:

1. In this § 1983 action, Plaintiff, JONAS R. AUGUSTIN ("Augustin"), has alleged that Defendants used excessive force in effecting his arrest following an undercover narcotics operation.

2. In his Complaint, Plaintiff alleges that he was fleeing police officers who were chasing him and was ultimately apprehended and handcuffed outside his aunt's house. (Complaint, p. 3). Plaintiff further alleges that officers "beat" him up while he

was handcuffed and that, as a result, they broke his right hand pinky finger, injured his knee, and injured his back. (Complaint, p. 3).

3. Although Plaintiff did name Condoleo and McInerney as Defendants in the Complaint, the allegations in the Complaint refer only to "police officers" and "officers," and not specifically to Condoleo and McInerney. The undisputed evidence of record affirmatively demonstrates that neither Condoleo or McInerney were present during, nor did they participate in, Plaintiff's physical apprehension, handcuffing, and placement in a marked police vehicle. Thus, the record demonstrates that neither Condoleo nor McInerney exerted any force whatsoever on Plaintiff, nor were they even in a position to do so. There are no disputed issues of fact concerning this issue, and Defendants are entitled to summary judgment on this basis alone.

4. Moreover, Plaintiff's allegations in the Complaint regarding his injuries are contradicted by his own deposition testimony, which is itself internally contradictory on many points, and also by the other record evidence of this case. The undisputed evidence, as opposed to Plaintiff's mere uncorroborated allegations, clearly indicates that to the extent Plaintiff suffered any injuries whatsoever incident to his arrest, they were *de minimis* as a matter of law. Furthermore, the undisputed evidence also indicates that any force applied during Plaintiff's arrest was *de minimis*, reasonable, and not excessive. Accordingly, even if Defendants were to have engaged in the alleged conduct, of which there is no evidence, there would be no constitutional violation, and therefore, Plaintiff's claims cannot survive summary judgment. Furthermore, even if there were a constitutional violation, Defendants would be entitled to qualified immunity as a matter of law and, therefore, entitled to summary judgment on that ground.

5. For the foregoing reasons, developed in more detail below, Defendants Condoleo and McInerney are entitled to summary judgment as a matter of law.

UNCONTESTED FACTS

In order to avoid redundancy, Defendants direct the Court to their Statement of Material Facts in Support of their Motion for Summary Judgment ("Statement of Facts"), filed separately in conjunction with this Motion.

MEMORANDUM OF LAW

Summary Judgment Standard

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The movant may meet its burden by presenting evidence indicating there is no dispute of material fact or by showing that the nonmoving party has failed to present evidence in support of some element of its case on which it bears the ultimate burden of proof. Celotex, 477 U.S. at 322-24. Then, the burden shifts to the plaintiff to establish, with appropriate evidence beyond the pleadings, that a genuine issue material to his case exists. Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991); Celotex, 477 U.S. at 324. The Eleventh Circuit has held that "[c]onclusory, uncorroborated allegations by a plaintiff in an affidavit or deposition will not create an issue of fact for trial sufficient to defeat a well supported summary judgment motion." West v. Higgins, 2009 WL 2993823, at *2 (11th Cir. Sept. 21, 2009) (citing Earley v. Champion Int'l Corp., 907 F.2d 1077, 1081 (11th Cir. 1990)).

To survive a motion for summary judgment, the nonmoving party must establish that there is a genuine issue of material fact. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986). When a plaintiff fails to set forth specific facts supported by requisite evidence sufficient to establish the existence of an element essential to his case and on which the plaintiff will bear the burden of proof at trial, summary judgment is due to be granted in favor of the moving party. Celotex, 477 U.S. at 322. If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990). If the record as a whole would preclude a rational fact finder from deciding in the nonmoving party's favor, then no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Matsushita, 475 U.S. at 587.

Here, Plaintiff fails to "make a showing sufficient to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial," Celotex, 477 U.S. at 322, namely, that Defendants used excessive force against him and caused him injuries on October 16, 2009.

ARGUMENT

I. The undisputed record evidence establishes that Defendants did not participate in, nor were they even present during, Plaintiff's physical apprehension, handcuffing, and placement in a marked police vehicle.

McInerney and Condoleo have each testified in sworn affidavits indicating their whereabouts during the time Plaintiff was pursued, physically apprehended, handcuffed,

and placed in a marked police vehicle. (See Affidavit of Thomas McInerney; Affidavit of Paul Condoleo, filed in conjunction herewith). McInerney's Affidavit indicates he remained in the undercover vehicle as Plaintiff was being pursued on foot by other deputies, who eventually apprehended Plaintiff and took him into custody outside McInerney's presence. (¶ 5). McInerney did not see Plaintiff until he had already been taken into custody, handcuffed, and was being led out of a yard into the street where he was placed into a marked police vehicle. (Affidavit of Thomas McInerney, ¶ 6). Condoleo's Affidavit indicates that, during the entire period of the undercover narcotics operation, and during the subsequent pursuit and arrest of Plaintiff, Condoleo remained in an unmarked vehicle maintaining a perimeter position. (¶¶ 5, 6). He did not ever leave his vehicle to pursue Plaintiff on foot and was not present when Plaintiff was apprehended and taken into custody by other deputies. (Affidavit of Paul Condoleo, ¶¶ 6, 8). The first time Condoleo saw Plaintiff was when he was in handcuffs being placed into the rear of a marked police car by other deputies. (Affidavit of Paul Condoleo, ¶ 7).

The accounts in the Affidavits of Condoleo and McInerney are corroborated by the Affidavit of Daniel Fitzpatrick, the lone Sergeant in charge of the undercover narcotics operation. Fitzpatrick's Affidavit indicates that he was present when deputies apprehended Plaintiff, handcuffed him, and took him into custody, and that neither McInerney nor Condoleo were present when Plaintiff was apprehended, handcuffed, and taken into custody by other deputies. (Affidavit of Daniel Fitzpatrick, ¶ 6). The foregoing evidence indicates that neither McInerney nor Condoleo were even present during the events Plaintiff complains of, much less that they used any force whatsoever against Plaintiff.

In his Complaint, Plaintiff merely alleges that "police officers" beat him up after handcuffing him. He does not identify the officers. During his deposition, Plaintiff attributed more specific conduct to McInerney and Condoleo. However, Plaintiff admitted that he did not know either McInerney or Condoleo prior to his arrest on October 16, 2009. (See Statement of Facts). When Plaintiff was questioned as to how he knew it was McInerney and Condoleo who arrested him, Plaintiff admitted he had just seen their names in the police report. (See Statement of Facts).[1] Plaintiff further testified that he was unconscious the entire time he was beaten after being handcuffed. (See Statement of Facts). Thus, Plaintiff, being in an unconscious state, would not have the ability to see which officer or officers were doing what. In addition, Plaintiff's description of what McInerney was wearing at the time in question is completely contradicted by the available video footage of the undercover operation, as well as McInerney's Affidavit. (See Statement of Facts; Affidavit of Thomas McInerney, ¶ 5).

The allegations in Plaintiff's Complaint and his deposition testimony do not create any issues of fact with respect to the Defendants' non-presence and non-participation with respect to Plaintiff's being physically taken into custody. Though courts must typically accept the plaintiff's version of the facts, the United States Supreme Court has recognized that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007); see also Beshers v.

[1] Condoleo was assigned to complete the Probable Cause Affidavit for Plaintiff's arrest after Plaintiff was taken into custody. (Affidavit of Paul Condoleo, ¶ 9).

Harrison, 495 F.3d 1260, 1262 (11th Cir. 2007); Kesinger ex rel. Estate of Kesinger v. Herrington, 381 F.3d 1243, 1248 (11th Cir. 2004).

In Scott v. Harris, the Supreme Court considered the fact that the record contained a video recording of the events at issue. Appreciating the significance of the extrinsic evidence, the Court reasoned that where there was tangible physical evidence which "utterly discredited" the plaintiff's version of events, his version, even if in contrast to the defendant's, should not preclude summary judgment. 550 U.S. at 380. A plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Id. (citation and internal quotation marks omitted). "'[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment . . . .'" Id.; (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)).

II. The undisputed record evidence establishes that both the level of force used and Plaintiff's resulting injuries were *de minimis* as a matter of law, and, therefore, no constitutional violation occurred.

Despite Plaintiff's allegations that he was subject to excessive force during his arrest, the evidence of record indicates that any alleged injuries suffered were *de minimis* and that any force which allegedly caused such injuries was *de minimis* as a matter of law.

The Supreme Court has recognized that the right to make an arrest inherently carries with it the right to use a reasonable amount of force. Saucier v. Katz, 533 U.S. 194, 208 (2001). Moreover, in the Eleventh Circuit, it is recognized that the typical arrest involves some force and injury. Rodriguez v. Farrell, 280 F.3d 1341, 1351 (11th Cir. 2002). All claims that law enforcement officers have used excessive force during a

seizure are analyzed under the reasonableness standard of the Fourth Amendment. Graham v. Connor, 490 U.S. 386, 394-95 (1989). The reasonableness inquiry is objective, "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 396-97. Courts must pay careful attention to the facts and circumstances of the particular situation, and Graham identifies several relevant factors: (1) severity of the crime; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Id. at 396.

Here, Plaintiff was arrested following his sale of fifty dollars worth of crack cocaine to the undercover detective, McInerney, in the course of fleeing pursuing law enforcement officers on foot. Plaintiff is not contesting his arrest in this action.

There is no constitutional prohibition against the use of force unless such force is the sort "repugnant to the conscience of mankind." Whitley v. Albers, 475 U.S. 312, 327 (1986). The Eleventh Circuit has made clear that "some use of force by a police officer when making a custodial arrest is necessary and altogether lawful, regardless of the severity of the alleged offense." Durruthy v. Pastor, 351 F.3d 1080, 1094 (11th Cir. 2003). There, the court held that even if the force applied in effecting the arrest which included forcing the plaintiff to the ground and placing him in handcuffs was unnecessary, "plainly it was not unlawful" and was *de minimis*. See id.; see also Foster v. Metro. Airports Comm'n, 914 F.2d 1076, 1082 (8th Cir. 1990) (allegations of pain without more permanent or long-term injury were insufficient to support a claim of excessive force).

In the Eleventh Circuit, "the application of de minimis force, without more, will not support a claim for excessive force in violation of the Fourth Amendment." Nolin v. Isbell, 207 F.3d 1253, 1257 (11th Cir. 2001). This principle applies to a minimal amount of force and a minimal injury: "[A] minimal amount of force and injury . . . will not defeat an officer's qualified immunity in an excessive force case." Id. at 1258. Discussing the case of Jones v. City of Dothan, 121 F.3d 1456, 1460-61 (11th Cir. 1997), the Nolin court observed that while the use of force against the plaintiff in Jones may have been unnecessary, "the actual force used and the injury inflicted were both minor in nature. Given such variables, the application of the excessive force standard would not inevitably lead an official in the defendant officer's position to conclude that the force was unlawful." Id. at 1256-57. "In summary, minimal force and injury will not defeat qualified immunity; unnecessary force which is minimal and inflicts only minor injury will not inevitably defeat qualified immunity." Bradley v. West, 2007 WL 896274, at *6 (M.D. Ala. Mar. 22, 2007).

In Nolin v. Isbell, the Eleventh Circuit held that the officer was entitled to qualified immunity from the plaintiff's excessive force claims given the minimal amount of force and injury. 207 F.3d at 1257-58. There, the plaintiff alleged he was grabbed from behind by the shoulder and wrist, thrown against a van three or four feet away, kneed in the back, and had his head pushed into the side of a van for which he suffered bruising which disappeared quickly and for which no medical attention was required. See id.; see also Rodriguez v. Farrell, 280 F.3d 1341 (11th Cir. 2002) (officer entitled to summary judgment since force was not excessive where he grabbed the arrestee's arm, twisting it around his back, jerking it up high to his shoulder and then handcuffed him as

he fell to his knees screaming that the officer was hurting him and the handcuffs were not removed until his arrival at the police station); Taylor v. McDuffie, 155 F.3d 479 (4th Cir. 1998) (in spite of plaintiff's claims that police baton was shoved into his mouth and nose approximately 8-10 times, only slight swelling of the jaw and some irritation of membranes of the mouth were found "clearly de minimis" and not excessive as were abrasions of the wrists and ankles and tenderness over some ribs).

A number of Eleventh Circuit cases have found the use of force to be *de minimis*, and therefore incapable of precluding summary judgment. See, e.g., Crosby v. Monroe County, 394 F.3d 1328 (11th Cir. 2004) (foot in the face causing no injury); Nolin v. Isbell, 207 F.3d 1253, 1255 (11th Cir. 2000) (grabbed plaintiff and shoved him a few feet against a vehicle, pushed knee in back and head against van, and handcuffed him); Gold v. City of Miami, 121 F.3d 1442, 1444 (11th Cir. 1997) (handcuffed too tightly and for twenty minutes); Jones v. City of Dothan, 121 F.3d 1456, 1458 (11th Cir. 1997) (slammed plaintiff against the wall, kicked legs apart and required plaintiff to raise hands above head as officers carried out arrest); Post v. City of Fort Lauderdale, 7 F.3d 1552, 1556 (11th Cir. 1993) (pushed plaintiff against wall while handcuffed), modified, 14 F.3d 583 (11th Cir. 1994); see also Lee v. Ferraro, 284 F.3d 1188, 1199-1200 (11th Cir. 2002) (discussing these *de minimis* force cases).

In cases where plaintiffs have claimed to have sustained a physical injury as the result of the use of force, courts have refined the scope of those injuries deemed violative of the constitution, holding that "a physical injury is an observable or diagnosable medical condition requiring treatment by a medical care professional. It is not a sore muscle, an aching back, a scratch, an abrasion, a bruise, etc., which may last

up to 2-3 weeks." Smith v. City of Moultrie, 2007 WL 2684983, at *5 (M.D. Ga. Sept. 7, 2007) (citation omitted); Clay v. Water, 2007 WL 2874266, at *3 (M.D. Ga. Sept. 26, 2007) (citation omitted); see also Rodriguez v. Farrell, 280 F.3d 1341 (11th Cir. 2002); Nolin v. Isbell, 207 F.3d 1253, 1257-58 (11th Cir. 2000); Durruthy v. Pastor, 351 F.3d 1080, 1094 (11th Cir. 2003).

Summary judgment is appropriate where a plaintiff fails to produce evidence of physical injuries exceeding the Eleventh Circuit *de minimis* standard as stated in Nolin. See Bradley v. West, 2007 WL 896274, at *7 (M.D. Ala. Mar. 22, 2007). The lack of such an injury may be demonstrated by a failure to produce competent medical evidence of injuries and a failure to seek immediate medical care. See id. Here, the record establishes that to the extent Plaintiff was injured at all during his arrest, any such injuries are *de minimis* as a matter of law. The record further establishes that any force resulting in such *de minimis* injuries was also *de minimis*. Accordingly, Plaintiff cannot establish any constitutional violation based on excessive force, and his claims fail as a matter of law.

As developed in great detail in Defendants' Statement of Facts, Plaintiff's accounts of the events surrounding his arrest in his Complaint and in his deposition are hopelessly inconsistent. In the Complaint, the only injuries Plaintiff identifies are a broken pinky finger on his right hand, injury to his knee, and injury to his back. (Complaint, p. 3). However, when Plaintiff was taken to North Broward Medical Center for medical clearance immediately following his apprehension and arrest, he complained only of right jaw pain, cuts to his left small toe, and contusions to his left leg and face. (See Statement of Facts). The hospital records indicated that during the

physician's physical exam of Plaintiff, the only injuries noted were a skin tear to his left small toe and an abrasion to the back of his left shoulder. (See Statement of Facts). The physician indicated there was no bruising or swelling to the face. (See Statement of Facts).

Upon Plaintiff's arrival at the Broward County Jail, he was medically screened and indicated that he was not currently ill or injured. (See Statement of Facts). The screening nurse indicated that Plaintiff did not have signs of pain, bleeding, or injury. (See Statement of Facts). Plaintiff was asked if he had any medical problems, including back problems, and he indicated he had only right hip pain. (See Statement of Facts). Plaintiff's booking photograph does not depict any signs of trauma or injury to his face or mouth. (See Statement of Facts). Plaintiff's deposition testimony that he did not have any back problems prior to his October 16, 2009 arrest is blatantly contradicted by the records from his incarceration only seven months earlier, in March 2009, which indicate numerous complaints of back pain. (See Statement of Facts).

Thus, the record evidence demonstrates that the only injuries which are at all substantiated beyond Plaintiff's assertions in his Complaint and at deposition are *de minimis.* Even if the scrape to Plaintiff's pinky toe was caused by his being dragged from the yard to the police car, as he claimed at deposition – as opposed to being caused by running through yards and jumping over fences in flip-flop sandals – this injury would be *de minimis.*

The amount of force required to cause the *de minimis* injuries in this case is also *de minimis*. The injuries documented in the medical and jail records are simply blatantly inconsistent with Plaintiff's assertions during his deposition that he was hit in the head

with a radio and punched repeatedly in the face. No such trauma or injury is reflected in the hospital and jail records from the day of Plaintiff's arrest, including Plaintiff's booking photo. Moreover, Plaintiff testified that after being hit in the head with a radio, he lost consciousness for the entire episode up until the time he was placed in the police car, so there is no explanation for how Plaintiff could possibly be aware if he was, in fact, being punched. Viewing all the circumstances in the light most favorable to Plaintiff, there is insufficient evidence of physical injury to Plaintiff to support a constitutional violation under controlling Eleventh Circuit precedent. See Bradley v. West, 2007 WL 896274, at *8 (M.D. Ala. Mar. 22, 2007).

III. Defendants are entitled to qualified immunity.

The existence of qualified immunity is a legal question which is properly decided on summary judgment. Ansley v. Heinrich, 925 F.2d 1339, 1348 (11th Cir. 1991). Qualified immunity shields law enforcement officials from liability for excessive force claims when the official is performing a discretionary function if the official's conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Because the Fourth Amendment's excessive force standard "establishes no bright line, qualified immunity applies unless the application of the standard would inevitably lead every reasonable officer to conclude the force was unlawful." Post v. City of Fort Lauderdale, 7 F.3d 1552, 1559 (11th Cir. 1993), modified on other grounds, 14 F.3d 583 (11th Cir. 1994). "If case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." Id. at 1557.

To deprive a public official of qualified immunity, the plaintiff must first show that the officer has violated a constitutional right. Second, assuming adequate proof of a constitutional violation, the plaintiff must show that the constitutional right in question was so clearly established that the officer had "notice" or "fair warning" that his or her conduct was constitutionally prohibited. In other words, if the Plaintiff's constitutional rights were violated, qualified immunity applies unless "at the time of the incident, every objectively reasonable police officer would have realized the acts violated already clearly established federal law." Garrett v. Athens-Clarke County, 378 F.3d 1274, 1278-79 (11th Cir. 2004).

As demonstrated above, the use of force in this case was not clearly excessive, and thus the Defendants are entitled to qualified immunity on the excessive force claim. Even assuming *arguendo* that there was a constitutional violation, which Defendants strongly deny, the Defendants are entitled to qualified immunity under the clearly established violation analysis. There are no disputed issues of fact on this issue, and accordingly, Defendants are entitled to summary judgment in their favor on the basis of qualified immunity.

CONCLUSION

The foregoing makes clear that neither McInerney nor Condoleo were present when Plaintiff was physically apprehended, taken into custody, and placed into a police car by other deputies. There is no evidence either Defendant exercised any force whatsoever against Plaintiff, or even had the opportunity to do so. Moreover, any injuries suffered by Plaintiff incident to his arrest are de minimis as a matter of law, as is the level of force used in effecting Plaintiff's arrest. Because of the de minimis nature of

the force and injuries, there was no constitutional violation. Furthermore, because there was no constitutional violation, Defendants are entitled to qualified immunity. For all these reasons, Defendants are entitled to summary judgment with respect to all of Plaintiff's claims.

WHEREFORE, Defendants, PAUL CONDOLEO and TOM MCINERNEY, respectfully request that this Honorable Court enter an Order granting this Motion, entering summary judgment in favor of Defendants with respect to all of Plaintiff's claims against them, and providing any such further relief that the Court deems just and appropriate.

Dated on: June 9, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 9, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel L. Losey
Daniel L. Losey

Jonas R. Augustin
DC# L52830
Florida State Prison - West Unit
7819 N.W. 228th St.
Raiford, FL 32026-3000
Plaintiff, Pro Se
VIA CERTIFIED MAIL

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, PAUL CONDOLEO AND TOM MCINERNEY, by and through their undersigned counsel, and pursuant to Federal Rules of Civil Procedure 56 and Rule 7.5(c), Local Rules of the United States District Court for the Southern District of Florida, hereby file this Statement of Material Facts in Support of their Motion for Summary Judgment as follows:

STATEMENT OF FACTS

1. On October 16, 2009, at approximately 12:30 p.m., undercover BSO Narcotics Detective Tom McInerney met in an undercover capacity with Jonas Augustin at which time Mr. Augustin delivered fifty dollars worth of crack cocaine to the undercover detective [See Probable Cause Affidavit dated October 16, 2009 and DVD of narcotics transaction dated October 16, 2009].

2. During this transaction Detective McInerney was wearing a white sleeveless t-shirt and beige camo colored shorts as he sat in the driver's seat of the undercover

vehicle. [See DVD of narcotics transaction dated October 16, 2009].

3. After Mr. Augustin delivered several crack cocaine rocks to Detective McInerney and Detective McInerney in turn paid Mr. Augustin fifty dollars for the cocaine, Mr. Augustin was offering to sell additional amounts of cocaine to Detective McInerney as other BSO deputies approached Mr. Augustin and attempted to place him under arrest. As at least one of the deputies approached he yelled "Sheriff's Office get on the ground" but Mr. Augustin fled from the police officers. [See DVD of narcotics transaction dated October 16, 2009 and deposition of Jonas Augustin taken April 14, 2011 page 60 line 20 through page 61 line 3].

4. As he fled from the police through the neighborhood, Mr. Augustin was wearing flip flop type sandals with the toes open. [See deposition of Jonas Augustin taken April 14, 2011, page 29 lines 8 through 19]. Mr. Augustin admitted that he assumed that the men that were chasing after him were the police. [See deposition of Jonas Augustin taken April 14, 2011, page 115 lines 11 through 24].

5. However, Mr. Augustin knew that if he got arrested he could be deported back to Haiti, [see deposition of Jonas Augustin taken April 14, 2011, page 112 line 24 through page 113 line 2], and Mr. Augustin did not want to go back to Haiti. [See deposition of Jonas Augustin taken April 14, 2011, page 124 lines 17 through 19]. Deportation proceedings have begun on Mr. Augustin as there is an I.C.E. (Immigration and Customs Enforcement) detainer on Mr. Augustin as he serves his prison sentence. [See Florida Department of Corrections Inmate Population Information Detail].

6. While the Plaintiff fled from the police, Detective McInerney remained in the undercover vehicle holding the crack cocaine rocks that had been sold to him by Mr.

Augustin moments earlier. [See DVD of narcotics transaction dated October 16, 2009 and Affidavit of Thomas McInerney].

7. As Mr. Augustin ran through the neighborhood he admits to jumping over at least one fence, while wearing his flip flop sandals, as he fled from the police. [See deposition of Jonas Augustin taken April 14, 2011, page 86 lines 20 through 21].

8. In his deposition the Plaintiff initially stated that it was Detective McInerney that chased and tackled him, [see deposition of Jonas Augustin taken April 14, 2011, page 83 lines 11 through 13], and then the Plaintiff changed his story and stated that he wasn't tackled but that while he was knocking on his aunt's door he turned around and saw that the police were in his aunt's backyard so he laid flat on the ground. [See deposition of Jonas Augustin taken April 14, 2011, page 83 lines 15 through 25]. The Plaintiff claims in his deposition that Detective McInerney was the first deputy to make contact with him and Detective Paul Condoleo was the second. [See deposition of Jonas Augustin taken April 14, 2011, page 81 lines 16 through 23].

9. The Plaintiff contends that Detective McInerney put handcuffs on him and then hit the Plaintiff on the side of his head with his radio. The Plaintiff claims that when Detective McInerney hit him on the right side of his head, he was knocked unconscious until Detectives McInerney and Condoleo lifted him up to his feet and took him out of the backyard to the street. [See deposition of Jonas Augustin taken April 14, 2011, page 98 lines 4 through 9].

10. In his Complaint, the Plaintiff alleges that he was the victim of an excessive use of force during his arrest and he identifies his injuries as only a broken pinky finger on his right hand and "severe back injuries". [See Plaintiff's Complaint , DE #1].

11. After he fled and was arrested the Plaintiff was taken to North Broward Medical Center for medical clearance at which time he advised the health care personnel in the hospital what he was alleging was wrong with him. [See deposition of Jonas Augustin taken April 14, 2011 page 27 lines 4 through 7]. The Plaintiff's medical records from the hospital indicate that on October 16, 2009 the Plaintiff complained only of right jaw pain, cuts to this left small toe and contusions to his left leg and face. [See ED Triage Form 10/16/09 12:40 p.m. and Emergency Physician Record 10/16/09 12:50 p.m.]. However, the hospital records indicate that during a physical examination of the patient by the physician it was noted that there was "no bruising or swelling to the face" and "no swelling to the right thigh or bruising." [See North Broward Medical Center's Physician's Note]. The medical record indicates that the patient's only injuries were a "skin tear to the left fifth metacarpal toe and an abrasion to the posterior left shoulder." [See North Broward Medical Center's Physician's Note]. The patient was noted to be "stable for discharge and released into BSO custody."

12. When the Plaintiff arrived in the Broward County Jail he was medically screened by a nurse during which time an Intake Health Screening by Health Trained Staff form was completed on the Plaintiff. [See Intake Health Screening by Health Trained Staff dated October 16, 2009]. During the medical screening in the jail it was noted in the Questionnaire section that the inmate was asked if he was currently ill or injured and he stated that he was not. [See Intake Health Screening by Health Trained Staff dated October 16, 2009]. In the Observations section of the form, the nurse noted that the inmate did not have signs of pain, bleeding or injury. The screening form indicates that the Plaintiff was asked if he had any medical problems, including back problems, and he

indicated that he only had right hip pain. [See Intake Health Screening by Health Trained Staff dated October 16, 2009].

13. In regard to the Plaintiff's alleged back injury, the Plaintiff testified that prior to being arrested on October 16, 2009, he did not have any problems with his back and he stated that he was positive that he had never complained to anyone about any back pain prior to that arrest. [See deposition of Jonas August taken April 14, 2011, page 37 lines 7 through 23]. However, just seven months earlier, during a previous incarceration in the Broward County Jail, in March 2009, the Plaintiff complained of lower back and mid back pain which he had been experiencing for one week. [See Department of Detention Urgent Medical Care Record dated 3/5/09 pages 1 and 2, and Armor Correctional Health Services, Inc. Progress Note dated 3/11/09]. During this prior incarceration the Plaintiff's complaint of back pain was so extensive that he completed a Sick Call Request requesting to see a doctor claiming that his back was killing him and the medication was not working. [See Armor Correctional Health, Inc. Sick Call Request dated 3/20/09].

14. The Plaintiff's claim is that Detective McInerney and Detective Condoleo took him into custody and in so doing those detectives utilized excessive force. [See Plaintiff's Complaint, DE #1]. However, during his deposition the Plaintiff testified that he did not know Detective Condoleo or Detective McInerney prior to his arrest on October 16, 2009. [See deposition of Jonas August taken April 14, 2011, page 38 lines 5 through 20]. In his deposition when he was questioned about how he knows it was Detective McInerney and Detective Condoleo that arrested him, the Plaintiff admitted that those were the names he saw in the police report. . [See deposition of Jonas August taken April 14, 2011, page 66 line 24 through 68 line 8 and Probable Cause Affidavit dated 10/16/09].

15. In his deposition the Plaintiff testified that he was absolutely certain that Detective Tom McInerney was wearing a black shirt with yellow identification printing stating Broward Sheriff's Office on the shirt and black pants. [See deposition of Jonas August taken April 14, 2011, page 78 line 21 through page 79 line 1]. However, the Plaintiff's sworn testimony concerning what Detective McInerney was wearing is grossly inaccurate as the DVD video recording clearly depicts that Detective McInerney was wearing a white sleeveless t-shirt and light camo colored shorts. [See DVD of narcotics transaction dated October 16, 2009].

16. Additionally, the Plaintiff has testified that when he got beaten up he lost consciousness and doesn't remember anything. [See deposition of Jonas Augustin taken April 14, 2011 page 65 lines 6 through 18]. In spite of the fact that the Plaintiff claims that he was unconscious after Detective McInerney hit him in the head, the Plaintiff claims to remember Detective McInerney punching him several times in the face. [See deposition of Jonas Augustin taken April 14, 2011, page 101 lines 14 through 23]. When asked to describe how Detective Condoleo utilized excessive force, the Plaintiff stated in his deposition that Detective Condoleo also punched him during this time. [See deposition of Jonas Augustin taken April 24, 2011, page 111 lines 13 through 15]. Although the Plaintiff accuses both Detectives McInerney and Condoleo of utilizing excessive force by beating him up after he was handcuffed, the Plaintiff also contends that he was knocked unconscious the entire time that the deputies beat him up. [See deposition of Jonas Augustin taken April 14, 2011, page 96 lines 18 through 21 and page 97 lines 13 through 19].

17. Mr. Augustin claims that when Detective McInerney hit him in the face with

his radio, the radio cut Mr. Augustin's face and caused it to bleed. [See deposition of Jonas August taken April 14, 2011, page 104 lines 10 through 17]. The Plaintiff also claimed that he was also bleeding a great deal from his mouth. [See deposition of Jonas August taken April 14, 2011, page 31 lines 3 through 5 and page 105 lines 8 through 9]. Along with the hospital medical record and jail medical record indicating no bruising, swelling or other injury to the Plaintiff's face or mouth, the Plaintiff's color booking photo taken upon the Plaintiff's entry into the Broward County Jail does not depict any injury whatsoever to the Plaintiff. [Broward County Sheriff's Office Booking Report and color booking photo of Jonas Augustin].

18. As far as the scrape to the Plaintiff's pinky toe was concerned, the Plaintiff testified that he is certain that he didn't scrape his toe while climbing over the fence or otherwise fleeing from the police wearing his flip flop sandals because he runs track. [See deposition of Jonas August taken April 14, 2011, page 105 lines 15 through 19]. In his deposition the Plaintiff alleged that his pinky toe was scraped and bleeding from his being drug out of the backyard to the police car. [See deposition of Jonas August taken April 14, 2011, page 105 lines 11 through 14].

Dated on: June 9, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 9, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel L. Losey
Daniel L. Losey

Jonas R. Augustin
DC# L52830
Florida State Prison - West Unit
7819 N.W. 228th St.
Raiford, FL 32026-3000
Plaintiff, Pro Se
VIA CERTIFIED MAIL

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS' NOTICE OF FILING DOCUMENTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, PAUL CONDOLEO AND TOM MCINERNEY, by and through their undersigned counsel, hereby file the following documents in support of their Motion for Summary Judgment and Memorandum of Law as follows:

1. DVD of narcotics transaction dated October 16, 2009.
2. Florida Department of Corrections Inmate Release Information Detail.
3. Deposition Transcript of Jonas Augustin taken April 14, 2011 pages 27, 29, 31, 37, 38, 60, 61, 65, 66, 67, 68, 78, 79, 81, 83, 86, 96, 97, 98, 101, 104, 105, 111, 112, 113, 115 and 124.
4. Probable Cause Affidavit dated October 16, 2009.
5. ED Triage Form 10/16/09 12:40 p.m.
6. Emergency Physician Record 10/16/09 12:50 p.m.
7. North Broward Medical Center's Physician's Note.

8. Armor Intake Health Screening by Health Trained Staff dated October 16, 2009.
9. Department of Detention Urgent Medical Care Record dated 3/5/09.
10. Armor Correctional Health Services, Inc. Progress note dated 3/11/09.
11. Armor Correctional Health, Inc. Sick Call Request dated 3/20/09.
12. Broward county Sheriff's Office Booking Report, # 120902554.
13. Color booking photo of Jonas Augustin, # 120902554.
14. Affidavit of Thomas McInerney.
15. Affidavit of Paul Condoleo.
16. Affidavit of Daniel Fitzpatrick.

Dated on: June 9, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

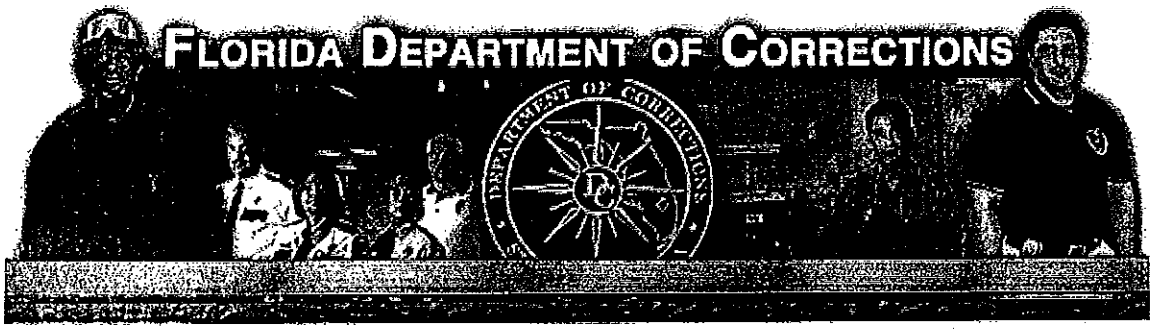
Augustin v. Condoleo , et al.
Case No. 10-62100-CIV-MORENO/WHITE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 9, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel L. Losey
Daniel L. Losey

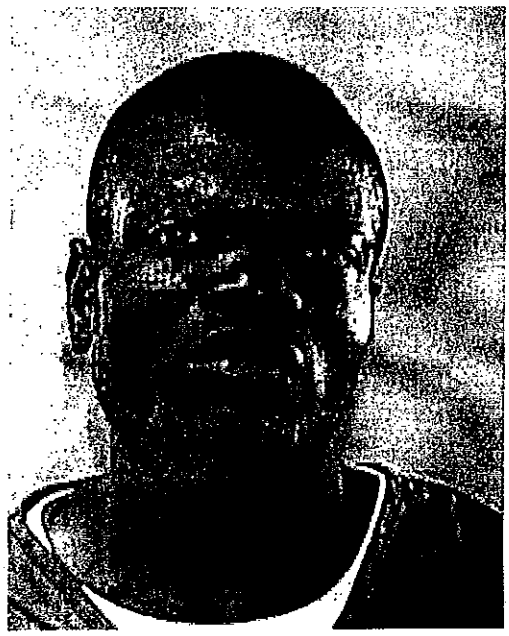
Jonas R. Augustin
DC# L52830
Florida State Prison - West Unit
7819 N.W. 228th St.
Raiford, FL 32026-3000
Plaintiff, Pro Se
VIA CERTIFIED MAIL



Corrections Offender Network

Inmate Population Information Detail

(This information was current as of 6/5/2011)



DC Number:	L52830
Name:	AUGUSTIN, JONAS
Race:	BLACK
Sex:	MALE
Hair Color:	BLACK
Eye Color:	BROWN
Height:	5'08"
Weight:	151 lbs.
Birth Date:	08/23/1983
Initial Receipt Date:	12/28/2010
Current Facility:	FSP WEST UNIT
Current Custody:	CLOSE
Current Release Date:	10/27/2012

(Release Date subject to change pending gain time award, gain time forfeiture, or review. A 'TO BE SET' Release Date is to be established pending review.)

VINELink
CLICK HERE for Custody Status Updates

Special Note:

See Detainer Section

Aliases:	
JONAS AUGUSTIN	JONAS R AUGUSTIN
JONAS RONALD AUGUSTIN	JONAS

Current Prison Sentence History:

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence Length
09/05/2009	SALE COC. ETC. 1K FT.REL/BS	12/14/2010	BROWARD	0919271	3Y 1M 29D
10/16/2009	COCAINE-SALE/MANUF/DELIV.	12/14/2010	BROWARD	0919271	3Y 1M 29D

Note: The offense descriptions are truncated and do not necessarily reflect the crime of conviction. Please refer to the court documents or the Florida Statutes for further information or definition.

Detainers: (Further information may be obtained by contacting the detaining agency)

Detainer Date	Agency	Type	Date Canceled
01/27/2011	ICE MIAMI	DETAIN	
12/01/2005	ICE-MIAMI	DETAIN	09/01/2006

Incarceration History:

Date In-Custody	Date Out-of-Custody
11/29/2005	09/01/2006
12/28/2010	Currently Incarcerated

Prior Prison History: (Note: Data reflected covers periods of incarceration with the Florida Dept.of Corrections since January of 1983)

Offense Date	Offense	Sentence Date	County	Case No.	Prison Sentence Length
10/17/2003	BURG/DWELL/OCCUP.CONVEY	11/18/2005	BROWARD	0321149	2Y 4M 24D

First | Previous | Next | Last | Return to List | New Search | Record: 1 of 1

The Florida Department of Corrections updates this information regularly, to ensure that it is complete and accurate, however this information can change quickly. Therefore, the information on this site may not reflect the true current location, status, release date, or other information regarding an inmate.

This database contains public record information on felony offenders sentenced to the Department of Corrections. This information only includes offenders sentenced to state prison or state supervision. Information contained herein includes current and prior offenses. Offense types include related crimes such as attempts, conspiracies and solicitations to commit crimes. Information on offenders sentenced to county jail, county probation, or any other form of supervision is not contained. The information is derived from court records provided to the Department of Corrections and is made available as a public service to interested citizens. The Department of Corrections makes no guarantee as to the accuracy or completeness of the information contained herein. Any person who believes information provided is not accurate may contact the Department of Corrections.

For questions and comments, you may contact the Department of Corrections, Bureau of Classification and Central Records, at (850) 488-9859 or go to ***Frequently Asked Questions About Inmates for more information****. This information is made available to the public and law enforcement in the interest of public safety.*

Search Criteria: Last Name: augustin First Name: Jonas Search Aliases: on Sex: ALL Race: ALL Offense Category: ALL Classification Status: ALL Current Custody: ALL Identifier Type: ALL County of Commitment: ALL Current Location: ALL Eye Color: ALL Hair Color: ALL

Return to Corrections Offender Information Network

Privacy Policy | **Accessibility**

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

ORIGINAL

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.

_____/

The videotaped deposition of JONAS R. AUGUSTIN was taken pursuant to Notice of Taking Videotape Deposition, on behalf of the Defendants, on Thursday, April 14, 2011, at 7819 NW 228th Street, Raiford, Florida; commencing at approximately 11:30 a.m., before Kenna I. Tillman, Court Reporter and Notary Public in and for the State of Florida at Large.

Cp

1 **hospital look at you?**
2 A Yes. I don't -- I don't know if it's a doctor
3 or not but I just see somebody.
4 **Q Okay. Whoever it was that saw you in the**
5 **hospital, a healthcare person in the hospital, did they**
6 **ask you what was wrong with you?**
7 A Yes, I explained everything.
8 **Q Okay. What did you tell them was wrong with**
9 **you when you first came to that hospital?**
10 A Well, actually, I could've -- I couldn't do too
11 much talking but I assuming that I warned them about
12 what's going on at first, okay? I was -- I was being
13 beat up by the --
14 **Q Okay. I'm not asking you about that yet.**
15 A Okay. Okay. Okay. Okay. So --
16 **Q Hold on. I just want you to tell me what the**
17 **doctors and healthcare providers in the hospital said to**
18 **you. What did you talk to them about?**
19 A Well, I told them -- I actually talked to the
20 doctor and the doctor just look at me and all that
21 stuff. And so when I'm trying to explain so the doctor
22 can really provide me with actually what I actually try
23 to explain to -- because I'm trying to let this doctor
24 know I'm in pain, and -- and I need to get -- I need to
25 get treated for the pain that I'm in right now, but the

1 Q **The right pinky finger?**
2 A Yes.
3 Q **Okay. And which knee was having pain?**
4 A My right knee. That knee right there
5 (indicating).
6 Q **Okay. And which pinky toe was having pain?**
7 A This one right here from my left feet.
8 Q **And by the way, when you were arrested on**
9 **October 16th, 2009, were you wearing shoes at the time**
10 **that you were arrested?**
11 A I was wearing like a Jesus flip -- flip
12 sandals, yeah.
13 Q **Flip-flop sandals, right?**
14 A Have you ever seen the -- what the type of
15 sandals and stuff that come around the way around like
16 that?
17 Q **But your toes are open, your foot is open,**
18 **right?**
19 A Yeah.
20 Q **It's a sandal?**
21 A Right. Right.
22 Q **Okay. All right. So you told the healthcare**
23 **providers in the jail all of these areas that you were**
24 **having pain and they looked at you, correct?**
25 A Yes.

1 A All around, down by the bottom of my teeth and
2 all that stuff like that.
3 **Q Okay. So your top lip was injured, your bottom**
4 **lip and up by your teeth were all bleeding, right?**
5 A Yeah. Yeah.
6 **Q Okay. So you're saying that a nurse came up**
7 **and said, oh my God, what happened?**
8 A Yes.
9 **Q What did that nurse look like?**
10 A I can't really describe how she look like
11 because I only seen her one time, not even -- not even
12 for 30 minutes, it's somebody that I actually seen for
13 about like --
14 **Q Okay.**
15 A But she -- she just -- I assume she just a
16 white lady, that's all.
17 **Q A white -- a white nurse?**
18 A Yes, a white nurse.
19 **Q Okay. All right. Anything else that you**
20 **remember happening in the hospital?**
21 A And -- and I remember that the doctor actually
22 came up to me and say that to sign a paperwork. And I
23 told the doctor did he mind if I read the paperwork.
24 And the doctor say, no, you cannot read the paperwork.
25 So -- and I'm like, wow.

1 that, I be -- yeah, I've been in pain a couple times and
2 stuff like that, like -- like when -- like when I'm
3 about to get ready to go to bed and stuff like that.
4 Sometimes I woke up because, you know, I'm in pain from
5 my fingers and stuff like that.
6 **Q No, no, no, you didn't hear what I said.**
7 **Before you were arrested October the 16th, 2009 --**
8 A Oh, okay.
9 **Q -- before that happened --**
10 A Uh-huh.
11 **Q -- did you have any problems with your back at**
12 **any time?**
13 A Not to my knowledge.
14 **Q Nothing? You didn't have any pain? Your back**
15 **was perfectly fine before the deputies arrested you,**
16 **right?**
17 A Yes, sir.
18 **Q Yes. And you're sure?**
19 A Positive.
20 **Q Okay. You'd never complained to anyone about**
21 **any back pain before that? The back pain all started**
22 **after you were arrested, right?**
23 A Positive.
24 **Q Okay. All right. I saw some records that said**
25 **that back in 2003 at one point you had attempted suicide**

1 by taking a bunch of oxycodone, percocets. Did that
2 happen?
3 A Yes, that's -- yeah, that's in the past and
4 stuff like that.
5 Q Okay. The two deputies that you're suing,
6 Deputy Paul Condoleo and, before October the 16th, 2009,
7 did you even know who he was?
8 A No.
9 Q No. And the same question --
10 A You're saying do I even know who he was?
11 Q No, no. Before October the 16th, 2009, when
12 the arrest happened, did you even -- did you even know
13 who Paul Condoleo was?
14 A No.
15 Q No. And the same question for Deputy Tom
16 McInerney. Before October the 16th, 2009, did you even
17 know who he was?
18 A Before the incident happened?
19 Q Yes, before the arrest, right?
20 A No.
21 Q Okay. So you hadn't had any run-ins with
22 either of these deputies before that, right, before
23 October 16, 2009? You'd never ever seen them before,
24 right? Is that what you're saying?
25 A Never seen Tom McKinney (SIC) never in my life

1 A Okay. You're asking me, look, go to the
2 grocery store, it's like, get this for me. And I want
3 to go ahead and go get it for you --
4 **Q Right.**
5 A -- and I bring it to you.
6 **Q Yes.**
7 A And as soon as I did finish doing that -- as
8 soon as I done bringing it to you and walk away from
9 you --
10 **Q Yes.**
11 A -- okay? Then when I walk away from you, and
12 about like 30 -- about like 15 to 20 seconds later and
13 all I was hearing was get on the ground, okay?
14 **Q Okay.**
15 A When I heard that, I see a bunch of people was
16 black and I don't know who they were and I just running
17 because I was -- I was shocked and I don't know what it
18 was going on.
19 **Q Okay. So let me see if I have this right. On**
20 **October the 16th, 2009 you met with some people, they**
21 **asked for you to get them crack cocaine, they gave you**
22 **money to get the crack cocaine --**
23 A Uh-huh.
24 **Q -- and then you gave the people --**
25 A Uh-huh.

1 Q -- crack cocaine. Then you hear some deputies
2 yell, get on the ground, and you ran, right?
3 A Yes.
4 Q Okay. We know you've sued Paul Condoleo and
5 Tom McInerney. What does Paul Condoleo, what does he
6 look like?
7 A Okay. You tell me what does Paul Condoleo look
8 like?
9 Q Yes.
10 A All I can tell you about Paul Condoleo --
11 Q Stop. You're starting to answer a question
12 that I didn't ask.
13 A Okay.
14 Q My question is very simple. Please describe
15 for this jury what Paul Condoleo looks like.
16 A He just a white person.
17 Q So other than Paul Condoleo being a white
18 person --
19 A Uh-huh.
20 Q -- you can't remember anything else about what
21 he looked like?
22 A Be honest? If he's here, I would identify who
23 it is because I'm not an artist --
24 Q Well, Paul Condoleo is not in the Florida State
25 Prison. So what this jury needs to know --

1 A Hold on. Hold on. Hold on. Wait a minute. I
2 only seen him stand when he was in the car. I made
3 a -- I made a mistake because I only seen him stand
4 when -- only time I say that I seen this man stand --
5 **Q Yes.**
6 A -- is when I got beat up and that particular
7 time, and I lost conscious and I don't remember nothing,
8 okay. So I can't tell you the final fact of how does
9 a -- how -- how height it is -- how tall it is right now
10 because these people had to drag me to the hospital
11 because I was totally a different person.
12 **Q Okay. Let me see if I have you right. When**
13 **you were arrested, you lost consciousness --**
14 A Uh-huh.
15 **Q -- and that's why you can't tell us even how**
16 **tall Paul Condoleo is, right?**
17 A Yeah, pretty much it's all that stuff, you
18 know.
19 **Q Okay. But because you lost consciousness, were**
20 **you not able to see how heavy he was; whether he was**
21 **fat, or skinny, or whatever, or can you tell us that?**
22 A Apparently at the time when he -- yeah, when he
23 came up and stuff like that there, he wasn't really --
24 he wasn't really fat. And it's not really a fat person
25 and he's not really a skinny person either.

1 Q Okay. So --
2 A It's just like --
3 Q Your testimony to this jury is that you're sure
4 that Paul Condoleo is not heavy set or fat at all,
5 right? That's what you're saying?
6 A That -- that -- yeah, I'm gonna get to that
7 point, but . . .
8 Q So if Paul Condoleo is a heavy man, an
9 overweight man, a fat man, then you don't know who Paul
10 Condoleo is because you've just described him as not
11 being fat or heavy, right?
12 A No, no, no. What I'm saying is that I can't
13 really told a person about a heavy weight because --
14 Q Yeah, here's what happened. Mr. Augustin,
15 here's what happened --
16 A Uh-huh.
17 Q Here's what happened: You took off running
18 after the cocaine transaction --
19 A Uh-huh.
20 Q -- and several deputies caught you and you
21 don't remember what any of them looked like, you just
22 know you got arrested and handcuffed and taken to jail;
23 that's the truth, isn't it?
24 A Okay. Let me tell you something, I got
25 arrested, okay, by Paul Condoleo. I got arrested by Tom

1 McKinney, so these are the two officers that I got
2 arrested by.
3 **Q How do you know that?**
4 A Okay?
5 **Q How do you know that?**
6 A How do I know that?
7 **Q Yes. How do you know their names?**
8 A That's what it is showing right here to me.
9 **Q I know. You got those names and that's who you**
10 **sued because on the paperwork for your arrest --**
11 A Uh-huh.
12 **Q -- those are the two deputies that are**
13 **mentioned, right? Those are the two names in there,**
14 **right?**
15 A Those are the two deputies that mentioned --
16 that mentioned and those are the deputies that actually
17 acknowledged that when they caught me. Okay? When they
18 actually got me from my auntie house and all that stuff.
19 So these are the ones that first end up and saw me and
20 caught me and stuff like this, and given all confirming
21 statement and all that stuff, as well as that
22 acknowledge about they names in the police report as
23 well, so . . .
24 **Q Okay. You've got the names and that's the**
25 **people you wrote into your lawsuit because in the**

1 **paperwork, about the report --**
2 A Uh-huh.
3 **Q -- that talks -- the police report that talks**
4 **about what happened, the two names that are in there are**
5 **Paul Condoleo and Tom McInerney, right? That's where**
6 **you got their names.**
7 A That's where I -- that's where I get these
8 names right here.
9 **Q Right. But --**
10 A That's only when that I actually acknowledging
11 their names and stuff like that.
12 **Q Okay. I got it.**
13 A Okay.
14 **Q You got the names out of the police report --**
15 A Okay.
16 **Q -- but we've already talked about that deputies**
17 **took you into custody and put handcuffs on you. But you**
18 **don't know the names of those deputies that put you in**
19 **custody because you don't even know Condoleo and**
20 **McInerney. You don't even know who they were before**
21 **this, right?**
22 A No. Because I seen -- I see one of these -- I
23 see the whatcha-ma-call-it name when they actually
24 screaming at him, when they was screaming out his name.
25 **Q What?**

1 Q **Okay. That's all I want to know.**
2 A -- from October 16.
3 Q **Yeah, that's what we're talking about.**
4 A But if you're telling me about September --
5 Q **Stop. Stop.**
6 A Okay.
7 Q **Stop.**
8 A Okay. Go ahead.
9 Q **We're not talking about September.**
10 A Okay. Okay. Okay.
11 Q **We -- listen, I want to be crystal clear here.**
12 A Okay.
13 Q **What we are talking about is October the**
14 **16th --**
15 A Okay.
16 Q **-- 2009 --**
17 A Okay.
18 Q **-- at the time you say excessive force was used**
19 **on you.**
20 A Yes.
21 Q **Are you certain, absolutely sure --**
22 A Uh-huh.
23 Q **-- positive that Tom McInerney was wearing a**
24 **black shirt with yellow identification about Broward**
25 **Sheriff's Office and black pants; are you sure?**

1 A Yes.
2 **Q Okay. And you're also absolutely sure at that**
3 **time that Paul Condoleo was wearing what? Tell us what**
4 **he was wearing at that time.**
5 A Paul Condoleo?
6 **Q Yes. October 16th, what was he wearing?**
7 A A black shirt.
8 **Q Yes?**
9 A With a black pants and as well as he had the
10 pockets just like the Army fatigue pants.
11 **Q Okay.**
12 A Okay? That's the --
13 **Q Got it. And there were other deputies there at**
14 **the time of the arrest also, right? Or was it just**
15 **these two?**
16 A There were other deputies actually when they
17 actually get me out of my -- from my auntie's backyard,
18 and that's when I actually seen all the deputies.
19 **Q Okay.**
20 A Okay?
21 **Q Let me --**
22 A These other deputies was wearing full -- full
23 clothes -- full clothes on and just like the regular
24 police on the streets.
25 **Q Okay.**

1 A And that one -- and the one that actually -- go
2 ahead. Go ahead. Go ahead.
3 **Q You got to stop --**
4 A I'm sorry. I'm sorry.
5 **Q -- interrupting me.**
6 A I'm sorry. I'm sorry.
7 **Q Okay. I'll start over. You've told us what**
8 **Condoleo was wearing --**
9 A Uh-huh.
10 **Q -- you've told us what McInerney was wearing,**
11 **and now you're telling us that there were two other**
12 **deputies that were dressed like them and one of them had**
13 **a ski mask on; is that right?**
14 A Yes.
15 **Q Okay.**
16 A But them two there, the only get in the scene
17 after when them two -- when Tom McKinney and Paul
18 Condoleo, and Tom McKinney, he was the first one that
19 got me, that end up in -- on top of me as well, and Paul
20 Condoleo was the second one that actually came in and
21 stuff like that right there. So the both are -- came up
22 and stuff like that and started beating me up when I was
23 in handcuffs, okay.
24 **Q Hold on. Let me see if I have this right.**
25 A Uh-huh.

1 they say that -- then they also actually -- then here's
2 this other dude came in with the ski mask on talking
3 about look, I got to get me some of this, I got to get
4 me some of this. You know what I'm saying? So --
5 **Q Some what?**
6 A I guess like beat me up too as well. Because
7 when he say he got to get some of this, and I'm
8 handcuffed, he just punched me in the stomach.
9 **Q Okay. Tell me what Tom McInerney --**
10 A So --
11 **Q Stop. We know Tom McInerney chased you,**
12 **tackled you and took you to the ground; is that right?**
13 A Yes.
14 **Q What else did Tom McInerney do?**
15 A Well, when they did that, they don't tack me on
16 the ground, okay? They don't -- that chase and all that
17 stuff, they don't never get no chance to tackle me
18 nowhere on the ground. All they just doing is that they
19 just jump in my auntie -- they just -- they just break
20 in through my auntie's backyard, okay, then they bust
21 in, bam. When they bust in, then I'm knocking on the
22 door, calling my cousin, then when I turn around and I
23 see nothing but police officers in my auntie backyard,
24 and what I did, I back up away from the door and I laid
25 down flat on my chest.

1 A Yeah. Some kind of type of metal, but --
2 **Q Yeah. Okay. So Tom McInerney puts the**
3 **handcuffs on you --**
4 A Uh-huh.
5 **Q -- then what happened?**
6 A Then -- when they put the handcuff on me, then
7 that's when the other officers actually start came in,
8 then I'm laid down like this here (indicating), then
9 with my head straight ahead, okay?
10 **Q Okay. Let me slow you down.**
11 A Uh-huh.
12 **Q And I forgot to ask you this --**
13 A Uh-huh.
14 **Q When you started running, how far did you run**
15 **before you got to your aunt's house?**
16 A A couple -- a couple houses down because my
17 auntie's like the next -- the next streets over.
18 **Q You had to jump a fence to get to your aunt's**
19 **house; is that right?**
20 A Yes, I -- yeah, I jumped one fence and get to
21 my auntie house --
22 **Q Okay.**
23 A -- and that was it.
24 **Q Okay. So --**
25 A But then --

1 A Okay.
2 **Q -- and it's hard to catch everything.**
3 A Okay.
4 **Q So now you're telling this jury that Tom**
5 **McInerney had a radio in his hand and he was hitting you**
6 **with the radio; is that right?**
7 A Yes. He got the radio as well, too.
8 **Q Okay. Where did he hit you?**
9 A They were hitting me right there in the head,
10 right (indicating)?
11 **Q Did he hit you hard?**
12 A Okay.
13 **Q Did he hit you hard in the head with the radio?**
14 A Of course he hit me hard.
15 **Q Well, I don't know, I wasn't there.**
16 A Of course he hit me hard. He wasn't playing
17 with me. I wasn't his girlfriend.
18 **Q Did he knock you out when he hit you?**
19 A Yeah. The whole time I was on the floor I told
20 you I lost unconscious about like the whole time they
21 were keep beating me up.
22 **Q Well, that's what I'm trying to figure out.**
23 A So now -- then when he knocked me down and
24 stuff right there with the radio, and then he talked
25 about, oh -- oh, you think it's gonna be like -- you

1 know what I'm saying, you think you're just gonna be --
2 it was gonna be easy and stuff like that, have you
3 running and all that stuff and all this -- man, now he
4 keep calling me piece of shit in all kinds of ways and
5 stuff right there, bam, now the -- now the one -- the
6 other officers whatever with the ski mask hardly get
7 involved them --
8 **Q We've gotten on to ski mask officers now. I'm**
9 **just talking about McInerney in this question now.**
10 A Okay. That's what it -- that's what Tom
11 McKinney actually saying, okay?
12 **Q I don't care what he's saying. I want to know**
13 **how he beat you up. And what you told me was --**
14 A Uh-huh.
15 **Q -- that he took his radio and he hit you very**
16 **hard on the right side of your head and knocked you --**
17 A Right.
18 **Q -- unconscious; is that right or wrong?**
19 A Right. Then --
20 **Q Stop. How long were you unconscious?**
21 A I was actually unconscious like for a period
22 and stuff like there --
23 **Q How long?**
24 A For -- for a little -- for a little while by
25 the time they actually hand me and stuff like -- to put

1 me --
2 **Q Okay. Let me see if I have this right.**
3 A Uh-huh.
4 **Q Tom McInerney hit you in the right side of your**
5 **head with the radio, knocked you unconscious, you're**
6 **unconscious until him and Condoleo lifted you up to your**
7 **feet to take you out to the street; is that right or**
8 **wrong?**
9 A Yeah, they just -- yeah, lift me up, okay?
10 **Q Okay.**
11 A So now when they lift me up and I was like, you
12 know my eyes were opened a little bit, you know, I
13 could -- you know what I'm saying? You know, I couldn't
14 see a little bit blurry a little bit, you know what I'm
15 saying? But I could see the person in front of me.
16 **Q Wait, wait, wait. Stop. Stop.**
17 A Okay.
18 **Q You keep getting -- you're answering questions**
19 **I'm not asking.**
20 A Uh-huh.
21 **Q You already told us that when the officers**
22 **first got to you, it was McInerney and Condoleo.**
23 A Uh-huh.
24 **Q And then once they handcuffed you, the other**
25 **officers came, right?**

1 **Q Well, that -- I'm --**
2 A The radio --
3 **Q That's just what you said before.**
4 A Listen.
5 **Q So now what is your story now? It's changing?**
6 A Listen. I'm not changing no story, sir.
7 **Q That's why I brought the videotape.**
8 A Listen, I'm not change -- okay. I understand
9 that. I'm not changing no story.
10 **Q Okay.**
11 A Okay? The radio on the ground right next -- by
12 my head, right?
13 **Q Yes.**
14 A So he keep punching me and stuff like that
15 there.
16 **Q Who does?**
17 A Okay.
18 **Q Who does?**
19 A Tom McKinney and stuff like there. So now,
20 then --
21 **Q Where was he punching you?**
22 A He punching me in my -- all over -- all over my
23 face, man. My head, my face, and all that stuff --
24 **Q Did he punch you in the mouth? Did he punch**
25 **you in the mouth?**

1 **what you said?**
2 A It make a bruise on my face then. It turned
3 out to be like -- it turned out, when it healed, and
4 this healed, then the marks still there.
5 **Q You said it was a scar. Is it a scar or it's**
6 **not a scar?**
7 A What I mean by like -- I got a bruise when they
8 hit me with a radio, okay?
9 **Q Uh-huh.**
10 A So then I cut -- then the radio cut me up, all
11 right?
12 **Q The radio cut you up?**
13 A Yeah, cut me up and stuff like there.
14 **Q Were you bleeding or did it not cut you very**
15 **much?**
16 A I was bleeding -- I was bleeding from it, but I
17 wasn't bleeding that much from it. Okay?
18 **Q Okay. What part of your face was bleeding?**
19 A My mouth was bleeding.
20 **Q Yes?**
21 A So then from the side of my -- my eyeball was
22 bleeding.
23 **Q Your eye was bleeding? Which eye?**
24 A Not my eye, but the side of my like my -- like
25 right there from (indicating) --

1 **Q You're touching the left side -- your left eye**
2 **from the top?**
3 A Yeah. So --
4 **Q Okay.**
5 A One of the part that was bleeding as well, but
6 it wasn't really bleeding that much, okay?
7 **Q Uh-huh.**
8 A The one that was bleeding so much was in my
9 mouth and --
10 **Q Your mouth was bleeding a lot?**
11 A And my pinky toe was bleeding a lot --
12 **Q And your pinky toe.**
13 A -- from them dragging me and stuff like that
14 there.
15 **Q Yeah. You don't think that happened when you**
16 **jumped over the fence, huh?**
17 A Sir, certainly that wouldn't be happening --
18 **Q No way.**
19 A -- cause I run track, okay?
20 **Q Oh, you run track? Where do you run track?**
21 A Listen. Look, look, I run track.
22 **Q Okay. Stop. I need to know about that. Sir,**
23 **where do you run track? What track team are you on?**
24 A I run track team here.
25 **Q Prison?**

1 A Both of them --
2 **Q Tell me what he did.**
3 A Both of them was on top of me, okay?
4 **Q Okay. We're talking about Paul Condoleo now.**
5 **What did he do to you? You said he used excessive**
6 **force. What did he do?**
7 A I just -- look, I told you both of them were
8 beating me -- beat up on me, okay? One was -- one was
9 putting their knees and stuff like that there, okay, in
10 my back and all that stuff, then Tom McKinney was doing
11 all this thing, keep slapping me all in my face and all
12 that stuff. Okay. Then I'm handcuffed, okay? So I
13 can't really see when the punch come out from him, I can
14 only see when the punch come out from Paul Condoleo as
15 well.
16 **Q Right.**
17 A You know, but I just see both of them keep
18 beating up on me, okay? And that's -- that's just --
19 that's just the only thing that I could actually tell
20 you. Then, I laid flat on my chest, faced the dirt, my
21 mouth all over the dirt, now they keep press -- putting
22 their -- you know what I'm saying, putting their knees
23 and all that stuff in my back, his hand -- one of his
24 hands pushing my head on the floor for not -- try to get
25 up or anything like that there, which I can't. Okay,

1 but with him, I realized that they are pushing me from
2 all the movement that they are making on top of me,
3 causing all the injuries and stuff like that from my
4 mouth.
5 **Q Okay. Can you tell this jury anything else**
6 **that Paul Condoleo did or Tom McInerney did?**
7 A Can I tell the jury exactly that what they did?
8 **Q Anything else? You've already talked for a**
9 **couple hours now. Is there anything else that you need**
10 **to tell the jury that Tom -- Paul Condoleo did to you or**
11 **Tom McInerney did to you that you hadn't already**
12 **mentioned?**
13 A I already mentioned what they did to me, okay?
14 **Q Because there's nothing else that you need to**
15 **tell us about, right?**
16 A Other things that I would like to say is that,
17 you know, as them being the officers, they have -- I
18 mean, like, I know they doing their jobs at the same
19 times, but it's not the job when somebody in handcuff
20 and stuff like that, that they can see that they can
21 beat up on the person.
22 **Q Okay.**
23 A If I was doing any violent stuff I agree.
24 **Q Right. Now, you knew if you got arrested that**
25 **you could be deported from this country and sent back to**

1 **Haiti, right? You know that that could happen, right?**
2 A Yes. Yes, I knew that.
3 **Q Yes.**
4 A Okay.
5 **Q And you already told us that you would do**
6 **anything you could to not be deported. So is that --**
7 **that's why you ran from the police because you didn't**
8 **want to get arrested and get deported, right?**
9 A Not only that.
10 **Q Well, is that true or not?**
11 A Not -- that's not -- that's not because that I
12 ran from the police, okay?
13 **Q Why did you run from the police then? If that**
14 **isn't the reason, what's the reason?**
15 A Well, I ran from the police because first I was
16 totally shocked and I wasn't really thinking that these
17 people were police, you know, because they dressed in
18 all black and then all I heard was get on the ground
19 when I turned my back and all that stuff. Then -- and I
20 was scared as well, then I ran from them.
21 **Q Well, let me ask you a question.**
22 A Okay?
23 **Q Let me ask you this question --**
24 A So --
25 **Q -- this neighborhood where this arrest took**

1 **know that was the cops? Everybody knows that's the**
2 **police, right? Who else is gonna do that?**
3 A Listen. Listen. I never tells you that I
4 don't know that was the police.
5 **Q Well, okay, let's be --**
6 A I said that I was in -- I was shocked.
7 **Q Okay. But let's be honest --**
8 A I was totally shocked.
9 **Q I got it. I got it.**
10 A Okay.
11 **Q Let's be honest here. When those white guys**
12 **jumped out all dressed alike and started running after**
13 **you, you knew that was the police, didn't you? I mean,**
14 **be honest. Are you gonna say you didn't know that was**
15 **the police?**
16 A When I seen them -- when I seen them jump out
17 the van and stuff like that there?
18 **Q Yeah. All those white guys. You knew it was**
19 **the police, right?**
20 A Look, be honest with you?
21 **Q Yes. Please do, for once, please.**
22 A I was assumed that.
23 **Q Of course, everybody would.**
24 A I assumed that.
25 **Q Of course, everyone would assume that.**

1 A Of course nobody want to go to jail.
2 **Q And tell the truth, just be honest.**
3 A Okay.
4 **Q Look -- look, the jury just wants you to be**
5 **honest.**
6 A Uh-huh.
7 **Q The honest truth is you didn't want to go to**
8 **jail because you knew it could get you deported back to**
9 **Haiti and you said you were going to be killed if you go**
10 **back to Haiti --**
11 A Look --
12 **Q -- so you ran because you didn't want to get**
13 **arrested; isn't that the truth? Or do you want to tell**
14 **a different story? Go ahead.**
15 A I'm not trying to tell a different story.
16 Listen. I done went through it before with you already.
17 I told you that I don't want to go back to Haiti and
18 stuff like there because I already know the part of me
19 being deported and all that stuff --
20 **Q Yeah. Yeah. And that's why you ran, right?**
21 A Okay. So you can't really tell me that's why I
22 just ran because you not -- you not -- if you -- you not
23 actually a spatic (SIC) or a psychotic doctor and all
24 that stuff or a genes doctor to verify that, what the
25 reason why I ran. I told you already, I don't consider

☐ COMPLAINT AFFIDAVIT
SHADED FIELDS MUST BE ANSWERED IF DEFENDANT NOT IN CUSTODY

BROWARD COUNTY ☒ ARREST FORM
ARREST # OBTS #

Filing Agency	Offense Report	Local ID #	FDLE	FBI	SS #
BSO	BS09-09-01107			162091CC9	772-03-2482

Defendant's Last Name	First	Middle	SUF	Alias/ Street Name	Citizenship
AUGUSTIN	JONAS				

Race	Sex	Hgt	Eyes	Hair	Wgt	Comp	Age	DOB	Birthplace	Scars, marks, TT
B	M	5-8	Bro	Blk	170			08-23-83		

Permanent Address: 421 NW 42 Street, Pompano Beach, FL
Local Address :
Place of Employment | Lenght
Residence Type ☐(1) City ☒ (2) County ☐ (3) Florida ☐ (4) Out of State

How long defendant in Broward County:	Breathalyser by/CCN	Reading	Place of arrest	Date	Time Arrested	Arresting officer(s)CCN
			600 NW 42 Court, Deerfield	10/16/2009	1230	Paul Condoleo 9497

Officer injured	Unit	Zone	Beat	Shift	Trans. Unit	PMD	Transporting officer/ CCN	Pick-up time: / Time arrived at BSO:	Drug Type:
Y☐ N☒						Y☐ N☐			C

Type:					Activity:	Activity:				Indication of	Y	N	UK
N-N/A	B-Barbiturate	H-Hallucinogen	P-Paraphernalia	U-Unknown		N-N/A	B-Buy	E-Use	K-Dispense/	Alcohol Influence	☐	☐	☐
A-Amphetamine	C-Cocaine	M-Marijuana	Equipment	Z-Other	S	P-Possess	T-Traffic	M-Manufacture/	Distribute	Drug Influence	☐	☐	☐
	H-Heroin	O-Opium	S-Synthetic			S-Sell	A-Smuggle	Produce/	Z-Other				
							D-Deliver	Cultivate					

Defendant's Vehicle Make: _____ Type: _____ Year: _____ Color: _____ VIN # _____
Attach Defendant's Photo
Vehicle towed to: _____ Tag # _____ Other identifiers or remarks: _____

Name of victim(s) (if corporation, exact legal name and state of incorporation):
State of Florida

Count #	Offenses Charged	Citation # if Applicable	FS or Capias/ Warrant #
1	DELIVERY OF COCAINE	Bond 2,500	893.13-1a1
2	RESIST ARREST W/OUT	Bond 100	843.02
	FIELD TESTED POSTIVE		

Probable Cause Affidavit

Before me this date personally appeared Detective Paul Condoleo who being first duly sworn deposes and says that on 16 day of October, (year) 2009 at 600 NW 42 Court, Deerfield Beach, FL (crime location) the above named defendant committed the above offenses charged and the facts showing probable cause to believe the same are as follows:

COUNT 1: On October 16, 2009 approx. 1200 hours, while posing undercover during a Buy-Bust narcotics operation, Detective Tom McInerney of the Broward County Sheriff's Office and BSO documented confidential informant made arrangements to purchase crack cocaine from JONAS AUGUSTIN. AUGUSTIN instructed them to meet at 600 NW 42 Court, Deerfield Beach, FL. AUGUSTIN did sell Detective McInerney $50.00 worth of suspect crack cocaine in exchange for fifty dollars of Official Investigative funds. Detective McInerney gave the take down signal at which time arresting detectives moved in to effect an arrest. AUGUSTIN observed detectives dressed in BSO identifying gear attempt to place him under arrest. AUGUSTIN willfully fled on foot through a residential neighborhood. After this pursuit, AUGUSTIN was apprehended with minor injuries. Said cocaine was field tested positive. Said offense was captured on video.

RECEIVED CLERK, CIRCUIT COURT BROWARD COUNTY, FL OCT 19 AM 8:43 FELONY

I swear the above statement is correct and true to the best of my knowledge and belief.

OFFICER/ AFFIANT SIGNATURE — Detective Paul Condoleo, OFFICER'S NAME/ CCN — SID, OFFICER'S DIVISION

STATE OF FL COUNTY OF Broward
The foregoing instrument was acknowledged before me this 16 day of OCT, (year) 09 who is personally known to me or who has produced (ID type) LEO as identification and who DID (did or did not) take an oath. (SEAL OR STAMP IF APPLICABLE)

DEPUTY CLERK OF THE COURT, NOTARY PUBLIC, OR ASSISTANT STATE ATTORNEY — Deputy 4919 TITLE OR RANK/ CCN

SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY
STATE OF FLORIDA
BSO DB2 (REVISED 0697)

FIRST APPEARANCE/ ARREST FORM
(SHOULD ADDITIONAL SPACE BE NEEDED, USE PROBABLE CAUSE AFFIDAVIT CONTINUATION.)

Distribution: Orig - C, 2nd, 3rd

BROWARD HEALTH

DEPARTMENT OF MEDICAL RECORDS
201 E. Sample Road
Deerfield Beach, FL 33064

Peter Johnson, M.D. (BGMC Laboratory)
Gary Richmond, M.D., F.A.C.P., F.C.C.P. (BGMC Pulmonary)
CLIA: 10D0285148 CAP: 1513401

Lewis Starasoler, M.D. (IPMC Laboratory)
George P. Azar, JR., M.D. (IPMC Pulmonary)
CLIA: 10D0284612 CAP: 1511701

William D. Williams, M.D. (NBMC Laboratory)
Darren Hoffberger, M.D. (NBMC Pulmonary)
CLIA: 10D0278979 CAP: 1497901

Farzad M. Esfahani, M.D. (CSMC Laboratory)
Jeffrey Wolkowicz, M.D. (CSMC Pulmonary)
CLIA: 10D0665305 CAP: 2997001

ED TRIAGE FORM

ED Triage NB Form
10/16/09 12:40 pm Performed by HOWARD, DIANA
Entered on 10/16/09 12:43 pm

Triage ED	
ED Chief Complaint Primary	Medical Clearance
Patient States (Complaint)	PT BROUGHT HERE WITH SHERRIFFS DEPT WITH MED CLEARENCE, PT C/O RIGHT JAW PAIN AND CUTS TO LEFT SMALL TOE
Allergy	Reaction
1. NKA	
Current Medication History	
Current Meds	Pt currently takes no medications
Health History	
Medical History	Patient Denies Medical History
Neuro/Sensory History	Migraines
Vital Signs	
Temperature Oral	98.0 DegF
Heart Rate	98 bpm
Resp Rate Spontaneous	20 br/min
Systolic Blood Pressure NIBP	120 mmHg
Diastolic Blood Pressure NIBP	74 mmHg
NIBP Site	Right arm
Vital Signs Position	Sitting
O2 Saturation	100 %
Oxygen Method of Delivery.	None - Room Air
Pain Assessment	
FACES or Numeric Pain Scale Used	Numeric
Height, Weight ED	
Height type	Estimated
Height (cm)	175.26 cm
How height was documented	Feet/Inches
Height (ft)	5 ft
Height in inches	9.0 in
Weight Type	Estimated
Weight (kg)	77.273 kg
How Weight was documented	Lbs/Oz
Weight (lbs)	170.0 lb
BSA	1.9396 m2
BMI	25.1572 kg/m2
Triage Intervention	
Triage Intervention	Vital Signs

ADMIT DATE: 10/16/2009	DISCHARGE DATE: 10/16/2009	DOB: 8/23/1983	PATIENT: AUGUSTIN, JONAS
PATIENT TYPE: ERD	MEDICAL SERVICE: EMD	SEX: M	ROOM: -
			MR#: 692547
ADMIT DR: PALEY MD, RICHARD			FIN#: 296539112
ORDER DR: N/A			LOCATION: NBER
		CORP ID: 1415505	

MEDICAL RECORDS FINAL
DO NOT DISCARD

DEPARTMENT OF MEDICAL RECORDS

201 E. Sample Road
Deerfield Beach, FL 33064

Peter Johnson, M.D. (BGMC Laboratory)
Gary Richmond, M.D., F.A.C.P., F.C.C.P. (BGMC Pulmonary)
CLIA: 10D0285148 CAP: 1513401

Lewis Starasolcr, M.D. (IPMC Laboratory)
George P. Azar, JR., M.D. (IPMC Pulmonary)
CLIA: 10D0284612 CAP: 1511701

William D. Williams, M.D. (NBMC Laboratory)
Darren Hoffberger, M.D. (NBMC Pulmonary)
CLIA: 10D0278979 CAP: 1497901

Farzad M. Esfahani, M.D. (CSMC Laboratory)
Jeffrey Wolkowicz, M.D. (CSMC Pulmonary)
CLIA: 10D0665305 CAP: 2997001

ED TRIAGE FORM

ED Triage NB Form
10/16/09 12:40 pm Performed by HOWARD, DIANA
Entered on 10/16/09 12:43 pm

Adult Fall Risk Assessment	
Assessed, Does Not Meet Criteria	No risk for fall
Psychosocial	
Language	English
ACUITY	
DCP GENERIC CODE	
Family Present	No
Triage Date and Time	10/16/09 12:37
ED Reason For Visit	MEDICAL CLEARANCE .
Tracking Group	NB ED
Tracking Acuity	NB 3-Urgent

ED DEPART SUMMARY

Depart Summary

North Broward Medical Center Emergency Department Depart Summary

PERSON INFORMATION

Name AUGUSTIN, JONAS **Sex** M DOB 8/23/1983 12:00 AM
MRN 692547 **PCP**
Arrival 10/16/2009 12:37 PM
Chief Complaint Medical Clearance

ORDERS INFORMATION

Start Time	Order	Type	Status	Stop Time	Provider
10/16/2009 12:58 PM	Dressing Application	PATIENT CARE	Completed	10/16/2009 1:02 PM	PALEY MD, RICHARD

ADMIT DATE: 10/16/2009 *DISCHARGE DATE: 10/16/2009*
PATIENT TYPE: ERD *MEDICAL SERVICE: EMD*

ADMIT DR: PALEY MD, RICHARD
ORDER DR: N/A

DOB: 8/23/1983 *PATIENT: **AUGUSTIN, JONAS***
SEX: M *ROOM: -*
*MR#: **692547***
FIN#: 296539112
*LOCATION: **NBER***
*CORP ID: **1415505***

MEDICAL RECORDS FINAL
DO NOT DISCARD

DEPARTMENT OF MEDICAL RECORDS

201 E. Sample Road
Deerfield Beach, FL 33064

Peter Johnson, M.D. (BGMC Laboratory)
Gary Richmond, M.D., F.A.C.P., F.C.C.P. (BGMC Pulmonary)
CLIA: 10D0285148 CAP: 1513401

Lewis Starasoler, M.D. (IPMC Laboratory)
George P. Azar, JR., M.D. (IPMC Pulmonary)
CLIA: 10D0284612 CAP: 1511701

William D. Williams, M.D. (NBMC Laboratory)
Darren Hoffberger, M.D. (NBMC Pulmonary)
CLIA: 10D0278979 CAP: 1497901

Farzad M. Esfahani, M.D. (CSMC Laboratory)
Jeffrey Wolkowicz, M.D. (CSMC Pulmonary)
CLIA: 10D0665305 CAP: 2997001

10/16/2009 12:58 PM	ibuprofen	Pharmacy	Completed	10/16/2009 1:05 PM	PALEY MD, RICHARD
10/16/2009 12:59 PM	HMR Disposition: Discharge	PATIENT CARE	Ordered	10/16/2009 12:59 PM	PALEY MD, RICHARD

MEDICAL INFORMATION

Allergy Info:
NKA
Prescriptions Given:

DISCHARGE INFORMATION

Discharge Disposition: 06-Home

PATIENT EDUCATION INFORMATION

Instructions:
MEDICAL CLEARANCE for JAIL
Follow up:

With:	Address:	When:
PRIVATE HLTH PLAN OR CLINIC PMD		Within 1 day

Comments:

ADMIT DATE: 10/16/2009	*DISCHARGE DATE: 10/16/2009*	*DOB: 8/23/1983*	*PATIENT: **AUGUSTIN, JONAS***
PATIENT TYPE: ERD	*MEDICAL SERVICE: EMD*	*SEX: M*	*ROOM: -*
			*MR#: **692547***
ADMIT DR: PALEY MD, RICHARD			*FIN#: 296539112*
ORDER DR: N/A			*LOCATION: **NBER***
		CORP ID: 1415505	

MEDICAL RECORDS FINAL
DO NOT DISCARD

DEPARTMENT OF MEDICAL RECORDS

201 E. Sample Road
Deerfield Beach, FL 33064

Peter Johnson, M.D. (BGMC Laboratory)
Gary Richmond, M.D., F.A.C.P., F.C.C.P. (BGMC Pulmonary)
CLIA: 10D0285148 CAP: 1513401

Lewis Starasoler, M.D. (IPMC Laboratory)
George P. Azar, JR., M.D. (IPMC Pulmonary)
CLIA: 10D0284612 CAP: 1511701

William D. Williams, M.D. (NBMC Laboratory)
Darren Hoffberger, M.D. (NBMC Pulmonary)
CLIA: 10D0278979 CAP: 1497901

Farzad M. Esfahani, M.D. (CSMC Laboratory)
Jeffrey Wolkowicz, M.D. (CSMC Pulmonary)
CLIA: 10D0665305 CAP: 2997001

ORDERS, ELECTRONIC

Order Date/Time 10/16/2009 1:03:15 PM

Mnemonic	Action	Order Status	Type of Order
ibuprofen	Order	Completed	Pharmacy

Ordering Physician: Contributor_system, PYXIS
Action Personnel: Contributor_system, PYXIS
Review Information N/A
Order Details
800 mg, PYXIS, NOW, TAB, 10/16/09 13:08:00, 10/16/09 13:08:00

Order Date/Time 10/16/2009 12:59:34 PM

Mnemonic	Action	Order Status	Type of Order
EMR Disposition: Discharge	Order	Cancel/DC	PATIENT CARE

Ordering Physician: PALEY MD, RICHARD
Action Personnel: PALEY MD, RICHARD
Review Information N/A
Order Details
10/16/09 12:59:00, Condition Stable, Disposition Police Custody

Order Date/Time 10/16/2009 12:59:05 PM

Mnemonic	Action	Order Status	Type of Order
Ibuprofen 800mg Tab	Order	Completed	Pharmacy

Ordering Physician: PALEY MD, RICHARD
Action Personnel: PALEY MD, RICHARD
Review Information
Nurse Review, Not Reviewed - <Unknown>
Pharmacist Verify, Reviewed - LACKNAUTH RPH, SITA, 10/16/2009 1:20:04 PM
Order Details
800 mg, PO, TAB, NOW, Start: 10/16/09 12:58:00, Stop: 10/16/09 12:58:00

ADMIT DATE: 10/16/2009 *DISCHARGE DATE: 10/16/2009*
PATIENT TYPE: ERD *MEDICAL SERVICE: EMD*
ADMIT DR: PALEY MD, RICHARD
ORDER DR: N/A

DOB: 8/23/1983 *PATIENT: **AUGUSTIN, JONAS***
SEX: M *ROOM: -*
*MR#: **692547***
FIN#: 296539112
*LOCATION: **NBER***
CORP ID: 1415505

MEDICAL RECORDS FINAL
DO NOT DISCARD

DEPARTMENT OF MEDICAL RECORDS

201 E. Sample Road
Deerfield Beach, FL 33064

Peter Johnson, M.D. (BGMC Laboratory)
Gary Richmond, M.D., F.A.C.P., F.C.C.P. (BGMC Pulmonary)
CLIA: 10D0285148 CAP: 1513401

Lewis Starasoler, M.D. (IPMC Laboratory)
George P. Azar, JR., M.D. (IPMC Pulmonary)
CLIA: 10D0284612 CAP: 1511701

William D. Williams, M.D. (NBMC Laboratory)
Darren Hoffberger, M.D. (NBMC Pulmonary)
CLIA: 10D0278979 CAP: 1497901

Farzad M. Esfahani, M.D. (CSMC Laboratory)
Jeffrey Wolkowicz, M.D. (CSMC Pulmonary)
CLIA: 10D0665305 CAP: 2997001

ORDERS, ELECTRONIC

Order Date/Time 10/16/2009 12:59:05 PM

Mnemonic	Action	Order Status	Type of Order
Dressing Application	Order	Completed	PATIENT CARE

Ordering Physician	Action Personnel
PALEY MD, RICHARD	PALEY MD, RICHARD

Review Information N/A

Order Details
10/16/09 12:58:00, Toe, STAT

ADMIT DATE: 10/16/2009	*DISCHARGE DATE: 10/16/2009*	*DOB: 8/23/1983*	*PATIENT: **AUGUSTIN, JONAS***
PATIENT TYPE: ERD	*MEDICAL SERVICE: EMD*	*SEX: M*	*ROOM: -*
			*MR#: **692547***
ADMIT DR: PALEY MD, RICHARD			*FIN#: 296539112*
ORDER DR: N/A			*LOCATION: **NBER***
		CORP ID: 1415505	

MEDICAL RECORDS FINAL
DO NOT DISCARD

30C2 AUGUSTIN, JONAS Encounter #296539112 10/16/2009 ERTREAT 10/21/2009

57 **General Adult / Medical Screen**

DATE: 10/16 TIME: 2:50 ROOM: 6 EMS Arrival

HISTORIAN: (patient) __family __paramedic __translator BSO

AGE_____ M / F_____

__History limited by _____

Indicators:

- Temperature between 95° 101° F — Yes / No
- Respirations between 12-20 — Yes / No
- Blood Pressure Ranges 100-165/60-100 — Yes / No
- Pulse Range 60-105 (100 for age greater than 60yr) — Yes / No
- Severe Pain (greater than 5/10th) Scale 0 - 10; Patient Report: ____ / 10 — ☐ present ☐ absent
- Chest or Abdominal Pain — ☐ present ☐ absent
- Inability to Walk — ☐ present ☐ absent
- Patient Volunteers Active High Risk Condition (TB, Hepatitis, HIV, Chemo) — ☐ present ☐ absent
- Abnormal Mental Status — ☐ present ☐ absent

Ran thru BSO/Resisted arrest
Struggled with officer
to face, Centralized to ER, face

severity: Pain Scale: (1-10)_____

pain level: current____/10 max _____/10

Chief complaints:

__Allergy or Hay Fever
__Immunizations and H-Globulin requests
__Work release or disability form completion
__Trauma follow up (minor injuries originally treated elsewhere)
__Dental problems
__Ear pain
__Mild eye irritation without signs of infection
__URI - symptoms (except pt w/ diabetes, CHF, kidney failure, CA)
__Neck pain (no history of acute trauma)
__Mild cough, without hemoptysis or respiratory impairment
__Nausea or vomiting
__Constipation, 3 days or less
__Mid back pain, able to walk without assistance
__Foot problems (blisters, pain, ingrown toenail)
__Minor contusions or abrasions
__Lice or scabies (suspected or real)
__Localized sunburn without blisters
__Minor skin sore, not infected
__Minor headache without neurologic impairment
__Painless urethral discharge
__Sexual disease or exposure
__Vaginal bleeding-minor (one pad in past 6 hrs.)
__Prescription refills
__Sleep disorder
__Physical examination request
__Hepatitis exposure
__Chronic sinusitis
__Weakness - appears well
__Mouth blisters
__Sore Throat
__Diarrhea (not orthostatic)
__Minor rectal pain or itching
__Joint pain
__Simple, localized rash
__Wound rechecks
__Pruritus without rash
__Suture removal
__Chronic dizziness
__Vaginal discharge
__Chronic recurrent hematuria
__Dysuria (mild), female

☐ Agree w/nurse's note for PFSH / ROS

ROS

☐ ROS below otherwise negative

CONST.
__fever
__subjective / to _____ °F
__chills

CHEST / CVS
__cough
__sputum
__trouble breathing
__chest pain

GI
__abdominal pain
__nausea / vomiting
__diarrhea
__black / bloody stools

FEMALE GENITAL
__abnormal bleeding / discharge
__LMP
postmenopausal / hysterectomy

NEURO / EYES
__headache
__blackout
__lost feeling / power
in arm leg face R / L
__difficulty walking
__difficulty with speech
__double vision
__confusion
☐ all systems neg. except as marked

PAST HISTORY ☐ Tetanus U/TD
__prior records reviewed
__cardiac disease None
heart attack (MI) angina
heart failure
__high blood pressure
__lung disease
asthma emphysema
__diabetes
insulin-dependent diet-controlled
oral hypoglycemic
__stroke

Medications __none
__see list - confirmed
__ASA __NSAID
__acetaminophen

Allergies
__NKDA __see list - confirmed

SOCIAL HX __smoker
__drugs
__alcohol occasional / frequent / recent
__lives alone __lives at home
__lives in nursing home
__occupation

FAMILY HX

2 10/16/09

© 1996-2005 T-System, Inc. Circle or check affirmatives, backslash (\) negatives.

North Broward Hospital District
EMERGENCY PHYSICIAN RECORD

Version January

Patient Identification / Addressograph

EMD
NBHC

30C2 AUGUSTIN, JONAS Encounter #296539112 10/16/2009 ERTREAT 10/21/2009

PHYSICAL EXAM

☐ Agree w/ vital signs BP___ Resp___ POX___ Temp___ Pulse___
Other___
Pulse Ox time___ ___% __RA __O_2 L/min
Interpretation: __normal __abnormal Dx___
__Exam limited by___

CONSTITUTIONAL
__no acute distress
__mild / moderate / severe distress
__scleral icterus / pale conjunctivae
__purulent nasal drainage
__pharyngeal erythema / exudate
__post-surgical pupillary defect (R/L)
__TM obscured by cerumen (R/L)

HEENT
__normocephalic, atraumatic
__PERRL
__nml ENT inspection
__no dental injury

NECK
✓ nml inspection
✓ thyroid nml
__thyromegaly
__lymphadenopathy (R / L)

RESPIRATORY
✓ no resp. distress
✓ breath sounds nml
✓ chest non-tender
__see diagram
__wheezing
__rales
__rhonchi
__irregularly irregular rhythm
__extrasystoles (occasional / frequent)
__tachycardia / bradycardia
__PMI displaced laterally
__PD present
__murmur grade ___/6 sys / dias
__gallop (S3 / S4)
__friction rub
__decreased pulse(s)
R carotid___ fem___ dors ped___
L carotid___ fem___ dors ped___

CVS
✓ regular rate, rhythm
✓ no murmur
✓ no gallop

T=tenderness
R=rebound
m=mild
mod=moderate
sv=severe
Example- Tsv indicates severe tenderness.

GI / ABDOMEN
✓ non-tender
✓ no organomegaly
✓ nml bowel sounds
__tenderness
__guarding
__rebound
__abnormal bowel sounds
increased / decreased / absent
__hepatomegaly /splenomegaly / mass
__black / bloody / heme pos. stool
__tenderness / mass / nodule

RECTAL
__non-tender
__heme neg stool

BACK
__nml inspection
__CVA tenderness (R / L)

SKIN
__color nml, no rash
__warm, dry
__cyanosis / diaphoresis / pallor
__skin rash

MUSCULOSKELETAL / EXTREMITIES
__non-tender
__full ROM
__no pedal edema
__pedal edema
__calf tenderness

NEURO
✓ awake and alert
✓ oriented x3
✓ CN's nml as tested
✓ no motor / sensory deficit
__lethargic
__disoriented to person / place / time
__weakness / sensory loss
__facial droop / EOM palsy / anisocoria

PSYCH
✓ mood / affect nml
__depressed affect
__anxious

ED COURSE

Time___ __re-examined __unchanged __improved

No Swelling to (R) Thigh, no Bruising, Ambulatory

__UPGRADE for work up see TEMPLATE #___

Medical screen complete, immediate medical attention not necessary; no immediate serious impairment or dysfunction of body or organs is reasonably expected ☐

Stable for Discharge
Mid release in to BCD Custody

__Crit Care- ___ min (excluding separately billable procedures)___

__Discussed with Dr.___ Time___
patient will be seen in: ED / hospital / office
__Counseled patient / family regarding: __Rx given___
lab/rad results diagnosis need for follow-up __Prior records ordered

☑ EMTALA EMC present ☐ EMTALA EMC absent
☐ Stable for discharge / out patient follow up

CLINICAL IMPRESSION

Medical Clearance Pr. Jail

DISPOSITION / FOLLOW UP INSTRUCTIONS:
☐ Primary health care in___ days
☐ To a specialty clinic___ in___ days
Release to follow up with___
Follow up with Dr.___
DISPOSITION- ☐ discharge ☐ transfer ☐ placed in obs. (See obs template)
Time___ ☐ Left AMA ☐ admitted __POA decubitus / UTI (foley)
CONDITION- ☐ unchanged ☐ improved ☑ stable
ARNP / PA___
PHYSICIAN 101509 Time___
PHYSICIAN- ___ Time___
☐ T Complete ☐ T Sheet Add-On ___ ☐ Copy PMD ☐ Dictated

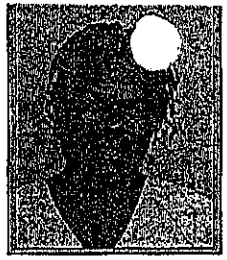
Patient Identification / Addressograph
29653911
AUGUSTIN
692547 26
08/23/1983

Medical Screen-57 Rev. 03 / 08

Case 0:10-cv-62100-FAM Document 30-7 Entered on FLSD Docket 06/09/2011 Page 1 of 6

Correctional Care

Intake Health Screening By Health-Trained Staff 10/16/2009



CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

2C4

Questionaire:

Have you been previously incarcerated?

● Yes ○ No If yes, when / where

2009/ BSO

Were you an inmate worker at BSO

NO

Are you currently ill or injured?

○ Yes ● No

Have you had a head injury or loss of consciousness in the past 72 hours?

○ Yes ● No

Was inmate taken to the hospital prior to being admitted to jail?

● Yes ○ No Reason for hospital visit:

RIGHT HIP PAIN

Was inmate initially refused at a Satellite or Main Jail in order to be medically cleared?

○ Yes ● No Explain reason for refusal:

Was necessary paperwork provided upon return?

When was the last time you were seen by a physician for a medical, dental, or mental health condition.

● Yes ○ No Name of physician / healthcare facility

ER DOCTOR 10/16/09

Are you allergic to any medications, plant, or foods?

● Yes ○ No Describe:

NKA

Observations:

Communication Difficulty?

○ Yes ● No Language Barrier?

Speech?

Vital Signs taken and recorded?

● Yes ○ No Blood Pressure:

126/87

Date of Birth:

8/23/83

Height and Weight:

5'9 139 LBS

Pulse:

86

Respirtory Rate:

16 99%

Temperature:

98.4

Is the inmate alert and oriented to time, place and person?

● Yes ○ No

Does the inmate have visible signs of pain, bleeding, injury illnessor other symptoms suggesting need for emergency medical referral?

○ Yes ● No

Is the inmate's mobility restricted in any way due to deformity, cast, injury, etc?

○ Yes ● No

Defendant's Comp. Ex. 2

Correctional Care

Intake Health Screening By Health-Trained Staff *10/16/2009*

CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

Are you taking any medication for asthma, diabetes, heart condition, high blood pressure, seizures or other medical condition?

○ Yes ● No Ailment?

Medication(s):

Are you on a special diet prescribed by a physician?

○ Yes ● No Type:

Have you been diagnosed with or exposed to HIV, AIDS, Hepatitis, TB, STD, or any other communicable disease?

○ Yes ● No Specify:

Medication(s)?

Have you been diagnosed with or exposed to HIV or AIDS

○ Yes ● No Specify:

Medication (s)

Have you been diagnosed with or exposed to Hepatitis, TB, STD, or any other communicable disease?

○ Yes ● No Specify:

Medication (s)

Have you been advised of voluntary testing for HIV / Syphillis?

● Yes ○ No

Are there signs of needle marks or indication of drug abuse, lesions, or traumatic markings or bruises?

○ Yes ● No

Is there obvious fever, swollen glands, jaundice, or other evidence of infection?

○ Yes ● No

Does the inmate appear to be under the influence of or withdrawing from drugs or alcohol?

○ Yes ● No

Does the inmate exhibit any signs of abnormal behavior?

○ Yes ● No Agitated, confused, hallucinations?

other:

Sweating, tremors?

Does the inmate's behavior/appearance suggest the risk of suicide or assault?

○ Yes ● No

Have you ever concidered or attempted suicide?

○ Yes ● No If yes, when

Do you feel suicidal at this time?

○ Yes ● No If yes, how do you plan to hurt yourself?

Were you ever housed in the jail's MH unit or place on suicide watch?

○ Yes ● No If yes, when?

Correctional Care

Intake Health Screening By Health-Trained Staff *10/16/2009*

CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

Have you experienced weakness, significant weight loss, loss of appetite, fever, night sweats, persistant cough, or spitting up blood?

○ Yes ● No Specify:

Have you had any of the following medical problems: Head Trauma, Loss of consciousness, headaches, vertigo / dizziness, seizures or strokes.

○ Yes ● No Specify:

Have you had any of the following medical problems: Gastritis, Ulcers, Bleeding, GallBladder/Pancreas, Liver Problems, Hepatitis.

○ Yes ● No Specify:

Have you had any of the following medical problems: Arthritis, Joint/ Muscle problems, Back/Neck problems.

● Yes ○ No Specify: RIGHT HIP PAIN

Have you had any of the following medical problems: Kidney Stones/Disease, Bladder/kidney Infection, Diabetes.

○ Yes ● No Specify:

Have you had any of the following medical problems: Vision problems, Hearing problems, Dental problems.

○ Yes ● No Vision:

Hearing:

Dental:

Do you wear dentures, eyeglasses, hearing aid(s), contacts or prosthesis?

○ Yes ● No If yes, specify

Are you currently wearing any of the above?

Have you ever been treated for depression, emotional or mental illness?

○ Yes ● No Contact person / phone #:

Hospitalized? When/Where?

Are you presently under mental health treatment?

○ Yes ● No Medications / Dosage:

Specify

Have you been convicted of a violent or sexual offense?

○ Yes ● No If yes, when?

Do you have a history of being a victim of sexual assault or violent crime?

○ Yes ● No If yes, when?

Do you have an emergency notification?

● Yes ○ No Address

Name

Phone #

Relationship NONE

Where do you live?

● Yes ○ No Address NONE

Correctional Care

Intake Health Screening By Health-Trained Staff *10/16/2009*

CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

Have you had any of the following medical problems: Heart condition, Angina/Heart attack, High Blood pressure, Anemia ? Blood disease.

○ Yes ● No Specify:

Have you had any of the following medical problems: Lung condition, Asthma, Bronchitis, Emphysema, Pneumonia.

○ Yes ● No Specify

Have you ever had or been exposed to Chicken Pox?

● Yes ○ No Comments:

CHILD

Do you use tobacco?

○ Yes ● No How much?

How often?

Do you use drugs or alcohol?

○ Yes ● No If yes, what kind?

Last used:

How often / amount

Have you ever received treatment for drug or alcohol abuse?

○ Yes ● No When / Where:

History of withdrawal

Correctional Care

Intake Health Screening By Health-Trained Staff *10/16/2009*

CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

Female?

○ Yes ● No Are you pregnant (Y/N)?

Date of last menstral period:

Comments:

IT WAS ER CLEARED FOR RIGHT HIP PAIN-PT HAS ABRASION TO LEFT PINKY TOE PT REPORTS NO OTHER MEDICAL/MENTAL ILLNESS AT TIME OF SCREENING PT ADVISED ON HOW TO MAKE SICK CALL. EMT L.TORRES

☒ Further Screening Reqd:

Disposition:

Mental Health
○ Yes ● No

Second Floor Medical
● Yes ○ No

Suicide Watch
○ Yes ● No

General Population
○ Yes ● No

Infirmary
○ Yes ● No

Inmate Refused Screening?
○ Yes ● No

DNA Testing Completed
○ Yes ● No

Form 1 of 1

Correctional Care

Intake Health Screening By Health-Trained Staff 10/16/2009

CIS No.	Control No.	Inmate Name	Housing Location	Security Level	SRA
120902554	627756	AUGUSTIN, JONAS	MAIN-INTK-MFEL-1-1		MB26

I have received instruction on access to health care. All my questions have been answered. I also hereby give my consent for professional services provided me through or by a health care professional. Upon my release from Broward County Jail, I will receive a three (3) day supply of any prescribed medication(s). I understand that any medication provided will not be packaged in a child proof container. I will accept responsibility for this supply of medication upon release.

Health Care Signature/Name Stamp [signature] Date 10/16/09 Inmate Signature [signature]

Screened By : [signature] Date : 10/16/09 Time : 16:33

Reviewed By : [signature] Date : 10-26-09 Time : 11:24

STEVE M. SCHWEITZER
LPN/NBB

JESUS A. DIAZ
RN/NBB

JESUS A. DIAZ
RN/NBB

4-13-10

10-29-10

11-9-10

1130

109

8/5/09

Pride in Service with Integrity

E[illegible]'ARD SHERIFF'S OFFI[illegible]
DEPARTMENT OF DETENTION
URGENT MEDICAL CARE RECORD

02

Name: (Last, First, Middle)			Race/Sex	CIS#:	DOB:
AUGUSTIN, JONAS			B/M	120802720	8/23/83
Age: 25	Date/Time 3/5/09 / 0606	Use of Force? [ ]Yes [X]No	Case #: B509-03-01009		

AUTHORIZATION FOR HEALTH CARE SERVICES

I, the undersigned, an inmate/patient in this facility, had explained to me and understand the nature of my condition. I hereby authorize the health care staff to perform evaluation and treatment on me as needed.

Signature [signature] Date 3/5/09 Time 0800
Witness [signature] Date 3/5/09 Time 0800
Witness _____ Date _____ Time _____

If inmate/patient cannot sign, explain: _____

BRIEF HISTORY

If injured by accident, state where, when, and how injury occurred. If an illness occurred, provide description of illness:
PT INVOLVED IN MINOR MVA & STS HE IS HAVING LOWER BACK & (L) KNEE PAIN. NO VISIBLE INJURIES NOTED.

TREATMENT

VITALS: BP: 96/72 P: 84. MEDICATION & CLINIC REFERRAL GIVEN.

DISPOSITION

PT STABLE, SKIN INTACT, TO BE RETURNED TO COURT.

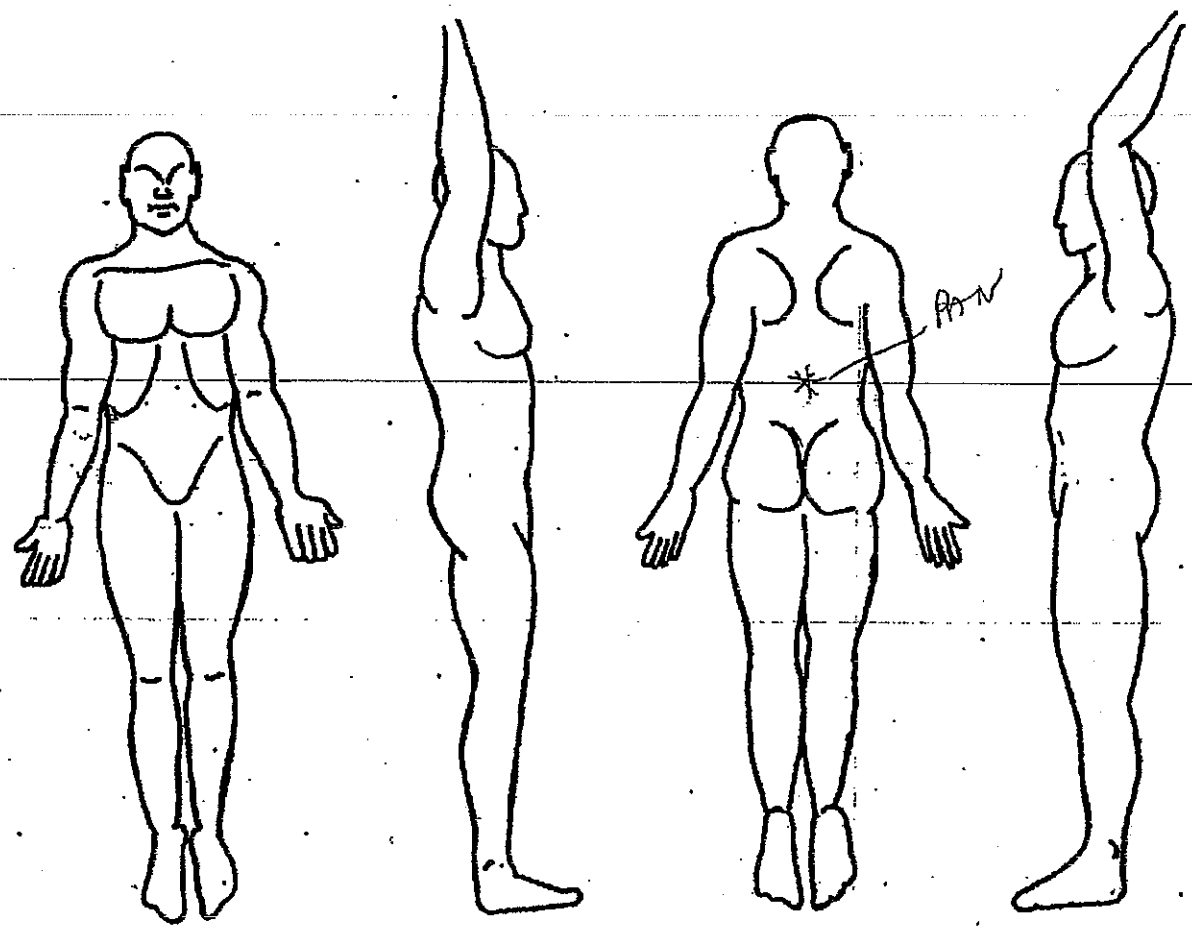
Condition on release: [X] GOOD [ ] FAIR [ ] POOR

Signature: [signature] J. ORSEK EMT-P ALL SITES. Title: EMT-P

Date: 3/5/09 Time: 0800

SO DJ#26 (Revised 07/05)

DIAGRAM OF INJURY



Front Right Side Back Left Side

Type of Injury: PT. STS PAIN ON LOWER BACK THAT HURTS TO TOUCH
PT ALSO HAVING PAIN ON (L) KNEE.

Date of Injury: 3/5/09 Time of Injury: 0600

Supplemental Urgent Medical Care Record: Completed? [ ] Yes [X] No Signed by Inmate? [X] Yes [ ] No

Signature: J. ORSEK EMT-P ALL SITES Title: EMT-P

Date: 3/5/09 Time: 0800

Time inmate was presented for medical treatment: 0800

BSO DJ#26 (Revised 07/05)

Armor Correctional Health Services, Inc.

PROGRESS NOTE

DATE	TIME	PROGESS NOTE
12-6-08	0958	H&P completed, PPD LFA, dental referral, orders obtained for dental abscess. HIV test declined. SUSAN MURDICO RN PRF
12/8/8	1345	Inc. note: PPD read - 0 mm - [illegible]
1/17/09	2255	Fire Note: S/C completed. pt eye sight 20/30. pt still able to read + see TV. MATTHEW NORDHEIM LPN PRF
2/19/09	2023	Fire Note: S/C completed. AR&P Adderly Satisfied for cotton Blanket pass. MATTHEW NORDHEIM LPN PRF
3-11-09 T983 P64 R12 Sp127 89 Wt 149 lbs	1635	S: Pt is a 25 y/o B ♂ who reports he was in bus accident, while on his way to court. Now c/o one week of mid back pain. Shates pain feels miscellar in origin - Pain aggravated c movement dull & aching. Misc: (+) tenderness (R) lumbar ϕ muscle tension or spasm. AP (1) Muscle sprain - Anti-inflammatory pm. Fly in 30 days. [illegible] ADDERLEY
3/19/09	1555	Inc note: S/C completed. pt inquiring about pain medication. pt instructed, pain medicine is PRN and may take it if he needs it. ϕ orders needed. S. ERIN PALLEIJA LPN PRF

NO KNOWN ALLERGIES

PATIENT NAME:	NO:	D.O.B.	SEX:	LOCATION:
Augustin Jonas	120802720	8-23-83	M	PRF

Armor: PT-943

147 ↑ cal Diet

HIV Test

Armor Correctional Health, Inc

SICK CALL REQUEST

FROM: (PLEASE PRINT)

Jonas Augustin — 12 08 09 790

(Inmate Name) (Nombre) (Non) — (ID #)

08/23/83 — D-2 — 03/20/09

(Date of Birth) (Fecha de Nacimiento) (Dat Nesans Prizonye a) — (Localidad) (Lojman) (Housing Unit/Cell#) — (Fecha) (Dat) (Date / Time)

PROBLEM: (BE SPECIFIC)
PROBLEMA:
PWOBLE'M: I need to see the DR Because I'v lost 23 Lbs already and my Back is Killing me the mod is not working

DATE/TIME RECEIVED: 3/20/09 1100 NURSE SIGNATURE: [illegible]

TRIAGE DECISION BY NURSING STAFF (Only check ONE box below)

☐ Urgent: _____

☐ Referral to HCP: _____

☐ Refer to Dental: _____

☐ Call Provider w/ Assessment: Temp _____ Pulse _____ Resp _____ BP _____ Wt _____

☐ Other

☐ Refer to Behavioral Health: _____

☐ Refer to Nurse Sick Call: _____

3/24/09 1847 MATTHEW NORDHEIM LPN

DATE/TIME: NURSE SIGNATURE:

(White Copy – Inmate Medical File Yellow Copy – Inmate)

Revised 09/20/07

09/19/2011 CF 1683360

Broward County Sheriff's Office

Levenson 228

Booking Report

CIS #	120902554	BCCN #	627756	Booking Sheet Control Date and Time	
OBTS	609115895	Print Clearance	10/16/2009 15:43:4 Prints Yes	10/16/09 17:18:20	

Arrest # DR 0902554 Offense Report # bs090901107 Agency DR

Last Name First Middle **AUGUSTIN , JONAS ,**

Race	Sex	Height	Weight	Eyes	Hair	-Comp.	Age Admitted	DOB	Place of Birth	State	FDLE
BLACK	M	508	170	BLK	BLK	DBR	26	08/23/1983	PORTAPRINCE	HT	5889665

Permanent Address 421 NW 42ND ST POMPANO BCH FL 33064 Months of Residence 96

Arrest Date 10/16/2009 12:30:0C Arresting Officer CONDOLEO Place of Arrest 600 NW 42 CT Badge Number 4919

Inmate Logged Date 10/16/2009 14:09:5 Inmate Log Type Place Admitted MAIN

Intake Comments29/54 SP/CC**13954 WC 14633

Alias Last name, First, Middle AUGUSTIN , JONAS , R

Alias Last name, First, Middle AUGUSTIN , JONAS , RONALD

Alias Last name, First, Middle AUGUSTIN , JONAS ,

Warrants Officer Id: bs14633

Scars,Marks,Tattoos:

Scars Ankle, left

Release Date/Time Release Reason Release Authorized By

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
1	10/16/2009 17:07	893.13-1e1(2A4)	COC	1F	Y	BOND	PC 7500

Charges S/M/D/P/W/INT 1000 RELIG/CONVEN/STR COCAINE Comments

Booking Off. ID bs11538 County Judge

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
2	10/16/2009 17:13	777.04-4c	COC	2F	Y	BOND	7500

Charges CRIMINAL ATTEMPT SOLICIT CONSPIRE 1ST DEG FEL Comments 777.04(2) DELIVER OF COCAINE(SOLICITATION)

Booking Off. ID bs11538 County Judge

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
3	10/16/2009 17:14	893.13-1a1	COC	2F	Y	BOND	2500

Charges SELL/MAN/DEL POSS/W/INT SCH 1A,1B,1D,2A, 2B,2C4 Comments DELIVER OF COCAINE

Booking Off. ID bs11538 County Judge

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
4	10/16/2009 17:15	843.02		1M	Y	BOND	100

Charges Resist Officer - Obstruct wo Violence Comments

Booking Off. ID bs11538 County Judge

CH 10/17

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
5	10/16/2009 17:16	HLD-IMMG	A074010934	XF	N	NO BOND	0

Charges IMMIGRATION HOLD Comments

Booking Off. ID bs11538 County Judge

Holder Status Code: ACTIVE Holder Type Code: IMMIGRATION HOLD

* End of Report *

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

AFFIDAVIT

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared, Thomas McInerney, personally known to me and who, after first being duly sworn upon oath, deposes and says as follows:

1. My name is Thomas McInerney.

2. I am over the age of 18, and am sui juris in all respects.

3. I am a Deputy Sheriff with the Broward County Sheriff's Office and have been so employed for 9 years.

4. On October 16, 2009, I was working in an undercover capacity attempting to purchase crack cocaine from drug dealers in the area of Deerfield Beach, Florida.

5. At approximately 12:00 p.m., on October 16, 2009, I was driving an undercover vehicle and wearing a white cutoff t-shirt and beige camo colored shorts, in the area of Northwest 42nd Court in Deerfield Beach, Florida when I was approached by the

Plaintiff, Jonas Augustin. The undercover vehicle which I was operating was equipped with a hidden video camera which recorded the narcotics transaction as Jonas Augustin stood outside the driver's side window and sold me several rocks of crack cocaine for which I paid him fifty dollars in U.S. Currency. As Mr. Augustin was advising me that he had additional cocaine available for purchase, other Broward Sheriff's Office deputies approached Mr. Augustin, identified themselves as Sheriff's deputies and ordered him to lie on the ground. Mr. Augustin then fled on foot followed closely by the other deputies. I remained in the undercover vehicle and at no time did I pursue Mr. Augustin on foot and I was not present when he was taken into custody.

6. The first time that I saw Mr. Augustin, after he sold me the crack cocaine, was when he had already been taken into custody, handcuffed and was being led out of a yard to the street where he was placed into a marked police vehicle by other deputies.

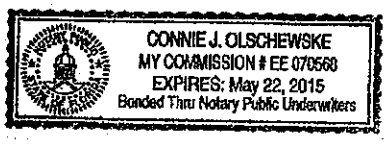
FURTHER AFFIANT SAYETH NAUGHT.

Thomas Melnerney

Sworn to and subscribed before me this _____day of _____, 2011.

Connie J. Olschewske
Notary Public

My Commission expires:



IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

AFFIDAVIT

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared, Paul Condoleo, personally known to me and who, after first being duly sworn upon oath, deposes and says as follows:

1. My name is Paul Condoleo.

2. I am over the age of 18, and am sui juris in all respects.

3. I am a Deputy Sheriff with the Broward County Sheriff's Office and have been a law enforcement officer for 17 years with the Pompano Beach Police Department and Broward Sheriff's Office.

4. On October 16, 2009, I was working for the Broward County Sheriff's Office as part of a narcotics enforcement operation being conducted in the area of Deerfield Beach, Florida.

5. At approximately 12:00 p.m., on October 16, 2009, Detective Thomas McInerney was working undercover, driving an unmarked vehicle attempting to purchase crack cocaine. My role in the particular operation was to drive an unmarked vehicle and serve as a backup officer maintaining a perimeter approximately a block away from where the narcotics transaction was taking place.

6. At one point I overheard via the police radio that a black male, later identified as Jonas Augustin, had sold crack cocaine to Detective McInerney and other deputies were approaching Mr. Augustin to place him under arrest. I then learned, via the police radio, that Mr. Augustin was fleeing on foot being pursued by other deputies. I remained in my police vehicle and maintained a perimeter position west of where Mr. Augustin was fleeing from the other deputies. A short time later I heard over the police radio that Mr. Augustin was in custody so I drove over to the area where the arrest took place.

7. The first time that I saw Mr. Augustin, after the narcotics transaction had taken place, was when he was in handcuffs being placed into the rear of a marked police car by other deputies.

8. At no time did I pursue Mr. Augustin on foot and at no time was I present when he was apprehended and handcuffed by other deputies.

Augustin v. Condoleo , et al.
Case No. 10-62100-CIV-MORENO/WHITE

9. After Mr. Augustin was taken into custody I was assigned to complete the Probable Cause Affidavit for his arrest.

FURTHER AFFIANT SAYETH NAUGHT.

Paul Condoleo

Sworn to and subscribed before me this 9th day of June, 2011.

Connie J. Olschewske
Notary Public

My Commission expires:

CONNIE J. OLSCHEWSKE
MY COMMISSION # EE 070588
EXPIRES: May 22, 2015
Bonded Thru Notary Public Underwriters

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

AFFIDAVIT

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared, Daniel Fitzpatrick, personally known to me and who, after first being duly sworn upon oath, deposes and says as follows:

1. My name is Daniel Fitzpatrick.

2. I am over the age of 18, and am sui juris in all respects.

3. I am a Sergeant with the Broward County Sheriff's Office and have been so employed as a deputy sheriff for 19 years.

4. On October 16, 2009, I was the lone Sergeant in charge of an undercover narcotics operation being conducted in the area of Deerfield Beach, Florida.

5. At approximately 12:00 p.m., on October 16, 2009, I was in an unmarked police vehicle approximately one block away from the location where Detective Thomas

McInerney was meeting with the black male later identified as Jonas Augustin for the purpose of conducting a narcotics transaction. At that time I was monitoring the narcotics transaction through the use of a listening device which was present in the undercover vehicle. During this time I was able to overhear that the narcotics transaction had been completed so I instructed other deputies to approach Mr. Augustin and place him into custody. I was then made aware, via police radio, that Mr. Augustin was fleeing on foot and was being pursued by other deputies. I then exited my vehicle and joined in the foot pursuant of Mr. Augustin. Mr. Augustin jumped over several fences as he fled from the police but was soon taken into custody by Broward Sheriff deputies.

6. I was present when Mr. Augustin was contacted by deputies with the Broward Sheriff's Office, handcuffed and taken into custody. At no time during Mr. Augustin's arrest was anything but necessary and reasonable force utilized. At no time was Mr. Augustin punched or struck by anyone. Detective Thomas McInerney and Detective Paul Condoleo did not apprehend or handcuff Mr. Augustin and neither of those detectives were even present when Mr. Augustin was taken into custody by other deputies.

FURTHER AFFIANT SAYETH NAUGHT.

Daniel Fitzpatrick

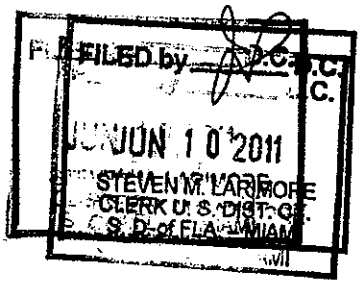
Sworn to and subscribed before me this 9 day of June, 2011.

Connie J. Olschewske
Notary Public

My Commission expires:

CONNIE J. OLSCHEWSKE
MY COMMISSION # EE 070568
EXPIRES: May 22, 2015
Bonded Thru Notary Public Underwriters

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA



CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS' NOTICE OF CONVENTIONAL FILING

PLEASE TAKE NOTICE that the foregoing DVD of narcotics transaction dated October 16, 2009, (Ex. 1 in Defendants' Notice of Filing in Support of their Motion for Summary Judgment) and the color booking photo of Jonas Augustin, #120902554, (Ex. 13 in Defendants' Notice of Filing in Support of their Motion for Summary Judgment) are being filed conventionally for the following reason:

[x] The items cannot be converted to an electronic format.

Dated on: June 9, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

Augustin v. Condoleo , et al.
Case No. 10-62100-CIV-MORENO/WHITE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Federal Express to Clerk of the Court, U.S. District Court for the Southern District of Florida, 400 N. Miami Avenue, 8th Floor, Miami, FL 33128 and US Mail upon the following on the service list below on this 9th day of June, 2011.

Daniel L. Losey

Jonas R. Augustin
DC# L52830
Florida State Prison - West Unit
7819 N.W. 228th St.
Raiford, FL 32026-3000
Plaintiff, Pro Se
VIA CERTIFIED MAIL

United States District Court
Southern District of Florida

Case Number: 10-62100 Civ FAM/paw

SUPPLEMENTAL ATTACHMENT(S)

Please refer to supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

☒ **NOT SCANNED**

- ☐ Due to Poor Quality
- ☐ Bound Extradition Papers
- ☒ Photographs
- ☐ Surety Bond (Original or Letter of Understanding)
- ☒ CD, DVD, VHS Tape, Cassette Tape
- ☐ Other: _____

☐ **SCANNED**

- ☐ But Poor Quality
- ☐ Habeas Cases (State Court Record/Transcript)

Date: 6/10/11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO
MAGISTRATE JUDGE P. A. WHITE

JONAS R. AUGUSTIN,

Plaintiff,

v.

PAUL CONDOLEO, et al.,

Defendants.

ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT

In this prisoner civil rights action the defendants Paul Condoleo and Tom McInerney, have filed a motion for summary judgment pursuant to Fed.R.Civ.P. 56, or a motion to dismiss with supporting documentation which the court will treat as a motion for summary judgment pursuant to Fed.R.Civ.P. 12(b)(6).

The plaintiff is hereby notified that this Court will consider this motion without oral hearing, and that he may file a response in opposition thereto for consideration by the Court. Somerville v. Hall, 2 F.3d 1563 (11 Cir. 1993); Griffith v. Wainwright, 772 F.2d 822, 825 (11 Cir. 1985); Moore v. Florida, 703 F.2d 516 (11 Cir. 1983); Barker v. Norman, 651 F.2d 1107 (5 Cir. 1981); Kibort v. Hampton, 538 F.2d 90 (5 Cir. 1976).

The attention of the plaintiff is particularly drawn to all provisions of Fed.R.Civ.P. 56, and specifically to that portion of Rule 56(e), which provides:

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials–including the facts considered undisputed–show that the movant is entitled to it; or

(4) issue any other appropriate order

The plaintiff is specifically cautioned as follows:

1. Any issue determined by summary judgment will not be tried. If a summary judgment is granted as to all issues, there will be no trial and a final judgment will be entered without further proceedings.

2. The evidence presented by the defendant in support of the motion for summary judgment may be accepted by the Court as true if it is not contradicted by affidavits or other sworn evidence such as depositions, submitted by the plaintiff.

3. The plaintiff cannot rely solely on his complaint and other initial pleadings, but must respond with affidavits, depositions, or otherwise, to show that there are material issues of fact which require a trial.

Coleman v. Smith, 828 F.2d 714 (11 Cir. 1987); Brown v. Shinbaum, 828 F.2d 707 (11 Cir. 1987). Thereupon, it is

ORDERED that if plaintiff files a response to the pending motion for summary judgment, such response shall be filed on or before **July 11, 2011**.

DONE AND ORDERED at Miami, Florida, this 14th day of June, 2011.

s/Patrick A. White
PATRICK A. WHITE
U.S. MAGISTRATE JUDGE

cc: Jonas R. Augustin, Pro Se
DC #L52830
Florida State Prison
7819 N.W. 228 Street
Raiford, FL 32026-3000

Daniel Lee Losey, Esq.
Billing, Cochran, et al.
SunTrust Center 6th Floor
515 East Las Olas Boulevard
Fort Lauderdale, FL 33301

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-62100-CIV-MORENO/WHITE

JONAS R. AUGUSTIN,

Plaintiff,

vs.

PAUL CONDOLEO AND
TOM MCINERNEY,

Defendants.
_____/

DEFENDANTS, PAUL CONDOLEO AND TOM MCINERNEY'S NOTICE OF PLAINTIFF'S FAILURE TO COMPLY

COME NOW, the Defendants, PAUL CONDOLEO AND TOM MCINERNEY, by and through their undersigned counsel and in compliance with paragraph 7 of this Honorable Court's Order Scheduling Pretrial Proceedings when Plaintiff is Proceeding Pro Se (D.E. 14), dated January 21, 2011, hereby notifies the Court that the Plaintiff has failed to file an appropriate Pretrial Statement, as required by paragraph 4.

The Defendants, PAUL CONDOLEO AND TOM MCINERNEY, hereby file their Notice to the Court, in compliance with the Court's Scheduling Order paragraph 7, notifying the Court of the Plaintiff's failure to file an appropriate Pretrial Statement.

Dated on: June 28, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Defs/CONDOLEO & MCINERNEY

Augustin v. Condoleo , et al.
Case No. 10-62100-CIV-MORENO/WHITE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 28, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Daniel L. Losey
Daniel L. Losey

Jonas R. Augustin
DC# L52830
Florida State Prison - West Unit
7819 N.W. 228th St.
Raiford, FL 32026-3000
Plaintiff, Pro Se
VIA CERTIFIED MAIL