

CASREF, PAW

**U.S. District Court
Southern District of Florida (Ft. Pierce)
CIVIL DOCKET FOR CASE #: 2:10-cv-14324-DLG**

Delphin v. St. Lucie County Sheriff's Office et al
Assigned to: Judge Donald L. Graham
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 11/29/2010
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff**Rodney Gener Delphin**

represented by **Rodney Gener Delphin**
Jail No. 198541
C.F.R.C.
7000 H.C. Kelly Road
Orlando, FL 32831
PRO SE

V.

Defendant**St. Lucie County Sheriff's Office**
*TERMINATED: 06/09/2011***Defendant****Ken J. Mascara**
Sheriff
*TERMINATED: 06/09/2011***Defendant****Deputy Archie Lasolomon**

represented by **Christy Michelle Runkles**
Purdy, Jolly, Giuffreda & Barranco,
P.A.
2455 E. Sunrise Blvd
Suite 1216
Fort Lauderdale, FL 33304
954-462-3200
Fax: 954-462-3861
Email: christy@purdylaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Deputy David Meizenger**

represented by **Christy Michelle Runkles**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/29/2010	<u>1</u>	COMPLAINT Under the Civil Rights Act, 42 U.S.C. 1983 against Ken J. Mascara, St. Lucie County Sheriff's Office. Filing fee \$ 350.00. IFP Filed, filed by Rodney Gener Delphin.(rgs) Modified event for MJSTAR on 2/16/2011 (dgj). (Entered: 11/29/2010)
11/29/2010	<u>2</u>	Judge Assignment RE: Electronic Complaint to Judge Donald L. Graham (rgs) (Entered: 11/29/2010)
11/29/2010	<u>3</u>	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: 11/29/2010)
11/29/2010	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Rodney Gener Delphin. (rgs) (Entered: 11/29/2010)
12/10/2010	<u>5</u>	ORDER REQUIRING AMENDED COMPLAINT. Signed by Magistrate Judge Patrick A. White on 12/10/2010. (Attachments: # <u>1</u> Supplement 1983) (tw) (Entered: 12/10/2010)
12/13/2010	<u>6</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 12/13/2010. (tw) (Entered: 12/13/2010)
12/13/2010	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 12/13/2010. (tw) (Entered: 12/13/2010)
12/20/2010	<u>8</u>	AMENDED COMPLAINT against Ken J. Mascara, filed by Rodney Gener Delphin.(asl) (Entered: 12/21/2010)
02/15/2011	<u>9</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Rodney Gener Delphin. Recommending 1. This case shall proceed on the claim of use of excessive force against Officers Archie and Meizenger. Service will be ordered by separate order. 2. The defendants Sheriff Mascara and the St. Lucie County Sheriffs Office are dismissed for failure to state a claim pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). 3. The plaintiff's claim of denial of his Miranda rights shall be dismissed for failure to state a claim. 4. The operative complaints in this case is both the complaint(DE#1) and the amended complaint (DE#8). Objections to R&R due by 3/4/2011. Signed by Magistrate Judge Patrick A. White on 2/15/2011. (tw) (Entered: 02/15/2011)
02/24/2011	<u>10</u>	RESPONSE to <u>9</u> REPORT AND RECOMMENDATIONS by Rodney Gener Delphin. (ral) (Entered: 02/25/2011)
03/02/2011	<u>11</u>	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: Deputy Archie Lasolomon, St. Lucie County Sheriffs Office, 4700 West Midway Road, Fort Pierce, FL 34981-4825 and Deputy David Meizenger, St. Lucie County Sheriffs Office, 4700 West Midway Road, Fort Pierce, FL 34981-4825. Signed by Magistrate Judge Patrick A. White on 3/2/2011. (tw) (Entered: 03/02/2011)
03/07/2011	<u>12</u>	Summons Issued as to Archie Lasolomon. (br) (Entered: 03/07/2011)
03/07/2011	<u>13</u>	Summons Issued as to David Meizenger. (br) (Entered: 03/07/2011)
04/15/2011	<u>14</u>	MOTION to Compel <i>clerk to forward subpoenas to defendants</i> by Rodney Gener Delphin. Responses due by 5/2/2011 (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(dm) (Entered: 04/18/2011)
04/19/2011	<u>15</u>	ORDER denying <u>14</u> Motion to Compel Clerk to serve subpoenas. The plaintiff must pay the fee and arrange for service. See Lloyd v McKendree, 749 F.2d 705 (11 Cir. 1985).. Signed by Magistrate Judge Patrick A. White on 4/19/2011. (cz) (Entered: 04/19/2011)
05/20/2011	<u>16</u>	MOTION for Contempt by Rodney Gener Delphin. Responses due by 6/6/2011 (yha) (Entered: 05/23/2011)
05/20/2011	<u>17</u>	Letter to the Court by Rodney Gener Delphin (yha) (Entered: 05/23/2011)
05/20/2011	<u>18</u>	SUMMONS (Affidavit) Returned Executed on <u>8</u> Amended Complaint David Meizenger served on 5/19/2011, answer due 6/9/2011. (yha) (Entered: 05/23/2011)
05/20/2011	<u>19</u>	SUMMONS (Affidavit) Returned Executed on <u>8</u> Amended Complaint Archie Lasolomon served on 5/19/2011, answer due 6/9/2011. (yha) (Entered: 05/23/2011)
05/26/2011	<u>20</u>	ORDER denying <u>16</u> Motion for Contempt as insufficient. The plaintiff would have to provide the court with copies of the subpoenas sent to ensure they were correctly filled out and proof they were served by a process server.. Signed by Magistrate Judge Patrick A. White on 5/26/2011. (cz) (Entered: 05/26/2011)
05/26/2011	<u>21</u>	Letter to the Court by Rodney Gener Delphin (yha) (Entered: 05/27/2011)
05/31/2011	<u>22</u>	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of Archie Lasolomon, David Meizenger (Runkles, Christy) (Entered: 05/31/2011)
05/31/2011	<u>23</u>	<i>Defendant Archie's</i> ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand (<i>Complaint & Amended Complaint</i>) by Archie Lasolomon.(Runkles, Christy) (Entered: 05/31/2011)
05/31/2011	<u>24</u>	<i>Defendant Meizenger's</i> ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand (<i>Complaint & Amended Complaint</i>) by David Meizenger.(Runkles, Christy) (Entered: 05/31/2011)
05/31/2011	<u>25</u>	Defendant's MOTION to Take Deposition from Rodney Delphin , <i>A Confined Person (And Memorandum of Law)</i> by Archie Lasolomon, David Meizenger. (Attachments: # <u>1</u> Text of Proposed Order)(Runkles, Christy) (Entered: 05/31/2011)

06/01/2011	<u>26</u>	ORDER granting <u>25</u> Motion to Take Deposition from plaintiff Rodney Delphin. A copy of the plaintiff's deposition shall be provided to him.. Signed by Magistrate Judge Patrick A. White on 6/1/2011. (cz) (Entered: 06/01/2011)
06/02/2011	<u>27</u>	SCHEDULING ORDER: Amended Pleadings due by 10/14/2011. Discovery due by 9/30/2011. Joinder of Parties due by 10/14/2011. Motions due by 11/4/2011.. Signed by Magistrate Judge Patrick A. White on 6/1/2011. (tw) (Entered: 06/02/2011)
06/08/2011	<u>28</u>	MOTION for Appointment of Counsel by Rodney Gener Delphin. Responses due by 6/27/2011 (yha) (Entered: 06/09/2011)
06/09/2011	<u>29</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>1</u> Complaint/Petition filed by Rodney Gener Delphin ; Dismissing Claims against defendants Sheriff Mascara and the St. Lucie County Sheriff's Office; Dismissing Plaintiff's Claim of Denial of his Miranda rights; Ken J. Mascara and St. Lucie County Sheriff's Office terminated. ; adopting Report and Recommendations re <u>9</u> Report and Recommendations.. Signed by Judge Donald L. Graham on 6/8/2011. (ls) (Entered: 06/09/2011)
06/13/2011	<u>30</u>	ORDER denying <u>28</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 6/13/2011. (cz) (Entered: 06/13/2011)
06/14/2011	<u>31</u>	RESPONSE in Opposition re <u>16</u> MOTION for Contempt filed by Archie Lasolomon, David Meizenger. (Runkles, Christy) (Entered: 06/14/2011)
07/05/2011	<u>32</u>	NOTICE of Change of Address by Rodney Gener Delphin. System Updated (yha) (Entered: 07/06/2011)

PACER Service Center			
Transaction Receipt			
07/21/2011 13:26:27			
PACER Login:	vl0006	Client Code:	
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Billable Pages:	3	Cost:	0.24

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-14324-CV Graham/White

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

cat / div 250/1983/FTP
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

FILED by FLG D.C.
NOV 29 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Case Number: _____

RODNEY GENER DELPHIN

(Enter the full name of the plaintiff in this action)

v.

ST. LUCIE COUNTY SHERIFF'S OFFICE
KEN J. MASCARA, SHERIFF

(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.

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

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: Rodney Genes Delphin
Inmate #: 198541
Address: 900 North Rock Road, Fort Pierce,
Florida 34945

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: Ken J. Mascara
is employed as Sheriff
at St. Lucie County Sheriff's Office

C. Additional Defendants: Deputy, Lasolomon Archie
Deputy, David Meizengel

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

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.

ON 11-6-2009 I WAS arrested in Fort Pierce Florida pursuant to F.S.A. 893.135, 918.13(1), 843.01 843.02, Upon me being arrested, the defendant's assaulted me for which caused me to receive several bruised ribs on the right side of my body. The defendant's also used racial slurs to me regarding my Haitian heritage. The defendant's actually pulled hair out of my head as my hair is dread-locks as per my rastafarian faith. The defendant told me that he's "sick of you people," quoting defendant's. I never resisted these officer's as they were only interested in harming

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

me physically and lying. My civil rights have been violated by the defendant's actions. This complaint has nothing to do with my pending criminal charge, I'm only filing a complaint on the civil rights violations made during the arrest.

III. Relief

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

250,000.000 (two hundred fifty thousand)
In Damages along with pain and suffering.

IV. Jury Demand

Do you demand a jury trial? Yes No

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

Signed this 16 day of November, 2010

Palmer Delphin
(Signature of Plaintiff)

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

Executed on: 11-16-10

Palmer Delphin
(Signature of Plaintiff)

Paul J. Delphino
900 North Rock Rd
Fort Pierce, FL 34945

United States
Southern District
400 North 1
Miami, Florida

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10CV14324 DLG

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by *MP* D.C.
DEC 20 2010
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

RODNEY DELPHIN
Plaintiff

v.

CASE NO: 10-14324 C.V.

GRAHAM

KEN MASCARA, et al

Defendants

"AMENDED COMPLAINT"

COMES NOW the Plaintiff,
Rodney Delphin, Pro-se, hereby complies with
this Court's order dated 12-10-10 to file an
amended complaint by 12-30-10.

STATEMENT OF FACTS

(1)- The Plaintiff will state that it was
Deputy Lasolman Archie, for whom assaulted him
and tore hair out of his head. Mr. Delphin will
state that Deputy Archie has a long history of
these types of abuses as he gets personal motivations
gain out of this type of behavior.

(2)- The Plaintiff will state that it was
Deputy Meizinger, David, for whom held him

down with Deputy Archie kicking him and pulling out his hair.

(3) Mr. Delphin will also state that he was never given his Miranda rights during or after the arrest.

WHEREFORE, the plaintiff, Rodney Delphin, humbly request this Honorable to grant his Amended complaint as was so ordered.

Respectfully Submitted

+ Rodney Delphin

Rodney Delphin
900 North Rock Rd
Fort Pierce FL 34945

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-14324-CIV-GRAHAM
MAGISTRATE JUDGE P.A. WHITE

RODNEY GENER DELPHIN, :
 :
 Plaintiff, :
 :
 v. :
 :
 ST. LUCIE COUNTY SHERIFF'S :
 OFFICE, et al., :
 :
 Defendants. :

REPORT OF
MAGISTRATE JUDGE

I. Introduction

The pro-se plaintiff, Rodney Gener Delphin, filed a civil rights complaint pursuant to 42 U.S.C. §1983 (DE#1) and an amended complaint (DE#8). The plaintiff is proceeding in forma pauperis.

This civil action is before the Court for an initial screening pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

(e) (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

This is a civil rights action. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985). The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e) (2) (B) or Fed.R.Civ.P. 12(b) (6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e) (2) (B) (ii) tracks the language of Federal Rule of Civil Procedure 12(b) (6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil

Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997) ("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.¹

¹ The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

B. Factual Allegations

The plaintiff names as defendants the St. Lucie County Sheriff's Office, Sheriff Ken Mascara, and deputies Lasolomon Archie and David Meizenger. The plaintiff alleges that on November 6, 2009, he was arrested in Ft. Pierce, Florida. He claims the arrested officers assaulted him, resulting in bruised ribs on the right side of his body. Some of his hair, which is in dread locks, was pulled out of his head. He claims the defendants used racial slurs regarding his Haitian heritage, and one of the defendants told him he's "sick of you people". He claims he did not resist the arrest. He seeks monetary damages of \$250,000.00. (DE#1) In his amended complaint (DE#8) he provides more specific facts, alleging that Deputy Meizinger held him down, while Deputy Archie kicked him and pulled out his hair.

Lastly, he alleges he was not given his Miranda rights during or after his arrest.

Improper Defendants

At the outset, the plaintiff names the Sheriff's Department of St. Lucie County and Sheriff Mascara, who are improper defendants. There are no allegations of personal involvement in the events alleged in the complaint as to Defendant Mascara. The plaintiff has apparently named Mascara as a defendant only because he holds a supervisory position.

It has long been established that public officials in supervisory positions cannot simply be held vicariously liable for the acts of their subordinates. Robertson v. Sichel, 127 U.S. 507 (1888); Byrd v. Clark, 783 F.2d 1002, 1008 (11 Cir. 1986); Jasinski v. Adams, 781 F.2d 843 (11 Cir. 1986). Nor can liability be

predicated solely upon the doctrine of respondeat superior in a §1983 action. Monell v. Department of Social Services, 436 U.S. 658 (1978). Supervisory liability requires a causal connection between actions of the supervisory official and an alleged deprivation [for example, a showing of knowledge of a history of abuses and failure to take corrective action]. Byrd v. Clark, supra at 1008.

The claim against the St. Lucie County Sheriff's Department must be dismissed because a sheriff's department/police department cannot be sued in a federal civil rights action. In Section 1983 actions, they are merely an administrative arm of the local municipality, and not a separate judicial entity. Eddy v. City of Miami, 715 F.Supp. 1553 (S.D.Fla. 1989); DeBellis v. Kulp, 166 F.Supp.2d 255, 264 (E.D.Pa. 2001). In some instances the local municipality may be sued, if it demonstrated that a policy or custom of the county is responsible for the plaintiff's constitutional violations. The plaintiff has failed to demonstrate that St. Lucie County has any such policy. Monell, supra.

The plaintiff alleges that the deputy used racial slurs against him regarding his Haitian heritage. This allegation fails to state a claim. Verbal harassment alone, does not state a claim for relief under §1983. See Hoptowit v. Ray, 682 F.2d 1237, 1252 (9 Cir. 1982) (federal court cannot order guards to refrain from using racial slurs to harass prisoners); Burton v. Livingston, 791 F.2d 97, 101 n. 1 (8 Cir. 1986) (use of racial slurs in prison does not offend Constitution); McFadden v. Lucas, 713 F.2d 143, 146 (5 Cir.), cert. denied, 464 U.S. 998 (1983) (threatening language and gestures does not state a constitutional violation).

However, in this case, the plaintiff alleges that the verbal slurs were followed by the use of unlawful force upon arrest,

resulting in bruised ribs. He apparently was held down by Officer Meizenger, while Officer Archie kicked him, and pulled out his hair. He claims he did not resist the arrest. The plaintiff has minimally stated a claim for use of unlawful force at this preliminary stage against Officers Meizenger and Archie.

Claims of excessive force by police officers are cognizable under 42 U.S.C. §1983, as are claims that officers who were present failed to intervene. Fundiller v. City of Cooper City, 777 F.2d 1436 (11 Cir. 1985). A claim that a law enforcement officer used excessive force in the course of an arrest, an investigatory stop, or any other seizure of a free citizen is to be analyzed under the Fourth Amendment and its "reasonableness" standard. Graham v. Connor, 490 U.S. 386 (1989) ("all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard"); Ortega v. Schram, 922 F.2d 684, 694 (11 Cir. 1991).

His claim of one line, stating he was not read his Miranda rights upon arrest is a challenge to his criminal proceedings and foreclosed by Heck v Humphrey, 512 US 477 (1994). ²In Heck, the Supreme Court held that if a judgment in favor of a state prisoner seeking damages in a §1983 suit would necessarily imply the invalidity of a conviction or sentence, the claim for damages is not cognizable under §1983 and the complaint must be dismissed, because the claim for damages will not exist unless and until the prisoner can demonstrate that the conviction or sentence has previously been reversed, expunged, invalidated, or impugned by the

²It appears that the plaintiff is a pre-trial detainee and charges against him are pending.

grant of a writ of habeas corpus. The plaintiff's proper vehicle to challenge his conviction, if convicted, is to file a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, after exhausting his state court remedies.

Further, his criminal proceedings may be pending, and the plaintiff should address his issues to the attorney representing him. This Court does not ordinarily interfere with ongoing state criminal proceedings. Younger v Harris, 401 US 37 (1971).

III. Recommendation

1. This case shall proceed on the claim of use of excessive force against Officers Archie and Meizenger. Service will be ordered by separate order.
2. The defendants Sheriff Mascara and the St. Lucie County Sheriff's Office are dismissed for failure to state a claim pursuant to 28 U.S.C. §1915(e) (2) (B) (ii).
3. The plaintiff's claim of denial of his Miranda rights shall be dismissed for failure to state a claim.
4. The operative complaints in this case is both the complaint (DE#1) and the amended complaint (DE#8).

Objections to this Report may be filed within fourteen days following receipt.

Dated at Miami, Florida, this 15th day of February, 2011.


UNITED STATES MAGISTRATE JUDGE

cc: Rodney Gener Delphin, Pro Se
#198541
St. Lucie County Jail
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 2:10-cv-14324-CIV-GRAHAM

RODNEY GENER DELPHIN,

Plaintiff,

vs.

ST. LUCIE COUNTY SHERIFF'S
OFFICE, et. al.,

Defendant.

DEFENDANT ARCHIE'S ANSWER/AFFIRMATIVE DEFENSES
(COMPLAINT & AMENDED COMPLAINT)

The Defendant, LASOLOMON ARCHIE, through his undersigned attorneys, files this his Answer/Affirmative Defenses to the Plaintiff's Complaint and Amended Complaint, and in support thereof, would state as follows:

ANSWER TO COMPLAINT

I. Parties

- A. Admitted that Rodney Delphin is the Plaintiff in this action.
- B. Denied.
- C. Admitted that Lasolomon Archie and David Meizenger are Defendants in this action.

II. Statement of the Claim

As these allegations are in narrative fashion they are denied.

III. Relief

Denied.

ANSWER TO AMENDED COMPLAINT

Statement of Facts

1. Denied.
2. Denied.
3. Denied.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

AFFIRMATIVE DEFENSES

1. As a first and separate Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that Plaintiff has failed to make sufficient allegation of ultimate fact from which it may be determined that a claim for relief has been stated.

2. As a further and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and at all times otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions, and otherwise acted reasonably.

3. As a further and separate defense, the Defendant would assert that any and all injuries suffered by Plaintiff were caused in whole or in part by reason of Plaintiff's negligent and/or wrongful acts and conduct, as a consequence of which the Plaintiff is not entitled to recovery or any recovery should be reduced in direct proportion thereto.

4. As a further and separate Affirmative Defense, the Defendant would assert that any

and all actions were taken:

- a. Without malice;
- b. With probable cause;
- c. In pursuit of lawful and legal duties;
- d. With such force as was reasonable and necessary under the circumstances.

DEMAND FOR TRIAL BY JURY

The Defendant, LASOLOMON ARCHIE, hereby demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing was mailed this 31st day of May, 2011, to: Rodney Gener Delphin, Jail No. 198541, St. Lucie County Jail, 900 North Rock, Road, Fort Pierce, FL 34945.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants
2455 East Sunrise Boulevard, Suite 1216
Fort Lauderdale, Florida 33304
Telephone (954) 462-3200
Telecopier (954) 462-3861
E-mail: Christy@purdylaw.com

S/ Christy M. Runkles
CHRISTY M. RUNKLES, ESQUIRE
Florida Bar No.: 0084631

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 2:10-cv-14324-CIV-GRAHAM

RODNEY GENER DELPHIN,

Plaintiff,

vs.

ST. LUCIE COUNTY SHERIFF'S
OFFICE, et. al.,

Defendant.

DEFENDANT MEIZENGER'S ANSWER/AFFIRMATIVE DEFENSES
(COMPLAINT & AMENDED COMPLAINT)

The Defendant, DAVID MEIZENGER, through his undersigned attorneys, files this his Answer/Affirmative Defenses to the Plaintiff's Complaint and Amended Complaint, and in support thereof, would state as follows:

ANSWER TO COMPLAINT

I. Parties

- A. Admitted that Rodney Delphin is the Plaintiff in this action.
- B. Denied.
- C. Admitted that Lasolomon Archie and David Meizenger are Defendants in this action.

II. Statement of the Claim

As these allegations are in narrative fashion they are denied.

III. Relief

Denied.

ANSWER TO AMENDED COMPLAINT

Statement of Facts

1. Denied.
2. Denied.
3. Denied.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

AFFIRMATIVE DEFENSES

1. As a first and separate Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that Plaintiff has failed to make sufficient allegation of ultimate fact from which it may be determined that a claim for relief has been stated.

2. As a further and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and at all times otherwise acted in good faith relying upon existing statutes, policies and procedures as authority for his actions, and otherwise acted reasonably.

3. As a further and separate defense, the Defendant would assert that any and all injuries suffered by Plaintiff were caused in whole or in part by reason of Plaintiff's negligent and/or wrongful acts and conduct, as a consequence of which the Plaintiff is not entitled to recovery or any recovery should be reduced in direct proportion thereto.

4. As a further and separate Affirmative Defense, the Defendant would assert that any

and all actions were taken:

- a. Without malice;
- b. With probable cause;
- c. In pursuit of lawful and legal duties;
- d. With such force as was reasonable and necessary under the circumstances.

DEMAND FOR TRIAL BY JURY

The Defendant, DAVID MEIZENGER, hereby demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 31st day of May, 2011, to: Rodney Gener Delphin, Jail No. 198541, St. Lucie County Jail, 900 North Rock, Road, Fort Pierce, FL 34945.

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S/ Christy M. Runkles
CHRISTY M. RUNKLES, ESQUIRE
Florida Bar No.: 0084631

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-14324-CIV-GRAHAM
MAGISTRATE JUDGE P. A. WHITE

RODNEY GENER DELPHIN, :
 :
 Plaintiff, :
 :
 v. : ORDER SCHEDULING PRETRIAL
 : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 ST. LUCIE COUNTY SHERIFF'S :
 OFFICE, et al., :
 :
 Defendants. :
 _____ :

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 **September 30, 2011**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **October 14, 2011**.

3. All motions to dismiss and/or for summary judgment shall be filed by **November 4, 2011**.

4. On or before **November 18, 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 each of his witnesses to give.

5. On or before **December 2, 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 discoverable 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 1st day of June, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Rodney Gener Delphin, Pro Se
Jail No. 198541
St. Lucie County Jail
900 North Rock Road
Fort Pierce, FL 34945

Christy M. Runkles, Esquire
Purdy, Jolly, et al.
2455 East Sunrise Boulevard
Suite 1216
Fort Lauderdale, FL 33304

Hon. Donald L. Graham, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION
Case No. 10-14324-CIV-GRAHAM/WHITE

RODNEY GENER DELPHIN,

Plaintiff,

vs.

ST. LUCIE COUNTY SHERIFF'S OFFICE,
et.al.,

Defendants.

ORDER

THIS CAUSE comes before the Court upon Plaintiff's complaint under the Civil Rights Act, 42 U.S.C. § 1983 [D.E. 1].

THE MATTER was referred to the Honorable United States Magistrate Judge Patrick A. White pursuant to 28 U.S.C. § 636 and the Magistrate Rules for the Southern District of Florida [D.E. 3]. Judge White issued a Preliminary Report and Recommendation [D.E. 9] recommending 1) that the case proceed on the claim of use of excessive force against Officers Archie and Meizinger; 2) dismissal of defendants Sheriff Mascara and the St. Lucie County Sheriff's Office for failure to state a claim and 3) dismissal of Plaintiff's claim of denial of his Miranda rights for failure to state a claim. Plaintiff does not object to the report.

THE COURT has conducted an independent review of the record and is otherwise fully advised in the premises.

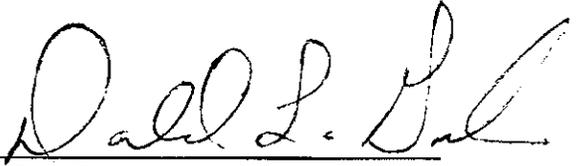
Accordingly, it is hereby

ORDERED AND ADJUDGED that the Magistrate Judge's Report [D.E. 9] is AFFIRMED, ADOPTED AND RATIFIED in its entirety. It is further

ORDERED AND ADJUDGED that the claims against Defendants Sheriff Mascara and the St. Lucie County Sheriff's Office are DISMISSED. It is further

ORDERED AND ADJUDGED that Plaintiff's claim of denial of his Miranda rights is DISMISSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 8th day of June, 2011.


DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Patrick A. White
Rodney Gener Delphin, Pro Se