

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
Liberty C.I.
11064 NW Dempsey Barron Rd.
Bristol, FL 32321
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	2	Judge Assignment RE: Electronic Complaint to Judge Donald L. Graham (rgs) (Entered: 11/29/2010)
11/29/2010	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: 11/29/2010)
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)
08/04/2011	<u>33</u>	NOTICE of Change of Address by Rodney Gener Delphin. System Updated. (yha) (Entered: 08/04/2011)
09/02/2011	<u>34</u>	MOTION/Notice of Service on Plaintiff's First Request for Production to Defendants Lasolomon Archie and David Meizenger by Rodney Gener Delphin. (yha) (Entered: 09/06/2011)
09/07/2011	<u>35</u>	ORDER dismissing <u>34</u> Motion to Produce, this is not a motion but notice of service.. Signed by Magistrate Judge Patrick A. White on 9/7/2011. (cz) (Entered: 09/07/2011)
09/19/2011	<u>36</u>	MOTION for Extension of Time to Complete Discovery by Archie Lasolomon, David Meizenger. (Runkles, Christy) (Entered: 09/19/2011)
09/20/2011	<u>37</u>	ORDER granting <u>36</u> Motion for Extension of Time to Complete Discovery, the discovery date is extended to on or before 10/31/11, all dispositive motions are due on or before 12/5/11.. Signed by Magistrate Judge Patrick A. White on 9/20/2011. (cz) (Entered: 09/20/2011)

PACER Service Center

Transaction Receipt

09/21/2011 13:37:03

PACER Login:	v10006	Client Code:	
Description:	Docket Report	Search Criteria:	2:10-cv-14324-DLG
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. Delpho, Attorney
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. 10-14324-CV Graham/White

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

AO 240 (Rev. 06/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

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

RODNEY GENE DELPHIN)
Plaintiff)
v.) Civil Action No.
ST. Lucie County Sheriff's Office)
Defendant)

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: ST. Lucie County Jail.
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ 0, and my take-home pay or wages are: \$ 0 per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|--|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

AO 240 (Rev. 06/09) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ 0.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

NONE

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

NONE

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

NONE

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

NONE

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 11-16-10

Rodney Delpin
Applicant's signature
Rodney Genes Delpin
Printed name

Individual Inmate Balance History Report

ST. LUCIE JAIL

Print Date: 11/22/2010 03:13:55 pm

User Name: AH

Start Date: 10/22/10 03:13:44 pm

End Date: 11/22/10 03:13:48 pm

Name DELPHIN, RODNEY GENER
Number 198541
DOB 7/8/1975
POD D2E
DORM D12
CELL D
BED D1222

Balance \$0.00
Frozen \$0.00

Owed \$1,211.97

TRANSACTIONS

Date	Transaction	Credit	Debit	Actual Balance	Owed Debit	Owed Credit	Owed Balance	Note
10/23/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,121.97	
10/24/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,124.97	
10/25/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,127.97	
10/26/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,130.97	
10/27/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,133.97	
10/28/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,136.97	
10/29/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,139.97	
10/30/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,142.97	
10/31/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,145.97	
11/1/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,148.97	
11/2/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,151.97	
11/3/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,154.97	
11/4/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,157.97	
11/5/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,160.97	
11/6/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,163.97	
11/7/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,166.97	
11/8/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,169.97	
11/9/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,172.97	
11/10/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,175.97	
11/11/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,178.97	
11/12/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,181.97	
11/13/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,184.97	
11/14/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,187.97	
11/15/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,190.97	
11/16/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,193.97	
11/17/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,196.97	
11/18/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,199.97	
11/19/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,202.97	
11/20/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,205.97	
11/21/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,208.97	
11/22/2010	SUB FEE	\$0.00	\$0.00	\$0.00	\$3.00	\$0.00	\$1,211.97	
Totals		\$0.00	\$0.00		\$93.00	\$0.00		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

RODNEY DELPHIN, :
 :
 Plaintiff, :
 :
 v. : ORDER REQUIRING
 : AMENDED COMPLAINT *
 KEN MASCARA, et al., :
 :
 Defendants. :

Rodney Delphin, who is confined at the Ft. Pierce County Jail, has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983.

The plaintiff names deputies who assaulted him upon his arrest, and tore hair out of his head. The plaintiff does not specify which defendant was allegedly guilty of which actions, and each defendant must be made aware of the actions the plaintiff is alleging they have committed.

The Court must hold the allegations of a pro se civil rights complaint to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519 (1972), and such a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitle the plaintiff to relief. Haines v. Kerner, supra; Conley v. Gibson, 355 U.S. 41 (1957).

The effort to provide justice to the plaintiff, however, cannot be allowed to work injustice upon a defendant. A defendant must be able to understand the claim of the plaintiff and what he

or she is accused of. Therefore, even a pro se plaintiff must comply with Fed.R.Civ.P. 8(a) by providing a short and plain statement of a claim, a basis for federal jurisdiction, and a demand for judgment. Moreover, the plaintiff must separate all claims based upon differing sets of circumstances, as required by Fed.R.Civ.P. 10(b).

It is thereupon

ORDERED AND ADJUDGED as follows:

1. On or before December 30, 2010, the plaintiff shall file an amended complaint in this case.

2. The amended complaint must be labeled Amended Complaint and must show Case No. 10-14324-Civ-Graham, so that it will be filed in this case.

3. The amended complaint must contain a separate paragraph as to each defendant explaining what that defendant did and the supporting facts to show why that person is being sued.

4. The plaintiff is cautioned that failure to file the amended complaint on time will probably result in dismissal of this case.

DONE AND ORDERED at Miami, Florida, this 10th day of
December, 2010.



UNITED STATES MAGISTRATE JUDGE

cc: Rodney Delphin, pro-se
900 North Rock Rd
Ft Pierce, FL
Address of record

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

**UNITED STATES DISTRICT COURT
Southern District of Florida**

Case Number: _____

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

v.

(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, 301 North Miami Avenue, 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: _____

Inmate #: _____

Address: _____

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: _____

is employed as _____

at _____

C. Additional Defendants: _____

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

Signed this _____ day of _____, 20_____

(Signature of Plaintiff)

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

Executed on: _____

(Signature of Plaintiff)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

RODNEY GENER DELPHIN, :
 :
 Plaintiff, : ORDER PERMITTING PLAINTIFF TO
 : PROCEED WITHOUT PREPAYMENT OF
 v. : FILING FEE BUT ESTABLISHING
 : DEBT TO CLERK OF \$350.00
 ST. LUCIE COUNTY SHERIFF'S :
 OFFICE, et al., :
 :
 Defendants. :
 _____ :

The pro se plaintiff in this case has not paid the Clerk's filing fee of \$350.00, but has filed a motion to proceed *in forma pauperis* with supporting financial affidavit and inmate bank statement.

On April 26, 1996, 28 U.S.C. §1915(a) was amended in part to provide that:

A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

The six month account statement is needed because pursuant to 28 U.S.C. §1915(b), as amended April 26, 1996, if a prisoner brings a civil action *in forma pauperis*, the prisoner must be required to

pay the full filing fee. Initially, the Court must assess 20% of the greater of

A) the average monthly deposits to the prisoner's account; or

B) the average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the complaint.

Thereafter, the prisoner must make payments of 20% of the preceding month's income credited to his or her account. The agency having custody of the prisoner must forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10.00 until the filing fees are paid.

The plaintiff in this case has filed documentation to establish that he cannot at present pay the fee.

The statute provides at 28 U.S.C. §1915(b)(4) that:

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

It is thereupon

ORDERED AND ADJUDGED as follows:

1. The plaintiff's motion to proceed *in forma pauperis* (DE# 4) is **granted** to the extent that the plaintiff need not prepay even a partial filing fee in this case, or to prepay costs such as for service of process.

2. The plaintiff owes the United States a debt of \$350.00 which must be paid to the Clerk of the Court as funds become available.

3. The jail/prison having custody of the plaintiff must make payments from the prisoner's account to the Clerk of this Court each time the amount in the account exceeds \$10.00 until the full filing fee of \$350.00 is paid.

DONE AND ORDERED at Miami, Florida, this 13th day of December, 2010.

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

Warden/Superintendent
St. Lucie County Jail
900 North Rock Road
Fort Pierce, FL 34945

Aggie Reed, Assistant Financial Administrator
for Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

RODNEY GENER DELPHIN, :
 :
 Plaintiff, :
 : ORDER OF INSTRUCTIONS TO
 v. : PRO SE CIVIL RIGHTS
 : LITIGANTS
 ST. LUCIE COUNTY SHERIFF'S :
 OFFICE, et al., :
 :
 Defendants. :
 _____ :

The plaintiff in this case is proceeding pro se. It is therefore important that he be advised of essential requirements concerning this case. It is therefore

ORDERED AND ADJUDGED as follows:

1. It is the responsibility of the plaintiff to keep the Court advised of his current address at all times. If the plaintiff's address changes and no change of address is promptly filed with the Clerk of Court, this case may be dismissed for lack of prosecution. A change of address must be labeled "Notice of Change of Address" and must not include any motions or other information except for the new address and the effective date of the change. The plaintiff must understand that the Court does not know if the plaintiff is transferred or released unless a change of address is filed.

2. It is the responsibility of the plaintiff to provide the full name, title, if any, and address of the defendant(s). If service cannot be accomplished upon a defendant due to lack of information provided by the plaintiff, the case will be dismissed

as to that defendant(s). If there is only one defendant and service cannot be achieved, the entire case will be dismissed.

3. The plaintiff is instructed that the Court has no legal authority to appoint counsel for the plaintiff in a civil rights suit. In extraordinary cases, it can request a lawyer to represent the plaintiff, but such cases are rare, and no appointment can be made in any civil rights case.

4. The plaintiff shall serve upon the defendant(s) and the defendant(s) upon the plaintiff, or, if appearance by counsel has been entered, upon their respective counsel, copies of all further pleadings or other documents submitted for consideration by the Court. This means that before counsel has appeared for the defendant(s), the plaintiff shall send to the defendant(s) personally a copy of every further pleading, motion, or other paper submitted to the Court. After counsel has appeared for the defendant(s), the copy shall be sent directly to counsel for the defendant(s), rather than to the defendant(s) personally. The plaintiff shall include with each pleading, motion, or other paper submitted to be filed a certificate stating the date that an accurate copy of the pleading, motion, or other paper was mailed to defendant(s) or counsel for defendant(s). If any pleading, motion, or other paper submitted to the Court does not include a certificate of service upon the defendant(s) or counsel for the defendant(s), it will be stricken by the Court.

5. In cases where the plaintiff is filing an "Amended" complaint, the plaintiff shall not send a copy of the amended complaint to the defendants. In such cases, a copy of the amended complaint and a motion for leave to amend the complaint shall be filed with the court only and not mailed to any of the defendants.

6. All pleadings must include the case number at the top of the first page. The parties shall send the original of every pleading or document to the Clerk of this Court. Miami cases to be filed at 400 North Miami Avenue, 8th Floor, Miami, Florida 33128; Broward cases to be filed at 299 East Broward Boulevard, Room 108, Fort Lauderdale, Florida 33301; West Palm Beach cases to be filed at 701 Clematis Street, Room 202, West Palm Beach, Florida 33401. Each submission shall include 1) a copy of the pleading or document, and 2) a certificate of service stating the date a true copy of the pleading or document was sent to the opposing party(ies) and/or counsel for such party(ies).

7. No original pleading or document shall be sent directly to a Judge or Magistrate of this Court. Any paper submitted directly to a Judge or Magistrate rather than to the Clerk will be disregarded by the Court.

8. The plaintiff is instructed not to send letters to the Court or to the Clerk. All documents must be filed in accordance with the Federal Rules of Civil Procedure and copies must be furnished to opposing counsel. No letter to the Court will be answered. The plaintiff must understand that letters are not motions or pleadings and are therefore not docketed in the case.

9. A pro se litigant and his or her family, friends or acquaintances must not call any Judge's office for any reason. No information about the case can be obtained from the Judge's office. Brief case status information contained on the docket sheet may be available from the Clerk of Court, but no Court employee can provide legal advice to any litigant, pro se or otherwise.

10. The plaintiff has no counsel to assist in the discovery process. Attention is therefore drawn to Fed.R.Civ.P. 26(a), which lists the various forms of discovery available in civil cases. The plaintiff is instructed that the Court will not grant any motion by a pro se plaintiff to take depositions, but will otherwise permit reasonable, relevant discovery by the methods described in the Federal Rules of Civil Procedure.

11. It is the plaintiff's responsibility to actively pursue this case, obtain any essential discovery, file all necessary pleadings and motions and otherwise comply with all scheduling orders and prepare the case for trial. Failure to do this will probably result in dismissal of the case for lack of prosecution.

12. If the plaintiff has been permitted to proceed in forma pauperis pursuant to 28 U.S.C. §1915(a), he or she must understand that a §1915(a) order only permits a plaintiff to proceed without prepayment of costs and fees; it does not mean that the plaintiff is not obligated under the law to pay the costs and fees when he or she is able to do so. It is the plaintiff's responsibility to make monthly payments of 20% of the preceding month's income credited to his or her account, and the agency having custody of the plaintiff must forward payments from the plaintiff's account to the Clerk each time the amount in the account exceeds \$10.00 until the full filing fee is paid.

At the conclusion of the case the Court may tax costs against the losing party or parties, and if the plaintiff wins the case such an order will probably eliminate any debt for costs such as

service of process by the Marshal. Otherwise, any costs and fees incurred by the Marshal on behalf of the plaintiff are properly billed to the plaintiff.

DONE AND ORDERED at Miami, Florida, this 13th day of December, 2010.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

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

**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. 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

RODNEY GENE DELPHIN
Plaintiff

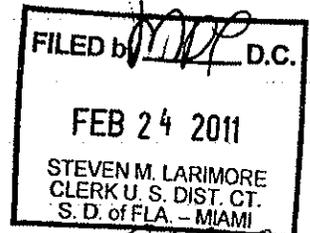
V.

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

Case no; 10-14324 - C.I.V.

-GRAHAM, Magistrate Judge

P.A. WHITE



PLAINTIFF'S RESPONSE TO MAGISTRATE JUDGE REPORT

The pro-se plaintiff, Rodney Gene Delphin, pursuant to 42 U.S.C. 1983, hereby will state that he has NO objection to the Report of Magistrate Judge, P.A. White, dated, 2-15-11.

Respectfully Submitted

+ Delphin Rodney
Rodney G. 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. : ORDER RE SERVICE OF
 : PROCESS REQUIRING PERSONAL
 ST. LUCIE COUNTY SHERIFF'S : SERVICE UPON AN INDIVIDUAL
 OFFICE, et al., :
 :
 Defendants. :
 _____ :

The plaintiff in the above-captioned civil action is proceeding in forma pauperis.

Fed.R.Civ.P. 4(e) provides that service shall be effected, as follows:

(e) SERVICE UPON INDIVIDUALS WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States.

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable

age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

The plaintiff has been permitted to proceed *in forma pauperis* and is therefore entitled to service of process at public expense.

Thereupon, it is

ORDERED AND ADJUDGED that the United States Marshal shall serve a copy of the complaint and appropriate summons upon:

Deputy Archie Lasolomon
St. Lucie County
Sheriff's Office
4700 West Midway Road
Fort Pierce, FL 34981-4825

Deputy David Meizenger
St. Lucie County
Sheriff's Office
4700 West Midway Road
Fort Pierce, FL 34981-4825

IN THE EVENT THAT PERSONAL SERVICE CANNOT BE EFFECTED UPON ANY OF THE NAMED DEFENDANTS, THE MARSHAL IS DIRECTED TO MAKE SUBSTITUTED SERVICE UPON A RANKING OFFICER AVAILABLE TO ACCEPT SERVICE AT THE DEFENDANT'S AGENCY/PLACE OF EMPLOYMENT. WHEN DOING SO, THE MARSHAL SHALL MAKE CLEAR AND SPECIFIC NOTATIONS ON THE "PROCESS RECEIPT AND RETURN," WHICH RECORD THE ACCEPTING OFFICER'S FULL NAME, TITLE, AND BADGE NUMBER, IN ADDITION TO THE MARSHAL'S REMARKS EXPLAINING THE REASON THAT THE NAMED INDIVIDUAL COULD NOT PERSONALLY BE SERVED.

DONE AND ORDERED at Miami, Florida, this 2nd day of March, 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

United States Marshal

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

RODNEY GENER DELPHIN,

Plaintiff

v.

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

Defendant

Civil Action No. 10-14324-CIV-GRAHAM

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Deputy Archie Lasolomon
St. Lucie County Sheriff's Office
4700 West Midway Road
Fort Pierce, FL 34981-4825

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 3/7/11

Elizabeth Rodriguez
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

RODNEY GENER DELPHIN,

Plaintiff

v.

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

Defendant

Civil Action No. 10-14324-CIV-GRAHAM

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Deputy David Meizenger
St. Lucie County Sheriff's Office
4700 West Midway Road
Fort Pierce, FL 34981-4825

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Elizabeth Rodriguez
Signature of Clerk or Deputy Clerk

Date: 3/7/11

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-cv-14324

**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

RODNEY DELPHIN

CASE # 10-14324-CJV. GRAY.

Plaintiff

V

ST. LUCIE COUNTY SHERIFF'S OFFICE, et al

Defendants

FILED by AS D.C.
APR 15 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. MIAMI

"MOTION TO COMPEL"

COMES NOW, the plaintiff, Rodney Delphin, in proper person, pursuant to United States rules of Federal procedure, moves this honorable court to grant the foregoing motion, in support of the plaintiff will state as follows:

The plaintiff, Rodney Delphin filed a subpoena on one of the defendants over one month ago through the clerk of courts but ever after Mr. Delphin sent a notice of inquiry about the said subpoena, he has still heard nothing from the clerk's office regarding this issue including not receiving proof of service by the U.S. Marshal's service on the defendants.

WHEREFORE, the defendant, Rodney Delphin, humbly request this honorable court to order the clerk of Court to forward out the enclosed 2 Federal

Subpoena's to both defendants and to send
the plaintiff proof of service by the United
States Marshall Service.

IT IS SO PRAYED

Respectfully Submitted

X Delphin Rodney
Rodney Delphin
St. Lucie County Jail
900 North Beck Road
Fort Pierce, FL 34945

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

RODNEY DELPHIN

Plaintiff

v.

ST. LUCIE COUNTY SHERIFF'S OFFICE

Defendant

Civil Action No. 10-14324 - C.I.U. - GRAHAM

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: SHERIFF, KEN J MASCARA

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: To produce the employment record and complaints against Deputy, Lasolomon Archie.

Place: ST. LUCIE COUNTY SHERIFF'S OFFICE Detention Center 900 North Rock Rd Ft. Pierce FL Date and Time: Within 10 days of Service V.I.A. U.S. Mail

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:

CLERK OF COURT [Signature] OR

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) 900 North Rock Road, Fort Pierce, FL 34945, who issues or requests this subpoena, are:

Rodney Delphin Pro-se

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

ROONEY DELPHIN
Plaintiff

v.

ST. LUCIE COUNTY SHERIFFS OFFICE
Defendant

Civil Action No. 10-14324-C.I.V. GRAHAM

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: SHERIFF, KEN J MASCARA

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: To produce the employment record and complaints against Deputy David Meizenger.

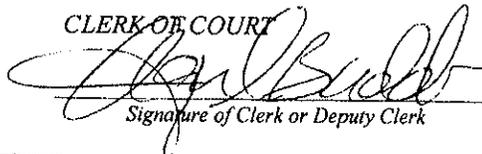
Place: ST. LUCIE COUNTY Jail 900 North Rock Rd Port Pierce, FL 34945	V.I.A. U.S. Mail	Date and Time: Within 10 days of Service V.I.A. U.S. Mail
--	------------------	--

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) 900 North Rock Road, Port Pierce, FL 34945, who issues or requests this subpoena, are:

Rooney Delphin, Pro Se.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-cv-14324 DLG

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

FILED by SP D.C.
MAY 20 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RODNEY GENE DELPHIN
Plaintiff

CASE # 10-14324-CIV
GRAHAM

V.
ST. LUCIE COUNTY SHERIFF'S OFFICE
Defendants

MOTION FOR CONTEMPT

COMES NOW the plaintiff, Rodney Gene Delphin, hereby notifies this Court that the defendants have failed to comply with two subpoenas that were due back on, 5-16-11.

Whereby Mr. Delphin now request that this Court issue a contempt of Court against the defendants for failing to turn over the disciplinary records of both defendants as was required.

Respectfully Submitted
Delphin Rodney
Rodney Gene Delphin
900 North Rock Road
Fort Pierce, FL 34945

C.C.
St. Lucie County Sheriff's Office

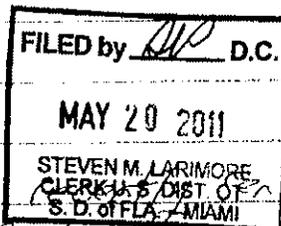
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-cv-14324 DLG

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

TO: Clerk of Court
From: Rodney Delphin
Re: Case # 10-14324 - C.I.U. - Graham

5-16-11



Please know that I have sent out 2 subpoena's to both defendant's on the above case number to be answered within 5 business days for which was up on 5-16-11. There has been no reply to these subpoena's. I'm please now requesting a contempt of Court notice to be served on both defendant's.

Respectably Submitted
x Delphin Rodney
Rodney Delphin
900 North Roub Road
Fort Pierce, FL 34945

U.S. Department of Justice
 United States Marshals Service

PROCESS RECEIPT AND RETURN
 See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF RODNEY GENER DELPHIN	COURT CASE NUMBER 10-14324
DEFENDANT ST. LUCIE COUNTY SHERIFF'S OFFICE, et al	TYPE OF PROCESS SUMMONS IN A CIVIL ACTION

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
 DEPUTY ARCHIE LASOLOMON
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 ST. LUCIE COUNTY SHERIFF'S OFFICE 4700 WEST MIDWAY ROAD FORT PIERCE, FL 34981-4825

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW RODNEY GENER DELPHIN, PRO SE JAIL NO. 198541 ST. LUCIE COUNTY JAIL 900 NORTH ROCK ROAD FORT PIERCE, FL 34945	Number of process to be served with this Form 285	1
	Number of parties to be served in this case	2
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business Hours, Alternate Address, D.C., All Telephone Numbers, and Estimated Times Available for Service):

FILED BY
 MAY 20 2011
 STEVEN M. LARIMORE
 CLERK U.S. DIST. CT.
 S.D. OF FLA. - FT. PIERCE

Signature of Attorney other Originator requesting service on behalf of: PLAINTIFF DEFENDANT TELEPHONE NUMBER DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin No. 04	District to Serve No. 04	Signature of Authorized USMS Deputy or Clerk	Date
--	--------------------	------------------------------	-----------------------------	--	------

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.
 I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)
 Kim Briglia, Records Clerk

Address (complete only different than shown above)

A person of suitable age and discretion then residing in defendant's usual place of abode

Date: 5/19/11 Time: 1:15 am pm

Signature of U.S. Marshal or Deputy: [Signature] 4356

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
-------------	--	----------------	---------------	------------------	--

REMARKS:

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

**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**

FILED by AP D.C.
MAY 26 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Dear Mr Ferguson JR.

I have a problem here
Somebody in this some down
with me that might try to
delay and destroy this lawsuit
That's been in effect since Nov 29 I
can't afford it to go that way on
Case 2:10-CV-14324-DLG Case no
10-14324 CIV Graham Magistrate
Judge P.A. White. He might
write you and tell you that
My story is a fraud and I'm
a per se perpetrator of something that
is an illusion. Oh I have
no reason to lie Deputy Archie
did pull my hair out Deputy
Meitzenyer did hold me down.
The man's name who might
try to sabotage me. Is
Michael James Kahane 119816
OZE you have to look out
for him!!! This case must
not be contaminated from

NO one, what so ever, This case is a legitimate reality of true nature. that's why I sent the next pack with the motion to compel and two subpoenas. I can't let this case go down because of animosity and grudge. I don't need no false influence to orchestrate any calamity to this case. Im writing this letter to be on the look out for any blaspheme against me or about me that might have false interpretation and representation of my self. If theres nothing to help benefit I Rodney Delphin on this case, **IT MUST NOT BE TAKEN** into consideration. for me and the privacy of this case to keep confidant.

Respectfully yours

Rodney Gene Delphin-198541

CASE NO. -10-1432-CIV-GRAWAN

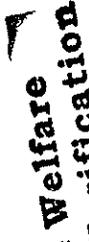
CASE: 2:10-CV-14324-DLG #9



WEST PALM BEACH
FL 33411
24 MAY 2011 3PM

Delphin, Rodney
900 North Rock Road
Fort Pierce, Florida 34945

United States District Court
Southern District of Florida
400 North Miami Avenue, 8th floor
Miami, Florida 33128



**Return to Inmate Welfare
For Postage and Verification**



331283718 0075

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.

NOTICE OF APPEARANCE

The Clerk will please note the appearance of the law firm of PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A. as Attorneys of Record for the Defendants, DEPUTY LASOLOMON ARCHIE AND DEPUTY DAVID MEIZENGER, in the above-styled cause, and you are hereby requested to furnish the said attorney with copies of all future motions, orders, etc., in this cause.

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 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.

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.

MOTION TO TAKE DEPOSITION OF A CONFINED PERSON
(AND MEMORANDUM OF LAW)

Defendants, DAVID MEIZENGER AND LASOLOMON ARCHIE, through their undersigned attorneys, pursuant to Rule 30(a) of the Federal Rules of Civil Procedure, files this their Motion to Take Deposition of a Confined Person, and in support thereof would state as follows:

1. That Plaintiff is a pretrial detainee confined in the St. Lucie County Jail, located at 900 North Rock Road, Fort Pierce, FL 34945.
2. The Defendants intend to depose Rodney Delphin in this cause.

WHEREFORE, it is respectfully requested that this Honorable Court enter its Order permitting the deposition of the Plaintiff, RODNEY DELPHIN, to be taken at the St. Lucie County Jail.

Further, and in support of this Motion to Take Deposition of a Confined Person, Defendants would refer this Honorable Court to the Memorandum of Law attached hereto and by reference made a part hereof.

MEMORANDUM OF LAW

According to Rule 30(a) of the Federal Rules of Civil Procedure, "The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes." Plaintiff is currently confined as a pretrial detainee at the St. Lucie County Jail, located in Ft. Pierce, Florida. As the Rule provides, the deposition of the Plaintiff may be taken only with leave of court.

The deposition, if permitted, will be coordinated through the administration office for the jail. The date and time for the deposition will be selected so as to allow advance notice to the institution to minimize security disruption, etc.

Defendants' Motion to Take Deposition of a Confined Person should be granted.

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.

ORDER GRANTING DEFENDANTS' MOTION TO
TAKE DEPOSITION OF A PERSON CONFINED IN PRISON

THIS CAUSE, having come on before the Court on the Defendants' Motion to Take Deposition of a Person Confined in Prison, the Court having considered the grounds for the Motion, and the Court having been advised that all parties are in agreement to this Motion, it is

ORDERED AND ADJUDGED that the Defendants' Motion to Take Deposition of a Person Confined in Prison is hereby GRANTED. The Defendant may take the deposition of Plaintiff, RODNEY DELPHIN, at his place of incarceration.

DONE AND ORDERED in Chambers, Miami, Florida, this _____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE

Copies Furnished:
Christy M. Runkles, Esquire, attorney for Defendant
Rodney Delphin, Plaintiff

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**

Case No. 10CV14324.DLG.

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

IN THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

FILED by [Signature] D.C.
JUN 08 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

Rodney B. Delphin
Plaintiff

MOTION FOR
APPOINTMENT OF
COUNSEL

v.

ST Lucie County Sheriff Office
Defendants

Civil Action no. 10-CV-14324

Pursuant to 28 U.S.C. § 1915 (e) (1)
plaintiff (or plaintiffs) move for an
order appointing counsel to represent
him in this case. In support of
this motion, plaintiff states:

1. Plaintiff is unable to afford counsel.
He has requested leave to proceed
in forma pauperis.

2. Plaintiff's imprisonment will greatly
limit his ability to litigate. The issues
involved in this case are complex,

and will require significant research and investigation. Plaintiff has limited access to the law library and limited knowledge of the law.

3. A trial in this case will likely involve conflicting testimony, and counsel would better enable plaintiff to present evidence and cross examine witnesses.

4. Plaintiff has made repeated efforts to obtain a lawyer. Attached to this motion are:

1. Fender & Minton, P.A.

2. Brandt & Feinberg

3. James T Long, P.A.

4. Micheal P. Berg

5. Frank Uiciacomo

6. Ferraro

7. Sobel

8. JD

WHEREFORE, plaintiffs request that the court appoint ~~Michael R. Berg~~, a member of the Florida Bar, as counsel in the case.

6/4/11

Rodney Delphin

900 N Rock Road Ft Pierce FL 34945

Dear

To Judge Donald L Graham
Magistrate Judge P.A. White

From Plaintiff Rodney Gene Delphin
Case no 10-14324-CIV-GRAHAM

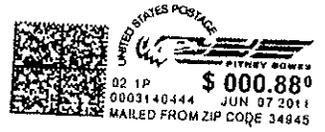
Dear Honorable Judge Graham

The defendants sent me a notice to be depose, so I am asking if your Honor can you put it off the deposition until after, your Honorable Judge Graham to reconsider. I the plaintiff Rodney Delphin is sending a motion to appoint the plaintiff counsel to be at the deposition. I'm afraid the Defendants might ask me to say things that could be used against me in a criminal prosecution. Under the Rule 30 (a) a prisoner can be

deposed "only by leave of
the court on such terms as
the court prescribes."

Respectful yours
Plaintiff
Rodney Delphin 198541

Delphin, Rodney
**900 North Rock Road
Fort Pierce, Florida 34945**



BY *Delphin, Rodney*
BY **USMS MAIL ROOM**

**United States District Court
Southern District of Florida
400 North Miami Avenue, 8th floor
Miami, Florida 33128**

**Return to Inmate Welfare
For Postage and Verification**

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.

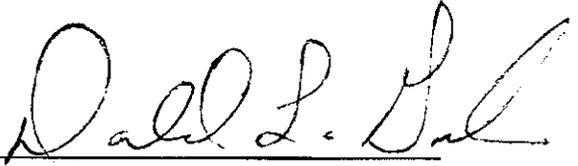
Accordingly, it is hereby

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

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.,

Defendants.

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION FOR CONTEMPT**

Defendants, DAVID MEIZENGER AND LASOLOMON ARCHIE, through their undersigned attorney, file this their Memorandum of Law in Opposition to Plaintiff's Motion for Contempt, and in support thereof would state as follows:

1. On May 4, 2011, the St. Lucie County Sheriff's Office received two Subpoenas by the United States Postal Service (USPS), issued by the Plaintiff. The Subpoenas directed the St. Lucie County Sheriff's Office to produce the disciplinary records and complaints for Deputies Lasoloman Archie and David Meizenger to the Plaintiff within five business days. The St. Lucie County Sheriff's Office treated the Subpoenas as a public records request because it is not a party to this lawsuit and because the Subpoenas were not properly served. Subsequently on May 4, 2011, the St. Lucie County Sheriff's Office informed the Plaintiff that the personnel files for both deputies would be mailed to him upon receipt of payment in the amount of \$69.75 to cover copying costs and that

information on the Internal Affairs files would be forthcoming, all as authorized by the Florida Public Records Act. See §119.01, Florida Statutes (2010).

2. On May 16, 2011, the St. Lucie County Sheriff's Office received a letter from Plaintiff stating that a Motion for Contempt was filed against the Sheriff for not responding to Plaintiff's Subpoenas.

On May 17, 2011, the St. Lucie County Sheriff's Office mailed the Internal Affairs files for Deputy Archie and Deputy Meizenger to the Plaintiff without having received payment for the records.

3. On May 20, 2011, Plaintiff filed a Motion for Contempt [D.E. 16] against the Sheriff of St. Lucie County for failure to turn over Deputy Archie and Deputy Meizenger's disciplinary records.

On May 26, 2011, an Order Denying Plaintiff's Motion for Contempt [D.E. 20] was entered. The Order stated that Plaintiff would be required to provide the court with copies of Subpoenas to ensure they were correctly filled out and served by a process server.

4. The St. Lucie County Sheriff's Office and the St. Lucie County Sheriff are not parties to this lawsuit as they were dismissed pursuant to the Order adopting the Magistrate's Report and Recommendation [D.E. 29] for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Defendants, Deputy Lasoloman Archie and Deputy David Meizenger, were served with a copy of Plaintiff's Summons and Complaint on May 19, 2011.

5. On May 19, 2011, the St. Lucie County Sheriff's Office received a third Subpoena by United States mail, issued by the Plaintiff. This Subpoena requested three hundred eighty-seven (387) pages of documents that he alleged were missing from the documents that were voluntarily mailed to him on May 17, 2011. However, all Internal Affairs documents for both deputies were mailed to Plaintiff on May 17, 2011. Additionally, all personnel documents have been made available to Plaintiff once he complies (makes payment) with the requirements of the Public Records Act.

MEMORANDUM OF LAW

In order to hold a person in contempt for not responding to a subpoena, the person must have been properly served. Rule 45(e), Fed. R. Civ. P. Service of a subpoena is proper when it has been personally served on a person. See Fed. R. Civ. P. 45(b)(1). Additionally, proof of service must be made by filing with the issuing court a statement showing the date and manner of service and the names of the persons served and the statement must be certified by the server. Rule 45 (b)(4), Fed. R. Civ. P.

The St. Lucie County Sheriff's Office cannot be held in contempt for failure to comply with Subpoenas which do not comply with Rule 45 of the Federal Rules of Civil Procedure. The three Subpoenas issued by Plaintiff are ineffective because they were never personally served on the St. Lucie County Sheriff's Office. Rather, the Subpoenas were mailed to the St. Lucie County Sheriff's Office by the United States Postal Service. Additionally, the Plaintiff did not file any proof of service with the court. Therefore, the Subpoenas do not comply with Rule 45, Fed. R. Civ. P and St. Lucie County Sheriff's Office cannot be held in contempt for failure to respond.

I HEREBY CERTIFY that I electronically filed a copy of the foregoing with the Clerk of the Court by using the CM/ECF system, and sent a copy via U.S. mail to: Rodney Gener Delphin, Jail No. 198541, St. Lucie County Jail, 900 North Rock, Road, Fort Pierce, FL 34945 this 14th day of June, 2011.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorney 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

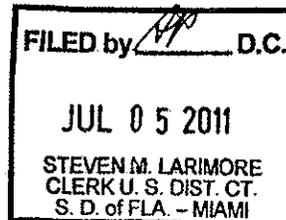
BY: s/ Christy M. Runkles
CHRISTY M. RUNKLES, ESQ.
Florida Bar No.: 0084631

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

Case No. 10-14324 CV DLG

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

NOTICE OF ADDRESS CHANGE
CASE # 10-CV-14324-DLG



"New ADDRESS"
Rodney Delphin K76220
C.F.R.C.
7000 H.C. Kelly Road
Orlando, Florida 32831

Thank you

+ Rodney Delphin
RD

Delphin Rodney
~~Delphin Rodney~~

*Delphin
Rodney
K76220*

Mailed From State
Correctional Facility



UNITED STATES POSTAGE
FIRST CLASS PERMIT NO. 2622 MIAMI, FL 33128

\$ 00.440
JUL 01 2011

USMS INSPECTED

United States District Court
Southern District of Florida
400 North Miami Avenue, 8th floor
Miami, Florida 33128
**Return to Inmate Welfare
For Postage and Verification**

3312837716 0075 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10 CV 14324 DLG

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

Memo

To Donald L Graham
From Rodney Delphin
Re: case: 2:10-cv-14324-DLG

FILED by SP D.C.
AUG 04 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

I have transfered to another facility I am in Liberty CI I came here Tuesday of this week the address is in front of the envelope I will keep in touch.

Thank you
Rodney Delphin

PROVIDED BY
LIBERTY CI ON
AUG 02 2011
FOR MAILING

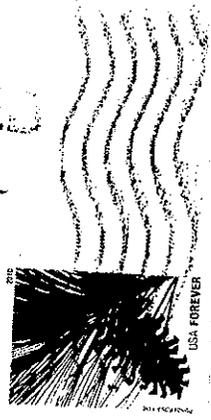
Rodney Delphus - K76220 H2
Lively C.I.
1106 N.W. Deming Boulevard
Bristol, FL 32301

TALLAHASSEE FL 323
02 AUG 2011 PM 11

United States District Court
Southern District of Florida
450 North Miami Avenue
Miami, Florida 33125-7714

9312881601

9312881601



USPS INSPECTED
By: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10 CV 14324 DLG

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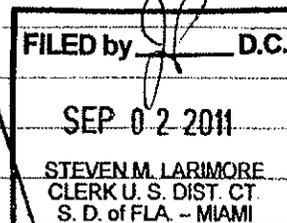
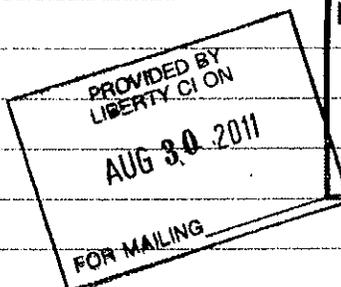
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

BODNEY G DELPHIN
Plaintiff,

v.

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



NOTICE OF SERVICE OF PLAINTIFF'S

FIRST REQUEST FOR PRODUCTION TO

DEFENDANTS LASOLOMON ARCHIE AND

DAVID MEIZENGER

COMES NOW the Plaintiff, Bodney

G. DELPHIN, pro se, pursuant to Rule

34, Federal Rule of Civil Procedure

and hereby Request that the above

said Defendants produce to the Plaintiff

at K76220 / CI-54, LIBERTY C.I.,
1164 Dempsey Barron Rd., Bristol, FL 32321,

copies of the following within thirty
(30) days of service of this Request

for Production: 1. any and all papers,
records and documents of any kind in
or a part of personnel files of LASLOMON
ARCHIE with or kept by the Sheriff's
Office of St. Lucie County.

2. any and all papers, records and
documents of any kind in or a part of
the personnel file of DAVID MEIZINGER
with or kept by the Sheriff's Office
of St. Lucie County.

I HEREBY CERTIFY that a true
and correct copy of the document

for the Defendants, Puredy, Jolly, Guillauda
and Barranco, P.A. 2455 East Sunrise
Boulevard, Suite 1210 Fort Lauderdale,
FL 33304 by placing said copy in the
hands of the Institutional officials
of Liberty C.I. this 27 day of
August, 2011

~~Bodney Delphid~~
Bodney Delphid
K762201 CI-54
11064 N.W. Dempsey Barron Rd.
Bristol, FL 32321

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.

**DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME TO COMPLETE
DISCOVERY (AND MEMORANDUM OF LAW)**

Defendants, DAVID MEIZENGER AND LASOLOMON ARCHIE, through their undersigned attorneys, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, file this their Motion for Enlargement of Time to Complete Discovery, and in support thereof would state as follows:

1. Pursuant to the Order Scheduling Pretrial Proceedings [DE 27] entered by this Court on June 2, 2011, the deadline to complete all discovery is September 30, 2011.
2. On August 10, 2011, Defendants propounded their First Request for Production on Plaintiff Delphin. As of this date, Defendants have not received Plaintiff's Response to the Request for Production.
3. Defendants are waiting to schedule the Plaintiff's deposition until Plaintiff provides his Response to the Request for Production.

4. The undersigned has not filed a Motion to Compel Plaintiff to provide a Response to the Request for Production because it is undersigned counsel's experience that discovery responses are sometimes delayed when dealing with incarcerated individuals. However, because of the compressed discovery deadlines that exist, the Defendants request an enlargement of time to conduct the contemplated deposition.

5. Undersigned counsel has not consulted with the Plaintiff because he is incarcerated and cannot be reached by phone. Undersigned counsel cannot advise as to the Plaintiff's position on this Motion.

WHEREFORE, it is respectfully requested that this Honorable Court enter its Order granting the Defendants' Motion for Enlargement of Time to Complete Discovery, allowing an enlargement of time to complete discovery until October 31, 2011.

Further, and in support of the Defendants' Motion for Enlargement of Time to Complete Discovery, undersigned counsel would refer this Honorable Court to the Memorandum of Law incorporated herein and by reference made a part hereof.

MEMORANDUM OF LAW

Rule 6(b) of the Federal Rules of Civil Procedure provides, in pertinent part, that:

"[when] by these Rules or notice given thereunder or by order of court, an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion...order a period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order ..."

By its expressed terms, the Rule affords wide discretion to this Court to enlarge time period established by the Rule or a court order. See Woods v. Allied Concord Financial Corp., 373 F.2d 733 (5th Cir. 1967); Yanofsky v. Wernick, 362 F.Supp. 1005 (S.D. N.Y. 1973); Graham v. Brier,

418 F.Supp. 73 (S.D. Wis. 1976); Moore's Federal Practice §608 (2d.Ed 1984). Rule 6 should be applied liberally "to secure the just, speedy and inexpensive determination of every action." Enlargements of time should be available when a party demonstrates a reasonable basis for such request. See Beaufort Concrete Company v. Atlantic States Construction Company, 352 F.2d 460 (5th Cir. 1965). The enlargement of time requested by the Defendant does not prejudice the Plaintiff in this case.

Therefore, having shown a reasonable basis for the enlargement of time requested, it is appropriate that the Defendants' Motion for Enlargement of Time be granted and the deadline to complete discovery be extended until October 31, 2011

I HEREBY CERTIFY that I electronically filed a copy of the foregoing with the Clerk of the Court by using the CM/ECF system, and sent a copy via U.S. mail to: **Rodney Gener Delphin, Pro Se K76220**, Liberty Correctional Institute, 11064 N.W., Dempsey Barron Road, Bristol, Florida 32321-9711 this 19th day of September, 2011.

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