CASREF,PAW

U.S. District Court
Southern District of Florida (Ft. Pierce)
CIVIL DOCKET FOR CASE #: 2:11-cv-14210-JEM

Quinlin v. Keitz et al
Assigned to: Judge Jose E. Martinez
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 06/20/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Anthony S. Quinlin represented by **Anthony S. Quinlin**
2302 Barbara Avenue
Ft. Pierce, FL 34982
PRO SE

V.

Defendant

Deputy Kevin Keitz
K-9 Deputy

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

Sheriff Deryl Loar
Indian River County Sheriff Dept.
TERMINATED: 11/10/2011

Defendant

Indian River County
TERMINATED: 11/10/2011

Defendant

Sheriff Deputy John Clark represented by **Christy Michelle Runkles**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/20/2011	1	COMPLAINT under the Civil Rights Act against Indian River County, Kevin Keitz, Deryl Loar. Filing fee $ 350.00. IFP Filed, filed by Anthony S. Quinlin. (ar2) Modified event for MJSTAR on 7/14/2011 (wc). (Entered: 06/20/2011)
06/20/2011	2	Judge Assignment to Judge Jose E. Martinez (ar2) (Entered: 06/20/2011)
06/20/2011	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. (ar2) (Entered: 06/20/2011)
06/20/2011	4	MOTION for Leave to Proceed in forma pauperis by Anthony S. Quinlin. (ar2) (Entered: 06/20/2011)
07/08/2011	5	NOTICE to the Court by Anthony S. Quinlin (jua) (Entered: 07/08/2011)
07/12/2011	6	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF $350.00 and Granting 4 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 7/11/2011. (tw) (Entered: 07/12/2011)
07/12/2011	7	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 7/11/2011. (tw) (Entered: 07/12/2011)
07/14/2011	8	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Anthony S. Quinlin. Recommending 1. The claim of excessive force under the Fourth Amendment shall proceed against Defendant Officer Keitz. 2.The claim for delay of medical treatment should proceed against Defendant Clark. 3. Sheriff Loar should be dismissed for failure to state a claim against him. 4. Indian River County and the Sheriff's Department shall be dismissed for failure to state a claim against these defendants. Objections to R&R due by 8/1/2011. Signed by Magistrate Judge Patrick A. White on 7/14/2011. (tw) (Entered: 07/14/2011)
07/29/2011	9	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 Kevin Keitz, K-9 Deputy, Indian River County Sheriffs Department, 4055 - 41st Avenue, Vero Beach,FL 32960 and Sheriff Deputy John Clark, Indian River County Sheriffs Department, 4055 - 41st Avenue,Vero Beach, FL 32960. Signed by Magistrate Judge Patrick A. White on 7/28/2011. (tw) (Entered: 07/29/2011)
08/02/2011	10	Summons Issued as to John Clark. (br) (Entered: 08/02/2011)
08/02/2011	11	Summons Issued as to Kevin Keitz. (br) (Entered: 08/02/2011)
09/23/2011	12	NOTICE of Change of Address by Anthony S. Quinlin (System updated) (jua) (Entered: 09/23/2011)

09/27/2011	13	SUMMONS (Affidavit) Returned Executed Deputy Kevin Keitz served on 9/21/11, answer due 10/12/11. (asl) (Entered: 09/27/2011)
09/27/2011	14	SUMMONS (Affidavit) Returned Executed Sheriff Deputy John Clark served on 9/21/11, answer due 10/12/11 (asl) (Entered: 09/27/2011)
10/05/2011	15	NOTICE of Attorney Appearance by Christy Michelle Runkles on behalf of John Clark, Kevin Keitz (Runkles, Christy) (Entered: 10/05/2011)
10/06/2011	16	*Defendant Keitz'* ANSWER and Affirmative Defenses to Complaint with Jury Demand by Kevin Keitz.(Runkles, Christy) (Entered: 10/06/2011)
10/06/2011	17	*Defendant Clark's* ANSWER and Affirmative Defenses to Complaint with Jury Demand by John Clark.(Runkles, Christy) (Entered: 10/06/2011)
10/19/2011	18	SCHEDULING ORDER: Amended Pleadings due by 1/17/2012. Discovery due by 1/3/2012. Joinder of Parties due by 1/17/2012. Motions due by 3/6/2012.. Signed by Magistrate Judge Patrick A. White on 10/19/2011. (tw) (Entered: 10/19/2011)
11/10/2011	19	ORDER ADOPTING Magistrate Judge's Report and Recommendation; re 8 Report and Recommendations. Sheriff Loar shall be dismissed for failure to state a claim against him. Indian River County and the Sheriff's Department shall be dismissed for failure to state a claim against them. Signed by Judge Jose E. Martinez on 11/10/2011. (asl) (Entered: 11/10/2011)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-14210-CV-MARTINEZ/WHITE

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

FILED by AP D.C.
JUN 20 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 11-14210-CV-MARTINEZ/WHITE

Anthony S. Quinlin
(Enter the full name of the plaintiff in this action)

v.

K-9 Deputy Kevin Keitz
Sheriff Deryl Loar of Indian River County Sheriff Dept.
Indian River County

(Above, enter the full name of the defendant(s) in this action)

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

Instructions for Filing:

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

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

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

cat / div 1983 / 550 / FTP
Case #
Judge Mag PAW
Motn Ifp Yes Fee pd $ 0
Receipt #

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: Anthony S. Quinlin

Inmate #: 11-1442

Address: 4055 41st Ave. Vero Beach, Fla. 32960

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: Deputy Kevin Keitz

is employed as K-9 Deputy

at Indian River County Sheriff's Dept.

C. Additional Defendants: Indian River County Sheriff's Dept.

Head sheriff Deryl Loar, Indian River County

II. Statement of Claim

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

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

On Dec. 22, 2010, Between the hour's of 8:00pm and 9:00pm. Eastern standard time. Petitioner was apprehended by Indian River County Sheriff's K-9 unit Deputy Kevin Keitz and his K-9 Charge. Petitioner was in his Neighbor's backyard, enclosed by a 6ft. privacy fence, Defendant entered through the back fence, unannounced and with No valid search warrant. Primary Charge of Burglary of occupied Dewelling was subsequently dropped by Judge David C. Morgan with a finding of No Probable Cause, Petitioner was released on his own recognizance. The petitioner was ordered to get on the ground, Petitioner Complied. While on the ground, Deputy Kevin Keitz allowed his K-9 Charge (while still on Leash) to attack the petitioner twice. (see Medical Records for injuries sustained.

Subsequently, sheriff Deputy John Clark to petitioner into custody, despite numerous request for emergency Medical assistance, by ambulance, and transported petitioner to Indian River Medical Center in his Patrol unit in violation of Emergency Medical protocal.

III. Relief

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

I'm seeking $200,000.00 in Monetary Damages.

IV. Jury Demand

Do you demand a jury trial? ☒ Yes ☐ No

Additional Statement of Claim

In allowing the K-9 Charge to attack Petitioner when Petitioner had already followed the defendant's order to lay down and put his hands on his head, He was in a Vulnerable position and in NO way resisting.

And in particular Defendant's use of excessive force and Negligence in the following Respect's by allowing K-9 to attack Petitioner while K-9 was still on Leash. Petitioner had already surrendered.

This incident was also in Direct Violation of K-9 apprehension Protocal.

As a result of K-9 Deputy Kevin Keitz use of excessive force and Negligence Plaintiff was injured in the following particular's: (see Complete medical report's). Laceration's and Deep puncture wound's. (4)

There were picture's taken of the Dog Bite wound's taken by K-9 Deputy Kevin Keitz while I was being treated for my wound's in the Emergency Room.

My Public Defender R. Blake Smith also took picture's of my wound's on his Camera Phone.

Signed this 7th day of June, 2011

(Signature of Plaintiff)

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

Executed on: June 7, 2011

(Signature of Plaintiff)

All Medical Staff that Treated Me for my Injuries and Examined Me.

1000 36th St. Vero Beach, Fla. 32960 — Indian River Medical Center in Vero Beach, Florida

Bryan Fox MD

Dolores Dawson RN

IDA Brown ARNP

Jennifer Montgomery Paramedic at Hospital

Kimberly Hagan RN

[redacted]

Picture's taken of Dog Bite Injuries taken By:

IRCSO — K-9 Deputy Kevin Keitz at Hospital Dec. 22, 2010 — Indian River County Sheriff's off. 4055 41st Ave. Vero Beach, Fla. 32960

Public Defender R. Blake Smith on Jan. 11, 2011 at Jail

Public Defenders office 2000 16th Ave. Vero Beach, Fla. 32960 Ste. 235

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11cv14210

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

To whom it may Concern:, 6/12/2011

On December 22, 2010 I was arrested on a charge of Burglary occupied Dwelling case # 2010-CF1800.

Well on December 23, 2010 the Honorable Judge David C. Morgan of the 19th Judicial Circuit Court of Indian River County in Vero Beach Fla. found no probable cause on the primary charge of Burglary occupied Dwelling and released me on a R.O.R., I couldn't be released cause I had a $15,500 on 3 misdemeanors.

The finding of No Probable Cause by Judge David C. Morgan on the charge I was arrested for is on record and in writing at the Indian River County Court house.

I've asked my Public Defender R. Blak Smith numerous of times to file numerous of motions on my behalf and he never filed any motions on my behalf including a motion to Dismiss. instead he insisted that I take the deal the state attorney offered.

I've stated to the Public Defender that according to the Florida Rules of the Court, Rules Regulating the Florida Bar, Rules of Professional Conduct Rule 4-3.8 Special responsibilities of a prosecutor

The prosecutor in a criminal case shall:

(A) Refrain from Prosecuting a charge that the prosecutor knows is not supported by probable cause, and my Public Defender at the time should have filed a motion to have my charge of Burglary occupied Dwelling Dismissed due to the fact that Judge David C. Morgan found No Probable Cause on the Charge I was arrested for and released me on a R.O.R.

The Prosecutor in my case Ms. Victoria L. Winfield knew she could not prosecute me ~~at~~ on the charge of Burglary occupied Dwelling due to the fact that the Judge found No Probable Cause and the prosecutor violatated rule 4-3.8 and I would like something done about the prosecutor violating one of the rules of the Florida Courts, I would like to try and have my charge and time that I got for the charge termanated due to the fact of ~~prosec~~ prosecutor procutorial misconduct.

Look into this letter and reply with feed back please.

Thank You for your time and patients.

Sincerely,
Anthony Quinlin

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASENO.11-14210-CIV-MARTINEZ
MAGISTRATE JUDGE P.A. WHITE

ANTHONY S. QUINLIN, :

Plaintiff, :

v. :

KEVIN KEITZ, et al., :

Defendants. :

REPORT OF
MAGISTRATE JUDGE

I. Introduction

The plaintiff, Anthony S. Quinlin, a detainee at the Indian River County Jail, filed a a pro se civil rights complaint pursuant to 42 U.S.C. §1983, raising claims of excessive force, arising from events surrounding his arrest on December 22, 2010.

This Cause is before the Court upon a preliminary screening of the complaint pursuant to 28 U.S.C. §1915. The plaintiff is proceeding in forma pauperis.

II. Analysis

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 Pursuant to 42 U.S.C. §1983. 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]

Statement of the Claims

Quinlin alleges that on December 22, 2010, Police K-9 dog handler, Kevin Keitz used his attack dog in an unlawful manner. He claims that he was apprehended and ordered to get on the ground.

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

While on the ground, and defenseless, the plaintiff claims that Keitz allowed his K-9 charge to twice attack him, resulting in documented medical injuries. He alleges that Deputy Sheriff John Clark took him into custody despite his numerous requests for emergency medical assistance. [2]The plaintiff seeks monetary damages.

He claims the primary charge of burglary of an occupied dwelling was subsequently dropped for lack of probable cause.

Use of Force

Claims of excessive force by police officers are cognizable under 42 U.S.C. §1983. 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); Vinyard v. Wilson, 311 F.3d 1340, 1346-47 (11 Cir. 2002); Lee v. Ferraro, 284 F.3d 1188, 1197 (11 Cir. 2002); Ortega v. Schram, 922 F.2d 684, 694 (11 Cir. 1991).

Such an analysis requires a court to balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the government interest alleged to justify the intrusion." Graham, supra, quoting United States v. Place, 462 U.S. 696 (1983). The factors to consider when balancing an arrestee's constitutional rights and the need for use of force include (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or

[2]The plaintiff claims that the primary charge of burglary of an occupied dwelling was subsequently dismissed for lack of probable cause.

others, and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight; Graham, supra, 490 U.S. at 396; Vinyard, supra, 311 F.3d at 1347; Lee, supra, 284 F.3d at 1197; and in determining whether the force applied was "reasonable" under the circumstances, the Court must examine: (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; and (3) the extent of the injury inflicted upon the individual to whom the force was applied. Graham, at 396; Vinyard, at 1347; Lee at 1998. Although the test applied by the Eleventh Circuit previously included a subjective prong, examining whether the force was applies maliciously, see e.g. Leslie v. Ingraham, 786 F.2d 1533, 1536 (11 Cir. 1986), that factor was eliminated from the analysis by Graham and other cases establishing that the excessive force inquiry should be completely objective, thereby excluding consideration of the Officer's intentions. Lee, supra, 284 F.3d at 1198 n.7. Thus, "reasonableness" for purposes of such an analysis is judged according to an objective standard under the totality of the circumstances, without regard to the officers' underlying intent. Graham, supra at 389. In Lee, the Eleventh Circuit explained that "Graham dictates unambiguously that the force used by a police officer in carrying out an arrest must be reasonably proportionate to the need for that force, which is measured by the severity of the crime, the danger to the officer, and the risk of flight." Lee, supra, 284 F.3d at 1198.

K-9 Force

The practice of police departments authorizing officers to use trained police dogs to find, seize and hold suspects, by biting if necessary, has been upheld by the courts. See: Kerr v. City of West Palm Beach, 875 F.2d 1546 (11 Cir. 1989); Chew v. Gates, 744 F.Supp. 952 (C.D.Cal. 1990). However, whether a particular use of force is a sufficient intrusion, so as to violate a suspect's

Fourth Amendment rights, is subject to analysis under Graham v. Connor, supra.

Analysis of complaint

In the present case, the plaintiff claims that in spite of his compliance with the deputy's order to get down on the ground, Keitz allowed the K-9 to attack him, while he was disarmed and vulnerable. At this preliminary stage he has stated a claim against Deputy Keitz for use of unlawful force.

He further alleges that Deputy Sheriff Clark took him into custody, refusing to respond to his requests for emergency medical aid. Although Clark is not formally named as a defendant in the complaint, he is named in the body of the complaint. In light of the plaintiff's pro-se status he will be construed as a named defendant.

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999).

Because the plaintiff was a pretrial detainee at the time of the events alleged, his claims must be analyzed under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell, 441 U.S. at 535; Hamm, 774 F.2d at 1571-74. In the context of a pretrial detainee claim of denial of medical care, the standards are the same. Id.

To demonstrate a claim for denial or delay of medical treatment the plaintiff must demonstrate deliberate indifference. Deliberate indifference can be established by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons. Farrow v West, 320 F.3d 1235, 1247 (11th Cir.2003) (finding jury question on issue of deliberate indifference because of unexplained fifteen-month delay in treatment). In this case, it is difficult to determine the extent of the plaintiff's injuries at the time of his being taken into custody, and whether his injuries were of a severity that required immediate, emergency medical attention. The length of time the plaintiff's medical treatment was delayed is also unclear. Therefore, without further factual development, it appears the plaintiff has minimally stated a claim against Deputy Clark for delay of medical treatment.

Lastly, the plaintiff has failed to state a claim against Sheriff Loar, and the complaint should be dismissed against Loar under the theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). See also; Ashcroft v Iqbal, supra. (Heightened pleading standard for supervisory liability) In this case there are no direct allegations against Loar, that he either took part in the assault upon the plaintiff,

or was aware of the circumstances, and he should be dismissed from the lawsuit.[3]

The plaintiff has not specified whether he intends to sue the defendants in their individual and official capacities. A §1983 suit against the defendants in their official capacity is tantamount to a suit against the State, and thus the defendants would be immune from monetary damages based upon the Eleventh Amendment. Gamble v. Fla. Dept. of Health and Rehabilitative Services, 779 F.2d 1509, 1512-13 (11 Cir. 1986). The allegations of the complaint, however, state a classic case of officials acting outside the scope of their duties and in an arbitrary manner. Scheuer v. Rhodes, 416 U.S. 232, 238 (1974). Under this construction of the complaint, this Court has jurisdiction over the defendants in their individual capacity.

III. Recommendation

Based on the foregoing, it is recommended that:

1. The claim of excessive force under the Fourth Amendment shall proceed against Defendant Officer Keitz.

2. The claim for delay of medical treatment should proceed against Defendant Clark.

3. Sheriff Loar should be dismissed for failure to state a claim against him.

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[3] Although Indian River County is listed as a defendant on the docket, and a review of the complaint indicates that the Indian River County Sheriff's Department may have been named as a separate defendant, both defendants are improper. These defendants are not separate entities for purposes of 1983, but an arm of the county. The plaintiff must demonstrate that a county custom or policy is unconstitutional and led to a violation of the plaintiff's civil rights. Monell, supra. The plaintiff has failed to demonstrate a Monell claim.

4. Indian River County and the Sheriff's Department shall be dismissed for failure to state a claim against these defendants.

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

It is so recommended at Miami, Florida, this 14th day of July, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Anthony S. Quinlin, Pro Se
No.11-1442
Indian River County Jail
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-14210-CIV-MARTINEZ

ANTHONY S. QUINLIN,

Plaintiff,

vs.

KEVIN KEITZ, et. al.,

Defendants.
_____/

DEFENDANT KEITZ' ANSWER/AFFIRMATIVE DEFENSES

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

I. Parties

A. Admitted that Anthony Quinlin is the Plaintiff in this action.

B. Admitted.

C. Denied.

II. Statement of Claim

Denied.

II. Relief

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

I. As a first and separate affirmative defense, the Defendant would assert that any and all injuries suffered by Plaintiff were caused by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

II. 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.

III. As a further and separate affirmative defense, the Defendant would assert that any and all actions taken by him were taken:

a. without malice;

b. with probable cause;

c. in pursuit of lawful and legal duties; and

d. with such force as was reasonably necessary under the circumstances.

DEMAND FOR TRIAL BY JURY

The Defendant, DEPUTY KEVIN KEITZ, hereby demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

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: Anthony S. Quinlin, Pro Se, 2302 Barbara Avenue, Ft. Pierce, FL 34982 this *6th* day of October, 2011.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants KEITZ and CLARK
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
Fla. Bar No. 0084631

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-14210-CIV-MARTINEZ

ANTHONY S. QUINLIN,

Plaintiff,

vs.

KEVIN KEITZ, et. al.,

Defendants.
_____/

DEFENDANT CLARK'S ANSWER/AFFIRMATIVE DEFENSES

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

I. Parties

A. Admitted that Anthony Quinlin is the Plaintiff is this action.

B. Admitted that Deputy Kevin Keitz is a Defendant in this action.

C. Denied.

II. Statement of Claim

Denied.

II. Relief

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

I. As a first 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.

II. 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.

III. As a further and separate Defense, Defendant would assert that any and all the actions he took were taken:

a. Without malice;

b. In pursuit of lawful and legal duties.

DEMAND FOR TRIAL BY JURY

The Defendant, JOHN CLARK, hereby demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

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: Anthony S. Quinlin, Pro Se, 2302 Barbara Avenue, Ft. Pierce, FL 34982 this ***6th*** day of October, 2011.

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

BY: ***s/ Christy M. Runkles***
CHRISTY M. RUNKLES
Fla. Bar No. 0084631

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-14210-CIV-MARTINEZ
MAGISTRATE JUDGE P. A. WHITE

ANTHONY S. QUINLIN, :

Plaintiff, :

v. :

KEVIN KEITZ, et al., :

Defendants. :

ORDER SCHEDULING PRETRIAL PROCEEDINGS WHEN PLAINTIFF IS PROCEEDING PRO SE

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

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **January 3, 2012.** This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **January 17, 2012.**

3. All motions to dismiss and/or for summary judgment shall be filed by **March 6, 2012.**

4. On or before **March 20, 2012,** the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

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

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

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

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

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

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

5. On or before **April 5, 2012**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

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

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

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

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

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

(a) discuss the possibility of settlement;

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

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

that impeachment documents need not be revealed;

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

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

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

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

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

DONE AND ORDERED at Miami, Florida, this 19th day of October, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Anthony S. Quinlin, Pro Se
2302 Barbara Avenue
Fort Pierce, FL 34982

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

Hon. Jose E. Martinez, United States District Judge

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Fort Pierce Division

Case Number:11-14210-CIV-MARTINEZ-WHITE

ANTHONY S. QUINLIN,

Plaintiff,

vs.

K-9 DEPUTY KEVIN KEITZ; SHERIFF
DERYL LOAR OF INDIAN RIVER COUNTY
SHERIFF DEPT.; INDIAN RIVER COUNTY,

Defendants.
_____/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation on Plaintiff's Complaint pursuant to 28 U.S.C. § 1915 (D.E. No. 1). The Magistrate Judge filed a Report and Recommendation (D.E. No. 8) on July 14, 2011 recommending that the claim of excessive force proceed against Defendant Officer Keitz, the claim for delay of medical treatment proceed against Defendant Clark, and that Sheriff Loar, Indian River County and the Sheriff's Department be dismissed. The Court has reviewed the entire file and record. No objections to the Report and Recommendation were filed, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge White's Report and Recommendation (D.E. No. 8) is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that

1. The claim of excessive force under the Fourth Amendment shall proceed against

Defendant Officer Keitz.

2. The claim for delay of medical treatment shall proceed against Defendant Clark.

3. Sheriff Loar shall be DISMISSED for failure to state a claim against him.

4. Indian River County and the Sheriff's Department shall be DISMISSED for failure to state a claim against them.

DONE AND ORDERED in Chambers at Miami, Florida, this 10 day of November, 2011.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge White
All Counsel of Record