CASREF,HABEAS,PAW

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:11-cv-60652-MGC

Lewis v. Officer John Czech et al
Assigned to: Judge Marcia G. Cooke
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 03/25/2011
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Leonard Lewis
Prisoner ID: F015272

represented by **Leonard Lewis**
F015272
Wakulla Correctional Institution--Annex
110 Melaleuca Drive
Crawford, FL 32327
PRO SE

V.

Defendant

Officer John Czech
Police Officer, Fort Lauderdale Police Department

represented by **Alain E. Boileau**
Alain E. Boileau, P.A.
Post Office Box 880687
Boca Raton, FL 33488
561-901-2283
Email: aeblawfirm@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michelle Burgess
Police Officer, Fort Lauderdale Police Department

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Aidan Finnery
Police Officer, Fort Lauderdale Police Department

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Justin Lanuez
Officer

represented by **Alain E. Boileau**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Richard Matos
Police Officer, Fort Lauderdale Police Department

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/25/2011	1	Complaint under the Civil Rights Act 42 U.S.C. 1983. Filing fee $ 5.00. IFP Filed, filed by Leonard Lewis.(drz) Modified docket texton 3/25/2011 (drz). (Entered: 03/25/2011)
03/25/2011	2	Judge Assignment to Judge Marcia G. Cooke (drz) (Entered: 03/25/2011)
03/25/2011	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. (drz) (Entered: 03/25/2011)
03/25/2011	4	MOTION for Leave to Proceed in forma pauperis by Leonard Lewis. (drz) (Entered: 03/25/2011)
05/03/2011	5	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 5/3/2011. (tw) (Entered: 05/03/2011)
05/03/2011	6	ORDER denying without prejudice 4 Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit. Due on or before May 23, 2011. Signed by Magistrate Judge Patrick A. White on 5/3/2011. (Attachments: # 1 Affidavit IFP) (tw) (Entered: 05/03/2011)
05/25/2011	7	MOTION for Leave to Proceed in forma pauperis and affidavit by Leonard Lewis. (tp) (Entered: 05/26/2011)
05/25/2011	8	MOTION for Extension of Time to comply re 5 Order of Instructions to Pro Se Litigant by Leonard Lewis. Responses due by 6/13/2011 (tp) (Entered: 05/26/2011)
05/31/2011	9	ORDER denying as moot 8 Motion for Extension of Time, an order will be entered granting m/IFP and establishing a debt.. Signed by Magistrate Judge Patrick A. White on 5/31/2011. (cz) (Entered: 05/31/2011)
05/31/2011	10	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of $350.00; granting 7 Motion for Leave to Proceed in forma pauperis 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. Signed by Magistrate Judge Patrick A. White on 5/31/2011. (br) (Entered: 05/31/2011)
06/13/2011	11	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL. The United States Marshal shallserve a copy of

		the complaint and appropriate summons upon:Officer John Czech, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312; Officer Michelle Burgess, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312; Officer Aidan Finnery,a/k/a Officer Aidan Finnerty, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312; Officer Justin Laniez, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312 and Officer Richard Matos, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312. Signed by Magistrate Judge Patrick A. White on 6/10/2011. (tw) (Entered: 06/13/2011)
06/13/2011	12	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Application/Petition (Complaint) for Writ of Habeas Corpus filed by Leonard Lewis. Recommending 1. The case shall proceed on the claim of use of unlawful force against Czech, Burgess, Laniez and Matos, and on failureto intervene against Finnerty and Laniez. 2. Service will be ordered by separate order against these defendants.3. The standard used for initial screening of a complaint is identical to that of a motion to dismiss. To determine the issue, including whether defendants are entitled to qualified immunity, requires the case to proceed to develop the issues with supporting evidence. Objections to R&R due by 6/30/2011. Signed by Magistrate Judge Patrick A. White on 6/9/2011. (tw) (Entered: 06/13/2011)
06/13/2011	13	Summons Issued as to Michelle Burgess. (br) (Entered: 06/13/2011)
06/13/2011	14	Summons Issued as to Officer John Czech. (br) (Entered: 06/13/2011)
06/13/2011	15	Summons Issued as to Aidan Finnery. (br) (Entered: 06/13/2011)
06/13/2011	16	Summons Issued as to Justin Laniez. (br) (Entered: 06/13/2011)
06/13/2011	17	Summons Issued as to Richard Matos. (br) (Entered: 06/13/2011)
07/06/2011	18	SUMMONS (Affidavit) Returned Executed on 1 Application/Petition (Complaint) for Writ of Habeas Corpus as to Officer John Czech served on 6/22/2011, answer due 7/13/2011. (ar2) (Entered: 07/06/2011)
07/06/2011	19	SUMMONS (Affidavit) Returned Executed on 1 Application/Petition (Complaint) for Writ of Habeas Corpus as to Michelle Burgess served on 6/22/2011, answer due 7/13/2011. (ar2) (Entered: 07/06/2011)
07/06/2011	20	SUMMONS (Affidavit) Returned Executed on 1 Application/Petition (Complaint) for Writ of Habeas Corpus as to Aidan Finnery served on 6/22/2011, answer due 7/13/2011. (ar2) (Entered: 07/06/2011)
07/06/2011	21	SUMMONS (Affidavit) Returned Executed on 1 Application/Petition (Complaint) for Writ of Habeas Corpus as to Justin Laniez served on 6/22/2011, answer due 7/13/2011. (ar2) (Entered: 07/06/2011)
07/06/2011	22	SUMMONS (Affidavit) Returned Executed on 1 Application/Petition (Complaint) for Writ of Habeas Corpus as to Richard Matos served on 6/22/2011, answer due 7/13/2011. (ar2) (Entered: 07/06/2011)
07/08/2011	23	ORDER ADOPTING REPORT AND RECOMMENDATIONS. Signed by

		Judge Marcia G. Cooke on 7/8/2011. (tm) (Entered: 07/08/2011)
07/12/2011	24	Withdrawn by DE 26 *Answer and Affirmative Defenses to Plaintiff's Complaint* RESPONSE to Petition for Writ of Habeas Corpus by Michelle Burgess, Aidan Finnery, Justin Laniez, Richard Matos, Officer John Czech.(Boileau, Alain) Modified on 7/13/2011 (tp). (Entered: 07/12/2011)
07/12/2011	25	*Answer & Affirmative Defenses to Plaintiff's Complaint [DE 1]* / RESPONSE to Petition for Writ of Habeas Corpus by Michelle Burgess, Aidan Finnery, Justin Laniez, Richard Matos, Officer John Czech.(Boileau, Alain) (Entered: 07/12/2011)
07/12/2011	26	NOTICE by Michelle Burgess, Aidan Finnery, Justin Laniez, Richard Matos, Officer John Czech re 24 Response to Habeas Petition *of Withdrawing DE 24* (Boileau, Alain) (Entered: 07/12/2011)
07/13/2011	27	MOTION for Appointment of Counsel by Leonard Lewis. Responses due by 8/1/2011 (ar2) (Entered: 07/13/2011)
07/13/2011	28	NOTICE of Related Matters by Leonard Lewis (See Image at Docket Entry 27) (ar2) (Entered: 07/13/2011)
07/14/2011	29	ORDER denying 27 Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 7/14/2011. (cz) (Entered: 07/14/2011)
07/15/2011	30	SCHEDULING ORDER: Amended Pleadings due by 10/31/2011. Discovery due by 10/17/2011. Joinder of Parties due by 10/31/2011. Motions due by 11/21/2011.. Signed by Magistrate Judge Patrick A. White on 7/14/2011. (tw) (Entered: 07/15/2011)
09/29/2011	31	MOTION for Judicial Action by Leonard Lewis. (ar2) (Entered: 09/29/2011)
10/03/2011	32	ORDER denying 31 Motion order plaintiff's helth records from hospital and jail. The Court cannot compel non parties to produce records. The plaintiff must obtain his records or provide for subpoenas.. Signed by Magistrate Judge Patrick A. White on 10/3/2011. (cz) (Entered: 10/03/2011)
10/13/2011	33	AMENDED COMPLAINT under the Civil Rights Act, 42 U.S.C. § 1983 against All Defendants, filed by Leonard Lewis.(ar2) Modified text on 10/13/2011 (ar2). (Entered: 10/13/2011)
10/19/2011	34	*Endorsed Order The plaintiff has filed an amended complaint on October 7, 2011 (DE#33). An Answer has been filed in this case and the plaintiff must file a motion for leave of Court to file an amended complaint and then file a proposed amended complaint. The amended complaint (DE#33) is stricken.. Signed by Magistrate Judge Patrick A. White on 10/19/2011. (cz) (Entered: 10/19/2011)
11/03/2011	35	MOTION for Leave to File an Amended Complaint by Leonard Lewis. (Attachments: # 1 Amended Complaint)(ar2) (Entered: 11/03/2011)
11/07/2011	36	ORDER denying 35 Motion for Leave to File amended complaint. The amended complaint names the same defendants and alleges the same cause of action as in the initial complaint.. Signed by Magistrate Judge Patrick A. White

		on 11/7/2011. (cz) (Entered: 11/07/2011)
12/08/2011	37	ORDER/REPORT THAT CASE IS READY FOR TRIAL. Signed by Magistrate Judge Patrick A. White on 12/8/2011. (tw) (Entered: 12/08/2011)
12/09/2011	38	The Pre-Trial Statement by Leonard Lewis (ar2) (Entered: 12/09/2011)

PACER Service Center			
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12/16/2011 11:12:03			
PACER Login:	vl0006	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	0:11-cv-60652-MGC
Billable Pages:	4	**Cost:**	0.32

11-21031-Civ-COOKE/WHITE

(Rev. 04/2005) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number:

MAR 25, 2011
LEGAL MAIL
PROVIDED TO WAKULLA CI ANNEX
MAR 21 2011
FOR MAILING

LEONARD LEWIS
(Enter above the full name of the plaintiff or plaintiffs in this action.)

v.

OFFICER JOHN CZECH, POLICE OFFICER, FORT LAUDERDALE POLICE DEPARTMENT;
MICHELLE BURGESS, POLICE OFFICER, FORT LAUDERDALE POLICE DEPARTMENT;
AIDAN FINNERY, POLICE OFFICER, FORT LAUDERDALE POLICE DEPARTMENT;
JUSTIN LANIEZ, POLICE OFFICER, FORT LAUDERDALE POLICE DEPARTMENT
RICHARD MATOS, POLICE OFFICER, FORT LAUDERDALE POLICE DEPARTMENT
(Enter above the full name of the defendant or defendants in this action.)

FILED BY
2011 MAR 25 PM 3:00
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA.

A COMPLAINT UNDER THE CIVIL RIGHTS ACTS, 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 or plaintiffs must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

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

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

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

In addition, if the Judge directs the U.S. Marshal to serve the summons and complain to each defendant, the United States Marshal will require you to pay for the costs of this service.

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. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with ~~the same facts involved in this~~ action or otherwise relating to your imprisonment?

1983/Ft. Lauderdale
cat / div
Case # 11 CV 60652
Judge ____ Mag ____
Motn Ifp YES Fee pd $ 0
Receipt # ____

Yes ( ) No (X)

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.) Not Applicable

1. Parties to this previous lawsuit

Plaintiffs: Not applicable

Defendants: Not applicable

2. Court (if federal court, name the district; if state court, name the county): Not applicable

3. Case Number: Not applicable

4. Name of Judge to whom case was assigned: Not applicable

5. Disposition (for example: Was the case dismissed?; Was it appealed?; Is it still pending?): Not applicable

6. Approximate date of filing lawsuit: Not applicable

7. Approximate date of disposition: Not applicable

II. Place of present confinement: Wakulla Correctional Institution Annex, 110 Melaleuca Drive, Crawfordville, Florida 32327

A. Is there a prisoner grievance procedure in this institution?

Yes (X) No ( )

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes ( ) No (X)

C. If your answer if YES:

1. What steps did you take? not applicable

2. What was the result? not applicable

D. If your answer is NO, explain why not: Instant complaint is not applicable to State of Florida, Department of Corrections, its supervisors, or agents. Exhaustion of remedies is therefore not required.

III. Parties

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Leonard Lewis, DC # 015272
Address: Wakulla Correctional Institution (Annex), 110 Melaleuca Drive, Crawfordville, Florida 32327

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

B. Defendant John Czech
is employed as Police Officer

at Fort Lauderdale Police Department, 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312

C. Additional Defendants: Michelle Burgess; Aidan Finnery, Justin Laniez, Richard Matos, Law Enforcement Officer.

IV. 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.)

Plaintiff asserts claim of violation of federal constitutional rights under U.S. Constitution Amendment VII, XIV when defendant(s) Czech, Burgess, Finnery, Laniez, Matos each individually and collectively subjected plaintiff on April 5, 2009 to assault and battery resulting in permanent physical injuries, pain and mental suffering while acting under color of state law in Broward County, State of Florida, City of Fort Lauderdale.

The following facts are pertinent to the claim:

1. Plaintiff Leonard Lewis is an inmate in the Florida Department of Corrections (hereinafter "FDOC" and has been assigned to the Wakulla Correctional Institution (Annex) located at 110 Melaleuca Drive, Crawfordville, Florida 32327.

2. Defendant John Czech, is and at all times relevant in this action was and continues to be a police officer at the Fort Lauderdale Police Department located at 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312, a police officer acting under color of state law.

3. Defendant Michelle Burgess, is and at all times relevant in this action was and continues to be a police officer at the Fort Lauderdale Police Department, located at 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312, a police officer acting under color of state law.

4. Defendant Aidan Finnerty, is and at all times relevant in this action was and continues to bea police officer at the Fort Lauderdale Police Department, located at 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312, a police officer acting under the color of state law.

5. Defendant Justin Laniez, is and at all times relevant in this action was and continues to be a police officer at the Fort Lauderdale Police Department, located at 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312, a police officer acting under the color of state law.

6. Defendant Richard Matos, is and at all times relevant in this action was and continues to be a police officer at the Fort Lauderdale Police Department, located at 1300 W. Broward Blvd., Fort Lauderdale, Florida 33312, a police officer acting under the color of state law.

7. On April 5, 2009, Defendant(s) Laniez, Matos, Czech, Finnerty responded to the location of 700 S. Seabreeze Blvd., Fort Lauderdale, Florida in response to a purported domestic disturbance at approximately 1758 hours.

8. Defendant Matos intitally arrived at the location and he and defendant Laniez subsequently followed Plaintiff who was walking eastbound on the beach and who was observed in close proximity of a white female.

9. Plaintiff had his back to defendant(s) Matos and Laniez who alleged they viewed Plaintiff with a knife in his possession.

10. Plaintiff heard defendant Laniez give a verbal command "Drop the knife...Police, drop the knife."

11. At the time of the command, defendant Laniez pointed his issued service revolver at Plaintiff.

12. As Plaintiff dropped the knife as instructed, defendant Matos although knowing that Plaintiff was actively complying with the verbal order, violently struck Plaintiff's arm with his issued baton without regard to Plaintiff's personal health, welfare or well-being.

13. After defendant Matos struck Plaintiff's arm, defendant Laniez holstered his firearm and accompanied by defendant(s) Czech, Finnerty and Laniez, forced Plaintiff to the ground after defendant Laniez grabbed Plaintiff by the neck.

14. Plaintiff was struck in the head on two occasions by defendant Matos with the issued baton.

15. After being thrown to the ground by defendant(s) Matos, Laniez, Czech and Finnery, Plaintiff was struck by the closed fist of defendant Laniez several times on his right bicep.

16. Defendant Laniez forced Plaintiff's arm back behind his back and shoulder, pulling upward in an attempt to dislocate the arm from the shoulder socket.

17. While the defendant was on the ground in a prone position on his stomach, he was viciously kicked in the back of his head several times by defendant Matos and kicked in the side of his ribs by defendant Czech.

18. Defendant Laniez who had arrived at the scene failed to intercede and stop the physical assault upon Plaintiff by defendants Laniez, Matos, Finnerty and Czech. Although able to stop the attack and prevent injuries to Plaintiff.

19. Defendant Finnerty, who assisted in the initial takedown of Plaintiff without interceding allowed defendant(s) Laniez, Matos and Czech to physically beat Plaintiff although able to stop the attack and prevent injuries to Plaintff.

20. Due to the assault by defendant(s) Laniez, Matos and Czech, Plaintiff suffered serious physical injuries which included permanent physical injuries and nerve damage to Plaintiff's left wrist. Lacerations and permanent injuries to his skull and permanent disfigurement to his left wrist, head area due to the actions of defendant(s) Laniez, Matos, and Czech which were deliberately indifferent to Plaintiff's personal well-being and safety.

21. Due to the failure of defendants Finnerty and Laniez who witnessed the physical attack on Plaintiff and who although able failed to intereced to prevent the injuries to Plaintiff, were deliberately indifferent to Plaintiff's personal safety and well-being.

22. Plaintiff demands jury trial.

PRAYER FOR RELIEF/DEMAND FOR JUDGMENT

Wherefore, Plaintiff requests this Honorable Court enter on order as follows:

23. Award judgment against defendants individually or collectively in the amount of $500,000 in actual damages;

24. Award declaratory judgment against defendants individually or collectively for violation of federal constitutional rights afford U.S. Constitution Amendment VIII, XIV;

25. Award Plaintiff damages against defendants individually or collectively in the amount of $1,000,000;

26. Award Plaintff reasonable attorney fees and costs;

27. Grant Plaintiff a trial by jury on all issues of fact.

V. Relief

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

1. Grant declatory judgment in favor of Plaintiff against defendant(s) Czech, Burgess, Finnerty, Laniez, Matos, violation of federal constitutional rights. U.S. Constitution Amendment VIII;

2. Grant actual damages against defendant in favor of Plaintiff in the amount of $250,000;

3. Grant compensatory damages against the defendants in favor of the Plaintiff in the amount of $50,000;

4. Grant punitive damages in the amount of $1,000,000 against defendant;

5. Grant reasonable attorney fees and costs.

Signed this 21 st day of MARCH, 2011.

Leonard Lewis

Leonard Lewis, DC # 015272
Wakulla Correctional Institution (Annex)
110 Melaleuca Drive
Crawfordville, FL 32327

I declare under penalty of perjury that the foregoing is true and correct. Executed on 21 st day of MARCH, 2011.

Leonard Lewis
(Signature of plaintiff)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60652-CIV-COOKE
MAGISTRATE JUDGE P. A. WHITE

LEONARD LEWIS, :

Plaintiff, :

v. : REPORT OF MAGISTRATE JUDGE

OFFICER JOHN CZECH, et al.,

Defendants, :

I. Introduction

Leonard Lewis filed a pro se civil rights complaint while confined at the Wakulla Annex. He is proceeding in forma pauperis. He seeks declaratory relief, and monetary damages.

This Cause is before the Court upon a preliminary review of the complaint 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 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 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)"). When reviewing complaints pursuant to 28 U.S.C. §1915(e)(2)(B), the Court must apply the standard of review set forth in Fed.R.Civ.P. 12(b)(6), and the Court must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997). 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),See: Whitehorn, 758 F.2d at 1419 id. Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it

appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."' Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). 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).

The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007)(retiring the oft-criticized "no set of facts" language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11 Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964). 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]

B. Factual Allegations

The plaintiff names Ft. Lauderdale Police Officers John Czech, Michelle Burgess, Aidan Finnerty, Justin Laniez and Richard Matos. He alleges that on April 5, 2009, the defendant officers responded to a domestic disturbance call in Ft. Lauderdale, Florida. They found the plaintiff holding a knife, and he was ordered to drop it. The plaintiff contends he complied, and dropped the knife, and that Matos, knowing he was complying with their order, struck plaintiff's arm with a baton. Defendant Laniez then holstered his firearm, and accompanied by Czech and Finnerty, forced him to the ground. Matos struck him twice in the head twice with a baton. He was struck several times with a closed fist by Laniez, who forced his arm behind his back in an attempt to dislocate his arm from his shoulder. He was kicked in the stomach while lying on the ground by Matos and Czech. He further contends Laniez and Finnerty failed to intercede to prevent further assault. He alleges the assault led to permanent physical injuries.

C. Sufficiency of the complaint

Excessive force

Claims of excessive force by police officers are cognizable under 42 U.S.C. §1983, as are claims that officers who were present

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

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).

It is not necessary for an officer to actually participate in the use of excessive force in order to be held liable under §1983, he need only be present at the scene and fail to take steps to protect a victim from a fellow officer's use of excessive force. See: Fundiller v. City of Cooper City, 777 F.2d 1436, 1441-42 (11 Cir. 1985) ("an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance"); Harris v. Chanclor, 537 F.2d 203, 206 (5 Cir. 1976) ("a supervisory officer is liable under [Section] 1983 if he refuses to intervene where his subordinates are beating an inmate in his presence").

D. Analysis

Review of the Department of Corrections website indicates that Lewis was convicted of felony charges resulting from the April 5, 2009 incident, including dealing with a gun; a concealed weapon with ammunition.[2] In light of the plaintiff's conviction, his

[2]The offense is listed as FEL/DELI W/GUN/CONC WPN/AMMO.

claims do not appear credible.

However, at this early stage, it cannot be determined whether the force used to restrain the plaintiff was unlawful. He claims he was kicked and punched after complying with the officers' orders to get down on the ground. The plaintiff has stated a claim for use of unlawful force at this early, preliminary stage.

III. Conclusions

It is therefore recommended as follows:

1. The case shall proceed on the claim of use of unlawful force against Czech, Burgess, Laniez and Matos, and on failure to intervene against Finnerty and Laniez.

2. Service will be ordered by separate order against these defendants.

3. The standard used for initial screening of a complaint is identical to that of a motion to dismiss. To determine the issue, including whether defendants are entitled to qualified immunity, requires the case to proceed to develop the issues with supporting evidence.

Objections to this Report may be filed with the District Judge within fourteen days after receipt.

Dated this 9TH day of June, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Leonard Lewis, Pro Se
DC #015272
Wakulla CI
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 11-60652-Civ-COOKE/WHITE

LEONARD LEWIS,

Plaintiff

vs.

OFFICER JOHN CZECH, *et al.*,

Defendants.
_____/

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, pursuant to Administrative Order 2003-19 of this Court, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. On February 25, 2011, Judge White issued a Report and Recommendation (ECF No. 12) recommending that (i) this case proceed on the claim of use of unlawful force against Officers Czech, Burgess, Laniez, and Matos, and on failure to intervene against Officers Finnery and Laniez; (ii) the defendants be served. None of the parties filed objections. I have considered Judge White's Report and Recommendation, and have made a *de novo* review of the record. I find Judge White's Report and Recommendation clear, cogent, and compelling.

It is **ORDERED and ADJUDGED** that Judge White's Report and Recommendation (ECF No. 12) is **AFFIRMED and ADOPTED**.

DONE and ORDERED in chambers, at Miami, Florida, this 8th day of July 2011.

Marcia G. Cooke
MARCIA G. COOKE
United States District Judge

Copies furnished to:
Patrick A. White, U.S. Magistrate Judge
Leonard Lewis, pro se
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60652-CIV-COOKE/WHITE

LEONARD LEWIS,

Plaintiff,

vs.

OFFICER JOHN CZECH, et al.,

Defendants.
_____/

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

Defendants, OFFICER JOHN CZECH ("CZECH"), OFFICER MICHELLE BURGESS ("BURGESS"), OFFICER AIDAN FINNERY ("FINNERY"), OFFICER RICHARD MATOS ("MATOS"), and OFFICER JUSTIN LANUEZ ("LANUEZ"), by and through their undersigned counsel, hereby file their Answer and Affirmative Defenses to Plaintiff, LEONARD LEWIS' ("BLUE") Complaint, and state as follows:

1. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ deny each and every allegation contained within LEWIS' Complaint herein not specifically admitted and demand strict proof thereof.

AFFIRMATIVE DEFENSES

2. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that they are entitled to qualified immunity because they did not act in any way that would violate any clearly established rights guaranteed to LEWIS, under the Constitution of the United States and/or under any statutory law, of which a reasonable person and/or reasonable police officer would have known.

3. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that they acted in good faith, and acted without malice, and acted with probable cause, arguable probable cause, and/or reasonable suspicion.

4. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that the actions taken by them, including any use of force, were reasonable upon objective evaluation and not so grossly disproportionate to the need to take those actions so as to warrant recovery pursuant to 42 U.S.C. §1983.

5. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that, at all times material, they used only such force as was reasonable or necessary under the circumstances.

6. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that LEWIS unjustifiably resisted lawful arrest with and/or without violence as prohibited by § 776.051, §843.01, and/or §843.02, Fla.Stat.

7. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that any use of force against LEWIS was justifiable, as enumerated in §776.05, §776.051, and/or §776.07, Fla.Stat., in self defense, and in the protection of others, or to prevent escape.

8. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that under the facts of this case, there existed no conduct warranting intervention, and/or they were under no obligation or duty to intervene because they were not in a position to, or they did not have a realistic opportunity to, intervene in any alleged conduct.

9. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that LEWIS' conduct is the sole cause of his alleged damages and/or injuries.

10. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that LEWIS has failed to mitigate his damages.

11. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that, at all times material, there were reasonably relying upon information obtained in their capacity as law enforcement officers and/or were reasonably relying upon the good faith representations of, and information provided by, fellow law enforcement officers.

12. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ allege and assert that LEWIS' claims and request for damages are barred as a matter of law and are not recoverable under 42 U.S.C. §1983, pursuant to Heck v. Humphrey, and its progeny.

DEMAND FOR ATTORNEY'S FEES

13. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ further demand reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988, should they prevail in this action.

RESERVATION OF RIGHTS

14. CZECH, BURGESS, FINNERY, MATOS, and LANUEZ reserve the right to amend and supplement these affirmative defenses adding such affirmative defenses as may appear to be appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered LEWIS' Complaint, CZECH, BURGESS, FINNERY, MATOS, and LANUEZ pray it be dismissed with prejudice and costs and fees awarded to CZECH, BURGESS, FINNERY, MATOS, and LANUEZ.

Dated: July 12, 2011

Respectfully submitted,

s/Alain E. Boileau
ALAIN E. BOILEAU (0148598)
aeb@mcintoshschwartz.com
McINTOSH SCHWARTZ, P.L.
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, Florida 33316
Telephone: (954) 660-9888
Facsimile: (954) 660-9872

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Alain E. Boileau
ALAIN E. BOILEAU

LEONARD LEWIS v. OFFICER JOHN CZECH, et al.
CASE NO: 11-60652-CIV-COOKE/WHITE

Service List

Leonard Lewis, *Pro Se*
DOC# F015272
Wakulla Correctional Center
110 Melaleuca Drive
Crawfordville, Florida 32327
[via regular U.S. Mail]

FILED by [illegible] D.C.
JUL 13 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LEONARD LEWIS,
Plaintiff,

Case No.: **0:11-CV-6052-MGC**

v.

OFFICER JOHN CZECH, et. al.,
Defendant(s).

LEGAL MAIL
PROVIDED TO WAKULLA CI ANNEX
JUL 05 2011
FOR MAILING [illegible]

MOTION FOR APPOINTMENT OF COUNSEL AND NOTICE OF RELATED MATTERS

COMES NOW, Leonard Lewis, *pro-se*, pursuant to U.S. Const. Amend. I, VI, of America, 18 U.S.C. § 3006A (b) (2), and moves this Honorable Court oh Honorable Judges for the above said reasons and therefore the following is relayed:

1. The Plaintiff is indigent and cannot afford to retain counsel for redression of this matter. (See: Exhibit "A").

2. The Plaintiff has sustained permanent damages to his sight due to the excessive force by the Defendant(s) and has trouble with vision subsequent reading materials which hinders his ability to understand Orders of the Court and legal materials needed to file proper pleadings and or motions to the Court in support and defense of his claims.

3. The initial complaint was drafted by a fellow prisoner who has been recently transferred to an unknown institution.

4. The Plaintiff has no experience in legal matters Civil or Criminal as a *pro-se* litigant and would be highly and duly prejudiced of his Sixth Amendment right of the U.S. Constitution of America if not appointed counsel to defend and present his claims for relief against police officials in a court of law. In addition to all facts and circumstances surrounding and potentially relevant to this matter.

5. The Department of Corrections website that indicates that the conviction and incident included "dealing with a gun", "a concealed weapon with ammunition" as noted by this Honorable Court in the Analysis (Section D) of the most recently received letter from this Honorable Court is incorrect. (See: Exhibit "B").

6. The Exhibits attached of the officers/Defendants reports drafted themselves show inconsistency and obvious contrast to each other as well as other presentable evidence that an untrained inexperienced *pro-se* litigant would by duly prejudiced against an certified Bar member in this field of trial law if compelled to proceed in a trial setting for decision and judgement.

Therefore, the Plaintiff prays this Honorable Court of Honorable Judges Grant this Motion for Appointment of Counsel and take "Notice" to the Exhibits attached in support thereof and for right knowledge of the circumstances surrounding this matter and appoint him counsel in pursuant of all Constitutional Laws applicable to this matter in accordance and preservation of his Civil

Commerce interchanges as a Citizen of the U.S. of America in the State of Florida Department of Corrections.

Respectfully Submitted,

Leonard Lewis

Leonard Lewis, *pro-se*
Wakulla Correctional Inst. (Annex)
110 Melaleuca Drive
Crawfordville, Florida 32327

CERTIFICATE OF OATH

I HEREBY SWEAR under penalties of perjury that the Plaintiff, I, Leonard Lewis, is indigent and cannot afford, retain, or give securities for counsel and that all Exhibits are official unaltered documents provided by appointed counsel in he and for criminal proceedings where these claims and cause originated and that they, as well as this Motion/Notice is provided in the interest of justice of the United States Constitution of America and all contained herein are true and correct by my signature and print below, pro-se.

Date: 7/5/11

Leonard Lewis

Leonard Lewis, *pro-se*
Wakulla Correctional Inst. (Annex)
110 Melaleuca Drive
Crawfordville, Florida 32327

EXHIBIT - A

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

LEGAL MAIL
PROVIDED TO WAKULLA CI ANNEX
MAR 21 2011
FOR MAILING

UNITED STATES DISTRICT COURT

Southern for the Florida

Leonard Lewis
Plaintiff/Petitioner

v.

Officer Michael Czech, et. al.
Defendant/Respondent

Civil Action No.

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: Wakulla Correctional Institution Annex. 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:

N/A

My gross pay or wages are: $ 0.00, and my take-home pay or wages are: $ 0.00 per *(specify pay period)* Per Week.

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	☐ Yes	☑ No
(b) Rent payments, interest, or dividends	☐ Yes	☑ No
(c) Pension, annuity, or life insurance payments	☐ Yes	☑ No
(d) Disability, or worker's compensation payments	☐ Yes	☑ No
(e) Gifts, or inheritances	☐ Yes	☑ No
(f) Any other sources	☐ Yes	☑ 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.

4. Amount of money that I have in cash or in a checking or savings account: $ 0.00 .

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)*:

N/A

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

N/A

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:

N/A

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

N/A

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: 3/21/11

[signature]
Applicant's signature

Leonard Lewis, DC # F015272
Printed name

EXHIBIT – B

13)

Broward County Sheriff's Office

Impaired
498

Booking Report

CIS #	570902736	BCCN #	744610	Booking Sheet Control Date and Time	
OBTS	608131391	Print Clearance	4/6/2009 01:27:53 Prints Yes	04/06/09 02:46:09	

Arrest # FL0902736 Offense Report # 09-37141 Agency FL

Last Name LEWIS , LEONARD , SSN # 428887714
First
Middle

Race	Sex	Height	Weight	Eyes	Hair	Comp.	Age Admitted	DOB	Place of Birth	State	FDLE
BLACK	M	510	226	BRO	GRY	BLK	67	11/08/1941		MS	133477

Permanent Address 1 NW 33RD TERR. LAUDERHILL FL 33313 Months of Residence 6

Arrest Date 4/5/2009 18:25:00 Arresting Officer LANUEZ Place of Arrest 700 SEA BREEZA BL Badge Number 1692

Inmate Logged Date 4/6/2009 00:23:06 Inmate Log Type Place Admitted MAIN

Intake Comments29-SP/CO-11805 WC/13838

Alias Last name, First, Middle

Scars,Marks,Tattoos:

Tattoos	Shoulder, left	CROSS
Tattoos	Shoulder, right	250,000
Blind	Blind right eye	CLOSED SHUT

Release Date/Time	Release Reason	Release Authorized By

Charge No.	Charge Initiation Date	Statute	Warrant/Capias	Level	M.C	B.Type	Bond Amount
1	04/06/2009 2:39	784.021-1a	CC	3F	Y	BOND	5000

Charges AGG ASSAULTW/ DEADLY WEAPON WITHOUT INTENT Comments PC

Booking Off. ID bs14174 County Judge

* End of Report *

- No victim contact
- If 0 bonds-release to PTR w/ Level II supervision
- No Weapons

EL 4/6/09

STATE ATTORNEY COPY

RECEIVED
2009 APR -6 PM 2:08
STATE ATTORNEY
17TH JUDICIAL CIRCUIT
FELONY CASE FILING

FT. LAUDERDALE POLIC DEPARTMENT Supplement Report	OR 09-37141 Related OR #

Offense: Aggravated Battery	Offense Changed to:	
Location: 700 Seabreeze Blvd. Ft. Lauderdale, Fl 33311		Date of Incident: 4/5/09 Date of Report: 4/20/09

On April 14, 2009 the listed case was assigned to this detective for filing purposes.

On April 17, 2009 this detective contacted Officer LaNuez CCN 1692 in an attempt to obtain further information on the victim. This detective attempted to contact the listed witnesses via telephone with negative results.

On April 19, 2009 this detective was notified by Officer LaNuez that the victim is homeless with no contact information, and that she was too intoxicated to speak to a detective on the night of the incident. This detective has attempted to locate the victim with negative results.

On April 20, 2009 this detective attempted to contact witness Ross via telephone with negative results as a busy signal was constantly received on several call back attempts. This detective was able to make contact with witness Dorsey via telephone at which time he stated that he does not remember the incident, and refused to give a statement.

On April 20, 2009 this detective was able to locate a witness from the 911 call information. On April 20, 2009 contact was made with witness Goines via telephone at which time a taped statement was obtained. During his statement, Goines advised that he called the police as he witnessed a black male subject beating a white female. Goines also advised that he observed the male suspect pull a black case out of his pocket which was later determined to be a knife. For specific details of the statement, please refer to the transcript.

On April 20, 2009 the SAO was contacted via telephone and advised that the victim could not be located, and witness statements were also unavailable; however the 911 caller was contacted for a statement.

On April 22, 2009 a case filing packet was compiled and sent over to the SAO for review.

Detective: Burgess	CCN: 1125	
Reviewing Officer: Nahum	CCN: 1268	

OFFICER AFFIDAVIT:
I swear or affirm that I have prepared this report, and it is correct and true to the best of my knowledge.
Authoring Officer (Signature) _____
Printed Name/CCN ___**Burgess/1125**_____

The forgoing instrument was acknowledged before me this day of April 22 , 2009, by _Burgess_(authoring officer), who is known to me or has produced _____ as identification, and who did take an oath.

NOTARY/WITNESSING OFFICER SIGNATURE/CCN _____ 1443

Routed to: Referred to:
Case Status CBA Type 1 1. Arrest 2. Exceptional 3. Unfounded Date Closed: 4/22/2009
Exception 1. Extradition Declined 3. Death of Offender 5. Prosecution Declined
2. Arrest on primary offense secondary offense without prosecution 4. V/W Refused to cooperate 6. Juvenile/No Custody

04-19-09 09:15 8417

FT. LAUDERDALE POLICE DEPARTMENT Supplement Report	OR # 09-037141 Related OR #

Offense: Battery (Aggravated)	Offense Changed to:	
Location: 700 S Seabreeze Blvd, Fort Lauderdale, FL South Beach Park		Date of Incident: 4/05/09 Date of Report: 4/05/09

I (Ofc. Matos) was dispatched to listed location reference to a battery that just occurred on the beach. Anonymous Reportee stated she observed a white female wearing a blue/black bathing suit fist fighting with a black male wearing beige/tan pants and no shirt.

Upon arrival I observed both A1 and A2 verbally arguing, and yelling profanity at each other. I then observed as I was getting closer to both subjects, Black Male/A1 grab a knife from his back pocket and stepped forward towards White Female/A2 as to stab her. Fellow officers and I quickly ordered A1 to place the knife on the ground, at which time he refused. I then reached, and grabbed my Baton while two other officers pulled there firearms out and we all again ordered A1 to drop the knife. I then disarmed A1 by striking him in the arm with my baton. I then grabbed A1 by his left wrist and the back of his neck and with the help of two other officers we took A1 to the ground/sand. A1 then dropped his knife in the process and it was grabbed and secured. A1 refused to put his hands behind his back by pulling, tensing, and pushing his arm straight out in front of him. One officer had to strike A1 arm, while I grabbed and pulled his right arm behind his back.

A1 and A2 were arrested and were transported to FLPD jail for processing.

No further action.

09-37141

Officer: R. Matos	CCN: 1683	Unit: 3A324
Reviewing Officer:	CCN:	

OFFICER AFFIDAVIT:
I swear or affirm that I have prepared this report, and it is correct and true to the best of my knowledge.
Authoring Officer (Signature) _____
Printed Name/CCN K. Matos 1683

The for going instrument was acknowledged before me this 5 **day of** April, 20 09, **by** K Matos **(authoring officer), who is known to me or has produced** FLDL **as identification, and who did take an oath.**

NOTARY/WITNESSING OFFICER SIGNATURE/CCN _____

Routed to: 3SA Referred to:

Case Status Type 1. Arrest 2. Exceptional 3. Unfounded Date Closed:

Exception 1. Extradition Declined 3. Death of Offender 5. Prosecution Declined
2. Arrest on primary offense secondary offense without prosecution 4. V/W Refused to cooperate 6. Juvenile/No Custody

OR# 09-37141

Suspect Code S-Suspect E-Escapee A-Arrestee Z-Other	Case #	Juvenile	Name (Last, First, Middle)
	2	No	Weightman, Debbie, O

Maiden Name	Nickname/Street Name	Place of Birth	Residence Phone

Address	City	State	Zip	Business Phone

Occupation	Employer/School	Address	Social Security Number

Driver's License Sta/Number	Immigration and Naturalization Number	Other I.D. Number	FL/OBTS Number (Arrested)	FCIC/NCIC ☐ YES ☐ NO

Clothing (Describe)	Scars/Marks/Tattoos (Location/Describe)

Race	Sex	Date of Birth or Age	Height	Weight	Eye Color	Hair Color	Other
W	F	04-11-60					

Activity: P - Possess; S- Sell; B- Buy; T- Traffic; R- Smuggle; D - Deliver; E - Use; K - Dispense/Distribute; M - Manufacture/ Cultivate; Z - Other

Type: A - Amphetamine; B - Barbiturate; C - Cocaine; E - Heroin; H - Hallucinogen; M - Marijuana; O - Opium/Derivative; P - Paraphernalia/ Equipment; S - Synthetic; U - Unknown; Z - Other

Unit: 1. Gram; 2. Milligram; 3. Kilogram; 4. Ounce; 5. Pound; 6. Ton; 7. Liter; 8. Milliliter; 9. Dose Unit/Item

Activity	Type	Description	Quantity	Unit	Estimated Street Value
					$
Activity	Type	Description	Quantity	Unit	Estimated Street Value
					$
Activity	Type	Description	Quantity	Unit	Estimated Street Value
					$

Narrative

SEE SUPPLEMENT PAGE

Property ☐ None Involved ☐ Stolen Lost ☒ Evidence Receipt ☐ To Be Forwarded

OFFICER AFFIDAVIT:

I swear or affirm that I have prepared this report, and it is correct and true to the best of my knowledge.

Authoring Officer (Signature) _____

Printed Name/CCN LaNuez 1692

The forgoing instrument was acknowledged before me this 05 day of April, 2009, by Officer J. LaNuez (authoring officer), who is known to me or has produced LEO as identification, and who did take an oath.

NOTARY/WITNESSING OFFICER SIGNATURE/CCN _____

VICTIM AFFIDAVIT: I hereby swear that on 04-05-09, I was the victim of a Assault Aggravated,

Which was committed without my permission and against my will, as reported by me, by persons unknown/known to me as Leonard Lewis, and further, that I

DO X DO NOT ☐ desire to prosecute.

Sworn and Subscribed by me this 05 day of April year 2009.

Officer's Signature _____. Victim's Signature In Custody.

FT. LAUDERDALE POLICE DEPARTMENT	OR # 3741
Supplement Report	Related OR #

Offense: Assault (Aggravated)	Offense Changed to:	
Location: 700 Seabreeze Blvd Fort Lauderdale, Fl		Date of Incident: 04-05-09
		Date of Report: 04-05-09

On 04-05-09 at approximately 1758 hour I along with Officers Czech, Matos, Finnerty responded to 900 Seabreeze Blvd in reference to violent domestic involving a Black male that was actively striking a white female on the beach. While in route to the call dispatch advised that the address had changed to the 700 block of Seabreeze. Due to the heavy traffic on Seabreeze Blvd all of the responding Officers had to park their patrol vehicles in the middle of the Boulevard. All of the Officer on scene were in full Fort Lauderdale Police issued uniforms.

Officer Matos was the first Officer to exit his vehicle and arrived on scene. Upon my arrival there were several people pointing and yell at a B/M saying "that's him, he has a knife." I then observed the black male in question (later identified as Leonard Lewis DOB 11-08-41) walking east on the beach in close proximately of the white female. The subject had his back towards me and was unaware that the police had arrived. The black male had a knife his left hand. The knife was in a black sheath. I then observed Lewis reach his right arm across his body and remove the knife from the sheath. The knife was approximately 5 to 6 inches long with a black handle and a metal blade.

Lewis then began to walk towards the white female (later identified as Debbie O Weightman DOB 04-11-60) in an aggressive manner. Weightman saw Lewis walking towards her with the knife and began to yell at him and was waiving her arms. At that time I was in fear for Weightman's life, and I drew my firearm and pointed at Lewis. I also gave Lewis loud verbal commands "Police drop the knife, Police drop the knife do it now." Lewis refused to drop the knife and to turn and face myself and the other three officers listed above. The subject re-sheathed the knife and began to swing the knife in an aggressive manner. I was approximately ten feet away from Lewis when he turned to face me.

Due to the close proximity Officer Matos was able to unarm Lewis by striking him in the arm with is baton. I holstered my firearm and grabbed Lewis by the neck and forced him to the ground with the assistance of the other officers. When Lewis fell to the ground his body landed on the knife. Lewis began to tense his arms and pull away in an attempt to stop myself and the other officers from placing him into handcuffs. Fearing that Lewis would grab the knife and injured himself or a Police Officer I began to punch Lewis with a closed fist on his right bicep several times. Once again I gave Lewis loud verbal commands to "stop resisting," however Lewis continued to resist. I then forced Lewis' arm back

Officer: LaNuez	CCN: 1692	
Reviewing Officer: [signature]	CCN:	

OFFICER AFFIDAVIT:

I swear or affirm that I have prepared this report, and it is correct and true to the best of my knowledge.

Authoring Officer (Signature) _____

Printed Name/CCN LaNuez 1692

The forgoing instrument was acknowledged before me this _05_ **day of April, 2009, by** _Officer J. LaNuez_ **(authoring officer), who is known to me or has produced** __LEO____ **as identification, and who did take an oath.**

NOTARY/WITNESSING OFFICER SIGNATURE/CCN [signature] 1422

Routed to: Referred to:

Case Status Type 1. Arrest 2. Exceptional 3. Unfounded Date Closed:

Exception 1. Extradition Declined 3. Death of Offender 5. Prosecution Declined
2. Arrest on primary offense secondary offense without prosecution 4. V/W Refused to cooperate 6. Juvenile/No Custody

FT. LAUDERDALE POLICE DEPARTMENT	OR# 09-141
Supplemental Report	Related OR#

so the other officers could place him into handcuffs. See the other Officers supplements for further information.

Once the knife and Lewis were secured I had EMS move into the scene. EMS treated both Weightman and Lewis for injuries sustained by one another due the physical altercation prior to my arrival. Both had minor injuries to the face area.

Both parties were on the beach since approximately 1000 hours drinking beer, and both were heavily intoxicated. Weightman stated that the fight stated over her giving Lewis money for beer; however she never received her beer. Weightman also verbal stated that she wanted to press charges against Lewis. Weightman was unable to sign the affidavit due to her being in custody See Officer Czech's supplement for further. The location were the incident took place had open cans of beer all over the floor. There was several families with children approximately 15 to 20 feet from the incident.
Officer Czech was able to talk to two witness' that observed the whole incident, and also talked to a detective (See his supplement for there statements).

I arrested Lewis for Aggravated Assault with a Deadly Weapon. Officer Czech arrested Weightman for Disorderly Conduct and transported her to FLPD jail for booking. I also transported Lewis to the Fort Lauderdale Police Department Sally Port for him to be processed. Once processed I transported Lewis to the Broward Sheriff Main Jail, however due to his high blood pressure the jail refused to take him in. Lewis then advised me that he felt like he was going to faint. I called for EMS to respond, and once on scene they transported Lewis to Broward General Hospital for treatment. Lewis was treated for high blood pressure and was released from the hospital. I then transported Lewis back to Broward Sheriff Office Mail Jail.

It should be noted that I seized the knife and place into evidence.

Sgt. Greenlaw was notified of the incident. A copy of this report was forwarded to internal affairs. This concludes my involvement at this time.

FT. LAUDERDALE POLICE DEPARTMENT Supplemental Report		OR# 09-037141 Related OR#
Offense: Assault (Aggravated)	Offense Changed to:	
Location: 700 Seabreeze Blvd		Date of Incident: 4/05/09 Date of Report: 4/05/09

N A Burglary Info Overview

POE (Point of Entry)	NA	POE (Point of Exit)	
MOE (Method of Entry)		MOE (Method of Exit)	
MO (Method of Operation)		Loss (approx. value)	
Suspects (Y/N)		Witnesses (Y/N)	
Processing (Y/N)		Video (Y/N, explain below)	
Suspect Vehicle (Y/N)		Canvas (Y/N)	

On this date I responded to the area of 900 Block Seabreeze Blvd ref. a violent domestic with a male and female were physically fighting. We were updated the two subjects were on the beach at 700 Seabreeze Blvd, a park. Due to the heavy traffic on Seabreeze Blvd we parked our cars in the roadway and ran to the beach area. Officers Matos, Finnerty, and Lanuez began to advance towards a B/M and W/F adult standing with in approx. ten feet of each other. I heard several people yell, "Knife, he has a Knife!" The B/M, Co Def. Leonard Lewis, had his back to me. Def. Debbie Weightman was yelling at the Co Def. in a combative manner while waiving her arms. I ran up as the officers began to draw their firearms in a tactical manner w/ Co. Def. Lewis in their sight. The beach was extremely crowded with families and their children with in "Fifteen to Twenty Feet" of the aggressor. The Co Def re-sheathed the approx. 5-6" straight blade knife moments after the officers orders however he swung the Knife in an aggressive manner at these officers after he re-sheathed it. He continued to fight as we detained the Co Def. in effort to suppress the aggravated level of threat to the officers and public. The knife was secured. Neither Co Def. Lewis and Def. Weightman were or stated they were in relation and only known as acquaintances.

Both Witnesses Michael Ross and Charlie Dorsey said the W/F physically attacked the Co Def. Lewis first inciting the physical fight. Neither witness is acquaintances. Both Def.'s smelled of alcoholic beverages. I transported and charged Def. Weightman to FLPD for Disorderly Conduct. Det. Moganvera and Sgt. Greenlaw were advised. Def. Weightman refused any medical attention.

Officer: J. Czech	CCN: 1445	Unit: 3A323
Reviewing	CCN:	Date:
Routed to:	Referred to:	
Case Status	Type 1. Arrest 2. Exceptional 3. Unfounded	Date Cleared:

OFFICER AFFIDAVIT:
I swear or affirm that I have prepared this report, and it is correct and true to the best of my knowledge.

Authoring Officer (Signature) J. Czech

Printed Name/CCN J. Czech 1445

The forgoing instrument was acknowledged before me this 5 day of April, 2009 by J. Czech (authoring officer), who is known to me or has produced _____ as identification, and who did take an oath.

NOTARY/WITNESSING OFFICER SIGNATURE/CCN _____

Exception 1. Extradition Declined 3. Death of Offender 5. Prosecution Declined
2. Arrest on primary offense secondary offense without prosecution 4. V/W Refused to cooperate 6. Juvenile/No Custody

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60652-CIV-COOKE
MAGISTRATE JUDGE P. A. WHITE

LEONARD LEWIS, :

Plaintiff, :

v. : ORDER SCHEDULING PRETRIAL PROCEEDINGS WHEN PLAINTIFF IS PROCEEDING PRO SE

JOHN CZECH, 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 **October 17, 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 31, 2011.**

3. All motions to dismiss and/or for summary judgment shall be filed by **November 21, 2011.**

4. On or before **December 5, 2011,** the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

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

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

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

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

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

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

5. On or before **December 19, 2011**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

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

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

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

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

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

(a) discuss the possibility of settlement;

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

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

that impeachment documents need not be revealed;

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

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

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

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

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

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

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Leonard Lewis, Pro Se
DC #F015272
Wakulla Correctional Institution
110 Melaleuca Drive
Crawfordville, FL 32327

Alain E. Boileau, Esquire
McIntosh, Schwartz, P.L.
888 S.E. Third Avenue
Suite 500
Fort Lauderdale, FL 33316

Hon. Marcia G. Cooke, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11 CV 60652 MGC

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

FILED by ____ D.C.
SEP 29 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LEONARD LEWIS
Plaintiff,

CASE NO: 0:11-CV-60652-MGC

LEGAL MAIL
PROVIDED TO WAKULLA CI ANNEX
SEP 26 2011
FOR MAILING J. L.

V.

OFFICER JOHN CZECH, et al.
Defendant(s)

MOTION FOR JUDICIAL ACTION

Comes now, Plaintiff Leonard Lewis asks this court to intervene and states the following:

Plaintiff wish to disclose all discovery to Defence counsels for defendants in the above said case number. However, Due to Plaintiff critical health conditions, lack of education, and present incarceration in the Florida Department of corrections. He is unable to secure all necessary Health Records from the following county facilities:

Broward county Jail
Paul Rein facility
P.O. Box 407703
Ft. Lauderdale, FL

Broward county General Hospital
Ft. Lauderdale, FL
Admitted on: April 5, 2009

Plaintiff wish for this court to compel the foregoing facilities to release all Health Records to him for the purpose of the claim laid out in the above styled case

Note: X-RAYS WAS TAKEN
At the county JAIL ON
Oct. 19, 2009 (1:45 - 2:15 pm)

Respectfully Submitted,
Leonard Lewis
Leonard Lewis
Wakulla C.I. annex
110 Arpalachee Drive
Crawfordville, FL 32327

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60652-CIV-COOKE
MAGISTRATE JUDGE P.A. WHITE

LEONARD LEWIS, :

Plaintiff, :

v. : REPORT THAT CASE IS READY FOR TRIAL

OFFICER JOHN CZECH, ET AL., :

Defendant. :

This prisoner civil rights case was referred to the undersigned for preliminary proceedings pursuant to 28 U.S.C. §636(b)(1).

The dates entered in the pre-trial scheduling order have passed, and the parties have not filed motions for extension of time. No dispositive motions have been filed. The plaintiff's Pre-Trial Statement was due on or before December 5, 2011, and he has not complied. The defendants' Pre-Trial Statement is due on or before December 19, 2011.

It is therefore respectfully recommended that this case be placed upon the trial calendar of the District Judge.

Dated at Miami, Florida, this 8th day of December, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Leonard Lewis, Pro Se
Wakulla Correctional Institution
Address of record

Alain Boileau, Esq.
Attorney of record

LEGAL MAIL
PROVIDED TO WAKULLA CI ANNEX
DEC 01 2011
FOR MAILING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LEWIS LEONARD
PLAINTIFF,

V.

Case No(s): 11-60652-CIV-COOK

FILED by PRG D.C.
DEC 09 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

OFFICER JOHN CZECH...ET...AL,
DEFENDANT.
_____/

THE PRE-TRIAL STATEMENT

1. The case is based on (5) five officer(s) that used, (excessive force) that caused "serious" body harm to the Plaintiff, by the negligence or Officer John Czech; Officer Richard Matos; Officer Justin Lanuez; Officer Michelle Burgess, and Officer Aidan Finnery; All parties played their part, in the Plaintiff's injuries, (a 67 year old man).

DUE PROCESS REQUIREMENTS

2. The Supreme Court of the U.S.C.A. 14th provided in situation like case no. 11-60652-CIV-COOK, the excessive force on the Plaintiff should be reviewed under the deliberate indifference standard. (Under the 8th Amendment, Cruel and Unusual Punishment).
3. On 4/5/09, Officer Matos was the first to arrive at 900 Seabreeze Blvd in reference to a domestic involving a black male striking a white female;

Officer Matos saw the B/M with a legal knife in his hand, a knife that was not used in this domestic dispute; the Plaintiff had put his knife down (complying) with the officer's request.

4. The Plaintiff put his knife down, and at that point in time Officer Matos had no right striking the Plaintiff's left upper arm with his baton; He had no right to grab a 67 year old man by the neck and slamming him to the ground, to put hand cuffs on him.
5. Office Matos put hand cuffs on the Plaintiff while on the ground, and then began to beat and kick the Plaintiff while he (was) on the ground, in hand cuffs.
6. Officer Lanuez, Officer Czech, and Officer Finnery all jumped on the plaintiff, forcing him to the ground to put hand cuffs on an unarmed 67 year old B/M, who complied with the officer's request, by dropping the knife. They had no right to hit the Plaintiff in his head with their fists and they had no right to pull the Plaintiff's shoulder out of dislocation. They had no right to kick him in the side of his ribs. However, there was no need for excessive force without reading the Plaintiff his rights under the 5th U.S.C.A.
7. Due Process requires that when bringing a complaint alleging excessive force, he must show that these five officer's comprising a "movement team" restrained him and beat him while in hand cuffs, constitutes Cruel and

Unusual Punishment, that was objectively "sufficient", "serious", used excessive force upon their arrival on 4/5/09, in violation of the 8th U.S.C.A. [states a sufficient claim for relief].

8. The Plaintiff was so badly beat up until the county jail told these officers to take the Plaintiff to the hospital on 4/5/09 against their will; However, all (5) five officers had acted with deliberated indifference to the Plaintiff for using unnecessary, excessive force.

9. Law Enforcement can only use excessive force when a prisoner or suspect is out of control. U.S.C.A. 14th. However, that was not the case at bar. [the record speaks for itself].

10. The Plaintiff is prepared to prove at trial that these (5) five officer's used excessive force in violation of the 5th, 8th, and 14th U.S.C.A.

11. The Plaintiff contends that Ms. Sandra Miller and Anjerina Miller both saw the officer's stomp, kick, and beat the Plaintiff while in hand cuffs on the ground. [See, Exhibit A and B]. These witnesses saw when Officer Matos told the B/M to drop his knife. The Plaintiff dropped the knife and was attacked by (5) five officer's who all used unnecessary use of excessive force. The Plaintiff will use these witnesses testimonies along with medical testimony that will prove the Plaintiff have on going back, neck, and arm pains; and medical will prove he's almost blind in one eye and cannot see

out of the other eye because of these (5) five officer's negligence on 4/5/09. However, this information is sufficient to prove these officers' negligence.

12. Sandra Miller lives at S.E. 66 Lane, in Bushnell, Florida. Anjerina Miller lives at S.W. 200 St., Apt # 1146, South Point Condo, Miami, Florida.

THEREFORE, the Plaintiff requests summary judgment against the Defendant based on all of the above.

Respectfully Submitted,

/s/Leonard Lewis

Leonard Lewis DC# 015272
Wakulla Corr. Inst. (Annex)
110 Melaleuca Drive
Crawfordville, Florida 32327

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing statement has been placed in the hands of an institution official to be furnished and forwarded by prepaid First Class U.S. Mail on this 1 day of December, 2011 to the following: United States District Court, Southern District of Florida, Office of the Clerk, Room 8N09, 400 North Miami Avenue, Miami, Florida 33128-7716; Robert H. Schwartz (301167), McIntosh Schwartz, P.I., 888 SE Third Ave., Suite 500, Fort Lauderdale, Florida 33316.

/s/ Leonard Lewis

Leonard Lewis DC# 015272
Wakulla Corr. Inst. (Annex)
110 Melaleuca Drive
Crawfordville, Florida 32327