

CASREF,PAW

**U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:11-cv-60085-AJ**

Blue v. Castro et al
Assigned to: Judge Adalberto Jordan
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 01/13/2011
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

Joseph Lewis Blue
Prisoner ID: 103239

represented by **Joseph Lewis Blue**
103239
Jackson Work Camp
5607 Highway 71 North
Malone, FL 32445
PRO SE

V.

Defendant

Jeffrey Castro
Detective

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
TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
McIntosh Schwartz, P.L.
888 SE 3rd Avenue
Suite 500
Fort Lauderdale, FL 33335-9002
954-523-5885
Fax: 954-760-9531
Email: rhs@mcintoshschwartz.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jason Marcus
Detective

represented by **Alain E. Boileau**
(See above for address)
TERMINATED: 01/12/2012

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Robert Hunt Schwartz
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Anthony Agular
Detective

represented by **Alain E. Boileau**
(See above for address)
*TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Robert Hunt Schwartz
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Matthew Muceri
Detective

represented by **Alain E. Boileau**
(See above for address)
*TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Robert Hunt Schwartz
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Billy Koepke
Detective

represented by **Alain E. Boileau**
(See above for address)
*TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Robert Hunt Schwartz
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Brian Dodge
Detective

represented by **Alain E. Boileau**
(See above for address)
*TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Robert Hunt Schwartz
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michael Florence
Detective Sergeant

represented by **Alain E. Boileau**
 (See above for address)
TERMINATED: 01/12/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/13/2011	<u>1</u>	COMPLAINT Under the Civil Rights Act, 42 U.S.C. 1983 against Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri. Filing fee \$ 350.00. IFP Filed, filed by Joseph Lewis Blue.(yha) Modified Text for MJSTAR on 3/1/2011 (ra). (Entered: 01/13/2011)
01/13/2011	2	Judge Assignment RE: Electronic Complaint to Judge Adalberto Jordan (yha) (Entered: 01/13/2011)
01/13/2011	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. (yha) (Entered: 01/13/2011)
01/13/2011	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Joseph Lewis Blue. (yha) (Entered: 01/13/2011)
01/13/2011	<u>5</u>	NOTICE of Filing Discovery: Plaintiff's First Set of Interrogatories to Defendant Billy Koepke by Joseph Lewis Blue.(yha) (Entered: 01/13/2011)
01/24/2011	<u>6</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 1/21/2011. (tw) (Entered: 01/24/2011)
01/24/2011	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 1/21/2011. (tw) (Entered: 01/24/2011)
02/28/2011	<u>8</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Joseph Lewis Blue. Recommending on or before March 30, 2011, the

		plaintiff shall be permitted to amend his complaint solely for the purpose of including his injuries resulting from the alleged use of unlawful force. Objections to R&R due by 3/17/2011. Signed by Magistrate Judge Patrick A. White on 2/28/2011. (tw) (Entered: 02/28/2011)
03/16/2011	<u>9</u>	MOTION for Extension of Time To serve the Amended Complaint re <u>8</u> REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Joseph Lewis Blue Recommending On or before March 30, 2011, the plaintiff shall be permitted to amend his complaint solely for the purpose of including his injuries resulting from the REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Joseph Lewis Blue Recommending On or before March 30, 2011, the plaintiff shall be permitted to amend his complaint solely for the purpose of including his injuries resulting from the by Joseph Lewis Blue. Responses due by 4/4/2011 (ots) (Entered: 03/17/2011)
03/21/2011	<u>10</u>	ORDER granting <u>9</u> Motion for Extension of Time to amend solely to state injuries to on or before 4/20/11.. Signed by Magistrate Judge Patrick A. White on 3/21/2011. (cz) (Entered: 03/21/2011)
03/29/2011	<u>11</u>	AMENDED COMPLAINT against Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri filed in response to Order Granting Motion for Leave, filed by Joseph Lewis Blue. (lh) (Entered: 03/29/2011)
04/15/2011	<u>12</u>	MOTION to Produce to Defendant Michael Florence For Production of Documents by Joseph Lewis Blue. (dj) (Entered: 04/18/2011)
04/15/2011	<u>13</u>	AMENDED COMPLAINT Under the Civil Rights Act 42USC 1983 against Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri, filed by Joseph Lewis Blue.(dj) (Entered: 04/18/2011)
05/10/2011	<u>14</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Detective Jeffrey Castro, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312, Detective Jason Marcus, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312, Detective Anthony Agular, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312, Detective Matthew Muceri, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312, Detective Billy Koepke, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312, Detective Brian Dodge, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312 AND Detective Michael Florence, Fort Lauderdale Police Dept., 1300 West Broward Boulevard, Fort Lauderdale, FL 33312. Signed by Magistrate Judge Patrick A. White on 5/10/2011. (tw) (Entered: 05/10/2011)
05/17/2011	<u>15</u>	Summons Issued as to Anthony Agular. (br) (Entered: 05/19/2011)
05/17/2011	<u>16</u>	Summons Issued as to Jeffrey Castro. (br) (Entered: 05/19/2011)

05/17/2011	<u>17</u>	Summons Issued as to Brian Dodge. (br) (Entered: 05/19/2011)
05/17/2011	<u>18</u>	Summons Issued as to Michael Florence. (br) (Entered: 05/19/2011)
05/17/2011	<u>19</u>	Summons Issued as to Billy Koepke. (br) (Entered: 05/19/2011)
05/17/2011	<u>20</u>	Summons Issued as to Jason Marcus. (br) (Entered: 05/19/2011)
05/17/2011	<u>21</u>	Summons Issued as to Matthew Muceri. (br) (Entered: 05/19/2011)
05/26/2011	<u>22</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Michael Florence served on 5/20/2011, answer due 6/10/2011. (yha) Modified file date on 5/27/2011 (yha). (Entered: 05/27/2011)
05/26/2011	<u>23</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Brian Dodge served on 5/20/2011, answer due 6/10/2011. (yha) Modified file date on 5/27/2011 (yha). (Entered: 05/27/2011)
05/26/2011	<u>24</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Billy Koepke served on 5/20/2011, answer due 6/10/2011. (yha) Modified file date on 5/27/2011 (yha). (Entered: 05/27/2011)
05/26/2011	<u>25</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Matthew Muceri served on 5/20/2011, answer due 6/10/2011. (yha) Modified on 5/27/2011 (yha). (Entered: 05/27/2011)
05/26/2011	<u>26</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Anthony Agular served on 5/20/2011, answer due 6/10/2011. (yha) Modified file date on 5/27/2011 (yha). (Entered: 05/27/2011)
05/27/2011	<u>27</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Jason Marcus served on 5/20/2011, answer due 6/10/2011. (yha) (Entered: 05/27/2011)
05/27/2011	<u>28</u>	SUMMONS (Affidavit) Returned Executed on <u>13</u> Amended Complaint Jeffrey Castro served on 5/20/2011, answer due 6/10/2011. (yha) (Entered: 05/27/2011)
06/10/2011	<u>29</u>	ANSWER and Affirmative Defenses to Amended Complaint, ANSWER and Affirmative Defenses to Amended Complaint by Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri.(Boileau, Alain) (Entered: 06/10/2011)
06/15/2011	<u>30</u>	SCHEDULING ORDER: Amended Pleadings due by 10/14/2011. Discovery due by 9/30/2011. Joinder of Parties due by 10/14/2011. Motions due by 11/4/2011.. Signed by Magistrate Judge Patrick A. White on 6/14/2011. (tw) (Entered: 06/15/2011)
07/01/2011	<u>31</u>	NOTICE of Change of Address by Joseph Lewis Blue. System Updated (yha) (Entered: 07/01/2011)
07/18/2011	<u>32</u>	ORDER denying <u>12</u> Motion to Produce, all discovery requests must be sent directly to the defendants.. Signed by Magistrate Judge Patrick A. White on 7/18/2011. (cz) (Entered: 07/18/2011)

08/01/2011	<u>33</u>	NOTICE of Change of Address by Joseph Lewis Blue. System Updated (yha) (Entered: 08/01/2011)
08/18/2011	<u>34</u>	NOTICE of Change of Address by Joseph Lewis Blue. System Updated. (yha) (Entered: 08/18/2011)
09/20/2011	<u>35</u>	Defendant's MOTION to Compel <i>Plaintiff's Answers to Defendants' Interrogatories and Responses to Defendants' Request for Production</i> by Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri. Responses due by 10/7/2011 (Attachments: # <u>1</u> Exhibit "A" Interrogatories, # <u>2</u> Exhibit "B" Request for Production)(Schwartz, Robert) (Entered: 09/20/2011)
09/21/2011	<u>36</u>	ORDER granting <u>35</u> Defendant's Motion to Compel; the plaintiff shall respond to the defendants discovery requests forthwith or risk sanctions.. Signed by Magistrate Judge Patrick A. White on 9/21/2011. (cz) (Entered: 09/21/2011)
09/30/2011	<u>37</u>	NOTICE of Change of Address by Joseph Lewis Blue. System Updated (yha) (Entered: 09/30/2011)
10/25/2011	<u>38</u>	Defendant's MOTION to Compel <i>Discovery and Compliance with Court's Order dated September 21, 2011 [DE 36]</i> by Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri. Responses due by 11/14/2011 (Schwartz, Robert) (Entered: 10/25/2011)
11/07/2011	<u>39</u>	ORDER granting <u>38</u> Motion to Compel to the extent that if the plaintiff fails to respond to defendants' discovery responses on or before November 20, 2011, the Court shall consider dismissing this case.. Signed by Magistrate Judge Patrick A. White on 11/7/2011. (cz) (Entered: 11/07/2011)
11/29/2011	<u>40</u>	NOTICE by Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri <i>of Plaintiff's Failure to File Pretrial Statement</i> (Schwartz, Robert) (Entered: 11/29/2011)
12/02/2011	<u>41</u>	Statement of: Pretrial Statement by Anthony Agular, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri (Schwartz, Robert) (Entered: 12/02/2011)
12/06/2011	<u>42</u>	ORDER/REPORT that case is ready for trial. Signed by Magistrate Judge Patrick A. White on 12/5/2011. (tw) (Entered: 12/06/2011)
12/12/2011	<u>43</u>	SCHEDULING ORDER: Jury Trial set for 4/10/2012 before Judge Adalberto Jordan. Calendar Call set for 4/2/2012 09:00 AM in Miami Division before Judge Adalberto Jordan. Pretrial Stipulation due by 3/6/2012.Signed by Judge Adalberto Jordan on 12/12/2011. (ots) (Entered: 12/12/2011)
12/12/2011	<u>44</u>	ORDER Setting Trial and Pretrial Deadlines: Jury Trial set for 4/9/2012 before Judge Adalberto Jordan. Calendar Call set for 4/3/2012 09:00 AM in Miami Division before Judge Adalberto Jordan.. Signed by Judge Adalberto Jordan on 12/12/2011. (ots) (Entered: 12/12/2011)
12/14/2011	<u>45</u>	NOTICE of Change of Address by Joseph Lewis Blue (gp) (Entered: 12/15/2011)

12/14/2011	46	MOTION for Extension of Time relating to discovery, MOTION to Compel Defendant's Answer's to Plaintiff's First Set of Interrogatories to Billy Koepke and Jeffrey Castro by Joseph Lewis Blue. Responses due by 1/3/2012 (gp) (Entered: 12/15/2011)
12/14/2011	47	NOTICE of Compliance with the Court's Paperless Order Dated September 21st 2011 by Joseph Lewis Blue re 36 Order on Motion to Compel. (gp) (Entered: 12/15/2011)
12/15/2011	48	Defendant's MOTION for clarification 44 Scheduling Order, by Anthony Aguilar, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri. Responses due by 1/3/2012 (Schwartz, Robert) (Entered: 12/15/2011)
12/19/2011	49	ORDER deferring ruling on 46 Motion for Extension of Time; deferring ruling on 46 Motion to Compel; deferring ruling on 48 Motion for Clarification These motions are respectfully deferred to United States District Judge Adalberto Jordan who has set the Trial Scheduling Orders.. Signed by Magistrate Judge Patrick A. White on 12/19/2011. (cz) (Entered: 12/19/2011)
12/19/2011	50	ORDER granting 46 Motion for Extension of Time; granting 46 Motion to Compel.. Signed by Judge Adalberto Jordan on 12/19/2011. (ots) (Entered: 12/19/2011)
12/19/2011	51	ORDER granting 48 Motion for Clarification. Signed by Judge Adalberto Jordan on 12/19/2011. (ots) (Entered: 12/19/2011)
12/30/2011	52	MOTION to Appoint Counsel by Joseph Lewis Blue. (lh) (Entered: 12/30/2011)
01/03/2012	53	ORDER denying 52 Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 1/3/2012. (cz) (Entered: 01/03/2012)
01/10/2012	54	MOTION to Withdraw as Attorney by Alain E. Boileau. by Anthony Aguilar, Jeffrey Castro, Brian Dodge, Michael Florence, Billy Koepke, Jason Marcus, Matthew Muceri. Responses due by 1/27/2012 (Attachments: # 1 Text of Proposed Order)(Boileau, Alain) (Entered: 01/10/2012)
01/11/2012	55	ORDER respectfully deferring ruling on 54 Motion to Withdraw as Attorney to United States District Judge Jordan.. Signed by Magistrate Judge Patrick A. White on 1/11/2012. (cz) (Entered: 01/11/2012)
01/12/2012	56	MOTION in Limine by Joseph Lewis Blue. (jua) (Entered: 01/12/2012)
01/12/2012	57	ORDER granting 54 Motion to Withdraw as Attorney. Attorney Alain E. Boileau terminated. Signed by Judge Adalberto Jordan on 1/12/2012. (ls) (Entered: 01/12/2012)

PACER Service Center
Transaction Receipt
01/20/2012 09:47:55

PACER Login:	v10006	Client Code:	
Description:	Docket Report	Search Criteria:	0:11-cv-60085-AJ
Billable Pages:	6	Cost:	0.48

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-cv-60085-Jordan/White

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

550/1983/ Ft. Lauderdale

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

Case # _____
Judge _____ Mag _____ UNITED STATES DISTRICT COURT

Motn Ifp yes Fee pd \$ 0 Southern District of Florida

Receipt # _____ Case Number: _____

Joseph Lewis Blue
(Enter the full name of the plaintiff in this action)

v.

Detective Jeffrey Castro; Detective Jason
Marcus; Detective Anthony Aguilar; Detective
Matthew Mueser; Detective Billy Kuepke;
Detective Brian Dodge, and Detective
Sergeant Michael Florence
(Above, enter the full name of the defendant(s) in this action)

FILED by [Signature] D.C.
JAN 12 2011
STEVEN M. LARIMORE
CLERK U. S. DIST CT
S. D. of FLA. - MIAMI

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

Instructions for Filing:

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

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

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

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

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

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

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

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

I. Parties

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

A. Name of plaintiff: Joseph Lewis Blue
Inmate #: 571008510
Address: Paul Rein Detention Facility - 2421 Northwest 16th
Street, Pompano Beach, Florida 33069

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

B. Defendant: Jeffrey Castro
is employed as Fort Lauderdale Police Officer
at 1300 W. Biward Blvd., Ft. Lauderdale, FL 33312

C. Additional Defendants: Jason Marcus, Anthony Aguilar, Matthew Mocerri, Billy Kuepke, Brian Dodge, and Michael Florencu
are employed as Fort Lauderdale Police Officers at

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

1300 W. Broward Blvd., Fort Lauderdale, FL 33312

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.

Claim One

Defendants Jeffrey Castro, Jason Marcus, Anthony Aguilar, and Matthew Muceri used excessive force against the Plaintiff while effectuating Plaintiff's arrest in violation of Plaintiff's Fourth Amendment Rights. Each defendant was present when the Plaintiff was subjected to a beating while handcuffed. Defendants Aguilar, Marcus, and Castro took the Plaintiff into custody, however, each defendant acted in concert to administer the beating while others watched from a restrainable range.

On the evening of September 15th 2010, Harmon Brown (A invited guest) brought the Plaintiff

Continuation Of Part 2 "Statement of Claim", Page 3 of 5

Curious about the sound, the Plaintiff locked inside the bedroom of the motel from the bathroom and saw multiple men dressed in black fatigue pants and a black shirt barge into the motel room with their weapons drawn, without announcement of their authority, purpose, or compliance with the Knock requirements. The Plaintiff laid on his stomach on the bathroom floor to indicate non-resistance. Upon entering the motel room one of the defendants immediately immobilized the Plaintiff and placed the Plaintiff in handcuffs behind his back. Subsequently, one of the defendants stated, "he flushed it", "he flushed the dope". Already in physical control of the defendant and handcuffed, without provocation one of the defendants savagely kicked the Plaintiff in the head. Within a few seconds the defendants simultaneously begin to kick and punch the Plaintiff in the legs, ribs, back and head. The Plaintiff asked the defendants why they were beating him, one of the defendants stated that the Plaintiff should not be selling drugs. The Plaintiff then yelled out to the defendants that he has asthma and hypertension, nevertheless the defendants continued to kick and punch the Plaintiff.

At the time of the beating, the Plaintiff was not the physical equal of the defendants. The Plaintiff is a slender man 5'8 and weight approximately 136 pounds. At no time during the acts describe herein did the Plaintiff offer resistance, comport himself in a threatening manner, or give any indication of an intent to flee.

I.

Plaintiff his medication, but the Plaintiff declined it. The defendants

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

some dinner at Plaintiff's motel room. Upon eating the meal, the Plaintiff excused himself to use the toilet. While washing his hands in the bathroom, the Plaintiff heard what he believed to be the sound of glass shattering. (See Attachments For Continuation)

III. Relief

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

Award Compensatory and Nominal Damages in the amount of \$10,000.00 against Defendants Castro, Marcus, Aguilar, and Mueri; \$5,000.00 against Defendants Kuepke, Dodge and Florenco, jointly and severally.

Punitive Damages in the amount of \$20,000.00 against Defendants Castro, Marcus, Aguilar, Mueri, and Florenco; \$30,000.00 against Defendants Kuepke and Dodge, jointly and severally.

(See Attachment For Continuation)

IV. Jury Demand

Do you demand a jury trial? Yes No

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

Signed this 14th day of January, 2011

Joseph Bl
(Signature of Plaintiff)

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

Executed on: 1/4/2011

Joseph Bl
(Signature of Plaintiff)

Joseph Blue # 571008510
Paul Rein Facility
P.O. Box 407003
Ft. Lauderdale, FL 33340

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

* * *

(B) the action or appeal -

* * *

(i) is frivolous or malicious;

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

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

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

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

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

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

B. Factual Allegations

The plaintiff names as defendants Ft. Lauderdale Police Detectives Castro, Marcus, Agular, Mocerri, Koepke, Dodge and Florence. He alleges that on the evening of September 15, 2010, the detectives entered his motel room and placed him in handcuffs. He claims that while remaining in handcuffs, he laid on his stomach on the bathroom floor to indicate non-resistance and the officers began kicking and punching him. He fails to allege any injuries.

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

The plaintiff has stated a claim for use of excessive force upon arrest. However, the plaintiff has failed to include his specific injuries resulting from this incident. This may cause the complaint to be dismissed. See: 42 U.S.C. §1915 e(e).² He will be

² Under 42 U.S.C. §1997e(e), in order to assert a claim for which relief could be granted there must be an allegation of a specific physical injury, *i.e.*, an injury which is an "observable or diagnosable medical condition requiring treatment by a medical care professional." See Luong v. Hatt, 979 F.Supp. 481, 485-6 (N.D. Texas 1997). Moreover, there can be no recovery for mental or emotional injury suffered while in custody without such a physical injury, which rises above the de minimis level. Siglar v. Hightower, 112 F.3d 191, 193 (5 Cir.

permitted an opportunity to supplement the complaint with his resulting injuries. The plaintiff is cautioned that he will sign the amendment under penalty of perjury.

III. Recommendation

1. On or before March 30, 2011, the plaintiff shall be permitted to amend his complaint solely for the purpose of including his injuries resulting from the alleged use of unlawful force.

2. The plaintiff must label his pleading "Amended Complaint" and refer to Case No. 11-60085-Civ-Jordan.

2. Upon review of the Amendment, service will be ordered upon all named defendants if required.

3. Failure to amend his complaint to include specific injuries resulting from the alleged use of unlawful force may result in dismissal of this case.

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

Dated at Miami, Florida, this 28th day of February, 2011.



UNITED STATES MAGISTRATE JUDGE

1997). The plaintiff has alleged no physical injuries.

cc: Joseph Lewis Blue, Pro Se
#571008510
Paul Rein Detention Facility
Address of record

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

Case No. 11 CV 60085 AJ

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

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

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 11-60085-CIV-Jordan

FILED by SP D.C.
MAR 29 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Joseph Lewis Blue
(Enter the full name of the plaintiff in this action)

Amended Complaint

v.

Detective Jeffrey Castro; Detective Jason
Marcus; Detective Anthony Agular; Detective
Matthew Muceri; Detective Billy Kuepke;
Detective Brian Dodge, and Detective
Sergeant Michael Florence
(Above, enter the full name of the defendant(s) in this action)

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

Instructions for Filing:

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

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

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

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

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

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

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

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

I. Parties

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

A. Name of plaintiff: Joseph Lewis Blue
Inmate #: 571008510
Address: Paul Rein Detention Facility - 2421 Northwest 16th
Street, Pompano Beach, Florida 33069

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

B. Defendant: Jeffrey Castro
is employed as Fort Lauderdale Police Officer
at 1300 W. Broward Blvd., Ft. Lauderdale, FL 33312

C. Additional Defendants: Jason Marcus, Anthony Aguilar, Matthew Mocerri, Billy Koepke, Brian Dodge, and Michael Florence
are employed as Fort Lauderdale Police Officers at

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

1300 W. Broward Blvd., Fort Lauderdale, FL 33312

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.

Claim One

Defendants Jeffrey Castro, Jason Marcus, Anthony Aguilar, and Matthew Mocerri used excessive force against the Plaintiff while effectuating Plaintiff's arrest in violation of Plaintiff's Fourth Amendment Rights. Each defendant was present when the Plaintiff was subjected to a beating while handcuffed. Defendants Aguilar, Marcus, and Castro took the Plaintiff into custody, however, each defendant acted in concert to administer the beating while others watched from a restrainable range.

On the evening of September 15th 2010, Harmen Brown (A invited guest) brought the Plaintiff

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

Some dinner at Plaintiff's motel room. Upon eating the meal, the Plaintiff excused himself to use the toilet. While washing his hands in the bathroom, the Plaintiff heard what he believed to be the sound of glass shattering. (See Attachments For Continuation)

III. Relief

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

Award Compensatory and Nominal Damages in the amount of \$10,000.00 against Defendants Castro, Marcus, Aguilar, and Moeri; \$5,000.00 against Defendants Kuepke, Dodge and Florenco, jointly and severally.

Punitive Damages in the amount of \$20,000.00 against Defendants Castro, Marcus, Aguilar, Mocerri, and Florenco; \$30,000.00 against Defendants Kuepke an Dodge, jointly and severally.

(See Attachment For Continuation)

IV. Jury Demand

Do you demand a jury trial? Yes No

Continuation of Part 2 "Statement of Claim", Page 3 of 5

Curious about the sound, the Plaintiff looked inside the bedroom of the motel from the bathroom and saw multiple men dressed in black fatigue pants and a black shirt barge into the motel room with their weapons drawn, without announcement of their authority, purpose, or compliance with the Knock requirements. The Plaintiff laid on his stomach on the bathroom floor to indicate non-resistance. Upon entering the motel room one of the defendants immediately immobilized the Plaintiff and placed the Plaintiff in handcuffs behind his back. Subsequently, one of the defendants stated, "he flushed it", "he flushed the dupe". Already in physical control of the defendant and handcuffed, without provocation one of the defendants savagely kicked the Plaintiff in the head. Within a few seconds the defendants simultaneously begin to kick and punch the Plaintiff in the legs, ribs, back and head. The Plaintiff asked the defendants why they were beating him, one of the defendants stated that the Plaintiff should not be selling drugs. The Plaintiff then yelled out to the defendants that he has asthma and hypertension, nevertheless the defendants continued to kick and punch the Plaintiff.

At the time of the beating, the Plaintiff was not the physical equal of the defendants. The Plaintiff is a slender man 5'8 and weight approximately 136 pounds. At no time during the acts describe herein did the Plaintiff offer resistance, comport himself in a threatening manner, or give any indication of an intent to flee.

Eventually, the defendants pick the Plaintiff up from the floor. Due to a knee injury sustain from the defendants beating, the Plaintiff fell back to the floor after attempting to stand on his own. The defendants lift the Plaintiff from the floor again, this time the Plaintiff told the defendants his knee was injured. In totally reckless disregard of the Plaintiff's physical condition, two of the defendants held the Plaintiff in a upright position while another defendant violently struck the Plaintiff with his closed fist on the left side of the Plaintiff's face. The force from the blow lacerated ^{the} inside of the Plaintiff's left cheek. The Plaintiff was moved to the shower stall in the bathroom. The same defendant that previously struck the Plaintiff commented that the Plaintiff was dealing in crack cocaine and flush the drugs down the toilet. The Plaintiff denied these allegations, consequently, the defendant punched the Plaintiff repeatedly with a closed fist in the upper torso, face, and head until the Plaintiff lost consciousness.

Shortly thereafter the Plaintiff regain consciousness. During a search incident to the Plaintiff's arrest one of the defendants discovered the Plaintiff's medication and asked the Plaintiff what it was for. The Plaintiff stated the medication was for asthma and hypertension. After observing the Plaintiff's difficulty breathing the defendant offered the Plaintiff his medication, but the Plaintiff declined it. The defendants action were unjustified and gratuitous. The purpose of the beating was not to subdue the Plaintiff but rather to punish him for their belief that the Plaintiff was dealing drugs.

Defendant Keepke took the Plaintiff to Broward General Medical Center where the Plaintiff was examined and treated for injuries sustained during his arrest. The Plaintiff suffered a contusion to his head, partial loss of hearing in the left ear, laceration inside his mouth, bruising to his rib cage, swelling to his face, tightening in his chest, heart abnormalities, and a injured Knee later diagnosed as a sprang. Plaintiff has sustained severe physical pain as the result of the injuries and has been under treatment for the injuries by medical staff at the jail.

By reasons of the above, the Plaintiff has been damaged by each named defendant, and sues each defendant individually and in his personally capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

Continuation of Part 3 "Relief", Page 4 of 5

Plaintiff's cost in the suit.

Any additional relief this court deems just, proper and equitable.

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

Signed this 4th day of January, 2011

Joseph Bl
(Signature of Plaintiff)

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

Executed on: 1/4/2011

Joseph Bl
(Signature of Plaintiff)

Joseph Blue # 571002510
Paul Rein Facility
P.O. Box 407003
Ft. Lauderdale, FL 33340

RECEIVED
MAR 30 2011
L
S

Legal Mail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11CV60085 AJ

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

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

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

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 11-60085-CIV-Jordan

Joseph Lewis Blue
(Enter the full name of the plaintiff in this action)

Amended Complaint

v.

Detective Jeffrey Castro; Detective Jason
Marcus; Detective Anthony Aguilar; Detective
Matthew Muceri; Detective Billy Kuepke;
Detective Brian Dodge, and Detective
Sergeant Michael Florence
(Above, enter the full name of the defendant(s) in this action)

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

Instructions for Filing:

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

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

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

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

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

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

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

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

I. Parties

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

A. Name of plaintiff: Joseph Lewis Blue
Inmate #: 571008510
Address: Paul Rein Detention Facility - 2421 Northwest 16th
Street, Pompano Beach, Florida 33069

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

B. Defendant: Jeffrey Castro
is employed as Fort Lauderdale Police Officer
at 1300 W. Broward Blvd., Ft. Lauderdale, FL 33312

C. Additional Defendants: Jason Marcus, Anthony Aguilar, Matthew
Mocerri, Billy Kuepke, Brian Dodge, and Michael Florento
are employed as Fort Lauderdale Police Officers at

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

1300 W. Broward Blvd., Fort Lauderdale, FL 33312

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.

Claim One

Defendants Jeffrey Castro, Jason Marcus, Anthony Agular, and Matthew Mocerri used excessive force against the Plaintiff while effectuating Plaintiff's arrest in violation of Plaintiff's Fourth Amendment Rights. Each defendant was present when the Plaintiff was subjected to a beating while handcuffed. Defendants Agular, Marcus, and Castro took the Plaintiff into custody, however, each defendant acted in concert to administer the beating while others watched from a restrainable range.

On the evening of September 15th 2010, Harman Brown (A invited guest) brought the Plaintiff

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

Some dinner at Plaintiff's motel room. Upon eating the meal, the Plaintiff excused himself to use the toilet. While washing his hands in the bathroom, the Plaintiff heard what he believed to be the sound of glass shattering. (See Attachments For Continuation)

III. Relief

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

Award Compensatory and Nominal Damages in the amount of \$10,000.00 against Defendants Castro, Marcus, Agular, and Mueri; \$5,000.00 against Defendants Kuepke, Dodge and Florenco, jointly and severally.

Punitive Damages in the amount of \$20,000.00 against Defendants Castro, Marcus, Agular, Mueri, and Florenco; \$30,000.00 against Defendants Kuepke an Dodge, jointly and severally.

(See Attachment For Continuation)

IV. Jury Demand

Do you demand a jury trial? Yes No

Continuation of Part 2 "Statement of Claim", Page 3 of 5

Curious about the sound, the Plaintiff looked inside the bedroom of the motel from the bathroom and saw multiple men dressed in black fatigue pants and a black shirt barge into the motel room with their weapons drawn, without announcement of their authority, purpose, or compliance with the Knock requirements. The Plaintiff laid on his stomach on the bathroom floor to indicate non-resistance. Upon entering the motel room one of the defendants immediately immobilized the Plaintiff and placed the Plaintiff in handcuffs behind his back. Subsequently, one of the defendants stated, "he flushed it", "he flushed the dupe". Already in physical control of the defendant and handcuffed, without provocation one of the defendants savagely kicked the Plaintiff in the head. Within a few seconds the defendants simultaneously begin to kick and punch the Plaintiff in the legs, ribs, back and head. The Plaintiff asked the defendants why they were beating him, one of the defendants stated that the Plaintiff should not be selling drugs. The Plaintiff then yelled out to the defendants that he has asthma and hypertension, nevertheless the defendants continued to kick and punch the Plaintiff.

At the time of the beating, the Plaintiff was not the physical equal of the defendants. The Plaintiff is a slender man 5'3 and weigh approximately 136 pounds. At no time during the acts describe herein did the Plaintiff offer resistance, comport himself in a threatening manner, or give any indication of an intent to flee.

Eventually, the defendants pick the Plaintiff up from the floor. Due to a knee injury sustain from the defendants beating, the Plaintiff fell back to the floor after attempting to stand on his own. The defendants lift the Plaintiff from the floor again, this time the Plaintiff told the defendants his knee was injured. In totally reckless disregard of the Plaintiff's physical condition, two of the defendants held the Plaintiff in a upright position while another defendant violently struck the Plaintiff with his closed fist on the left side of the Plaintiff's face. The force from the blow lacerated ^{the} inside of the Plaintiff's left cheek. The Plaintiff was moved to the shower stall in the bathroom. The same defendant that previously struck the Plaintiff commented that the Plaintiff was dealing in crack cocaine and flush the drugs down the toilet. The Plaintiff denied these allegations, consequently, the defendant punched the Plaintiff repeatedly with a closed fist in the upper torso, face, and head until the Plaintiff lost consciousness.

Shortly thereafter the Plaintiff regain consciousness. During a search incident to the Plaintiff's arrest one of the defendants discovered the Plaintiff's medication and asked the Plaintiff what it was for. The Plaintiff stated the medication was for asthma and hypertension. After observing the Plaintiff's difficulty breathing the defendant offered the Plaintiff his medication, but the Plaintiff declined it. The defendant's action were unjustified and gratuitous. The purpose of the beating was not to subdue the Plaintiff but rather to punish him for their belief that the Plaintiff was dealing drugs.

Claim Two

Defendants Brian Dodge, Michael Florence, and Billy Kuepke failed to take reasonable steps to protect the Plaintiff from Defendants Castro, Marcus, Agular, and Mocerri use of excessive force, notwithstanding the defendants was in a position to intervene. Despite being in clear view and close proximity, the defendants took no action to stop their fellow officers from punching and kicking the Plaintiff. Without regards to the Plaintiffs' rights to physical integrity the defendants watched as the already incapacitated Plaintiff was repeatedly punched and kicked. Defendant Florence, the command sergeant in charge of the arrest team acquiesced in and made no attempt to stop his subordinates from engaging in aggressive and assaultive behavior against the Plaintiff. Defendant Florence actions were well outside the acceptable norms of police work. Defendant Florence failed to adequately supervise the actions of the defendants and arguably fostered a policy, custom and practice of excessive force against individual arrestees.

Claim Three

Defendant Billy Kuepke, the arresting officer, fabricated criminal charges against the Plaintiff as a pretext to mask the unlawful beating the Plaintiff was subjected to. After being taken into custody, the Plaintiff was transported to the Fort Lauderdale Police Department. Whereupon, the Plaintiff was booked on the

charges of: 1) Possession With Intent To Deliver Cocaine, 2) Destruction Of Physical Evidence, and 3) Violation Of Probation. While in the holding cell of the jail the Plaintiff began to complain about injuries he sustain by the defendants, and requested to be taken to the emergency room. Defendant Kuepke was contacted by one of the booking officers and spoke directly to the Plaintiff. During this conversation Defendant Kuepke told the Plaintiff if he insisted on going to the emergency room the Plaintiffs' problems would be far greater than what they presently were. Despite the threat, the Plaintiff demand to be taken to the hospital. As a result, Defendant Kuepke supplemented the original arrest form and added a charge of Resisting Arrest w/o Violence.

Defendant Kuepke knew the resisting arrest w/o violence charge to be untrue. Defendant Kuepke witness the Plaintiff lying on the bathroom floor when the defendants entered the motel room, and this was a submission to the defendants authority. At no time did either defendant give the Plaintiff a lawful order which he refused. Instead, Defendant Kuepke colluded with the defendants to fabricate a untruthful story in a effort to justify the defendants conduct. However, the state Attorney's Office did not file an Information again the Plaintiff on the charge of resisting arrest w/o violence.

Defendant Kuepke took the Plaintiff to Broward General Medical Center where the Plaintiff was examined and treated for injuries sustained during his arrest. The Plaintiff suffered a contusion to his head, partial loss of hearing in the left ear, laceration inside his mouth, bruising to his rib cage, swelling to his face, tightening in his chest, heart abnormalities, and a injured Knee later diagnosed as a sprang. Plaintiff has sustained severe physical pain as the result of the injuries and has been under treatment for the injuries by medical staff at the jail.

By reasons of the above, the Plaintiff has been damaged by each named defendant, and sues each defendant individually and in his personally capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

Continuation of Part 3 "Relief", Page 4 of 5

Plaintiff's cost in the suit.

Any additional relief this court deems just, proper and equitable.

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

Signed this 14th day of April, 2011

Joseph Bl

(Signature of Plaintiff)

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

Executed on: 4/14/2011

Joseph Bl

(Signature of Plaintiff)

Joseph Blue # 571008510

Paul Rein Facility

P.O. Box 407003

Ft. Lauderdale, FL 33340

LAW LIBRARY

Legal Mail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60085-CIV-JORDAN/WHITE

JOSEPH LEWIS BLUE,

Plaintiff,

vs.

DETECTIVE JEFFREY CASTRO, et al.,

Defendants.

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT [DE 11 & DE 13]**

Defendants, DETECTIVE JEFFREY CASTRO ("CASTRO"), DETECTIVE JASON MARCUS ("MARCUS"), DETECTIVE ANTHONY AGULAR ("AGULAR"), DETECTIVE MATTHEW MUCERI ("MUCERI"), DETECTIVE BILLY KOEPKE ("KOEPKE"), DETECTIVE BRIAN DODGE ("DODGE") and DETECTIVE MICHAEL FLORENCE ("FLORENCE"), by and through their undersigned counsel, hereby file their Answer and Affirmative Defenses to Plaintiff, JOSEPH LEWIS BLUE's ("BLUE") Amended Complaint [DE 11 & DE 13], and state as follows:

1. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE deny each and every allegation contained within BLUE's Amended Complaint herein not specifically admitted and demand strict proof thereof.

AFFIRMATIVE DEFENSES

2. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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 BLUE, 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. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE allege and assert that, at all times material, they used only such force as was reasonable or necessary under the circumstances.

6. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE allege and assert that BLUE unjustifiably resisted lawful arrest with and/or without violence as prohibited by § 776.051, §843.01, and/or §843.02, Fla.Stat.

7. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE allege and assert that any use of force against BLUE 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. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE

allege and assert that BLUE's conduct is the sole cause of his alleged damages and/or injuries.

10. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE allege and assert that BLUE has failed to mitigate his damages.

11. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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.

DEMAND FOR ATTORNEY'S FEES

12. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE further demand reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988, should they prevail in this action.

RESERVATION OF RIGHTS

13. CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE 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 BLUE's Amended Complaint, CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE pray it be dismissed with prejudice and costs and fees awarded to CASTRO, MARCUS, AGULAR, MUCERI, KOEPKE, DODGE, and FLORENCE.

Dated: June 10, 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 June 10, 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

JOSEPH BLUE v. JEFFREY CASTRO, et al.
CASE NO: 11-60085-CIV-JORDAN/WHITE

Service List

Joseph Lewis Blue, *Pro Se*
#571008510
Paul Rein Detention Facility
P.O. Box 407003
Fort Lauderdale, FL 33340
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 11-60085-CIV-JORDAN

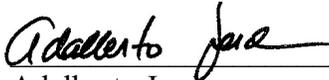
JOSEPH LEWIS BLUE)
)
Plaintiff)
)
vs.)
)
JEFFERY CASTRO, et al.,)
)
Defendants)
_____)

ORDER SETTING TRIAL AND PRETRIAL DEADLINES

This case is set for trial during the Court’s two-week trial calendar beginning on April 10, 2012. Calendar call will be held at 9 a.m. on April 2, 2012 in the Wilkie Ferguson, Jr. United States Courthouse, Room 10-1. No pre-trial conference will be held unless a party requests one no later than 30 days prior to the calendar call or the Court determines that one is necessary.

The parties shall submit joint pre-trial stipulation and proposed jury instructions by no later than March 6, 2012.

DONE and ORDERED in chambers in Miami, Florida, this 12th day of December, 2011.



 Adalberto Jordan
 United States District Judge

Copy to: All Counsel of Record

Joseph Blue, *pro se*
103239
Jackson Work Camp
5607 Highway 71 North
Malone, FL 32445

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 11-60085-CIV-JORDAN

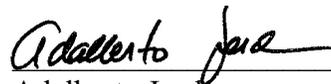
JOSEPH LEWIS BLUE)
Plaintiff)
vs.)
JEFFERY CASTRO, et al.,)
Defendants)
_____)

Amended ORDER SETTING TRIAL AND PRETRIAL DEADLINES

This case is set for trial during the Court’s two-week trial calendar beginning on April 9, 2012. Calendar call will be held at 9 a.m. on April 3, 2012 in the Wilkie Ferguson, Jr. United States Courthouse, Room 10-1. No pre-trial conference will be held unless a party requests one no later than 30 days prior to the calendar call or the Court determines that one is necessary.

The parties shall submit joint pre-trial stipulation and proposed jury instructions by no later than March 6, 2012.

DONE and ORDERED in chambers in Miami, Florida, this 12th day of December, 2011.



 Adalberto Jordan
 United States District Judge

Copy to: All Counsel of Record

Joseph Blue, *pro se*
103239
Jackson Work Camp
5607 Highway 71 North
Malone, FL 32445

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60085-CIV-JORDAN/WHITE

JOSEPH LEWIS BLUE,

Plaintiff,

vs.

JEFFREY CASTRO, et al.,

Defendants.

MOTION TO WITHDRAW AS COUNSEL

The undersigned counsel, ALAIN E. BOILEAU, hereby moves for an Order permitting him to withdraw as counsel for Defendants JEFFREY CASTRO (“CASTRO”), JASON MARCUS (“MARCUS”), ANTHONY AGULAR (“AGULAR”), MATTHEW MOCERI (“MOCERI”), BILLY KOEPKE (“KOEPKE”), BRIAN DODGE (“DODGE”), and MICHAEL FLORENCE (“FLORENCE”), in this matter, and states in support as follows:

1. Effective August 15, 2011, the undersigned counsel, ALAIN E. BOILEAU, left and ceased his association with the law firm of McIntosh Schwartz, P.L., and has formed his own law firm of Alain E. Boileau, P.A.
2. CASTRO, MARCUS, AGULAR, MOCERI, KOEPKE, DODGE, and FLORENCE continue to be represented by current counsel of record, ROBERT H. SCHWARTZ, of the law firm of McIntosh Schwartz, P.L.
3. Due to Plaintiff’s incarceration, and current *pro se* status, the undersigned counsel has been unable to confer with Plaintiff to determine whether Plaintiff has any objection to the relief sought herein.

WHEREFORE, the undersigned counsel, ALAIN E. BOILEAU, respectfully requests the Court issue an Order relieving him of any further responsibility as counsel of record in this matter.

Dated: January 10, 2012

Respectfully submitted,

s/Alain E. Boileau
ALAIN E. BOILEAU (0148598)
aeblawfirm@gmail.com
ALAIN E. BOILEAU, P.A.
Post Office Box 880687
Boca Raton, Florida 33488
Telephone: (561) 901-2283

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2012, 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

BLUE v. CASTRO, ET AL.
CASE NO: 11-60085-CIV-JORDAN/WHITE

Service List

Joseph Lewis Blue

Prisoner ID 103239

Jackson Work Camp

5607 Highway 71 North

Malone, Florida 32445

Pro Se Plaintiff

[via regular U.S. Mail]

Robert H. Schwartz, Esquire

rhs@mcintoshschwartz.com

McINTOSH SCHWARTZ, P.L.

888 SE Third Ave., Suite 500

Fort Lauderdale, FL 33316

Telephone: (954) 660-9888

Facsimile: (954) 760-9531

Counsel for Defendants

[via CM/ECF notification]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60085-CIV-JORDAN/WHITE

JOSEPH LEWIS BLUE,

Plaintiff,

vs.

JEFFREY CASTRO, et al.,

Defendants.

ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL

THIS MATTER is before the Court upon counsel, Alain E. Boileau's Motion to Withdraw as Counsel. The Court having carefully considered the motion, having reviewed the Court file and having been fully advised in the premises, finds that there is good cause to grant the instant motion.

It is therefore

ORDERED AND ADJUDGED that said Motion is hereby **GRANTED**. Counsel, Alain E. Boileau, is relieved of any further responsibility as counsel of record in this matter.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida this _____ day of January, 2012.

ADALBERTO JORDAN
UNITED STATES DISTRICT JUDGE

Copies provided:
See attached Service List

BLUE v. CASTRO, ET AL.
CASE NO: 11-60085-CIV-JORDAN/WHITE

Service List

Joseph Lewis Blue

Prisoner ID 103239
Jackson Work Camp
5607 Highway 71 North
Malone, Florida 32445

Pro Se Plaintiff

[via regular U.S. Mail]

Robert H. Schwartz, Esquire

rhs@mcintoshschwartz.com

McINTOSH SCHWARTZ, P.L.
888 SE Third Ave., Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 660-9888
Facsimile: (954) 760-9531

Counsel for Defendants

[via CM/ECF notification]

Alain E. Boileau, Esquire

aebfirm@gmail.com

ALAIN E. BOILEAU, P.A.
Post Office Box 880687
Boca Raton, Florida 33488
Telephone: (561) 901-2283

PROVIDED TO
JACKSON CI ON
JAN 09 2012
FOR MAILING *JB*
[Signature]

UNITED STATES DISTRICT
COURT
SOUTHERN DISTRICT OF
FLORIDA

Case no.: **11-60085-civ-Jordan**
Magistrate Judge P.A. White

JOSEPH LEWIS BLUE, |
Plaintiff, |

Vs. |

JEFFERY CASTRO, et al., |
Defendants. |

PLAINTIFF'S MOTION IN LIMINE

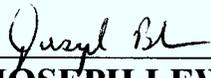
[Signature]
FILED BY *[Signature]* D.C.
JAN 12 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

Plaintiff, Joseph Lewis Blue, in proper person, respectfully moves this Honorable Court to issue an order prohibiting the defense attorney from commenting during Voir dire and Opening Statement, and prohibiting the defendant from eliciting any testimony from the witness at trial regarding:

1. Any reference to the type of crime(s) for which the plaintiff is currently serving time.
2. Any reference to plaintiff's prior criminal history.
3. Any reference to plaintiff's arrest on September 15th, 2010 for resisting arrest without violence. The testimony is irrelevant and highly prejudicial. The prejudicial effect of the testimony substantially outweighs any probative value.

WHEREFORE, plaintiff respectfully request that the foregoing motion be granted.

Respectfully submitted,



JOSEPH LEWIS BLUE
DC#103239 / Dorm: _____
Jackson Work Camp
5607 Highway 71 North
Malone, Florida 32445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail, to Robert H. Schwartz, 888 Southeast 3rd Avenue, Suite# 500, Ft. Lauderdale, Florida 33316, this 9th day of January, 2012.



JOSEPH LEWIS BLUE