

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:11-cv-60871-KMW

Johnson v. R. Sims
Assigned to: Judge Kathleen M. Williams
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 04/22/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Leroy Johnson
Prisoner ID: 570903129

represented by **Leroy Johnson**
570903129
Broward County Main Jail
P.O. Box 9356
Fort Lauderdale, FL 33310
PRO SE

V.

Defendant

R. Sims
*Housing Deputy at Broward County
Sheriff's Office of Detention*

represented by **Daniel Lee Losey**
Billing Cochran Lyles Mauro & Ramsey
PA
SunTrust Center 6th Floor
515 E Las Olas Boulevard
Fort Lauderdale, FL 33301
954-764-7150
Fax: 764-7279
Email: dll@bclmr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/22/2011	<u>1</u>	COMPLAINT under 42usc1983 against R. Sims. IFP Filed, filed by Leroy Johnson.(drz) (Entered: 04/22/2011)
04/22/2011	2	Judge Assignment to Judge James I. Cohn (drz) (Entered: 04/22/2011)
04/22/2011	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: 04/22/2011)
04/22/2011	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Leroy Johnson. (drz) (Entered: 04/22/2011)
05/03/2011	5	ORDER denying <u>4</u> Motion for Leave to Proceed in forma pauperis. The motion is not signed. A second order will be sent to verify the motion.. Signed by Magistrate Judge Patrick A. White on 5/31/2011. (cz) (Entered: 05/03/2011)
05/05/2011	<u>6</u>	NOTICE of Filing Information by Leroy Johnson (asl) (Entered: 05/05/2011)
05/10/2011	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 5/6/2011. (tw) (Entered: 05/10/2011)
05/10/2011	<u>8</u>	ORDER REQUIRING PLAINTIFF TO VERIFY IFP(Deadline 5/30/2011.). Signed by Magistrate Judge Patrick A. White on 5/6/2011. (Attachments: # <u>1</u> Affidavit Verification Form) (tw) (Entered: 05/10/2011)
05/17/2011	<u>9</u>	NOTICE of Filing Essential Discovery by Leroy Johnson.(jua) (Entered: 05/17/2011)

05/17/2011	<u>10</u>	NOTICE of Filing by Leroy Johnson (jua) (Entered: 05/17/2011)
05/24/2011	<u>11</u>	NOTICE of Compliance by Leroy Johnson re <u>8</u> Order Requiring Plaintiff to Verify IFP (jua) (Entered: 05/25/2011)
05/24/2011	<u>12</u>	MOTION asking for Order by the Court to Have Deputy R. Sims and Other Deputy Staff Member be Assigned to Work Off the Same Floor of Plaintiff by Leroy Johnson. (yha) (Entered: 05/25/2011)
06/03/2011	<u>13</u>	ORDER OF MAGISTRATE JUDGE. Denying <u>12</u> MOTION asking for Order by the Court to have Deputy R. Sims and other Deputy Staff Member be Assigned to Work Off the Same Floor of Plaintiff filed by Leroy Johnson. The time to file a motion to proceed in forma pauperis on the form provided with this Order is extended to on or before June 30, 2011. Signed by Magistrate Judge Patrick A. White on 6/2/2011. (Attachments: # <u>1</u> Affidavit ifp) (tw) (Entered: 06/03/2011)
06/14/2011	<u>14</u>	MOTION for Leave to Proceed in forma pauperis by Leroy Johnson. (jua) (Entered: 06/15/2011)
06/21/2011	<u>15</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>14</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/21/2011. (tw) (Entered: 06/21/2011)
07/28/2011	<u>16</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:R. Sims, Housing Deputy, Broward County Sheriffs Office, Public Safety Building, 2601 West Broward Boulevard, Fort Lauderdale, FL 33311. Signed by Magistrate Judge Patrick A. White on 7/27/2011. (tw) (Entered: 07/28/2011)
08/02/2011	<u>17</u>	Summons Issued as to R. Sims. (br) (Entered: 08/02/2011)
08/09/2011	<u>18</u>	NOTICE to the Court by Leroy Johnson (jua) (Entered: 08/09/2011)
08/25/2011	<u>19</u>	NOTICE to the Court Regarding Serving Documents by Leroy Johnson (jua) (Entered: 08/26/2011)
08/26/2011	<u>20</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint R. Sims served on 8/13/2011, answer due 9/6/2011. (jua) (Entered: 08/26/2011)
09/02/2011	<u>21</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by R. Sims.(Losey, Daniel) (Entered: 09/02/2011)
09/06/2011	<u>22</u>	SCHEDULING ORDER: Amended Pleadings due by 1/17/2012. Discovery due by 1/3/2012. Joinder of Parties due by 1/17/2012. Motions due by 3/6/2012.. Signed by Magistrate Judge Patrick A. White on 9/6/2011. (tw) (Entered: 09/06/2011)
09/08/2011	<u>23</u>	ORDER REASSIGNING CASE to Judge Kathleen M. Williams for all further proceedings, Judge James I. Cohn no longer assigned to case. Signed by Judge James I. Cohn on 09/08/2011. (mb) (Entered: 09/08/2011)
09/12/2011	<u>24</u>	MOTION to Take Deposition from Plaintiff, Leroy Johnson <i>via Videotape</i> by R. Sims. (Losey, Daniel) (Entered: 09/12/2011)
09/13/2011	<u>25</u>	ORDER granting <u>24</u> Motion to Take Deposition from Plaintiff Leroy Johnson by videtape. This is an unrepresented plaintiff and the defendants shall govern themselves accordingly.. Signed by Magistrate Judge Patrick A. White on 9/13/2011. (cz) (Entered: 09/13/2011)
09/21/2011	<u>26</u>	MOTION to Produce for Inspection and Copying by Leroy Johnson. (jua) (Entered: 09/21/2011)
09/21/2011	<u>27</u>	First Set of Interrogatories to Defendant by Leroy Johnson (jua) (Entered: 09/21/2011)
10/05/2011	<u>28</u>	MOTION for Protective Order <i>HIPAA Qualified Protective Order and Order to Disclose Protected Health Information</i> by R. Sims. (Losey, Daniel) Modified on 10/6/2011 (ls). (Entered: 10/05/2011)

10/06/2011	<u>29</u>	Pretrial Statement by Leroy Johnson (jua) (Entered: 10/06/2011)
10/19/2011	30	ORDER denying <u>26</u> Motion to Produce, this is a discovery request and should be made directly to the defendants; granting <u>28</u> Motion for HIPAA Qualified Protective Order and Order to Disclose Protected Health Information. (DE#28 (Exhibit A) incorporated in this Order.. Signed by Magistrate Judge Patrick A. White on 10/19/2011. (cz) (Entered: 10/19/2011)
10/19/2011	<u>31</u>	MOTION for Pretrial Conference by Leroy Johnson. (ar2) (Entered: 10/19/2011)
10/20/2011	32	ORDER denying <u>31</u> Motion for Hearing as premature.. Signed by Magistrate Judge Patrick A. White on 10/20/2011. (cz) (Entered: 10/20/2011)
11/03/2011	<u>33</u>	MOTION for Summary Judgment by Leroy Johnson. Responses due by 11/21/2011 (ar2) (Entered: 11/03/2011)
11/08/2011	<u>34</u>	REPORT AND RECOMMENDATIONS denying <u>33</u> MOTION for Summary Judgment filed by Leroy Johnson. Objections to RRdue by 11/25/2011. Signed by Magistrate Judge Patrick A. White on 11/8/2011. (tw) (Entered: 11/08/2011)
11/17/2011	<u>35</u>	NOTICE of why Allege Injuries wasn't Stated in Complaint Re. <u>1</u> Complaint by Leroy Johnson (ar2) (Entered: 11/17/2011)
11/30/2011	<u>36</u>	ORDER Accepting Magistrate's Report and Recommendation; denying <u>33</u> Motion for Summary Judgment; accepting <u>34</u> Report and Recommendations. Signed by Judge Kathleen M. Williams on 11/30/2011. (asl) (Entered: 11/30/2011)
12/12/2011	<u>37</u>	MOTION for Order Compelling <i>Production of Documents</i> by Leroy Johnson. Responses due by 12/30/2011 (ar2) (Entered: 12/12/2011)
12/13/2011	38	ORDER dismissing <u>37</u> Motion to Compel, this is not a motion but a discovery request.. Signed by Magistrate Judge Patrick A. White on 12/13/2011. (cz) (Entered: 12/13/2011)
12/14/2011	<u>39</u>	MOTION to Appoint Counsel by Leroy Johnson. Responses due by 1/3/2012 (jc) (Entered: 12/14/2011)
12/15/2011	40	ORDER denying <u>39</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 12/15/2011. (cz) (Entered: 12/15/2011)
12/22/2011	<u>41</u>	MOTION for Appointment of Counsel by Leroy Johnson. Responses due by 1/9/2012 (ar2) (Entered: 12/22/2011)
12/27/2011	42	ORDER denying <u>41</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 12/27/2011. (cz) (Entered: 12/27/2011)
01/11/2012	<u>43</u>	MOTION for Pretrial Conference by Leroy Johnson. (ar2) (Entered: 01/11/2012)
01/17/2012	44	ORDER denying <u>43</u> Motion for Hearing, plaintiff should contact defendants directly.. Signed by Magistrate Judge Patrick A. White on 1/17/2012. (cz) (Entered: 01/17/2012)

11-60871-CIV-Cohn/White

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

UNITED STATES DISTRICT COURT Southern District of Florida

Case Number: _____

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

v.

R. Sims

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

FILED by MB D.C.

APR 22 2011

STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - FT. LAUD.

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

Instructions for Filing:

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

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

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

cat / div 1983/FTL
Case # _____
Judge _____ Mag _____
Motn lfp Yes Fee pd \$ -0-
Receipt # _____

(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: Leroy Johnson
Inmate #: 570903129
Address: P.O. Box 9356 Fort Lauderdale, FL 33310-9356

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: R. Sims
is employed as Housing Deputy
at Broward County Sheriff's Office Department of Detention

C. Additional Defendants: _____

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

II. Statement of Claim

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

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

[1] I Leroy Johnson, Plaintiff, was "Brutally Attacked" at the Broward County Sheriff's Office Department of Detention by Deputy R. Sims, with a Chemical Agent or Radio on Sunday April 10, 2011 at Approximately 7:40 a.m.

[2] In addition to the incident document were [Falsified] to cover the "[Effect of Illegal Conduct]" by the Broward County Sheriff's Office Department of Detention Deputy R. Sims.

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

III. Relief

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

I Leroy Johnson, Plaintiff, would like the [Court] to order:

[1] The Broward County Sheriff's Office Department of Detention "Head Personnel" to [Fire and Arrest] Deputy R. Sims.

[2] For the State to send ~~to~~ Leroy Johnson, Plaintiff, a ^{paycheck} [paycheck] of \$ 1,000.00 a month for the [rest] of "my life".

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 17th day of April, 20 11

Heroy Johnson
(Signature of Plaintiff)

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

Executed on: April 17, 2011

Heroy Johnson
(Signature of Plaintiff)

Leroy Johnson
570903129
Main Jail

MAIN JAIL BUREAU
P.O. BOX 93301
FT. LAUDERDALE, FL 33301

THIS LETTER ORIGINATES FROM A BROWARD COUNTY
JAIL FACILITY. INMATE MAIL IS UNCENSORED AND
THE SHERIFF CANNOT ASSUME RESPONSIBILITY FOR
ITS CONTENTS.

3330181977

~~United States District Court~~
United States District Court



UNITED STATES POSTAGE
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United States District Court
Clerks Office
299 East Broward Boulevard
Room 108
Fort Lauderdale, FL 33301

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60871-CIV-COHN/WHITE

LEROY JOHNSON,

Plaintiff,

vs.

R. SIMS,

Defendant.

_____/

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, R. SIMS, (hereinafter "DEPUTY SIMS"), by and through his undersigned attorneys, and hereby files this, his Answer and Affirmative Defenses to Plaintiff's Complaint, and states as follows:

1. The Defendant admits that he is and was a detention deputy for the Broward County Sheriff's Office.
2. The Defendant specifically denies that he brutally attacked the Plaintiff on April 10, 2011.
3. The Defendant denies that he falsified any documentation as alleged by the Plaintiff in his Complaint.
4. Each and every allegation contained in Plaintiff's Complaint which is not specifically admitted herein is denied and strict proof is demanded thereof.

AFFIRMATIVE DEFENSES

5. The Defendant would show that the Complaint fails to state a cognizable claim for violation of any clearly established constitutional rights under either state or federal law.

6. The Defendant would further show that his actions were at all times lawful, proper, reasonable and taken with probable cause and/or arguable probable cause so as to act.

7. The Defendant would show that the Plaintiff has not been deprived by this Defendant of any right, privilege or immunity secured by the United States Constitution, federal statutory law, state constitution or state statutory law.

8. Defendant alleges and asserts that any measure of force utilized against Plaintiff was reasonable, justified and/or necessary under the circumstances, as enumerated within Chapter 776, Fla.Stat.

9. Defendant alleges and asserts that it was the Plaintiff's conduct that is the sole cause of his alleged injuries and damages, if any.

10. Defendant alleges and asserts that he is immune from suit pursuant to §768.28(5), Fla.Stat., or in the alternative, have limited liability as prescribed in §768.28(5), Fla.Stat.

11. Defendant would show that the actions of which Plaintiff complains involves inherently governmental functions for which the Sheriff and its employees are entitled to flexibility in making discretionary judgmental decisions to which the statutory waiver of sovereign immunity does not apply and therefor this action is barred.

12. Defendant asserts and alleges that Plaintiff has failed to exhaust administrative remedies.

13. Defendant would show that Plaintiff is guilty of negligence causing or contributing to the injuries claimed, and hence, cannot recover damages or any such damages are reduced in direct proportion thereto.

14. Defendant alleges and asserts that Plaintiff has failed to mitigate his alleged damages.

15. Defendant alleges and asserts that he is entitled to a credit and/or set-off for any and all collateral sources pursuant to §768.76, Fla.Stat.

16. Defendant would further show that because the facts and conduct upon which Plaintiff seeks to recover are the same in multiple counts against this Defendant, the Plaintiff is not allowed to a duplication of damages for any such conduct.

RESERVATION OF RIGHTS

17. Defendant reserves 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.

DEMAND FOR TRIAL BY JURY

Defendant, DEPUTY SIMS, hereby demands a trial by jury on all issues triable as a right by jury.

Dated on: September 2, 2011

Respectfully submitted,

By: s/ Daniel L. Losey
Daniel L. Losey (Fla. Bar No.: 064092)
E-Mail: dll@bchlm.com
BILLING, COCHRAN, LYLES,
MAURO & RAMSEY, P.A.
SunTrust Center, 6th Floor
515 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
Tel: (954) 764-7150
Fax: (954) 764-7279
Attorneys for Def/SIMS

Johnson v. R. Sims
Case No. 11-60871-CIV-COHN/WHITE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on September 2, 2011, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We 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/Daniel L. Losey
Daniel L. Losey

Leroy Johnson
#570903129
Broward County Main Jail
P.O. Box 9356
Ft. Lauderdale, FL 33310
Plaintiff, Pro Se
VIA CERTIFIED MAIL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60871-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

LERROY JOHNSON, :
 :
 Plaintiff, :
 : ORDER SCHEDULING PRETRIAL
 v. : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 R. SIMS, :
 :
 Defendant. :

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

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **January 2, 2012**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **January 16, 2012**.

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

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

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

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

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

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

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

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

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

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

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

DONE AND ORDERED at Miami, Florida, this 6th day of September, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Leroy Johnson, Pro Se
Jail #570903129
Broward County Main Jail
P. O. Box 9356
Fort Lauderdale, FL 33310

Daniel Lee Losey, Esq.
Billing, Cochran, et al.
SunTrust Center, 6th Floor
515 East Las Olas Boulevard
Fort Lauderdale, FL 33301

Hon. James I. Cohn, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-60871-CIV-WILLIAMS
MAGISTRATE JUDGE P. A. WHITE

LEROY JOHNSON,	:	
Plaintiff,	:	
v.	:	
R. SIMS,	:	<u>REPORT OF</u>
Defendant.	:	<u>MAGISTRATE JUDGE</u>
		(DE#33)

I. Introduction

This Cause is before the Court upon the pro-se plaintiff Leroy Johnson's Motion for summary judgment (DE#33). The plaintiff, presently confined at the Broward County Main Jail, filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983 (DE# 1), alleging that on April 10, 2011, he was attacked by defendant Officer Sims and hit with a chemical agent or radio. The plaintiff has been granted leave to proceed in forma pauperis. Service was ordered upon the defendant and the case is proceeding.

On November 3, 2011, the plaintiff filed a Motion for Summary Judgment (DE#33), and in support, attaches a Broward Sheriff's Officer Report of the event, upon which he has written across the top "Falsified Report".

II. Analysis

A. The Law of Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is proper:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Court held that summary judgment should be entered against:

[A] party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. (Citation omitted).

Thus, pursuant to Celotex and its progeny, a movant for summary judgment bears the initial responsibility of informing the court of the basis for his motion by identifying those portions of the record that demonstrate the nonexistence of a genuine issue of material fact. This demonstration need not be accompanied by affidavits. Hoffman v. Allied Corp., 912 F.2d 1379, 1382 (11 Cir. 1990).

If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, as the defendants have in this case, the burden then shifts to the non-moving party, in this case the plaintiff, to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. Avirgan v. Hull, 932 F.2d 1572, 1577 (11 Cir.), cert. denied, 112 S.Ct. 913 (1992). It is the non-moving party's burden to come forward with evidence on each essential element of his claim sufficient to sustain a jury verdict. Earley v. Champion International Corp., 907 F.2d 1077, 1080 (11 Cir. 1990). The non-moving party, even a pro se prisoner, cannot rely solely on his complaint and other initial pleadings to contest a motion for summary judgment supported by evidentiary material, but must respond with affidavits, depositions, or otherwise to show that there are material issues of fact which require a trial Fed.R.Civ.P. 56(e); Coleman v. Smith, 828 F.2d 714 (11 Cir. 1987); Brown v. Shinbaum, 828 F.2d 707 (11 Cir. 1987).

If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986); Baldwin County, Alabama v. Purcell Corp., 971 F.2d 1558 (11 Cir. 1992).

Despite the liberality with which courts are obliged to interpret pro se complaints, "a pro se litigant does not escape the essential burden under summary judgment standards of establishing that there are no genuine issues as to a fact material to his case in order to obtain summary judgement.

The plaintiff's motion and Exhibit clearly do not satisfy the burden required to be granted a motion for summary judgment.

Further, the plaintiff is cautioned that he has failed to allege injuries in his complaint, and this may constitute grounds for dismissal. See 28 U.S.C. §1997e(e).

III. Conclusion

Based on the foregoing, it is recommended that the plaintiff's motion for summary judgement (DE#33) be denied.

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

Dated this 8th day of November, 2011.



UNITED STATES MAGISTRATE JUDGE

cc: Leroy Johnson, Pro Se
Broward County Main Jail
Address of record

Daniel Losey, Esq.
Attorney of record