

STAYED

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:09-cv-20936-MGC**

Brown v. Passmore et al
Assigned to: Judge Marcia G. Cooke
Case in other court: USCA, 11-11242-DD
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 05/13/2009
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

Eldrick Brown
Prisoner ID: 407730

represented by **Eldrick Brown**
407730
3645 Franklin Avenue
Miami, FL 33133
PRO SE

Robert A. Young
3576 Charles Avenue
Miami, FL 33133
305-447-1604
Email: robtyoungatty@yahoo.com
TERMINATED: 06/01/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Roderick Passmore
Pin # 5532

represented by **Kevin Renard Jones**
City of Miami
444 SW 2nd Ave
Suite Ste. 945
Miami, FL 33130
305-416-1800
Fax: 305-416-1801
Email: krjones@miamigov.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brent John Chudachek
Ronald J Cohen PA
8100 Oak Lane
Suite 403
Miami Lakes, FL 33013
305-823-1212

Fax: 305-823-7778
 Email: bchudachek@roncohenlaw.com
 ATTORNEY TO BE NOTICED

Defendant

William Goins
 Pin# 2372

represented by **Kevin Renard Jones**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Brent John Chudachek
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant

Dairon Williams
 Pin# 7647

represented by **Kevin Renard Jones**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Brent John Chudachek
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant

William Cook
 Pin# 1184

represented by **Kevin Renard Jones**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Brent John Chudachek
 (See above for address)
 ATTORNEY TO BE NOTICED

Defendant

Reginald Kinchen
 Sgt., Pin# 3622
 TERMINATED: 01/19/2010

represented by **Kevin Renard Jones**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/09/2009	<u>1</u>	COMPLAINT (42 USC 1983) against all defendants, filed by Eldrick Brown. (nc) Modified MJSTAR event on 1/6/2011 (yc). (Entered: 04/09/2009)
04/09/2009	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Eldrick Brown with Inmate's Account Statement attached (nc) (Entered: 04/09/2009)
04/09/2009	<u>3</u>	Clerks Notice Referring Case to Magistrate Judge Patrick A. White. (nc) (Entered: 04/09/2009)

05/04/2009	<u>4</u>	NOTICE of Change of Address by Eldrick Brown (system updated) (tas) (Entered: 05/06/2009)
05/13/2009	<u>5</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT OF CLERK OF \$350.00 and Granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 5/12/2009. (tw) (Entered: 05/13/2009)
05/13/2009	<u>6</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 5/12/2009. (tw) (Entered: 05/13/2009)
05/13/2009	<u>7</u>	PRELIMINARY REPORT OF MAGISTRATE JUDGE. Recommending that the Complaint raising claims of false arrest remain pending against OfficersP assmore, Williams, Cook, Goins and Kinchen, in their individual capacities. Objections to R&R due by 6/1/2009. Signed by Magistrate Judge Patrick A. White on 5/12/2009. (tw) (Entered: 05/13/2009)
05/13/2009	<u>8</u>	ORDER RE: SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON INDIVIDUALS.The United States Marshal shall serve a copy of the complaint and appropriate summons upon: 1.City of Miami Police Officer Roderick Passmore (#5532), 2. City of Miami Police Officer Dairon Williams (#7647), 3. City of Miami Police Officer William Cook (#1184), 4. City of Miami Police Officer William Goins (#2372)and 5. City of Miami Police Sergeant Reginald Kinchen (#3622) located at:City of Miami Police Department, 400 N.W. 2nd Avenue, Miami, FL 33128. Signed by Magistrate Judge Patrick A. White on 5/12/2009. (tw) (Entered: 05/13/2009)
05/13/2009	<u>9</u>	Summons Issued as to Roderick Passmore. (br) (Entered: 05/13/2009)
05/13/2009	<u>10</u>	Summons Issued as to Dairon Williams. (br) (Entered: 05/13/2009)
05/13/2009	<u>11</u>	Summons Issued as to William Cook. (br) (Entered: 05/13/2009)
05/13/2009	<u>12</u>	Summons Issued as to William Goins. (br) (Entered: 05/13/2009)
05/13/2009	<u>13</u>	Summons Issued as to Reginald Kinchen. (br) (Entered: 05/13/2009)
05/22/2009	<u>14</u>	SUMMONS (Affidavit) Returned Executed by Eldrick Brown. Roderick Passmore served on 5/20/2009, answer due 6/9/2009. (tas) (Entered: 05/26/2009)
06/02/2009	<u>15</u>	MOTION to Appoint Counsel by Eldrick Brown. Responses due by 6/19/2009 (tas) (Entered: 06/03/2009)
06/03/2009	<u>17</u>	SUMMONS (Affidavit) Returned Executed Dairon Williams served on 5/28/2009, answer due 6/17/2009. (asl) (Entered: 06/04/2009)
06/03/2009	<u>18</u>	SUMMONS (Affidavit) Returned Executed William Goins served on 5/28/2009, answer due 6/17/2009. (asl) (Entered: 06/04/2009)
06/03/2009	<u>19</u>	SUMMONS (Affidavit) Returned Executed Reginald Kinchen served on 6/2/2009, answer due 6/22/2009. (asl) (Entered: 06/04/2009)

06/03/2009	<u>20</u>	SUMMONS (Affidavit) Returned Executed William Cook served on 6/2/2009, answer due 6/22/2009. (asl) (Entered: 06/04/2009)
06/04/2009	16	ORDER denying <u>15</u> Motion to Appoint Counsel. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 6/4/2009. (cz) (Entered: 06/04/2009)
06/15/2009	<u>21</u>	MOTION for More Definite Statement by Roderick Passmore. (Attachments: # <u>1</u> Exhibit clerks page, # <u>2</u> Exhibit alias list, # <u>3</u> Text of Proposed Order proposed order)(Jones, Kevin) (Entered: 06/15/2009)
06/17/2009	<u>22</u>	MOTION for More Definite Statement by William Goins, Dairon Williams. (Attachments: # <u>1</u> Exhibit clerks docket list, # <u>2</u> Exhibit alias list, # <u>3</u> Text of Proposed Order)(Jones, Kevin) Modified on 6/19/2009 (ls). (Entered: 06/17/2009)
06/22/2009	<u>23</u>	MOTION for More Definite Statement by William Cook, Reginald Kinchen. (Attachments: # <u>1</u> Exhibit prior arrest history, # <u>2</u> Exhibit alias list)(Jones, Kevin) (Entered: 06/22/2009)
06/23/2009	<u>24</u>	NOTICE of Attorney Appearance by Brent John Chudachek on behalf of Roderick Passmore, William Cook (Chudachek, Brent) (Entered: 06/23/2009)
07/10/2009	<u>25</u>	MOTION for Leave to Proceed in forma pauperis by Eldrick Brown. (tas) (Entered: 07/13/2009)
07/10/2009		Clerks Notice of Docket Correction re <u>25</u> MOTION for Leave to Proceed in forma pauperis. Error(s): Document Filed in Wrong Case ; Correction - Original document restricted, docket text modified, refiled in correct case # 08cv20936. (tas) (Entered: 07/13/2009)
07/21/2009	<u>26</u>	ORDER OF MAGISTRATE JUDGE granting <u>21</u> Motion for More Definite Statement; granting <u>22</u> Motion for More Definite Statement and granting <u>23</u> Motion for More Definite Statement. Signed by Magistrate Judge Patrick A. White on 7/21/2009. (tw) (Entered: 07/21/2009)
07/28/2009	<u>27</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS. The Complaint remains pending against Officers Passmore, Williams, Cook, Goins and Kinchen, in their individual capacities. Signed by Judge Marcia G. Cooke on 7/28/09. (tm) (Entered: 07/28/2009)
08/13/2009	<u>28</u>	AMENDED COMPLAINT, filed by Eldrick Brown.(asl) (Entered: 08/13/2009)
08/13/2009	<u>29</u>	MOTION to Supplement the Record re <u>28</u> Amended Complaint by Eldrick Brown. (asl) (Entered: 08/13/2009)
08/20/2009	<u>30</u>	MOTION to Dismiss <u>28</u> Amended Complaint, <u>29</u> MOTION to Supplement the Record re <u>28</u> Amended Complaint by Roderick Passmore, William Goins, Dairon Williams, William Cook, Reginald Kinchen. Responses due by 9/8/2009 (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Exhibit Exhibit e, # <u>6</u> Exhibit Comp Exhibit F, # <u>7</u> Exhibit comp exhibit f)(Jones, Kevin) (Entered: 08/20/2009)

08/28/2009	<u>31</u>	ORDER OF MAGISTRATE JUDGE denying <u>29</u> Motion to Supplement the Record. Signed by Magistrate Judge Patrick A. White on 8/28/2009. (tw) (Entered: 08/28/2009)
08/31/2009	<u>32</u>	REPORT AND RECOMMENDATIONS, Recommending that the Motion to Dismiss [DE# 30] be denied, and the alternative Motion for More Definite Statement be denied, as the plaintiff has sufficiently set forth facts to state a Fourth Amendment claim. Objections to R&R due by 9/18/2009. Signed by Magistrate Judge Patrick A. White on 8/31/2009. (tw) (Entered: 08/31/2009)
08/31/2009	<u>33</u>	REPORT AND RECOMMENDATIONS Recommending that this case proceed on the Amended Complaint [DE# 31] on a claim that the defendants Kinchen, Passmore, Williams, Goins and Cook conducted an unconstitutional search and effectuated a false arrest on July 28, 2006. It is further recommended that the Motion to Dismiss [DE# 33] be denied. Objections to R&R due by 9/18/2009. Signed by Magistrate Judge Patrick A. White on 8/31/2009. (tw) Document restricted due to error. Modified on 11/24/2009 (dg). (Entered: 08/31/2009)
09/08/2009	<u>34</u>	OBJECTION to <u>32</u> , <u>33</u> Report and Recommendations by Roderick Passmore, William Goins, Dairon Williams, William Cook, Reginald Kinchen. (Jones, Kevin) (Entered: 09/08/2009)
11/20/2009	<u>35</u>	SHORTENED SCHEDULING ORDER: Amended Pleadings due by 2/26/2010. Discovery due by 2/12/2010. Joinder of Parties due by 2/26/2010. Motions due by 3/9/2010.. Signed by Magistrate Judge Patrick A. White on 11/20/2009. (tw) (Entered: 11/20/2009)
11/24/2009	36	Clerks Notice of Docket Correction re <u>33</u> REPORT AND RECOMMENDATIONS. Document Restricted Due to Error. (dg) (Entered: 11/24/2009)
12/10/2009	<u>37</u>	MOTION to Take Deposition from Eldrick Brown by William Cook, William Goins, Reginald Kinchen, Roderick Passmore, Dairon Williams. (Jones, Kevin) (Entered: 12/10/2009)
12/14/2009	38	ORDER granting <u>37</u> Motion to Take Deposition from Eldrick Brown. This is an unrepresented plaintiff and the defendants shall govern themselves accordingly. The defendants shall provide the plaintiff with a copy of his deposition. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 12/14/2009. (cz) (Entered: 12/14/2009)
12/18/2009	<u>39</u>	MOTION for Production of Documents by Eldrick Brown. (jua) (Entered: 12/18/2009)
12/21/2009	40	ORDER dismissing <u>39</u> Motion to Produce. This discovery request must be made directly to the defendants. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 12/21/2009. (cz) (Entered: 12/21/2009)
01/12/2010	<u>41</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS denying <u>30</u> Motion to Dismiss, filed by Reginald Kinchen, Dairon Williams, Roderick Passmore, William Cook, William Goins. Plaintiff's claims for false arrest are DISMISSED; Plaintiff's Amended Complaint shall proceed on the claim that

		Defendants Roderick Passmore, Dairon Williams, William Goins, and William Cook violated Plaintiffs civil rights;Defendant Reginald Kinchen is DISMISSED as a party to this action.. Signed by Judge Marcia G. Cooke on 1/12/10. (tm) (Entered: 01/12/2010)
01/15/2010	<u>42</u>	MOTION for Extension of Time to Complete Discovery by William Cook, William Goins, Reginald Kinchen, Roderick Passmore, Dairon Williams. (Attachments: # <u>1</u> Text of Proposed Order)(Jones, Kevin) (Entered: 01/15/2010)
01/20/2010	<u>43</u>	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand by William Cook, William Goins, Roderick Passmore, Dairon Williams.(Jones, Kevin) (Entered: 01/20/2010)
01/22/2010	<u>44</u>	Interrogatories by Eldrick Brown (lbc) (Entered: 01/22/2010)
02/05/2010	<u>45</u>	MOTION to Compel <i>Answers</i> /Amended Request for Admission by Eldrick Brown. Responses due by 2/22/2010 (jua) (Entered: 02/08/2010)
02/09/2010	<u>46</u>	ORDER granting <u>42</u> Motion for Extension of Time to Complete Discovery to on or before 2/14/10, date requested ; dismissing <u>45</u> Motion to Compel, the plaintiff filed this pleading as a discovery request.. Signed by Magistrate Judge Patrick A. White on 2/9/2010. (cz) (Entered: 02/09/2010)
02/22/2010	<u>47</u>	MOTION for Extension of Time to Complete Discovery by Eldrick Brown. (jua) (Entered: 02/22/2010)
02/24/2010	<u>48</u>	ORDER granting <u>47</u> plaintiff's Motion for Extension of Time to Complete Discovery. All dates entered in the Pre-Trial Scheduling Order are extended for sixty days from the dates entered in that order. no further extensions will be granted. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 2/24/2010. (cz) (Entered: 02/24/2010)
03/02/2010	<u>49</u>	MOTION/REQUEST for Signed Subpoenas by Eldrick Brown. (jua) (Entered: 03/02/2010)
03/24/2010	<u>50</u>	ORDER dismissing <u>49</u> Motion for signed subpoenas. The plaintiff must make his arrangements with the Clerk's Office.. Signed by Magistrate Judge Patrick A. White on 3/24/2010. (cz) (Entered: 03/24/2010)
03/29/2010	<u>51</u>	NOTICE of Attorney Appearance by Brent John Chudachek on behalf of William Goins, Dairon Williams (Chudachek, Brent) Modified on 3/31/2010 (ls). [Filers modified by Clerk] (Entered: 03/29/2010)
04/05/2010	<u>52</u>	Pretrial Statement of Eldrick Brown (lbc) (Entered: 04/05/2010)
04/05/2010	<u>53</u>	MOTION for Extension of Time to File by Eldrick Brown. (tb) (Entered: 04/06/2010)
04/28/2010	<u>54</u>	ORDER granting <u>53</u> Motion for Extension of Time to File Response/Reply nunc pro tunc.. Signed by Magistrate Judge Patrick A. White on 4/28/2010. (cz) (Entered: 04/28/2010)
05/09/2010	<u>55</u>	MOTION for Summary Judgment by William Cook, William Goins, Roderick Passmore, Dairon Williams. Responses due by 6/2/2010

		(Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Jones, Kevin) (Entered: 05/09/2010)
05/10/2010	<u>56</u>	MOTION for Summary Judgment by Eldrick Brown. Responses due by 6/3/2010 (ral) (Entered: 05/10/2010)
05/11/2010	<u>57</u>	ORDER INSTRUCTING PRO SE PLAINTIFF CONCERNING RESPONSE TO MOTION FOR SUMMARY JUDGMENT. (Responses due by 6/4/2010) Signed by Magistrate Judge Patrick A. White on 5/11/2010. (tw) (Entered: 05/11/2010)
05/18/2010	<u>58</u>	MOTION for Sanctions by Eldrick Brown. (ral) (Entered: 05/18/2010)
05/18/2010	<u>59</u>	RESPONSE to Motion re <u>58</u> MOTION for Sanctions filed by William Cook, William Goins, Roderick Passmore, Dairon Williams. Replies due by 5/28/2010. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Jones, Kevin) (Entered: 05/18/2010)
05/20/2010	<u>60</u>	ORDER denying <u>58</u> Motion for Sanctions. Signed by Magistrate Judge Patrick A. White on 5/20/2010. (tw) (Entered: 05/20/2010)
06/01/2010	<u>61</u>	RESPONSE/Motion in Opposition re <u>55</u> MOTION for Summary Judgment filed by Eldrick Brown. (ral) (Entered: 06/01/2010)
06/02/2010	<u>62</u>	RESPONSE to Motion re <u>56</u> MOTION for Summary Judgment filed by William Cook, William Goins, Roderick Passmore, Dairon Williams. Replies due by 6/14/2010. (Jones, Kevin) Modified to remove incorrect filer (Reginald Kinchen) on 6/3/2010 (ral). (Entered: 06/02/2010)
06/03/2010	<u>63</u>	Clerks Notice to Filer re <u>62</u> Response to Motion. Wrong Filer Name(s) Selected ; ERROR - The correction was made by the Clerk. It is not necessary to refile this document. (ral) (Entered: 06/03/2010)
06/14/2010	<u>64</u>	REPLY to Response to Motion re <u>55</u> MOTION for Summary Judgment filed by William Cook, William Goins, Reginald Kinchen, Roderick Passmore, Dairon Williams. (Jones, Kevin) (Entered: 06/14/2010)
06/17/2010	<u>65</u>	RESPONSE/REPLY to <u>64</u> Reply to Response to Motion by Eldrick Brown. (ral) (Entered: 06/17/2010)
06/17/2010	<u>66</u>	PRETRIAL MEMORANDUM by William Cook, William Goins, Reginald Kinchen, Roderick Passmore, Dairon Williams. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Jones, Kevin) (Entered: 06/17/2010)
09/27/2010	<u>67</u>	Letter of Inquiry from Eldrick Brown (docket sheet sent) (ebs) (Entered: 09/27/2010)
01/03/2011	<u>68</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>56</u> MOTION for Summary Judgment filed by Eldrick Brown, <u>55</u> MOTION for Summary Judgment filed by Dairon Williams, Roderick Passmore, William Cook, William Goins Recommending that: 1) the joint motion for summary judgment by defendants Passmore, Goins, Williams, and Cook (DE#55) be

		DENIED; 2) the plaintiffs opposing motion for summary judgment (DE#56) be DENIED; and 3) the case remain pending as to the defendants Passmore, Goins, Williams, and Cook on the claim that an illegal warrantless entry and search of plaintiff Browns residence was conducted on 9/29/2005, in violation of his rights under the Fourth Amendment. Objections to R&R due by 1/20/2011. Signed by Magistrate Judge Patrick A. White on 1/3/2011. (br) (Entered: 01/03/2011)
01/03/2011	<u>69</u>	REPORT that case is ready for trial re; 42 USC 1983 case re <u>1</u> Complaint filed by Eldrick Brown Recommending that this case be placed on the trial calendar of the District Judge. Objections to R&R due by 1/20/2011. Signed by Magistrate Judge Patrick A. White on 1/3/2011. (br) Modified text to term R&R and convert to Order on 3/18/2011 (dm). (Entered: 01/03/2011)
01/17/2011	<u>70</u>	OBJECTIONS to Report and Recommendations by William Cook, William Goins, Roderick Passmore, Dairon Williams. (Jones, Kevin) (Entered: 01/17/2011)
02/04/2011	<u>71</u>	RESPONSE/REPLY/ Motion in Oppostition of the Defendant's <u>70</u> Objections to Report and Recommendations by Eldrick Brown. (mg) (Entered: 02/04/2011)
02/04/2011	<u>72</u>	NOTICE by Eldrick Brown (mg) (Entered: 02/04/2011)
02/28/2011	<u>73</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>56</u> Motion for Summary Judgment filed by Eldrick Brown, <u>55</u> Motion for Summary Judgment, filed by Dairon Williams, Roderick Passmore, William Cook, William Goins. Signed by Judge Marcia G. Cooke on 2/28/2011. (tm) (Entered: 02/28/2011)
03/17/2011	<u>74</u>	NOTICE OF INTERLOCUTORY APPEAL as to <u>73</u> Order Adopting Report and Recommendations, by Roderick Passmore. Filing fee \$ 455.00.. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Attachments: # <u>1</u> Exhibit) (Greco, John) (Entered: 03/17/2011)
03/18/2011		Transmission of Notice of Appeal, order, Report and Recommendation and Docket Sheet to US Court of Appeals re <u>74</u> Notice of Interlocutory Appeal, Fee- Not Paid (cqs) (Entered: 03/18/2011)
03/18/2011	<u>75</u>	USCA Appeal Fees received \$ 455.00 receipt number FLS100015914 re <u>74</u> Notice of Interlocutory Appeal, filed by Roderick Passmore (cqs) (Entered: 03/21/2011)
03/30/2011	<u>76</u>	Acknowledgment of Receipt of NOA from USCA re <u>74</u> Notice of Interlocutory Appeal, filed by Roderick Passmore. Date received by USCA: 3/30/2011. USCA Case Number: 11-11242-DD. (cqs) (Entered: 03/30/2011)
04/01/2011	<u>77</u>	TRANSCRIPT INFORMATION FORM by Roderick Passmore re <u>74</u> Notice of Interlocutory Appeal,. No Transcript Requested. (Greco, John) (Entered: 04/01/2011)

04/08/2011	<u>78</u>	MOTION to Appoint Counsel by Eldrick Brown. Responses due by 4/25/2011 (ls) (Entered: 04/11/2011)
05/15/2011	<u>79</u>	ORDER denying <u>78</u> Motion to Appoint Counsel. Signed by Judge Marcia G. Cooke on 5/13/2011. (tm) (Entered: 05/15/2011)
06/10/2011	<u>80</u>	CERTIFICATE of Readiness transmitted to USCA re <u>74</u> Notice of Interlocutory Appeal, filed by Roderick Passmore USCA# 11-11242-DD (cqs) (Entered: 06/13/2011)
06/10/2011	<u>81</u>	Certified and Transmitted Record on Appeal to US Court of Appeals consisting of (3) Volumes of Pleadings, re <u>74</u> Notice of Interlocutory Appeal, USCA# 11-11242-DD (cqs) (Entered: 06/13/2011)
06/22/2011	<u>82</u>	Acknowledgment of Receipt of COR/ROA from USCA re <u>74</u> Notice of Interlocutory Appeal, filed by Roderick Passmore. Date received by USCA: 6/15/2011. USCA Case Number: 11-11242-DD. (cqs) (Entered: 06/22/2011)
09/09/2011	<u>83</u>	NOTICE of Change of Address (updated) by Eldrick Brown (abe) (Entered: 09/09/2011)
09/09/2011	<u>84</u>	NOTICE of Inquiry (docket sheet sent) by Eldrick Brown (abe) (Entered: 09/09/2011)
09/16/2011	<u>85</u>	ORDER STAYING CASE. Signed by Judge Marcia G. Cooke on 9/16/2011. (tm) (Entered: 09/16/2011)
10/25/2011	<u>86</u>	MANDATE of USCA (certified copy) AFFIRMING the decision of the District Court as to <u>74</u> Notice of Interlocutory Appeal, filed by Roderick Passmore ; Date Issued: 10/21/2011 ; USCA Case Number: 11-11242-DD (cqs) (Entered: 10/25/2011)
11/01/2011	<u>87</u>	Appeal Record Returned: consisting of (3) volume of Pleadings <u>74</u> Notice of Interlocutory Appeal, USCA# 11-11242-DD (cqs) (Entered: 11/01/2011)
12/15/2011	<u>88</u>	NOTICE of Change of Address by Eldrick Brown (System updated) (ar2) (Entered: 12/16/2011)
01/26/2012	<u>89</u>	ORDER REOPENING CASE, ORDER Setting Status Conference. This case is reopened upon the Eleventh Circuit's issuance of a mandate affirming this Court's ruling. All parties and their counsel are directed to appear for a Status Conference before Judge Marcia G. Cooke on 2/22/2012 at 03:15 PM. Signed by Judge Marcia G. Cooke on 1/26/2012. (scy) (Entered: 01/26/2012)
01/27/2012	<u>90</u>	ORDER Re-setting Status Conference: The Status Conference in this case has been rescheduled. All parties and their counsel are directed to appear for a Status Conference before Judge Marcia G. Cooke on 2/13/2012, at 09:30 AM. Signed by Judge Marcia G. Cooke on 1/27/2012. (scy) (Entered: 01/27/2012)
02/08/2012	<u>91</u>	NOTICE of Attorney Appearance by Robert A. Young on behalf of Eldrick Brown (Young, Robert) (Entered: 02/08/2012)
02/10/2012	<u>92</u>	MOTION to Amend/Correct <u>28</u> Amended Complaint by Eldrick Brown. Responses due by 2/27/2012 (Young, Robert) Modified Link on 2/13/2012 (ls). (Entered: 02/10/2012)

02/13/2012	93	Clerks Notice to Filer re <u>92</u> First MOTION to Amend/Correct <i>Complaint</i> . Document Not Linked ; ERROR - The filed document was not linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document. (ls) (Entered: 02/13/2012)
02/13/2012	94	Paperless Minute Entry for proceedings held before Judge Marcia G. Cooke: Status Conference held on 2/13/2012. All counsel present. Jury Trial set for June 4, 2012 at 9:30 am. Calendar Call set for May 30, 2012 at 3:00 pm. Court Reporter: Diane Miller, 305-523-5152 / Diane_Miller@flsd.uscourts.gov (im) (Entered: 02/14/2012)
02/13/2012		Set/Reset Hearings Calendar Call set for 5/30/2012 03:00 PM in Miami Division before Judge Marcia G. Cooke. Jury Trial set for 6/4/2012 09:30 AM in Miami Division before Judge Marcia G. Cooke. (im) (Entered: 02/14/2012)
02/17/2012	<u>95</u>	SCHEDULING ORDER: Jury Trial set for 6/4/2012 09:30 AM in Miami Division before Judge Marcia G. Cooke. Calendar Call set for 5/30/2012 03:00 PM in Miami Division before Judge Marcia G. Cooke. Discovery due by 4/13/2012. Mediation Deadline 4/27/2012. Pretrial Stipulation due by 5/7/2012.. Signed by Judge Marcia G. Cooke on 2/16/2012. (tm) (Entered: 02/17/2012)
02/17/2012	<u>96</u>	ORDER denying <u>92</u> Motion to Amend Complaint. Signed by Judge Marcia G. Cooke on 2/16/2012. (tm) (Entered: 02/17/2012)
03/19/2012	<u>97</u>	ORDER Scheduling Settlement Conference for 4/10/2012 at 10:00 AM in Miami Division before Magistrate Judge William C. Turnoff. Signed by Magistrate Judge William C. Turnoff on 3/19/12. (lml) (Entered: 03/19/2012)
03/30/2012	<u>98</u>	Defendant's MOTION to Continue <i>mediation date</i> by William Cook, William Goins, Roderick Passmore, Dairon Williams. Responses due by 4/16/2012 (Attachments: # <u>1</u> Exhibit A)(Jones, Kevin) (Entered: 03/30/2012)
04/05/2012	99	ORDER granting <u>98</u> Defendants' unopposed Motion to Continue Mediation. Settlement Conference on 4/10/12 is CANCELED. The Settlement Conference is reset for 4/25/12 at 10:00 a.m. The terms of <u>97</u> Order Scheduling Settlement Conference still govern. Signed by Magistrate Judge William C. Turnoff on 4/5/2012. (lml) (Entered: 04/05/2012)
04/09/2012		Reset Hearings per 99 Order. Settlement Conference set for 4/25/2012 10:00 AM in Miami Division before Magistrate Judge William C. Turnoff. (asl) (Entered: 04/09/2012)
04/25/2012	100	Minute Entry for proceedings held before Magistrate Judge William C. Turnoff: Settlement Conference held on 4/25/2012. Case not settled. (Time: 10:00AM-2:30PM) (lw1) (Entered: 04/25/2012)
04/26/2012	<u>101</u>	MOTION to Withdraw as Attorney by Robert A. Young, by Eldrick Brown. Responses due by 5/14/2012 (Young, Robert) (Entered: 04/26/2012)
04/26/2012	<u>102</u>	MOTION to Withdraw as Attorney by Vera Gilford, by Eldrick Brown. Responses due by 5/14/2012 (Young, Robert) (Entered: 04/26/2012)

04/27/2012	103	Clerks Notice to Filer re <u>101</u> MOTION to Withdraw as Attorney by Robert A. Young., <u>102</u> MOTION to Withdraw as Attorney by Vera Gilford.. Pro Se Party Address Not Added ; CORRECTIVE ACTION REQUIRED - Pursuant to Administrative Order 2005-38, Filer must electronically file a Notice of Current Pro Se Party Address within five (5) business days if the Motion to Withdraw is Granted. (ls) (Entered: 04/27/2012)
04/30/2012	<u>104</u>	NOTICE by Eldrick Brown of <i>Supplemental Disclosure</i> (Young, Robert) (Entered: 04/30/2012)
04/30/2012	<u>105</u>	NOTICE by Eldrick Brown of <i>Current Pro Se Party Address</i> (Young, Robert) (Entered: 04/30/2012)
05/07/2012	<u>106</u>	STIPULATION <i>Joint Stipulation</i> by Eldrick Brown (Attachments: # <u>1</u> Supplement)(Young, Robert) Modified on 5/9/2012 (ls). (Entered: 05/08/2012)
05/08/2012	107	JOINT PRETRIAL STIPULATION by Eldrick Brown (ls)(See Image at DE # <u>106</u>) (Entered: 05/09/2012)
05/09/2012	108	Clerks Notice to Filer re <u>106</u> Stipulation. Wrong Event Selected ; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#107]. It is not necessary to refile this document. (ls) (Entered: 05/09/2012)
05/11/2012	<u>109</u>	Joint MOTION in Limine by William Cook, William Goins, Roderick Passmore, Dairon Williams. (Jones, Kevin) Modified Text on 5/14/2012 (ls). (Entered: 05/11/2012)
05/11/2012	<u>110</u>	STIPULATION <i>Joint Pre-Trial Stipulation</i> by Eldrick Brown (Attachments: # <u>1</u> Supplement)(Young, Robert) Modified Text on 5/14/2012 (ls). (Entered: 05/11/2012)
05/11/2012	111	Second Corrected JOINT PRETRIAL STIPULATION by Eldrick Brown (ls) (See Image at DE # <u>110</u>) (Entered: 05/14/2012)
05/14/2012	112	Clerks Notice to Filer re <u>110</u> Stipulation. Wrong Event Selected ; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#111]. It is not necessary to refile this document. (ls) (Entered: 05/14/2012)
05/14/2012	<u>113</u>	Defendant's MOTION for Sanctions by William Cook, William Goins, Roderick Passmore, Dairon Williams. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Jones, Kevin) (Entered: 05/14/2012)
05/17/2012	<u>114</u>	WITHDRAWAL of Motion re <u>102</u> MOTION to Withdraw as Attorney by Vera Gilford. filed by Eldrick Brown, <u>101</u> MOTION to Withdraw as Attorney by Robert A. Young. filed by Eldrick Brown <i>Proposed Order Granting Motion to Withdraw</i> (Young, Robert) (Entered: 05/17/2012)
05/18/2012	115	Clerks Notice to Filer re <u>114</u> Withdrawal of Motion., Proposed Order Docketed as Main Document ; CORRECTIVE ACTION REQUIRED - Filer must File a Notice of Striking, then resubmit the proposed order as instructed

		in the CM/ECF Administrative Procedures, and Wrong Event Selected; ERROR - The Filer selected the wrong event. (ls) (Entered: 05/18/2012)
05/18/2012	<u>116</u>	NOTICE of Striking <u>114</u> Withdrawal of Motion, <i>To Withdraw</i> by Eldrick Brown (Young, Robert) (Entered: 05/18/2012)
05/18/2012	<u>117</u>	NOTICE by Eldrick Brown of <i>Filing</i> (Attachments: # <u>1</u> Text of Proposed Order)(Young, Robert) Modified Text on 5/21/2012 (ls). (Entered: 05/18/2012)
05/18/2012	<u>118</u>	NOTICE by Eldrick Brown <i>Filing Voir Dire Questions</i> (Attachments: # <u>1</u> Voir Dire Questions)(Young, Robert) (Entered: 05/18/2012)
05/18/2012	<u>119</u>	Witness List by William Cook, William Goins, Roderick Passmore, Dairon Williams.. (Jones, Kevin) Modified on 5/21/2012 (ls). (Entered: 05/18/2012)
05/18/2012	<u>120</u>	Proposed Voir Dire Questions by William Cook, William Goins, Roderick Passmore, Dairon Williams. (Jones, Kevin) (Entered: 05/18/2012)
05/18/2012	<u>121</u>	Proposed Jury Instructions by William Cook, William Goins, Roderick Passmore, Dairon Williams. (Jones, Kevin) (Entered: 05/18/2012)
05/21/2012	<u>122</u>	NOTICE by Eldrick Brown <i>Plaintiff's Witness List</i> (Young, Robert) (Entered: 05/21/2012)
05/21/2012	124	Witness List by Eldrick Brown.. (ls)(See Image at DE # <u>122</u>) (Entered: 05/22/2012)
05/22/2012	<u>123</u>	NOTICE by Eldrick Brown of <i>Filing Responses to Motion for Sanctions and Exhibits</i> (Attachments: # <u>1</u> Exhibit Kerri Smith Deposition, # <u>2</u> Exhibit Ofc. S, Jean-Poix, # <u>3</u> Deposition Ofc. Michael Deposition, # <u>4</u> Exhibit Property Receipt-Drugs, # <u>5</u> Exhibit Property Receipt-Currency, # <u>6</u> Exhibit State Atty Charging Document, # <u>7</u> Exhibit Fredericka Brown Deposition, # <u>8</u> Deposition Depo of Det. R, Passmore, # <u>9</u> Exhibit Exhibits of Passmore Depo)(Young, Robert) (Entered: 05/22/2012)
05/22/2012	125	Clerks Notice to Filer re <u>122</u> Notice (Other). Wrong Event Selected; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#124]. It is not necessary to refile this document. (ls) (Entered: 05/22/2012)
05/22/2012	126	RESPONSE to Motion re <u>113</u> Defendant's MOTION for Sanctions filed by Eldrick Brown. Replies due by 6/1/2012. (ls)(See Image at DE # <u>123</u>) (Entered: 05/23/2012)
05/22/2012	127	CROSS-MOTION for Sanctions by Eldrick Brown. (ls)(See Image at DE # <u>123</u>) (Entered: 05/23/2012)
05/23/2012	128	Clerks Notice to Filer re <u>123</u> Notice (Other),. Two or More Document Events Filed as One; ERROR - Only one event was selected by the Filer but more than one event was applicable to the document filed. The docket entry was corrected by the Clerk, see [de #127]. It is not necessary to refile this document but in the future, the Filer must select all applicable events. Wrong Event Selected; ERROR - The Filer selected the wrong event. The document

		was re-docketed by the Clerk, see [de#126]. It is not necessary to refile this document. (ls) (Entered: 05/23/2012)
05/30/2012	<u>129</u>	ORDER granting in part and denying in part <u>109</u> Joint Motions in Limine. Signed by Judge Marcia G. Cooke on 5/30/2012. (scy) (Entered: 05/30/2012)
05/30/2012	130	Paperless Minute Entry for proceedings held before Judge Marcia G. Cooke: Calendar Call held on 5/30/2012. All counsel present. Court Reporter: Diane Miller, 305-523-5152 / Diane_Miller@flsd.uscourts.gov (im) (Entered: 05/31/2012)
06/01/2012	131	ENDORSED ORDER granting <u>101</u> Robert A. Young's Motion to Withdraw as Attorney for Plaintiff; granting <u>102</u> Vera E. Gilford's Motion to Withdraw as Attorney. For the reasons provided in open court on May 30, 2012, these Motions are granted, and Mr. Young and Ms. Gilford are hereby permitted to withdraw as counsel for Plaintiff. Signed by Judge Marcia G. Cooke on 6/1/2012. (scy) (Entered: 06/01/2012)
06/01/2012	132	ORDER Setting Status Conference: Status Conference set for 6/12/2012, at 02:00 PM in Miami Division before Judge Marcia G. Cooke. Mr. Brown must appear at the status conference in person. Failure to do so may result in sanctions, including the dismissal of this action. The purpose of this status conference is to determine whether Mr. Brown has obtained new counsel and to set this case for trial. Defendants' counsel is directed to serve a copy of this Order and the docket sheet on Mr. Brown by U.S. Mail or by courier service on or before June 6, 2012. Signed by Judge Marcia G. Cooke on 6/1/2012. (scy) (Entered: 06/01/2012)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20936-CIV-COOKE
MAGISTRATE JUDGE P.A. WHITE

ELDRICK BROWN, :
 :
Plaintiff, :
 :
v. :
 :
RODERICK PASSMORE, et al., :
 :
Defendants. :

REPORT OF
MAGISTRATE JUDGE

I INTRODUCTION

In this case, plaintiff Brown filed a *pro se* civil rights complaint pursuant to 42 U.S.C. §1983 (DE#1) with claims focused on events surrounding entry of police officers into his home in Miami-Dade County, search of the premises, and his arrest on September 29, 2005, from which charges in state criminal case F05-030997 arose. He named five City of Miami Police Officers as defendants: 1) Roderick Passmore, #5532; 2) Dairon Williams, #7647; 3) William Cook, #1184; 4) William Goins, #2372; and 5) Reginald Kinchen, #3622. Brown thereafter filed a superseding amended complaint (DE#28) naming only against Passmore, Williams, Cook, and Goins.

After the Amended Complaint was filed (DE#28), and Defendants moved to dismiss or for a more definite statement (DE#30), defendant Kinchen was dismissed from this case, Brown's claim of false arrest was dismissed as to all defendants for reasons discussed in the Report of Magistrate Judge (DE#32) and in the Court's Order adopting the Report (DE#41). The complaints as amended remains pending against Passmore, Williams, Cook, and Goins solely the claim that officers unlawfully entered and searched Brown's home on September 29, 2005, in violation of his Fourth Amendment rights.

This Cause is before the Court upon Motions for Summary Judgment by the Defendants (DE#55), and by the Plaintiff (DE#56). As a *pro se* litigant, plaintiff Brown was advised his right to oppose the defendants' summary judgment motion, and was instructed

regarding the standard of review for such motions. (See Order of Instructions, DE#57).¹

¹ 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 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 only 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. (citations omitted)

Thus, in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Court held that summary judgment should be entered only 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. (citations 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 parts 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, the burden then shifts to the nonmoving party, 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 nonmoving 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 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, 717 (11 Cir.1987). If the evidence pre-

II BACKGROUND

A brief background discussion concerning plaintiff Brown's allegations, and his relevant criminal history, will serve to place the amended complaint and Brown's surviving claim in context.

In pertinent part, the Prior Report (DE#32, at p.2) noted the following. The initial complaint contained general allegations about a September 2005 arrest made by Officers Passmore, Williams, Cook and Goins, whom plaintiff alleged engaged in false arrest after they entered and searched his apartment without a warrant. (Id.). Plaintiff also stated that a few weeks later the four officers returned to his apartment with Officer Kinchen, who arrested him again on false charges, but the pleading [DE#1] provided no details about those events. As noted in the Report (DE#32, p.2), Plaintiff Brown submitted with the initial \$1983 complaint [DE#1] a copy of a police Internal Affairs Complaint ["Complaint Form," and "Complaint Narrative," at DE#1, pp. 10-11] from which it appeared Brown had complained the second arrest was for stealing electricity; and that there was a third arrest for selling drugs. (Report, DE#32, p.2).

The Report (DE#32, at p.2, footnote 1, and related text) noted that plaintiff Brown's Amended Complaint [DE#28 in this case] "raises claims solely concerning his September 29, 2005 arrest," and observed that Brown's reference in the amended pleading to an arrest date of September 30, 2005, was "apparently an error" as his state court documents reflect his arrest on the 29th of September.

sented 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. Puller Corp., 971 F.2d 1558 (11 Cir.1992). "A mere 'scintilla' of evidence supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11 Cir. 1990) (citing Anderson v. Liberty Lobby, Inc., supra).

Pursuant to Brown v. Shinbaum, 828 F.2d 707 (11 Cir. 1987), the Order of Instructions (DE#57) was entered to inform the pro se plaintiff Brown of his right to respond to the defendants' motion for summary judgment, and to instruct him regarding requirements under Fed.R.Civ.P. 56 for a proper response to such a motion.

(Report, DE#32, p.2, n.1). The Report (DE#32) further noted that, in Case 09-Civ-20945-Seitz, Brown was separately litigating claims concerning his arrest on July 28, 2006. (Id., at n.2)

Taking judicial notice of public records from state court pertaining to plaintiff Brown (see Report, DE#32 at footnote 3), the following relevant criminal history pertaining to Brown was outlined in Section II of the prior Report (DE#32, at pp. 5-7), which read in pertinent part, as follows, *verbatim*:

The Plaintiff's Relevant Criminal History

According to court dockets maintained by the Miami-Dade County Clerk of Courts, the plaintiff has the following relevant criminal history:

1. The plaintiff was arrested on August 17, 2005 for possession of cannabis and battery on an elderly person. (Case Number F05026197). The plaintiff was released on bond.
2. While out on bond, he was arrested on September 29, 2005 for possession with intent to sell marijuana and cocaine and resisting arrest without violence. (Case No. F05030997). Bond was revoked and the plaintiff remained in custody for ten months. This arrest is the subject of the instant complaint.
3. The charge for possession with intent to sell marijuana and cocaine was "no actioned" and the misdemeanor resisting arrest charge was bounded down to county court. On November 29, 2005 the plaintiff pled no contest to the misdemeanor and was sentenced to time served.
4. On July 5, 2006 the plaintiff pled guilty to possession of marijuana and was sentenced to time served (10 months). He also pled guilty to battery on an elderly person and was sentenced to one year probation.
5. On July 28, 2006, the plaintiff was arrested for theft of electricity and sanitary nuisance. The theft charge was no actioned and the plaintiff pled guilty to the nuisance charge and received a suspended sentence. This arrest is the subject of Case No. 09-20945-CIV-SEITZ.
6. On October 13, 2006, while serving his probation, the plaintiff was arrested for possession with intent to sell cocaine. (Case No. F06034364A). The plaintiff was

sentenced to six years imprisonment, which he is currently serving.

The plaintiff is in custody pursuant to the conviction relating to the charges from the October 13, 2006 arrest. He is no longer in custody for the charges relating to the July 28, 2006 arrest.

(Report, DE#32, pp. 5-7).

III DISCUSSION

As discussed above, this case is presently pending against defendant Officers Passmore, Williams, Goins, and Cook on plaintiff Brown's claim that on September 29, 2005, they illegally entered his residence and therein conducted an unlawful warrantless search.

A. Law Pertaining to Claims of Illegal Entry and Search

The Supreme Court has held that in cases where probable cause exists, no warrant is required to apprehend a suspected felon in a public place. See United States v. Watson, 423 U.S. 411 (1976). Except in special circumstances, however, a line is drawn at the doorway of a person's residence, and the entry into a home to conduct a search or make an arrest is presumed to be unreasonable under the Fourth Amendment unless it is done pursuant to a warrant. See Payton v. New York, 445 U.S. 573, 583-90 (1980); Johnson v. United States, 333 U.S. 10, 13-15 (1948). There are two exceptions, exigent circumstances, and consent. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) ("[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent."); Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971) ("a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show...the presence of exigent circumstances"); Swint v. City of Wadley, Alabama, 5 F.3d 1435, 1443 (11 Cir. 1993) ("[a]bsent consent or exigent circumstances, a private home may not be entered to conduct a search or effect an arrest without a warrant") (quoting Donvan v. Dewey, 452 U.S. 594, 598, n.6 (1981)). Where consent has not been given, then, as the

Court stated in Payton, the Fourth Amendment draws "a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." Payton, supra, at 590.

With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no. See Illinois v. Rodriguez, 497 U.S. 177, 181 (1990); Payton, supra, 445 U.S. at 586. A warrant requirement clearly places a burden on the police, and "impedes to some extent the vigor with which the Government can seek to enforce its laws," Steagald v. United States, 451 U.S. 204, 222 (1981); however, the Fourth Amendment right protected [i.e., the right of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the government] is, in contrast, "weighty," Id., at 222, and the "additional burden imposed on police by a warrant requirement is minimal." Id. As the Supreme Court noted in Steagald, police, attempting to arrest a suspect, may avoid altogether the need to obtain a search warrant simply by waiting for a suspect to step out of the home, and effecting the individual's arrest, in a public place. Id. at p. 221, n.14, and related text. Alternatively, the relatively short time required to obtain a warrant from a judge who is on duty, or telephonically if a judge is not nearby, means that the warrant requirement will seldom hinder efforts to apprehend a felon. Id. at p. 222.

The exigency exception applies only when "the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action." United States v. Santa, 236 F.3d 662, 669 (11 Cir. 2000) (quoting United States v. Burgos, 720 F.2d 1520, 1526 (11 Cir. 1983)). The exigent circumstances doctrine would, for example, justify a warrantless entry into a home if the police were in "hot pursuit" of a fleeing felon. See United States v. Santana, 427 U.S. 38, 42-43 (1976); United States v. Blasco, 702 F.2d 1315, 1325 (11 Cir. 1983). In addition to "hot pursuit," the Courts have recognized other situations in which "exigent circumstances" would justify a warrantless intrusion. These include situations in which

the facts would lead a reasonable, experienced officer to believe that if time were taken to obtain a warrant, there would be danger that the suspect would flee or escape, there would be a risk of harm to police officers or the general public, or there would be a risk of loss, destruction, removal, or concealment of evidence. See Santa, supra, 236 F.2d at 669; Blasco, supra, 702 F.2d at 1325.

B. Analysis

As discussed below, the record contains sworn versions of the facts given by the defendants and by the plaintiff.

With their motion for summary judgment (DE#55), the defendants have submitted a copy of Brown's 2/1/2010 deposition taken in this case (Exhibit A, DE55-1); an Arrest Report/Probable Cause Affidavit in police case 050929023606 also bearing Court Case F05-30977, signed and dated by D. Williams #7647 on 9/29/05, and filed on 9/30/05 in Miami-Dade Circuit Court, naming "Defendant" Eldrick Brown and "Co-Defendant" Giordano Rolle as being arrested on 9/29/05 at 16:15 p.m., and listing two charges: "Poss. Marijuana w/intent sell, and "Poss. Cocaine w/intent sell" (Exhibit B, DE#55-2); and a copy of a Miami Police Department Property Unit *Property Receipt* in police Case 05023606, with Eldrick Brown's name, and address [5918 NW 13 Av, Miami, FL], prepared on 9/28/2005, naming Eldrick Brown as the only defendant, listing Darion Williams as the "Responsible Officer" and Stanley Jean-Poix as the "Submitting Officer," and stating that on 9/28/2005 Property Officer Michael Ali received 3 items, all with "Status HOLD," listed as: Item 1 [described as 6 "PLASTIC BAGS W/SUSP MARIJUANA EST GRAMS 7.6"]; Item 2 [described as 1 "GRN PLASTIC BAGS W/SUSP ROCK/POWDER COCAINE EST GRAMS 5.5"]; and Item 3 [described as 31 "PLASTIC BAGS W/SUSP ROCK/POWDER COCAINE TW 47.3 GMS EST GRAMS 4.3"] (Exhibit C, DE#55-3). In addition, the defendants have submitted seven additional exhibits. These are: Affidavits by defendants Passmore, Goins, Williams and Cook Exhibits (filed respectively as Exhibits "D" to "G" at DE#s 55-4 to 55-7); an Affidavit by Officer Stanley Jean-Poix (Exhibit H, at DE55-8); an Affidavit by Officer Michael Braddy (Exhibit I at DE#55-9); and a Composite Exhibit consisting of

documents relating to Miami-Dade Misdemeanor Case M05-53483, and Miami-Dade Felony Case F05-030997 (Exhibit J at DE#55-10).

Officer Darion Williams' Arrest Report/Affidavit (Ex. B) indicates that on 9/29/2005 officers were engaged in narcotics surveillance outside 5918 N.W. 13th Avenue, in Miami; that the "Co def" [i.e., Co-defendant Giordano Rolle] was observed standing in front of the address and being approached by unknown subjects, who would give him unknown quantities of U.S. currency, and that, in exchange, he [Co def Rolle] would direct the subjects to the "def" [defendant Eldrick Brown] who "would take a clear bag from his left front pocket * removing narcotics giving them to the subjects." The Report/Affidavit further stated that "Ofc. Passmore was advised via radio of the transaction and moved into the location," that "Co def" [Rolle] observed Passmore and "yelled over to the def [Brown] causing him to run inside the location." The Report/Affidavit further states that "Ofc. Braddy and Ofc. Jean-Poix followed def [Brown] into the location stopping the def." The Report/Affidavit states that "search of the location revealed inside the location the clear bag containing 6 clear baggies of marijuana, 15 green baggies of powder cocaine, 16 baggies of rock cocaine with clovers, and 15 green baggies of rock cocaine." Last, the Report/Affidavit states, "Def. arrested." (Ex.B, DE55-2).

In their Affidavits, City of Miami Officers Passmore, Goins and Cook [Exs. D, E, and G, respectively] state that they were "working patrol" in Liberty City as part of the Model City Problem Solving Team ("MCPST") "on or about September 30, 2005;" and in their Affidavits Officers Williams, Jean-Poix and Braddy [Exs. F, H, and I, respectively] state they were doing the same "on or about September 29, 2005." Passmore, Goins and Williams state that there were "constant complaints of narcotics activity at 5918 NW 13th avenue," and that "on or about September 29, 2005" the MCPST "was conducting a narcotic surveillance at that location." (Exs. D-F).

Passmore, Williams, and Goins state that Williams and Goins sat across the street in an unmarked car, as an "eye ball,"

watching for narcotics sales. (Exs. D-F). Goins and Williams state that they saw people approach Rolle and hand him money, and saw Rolle direct the individuals to Brown, who had a clear sandwich bag in his hand, containing suspect narcotics, and that they saw Brown hand small objects from the sandwich bag to at least 4 suspected purchasers. Rolle was on the sidewalk, outside a chain link fence, and Brown was inside the fence, next to the door of the residence at 5918 NW 13th Avenue. Goins and Williams decided to call in take down teams. (Exs. E and F).

Passmore states that when Williams called out the take down over the radio, he [Passmore] moved in to take down Rolle and arrested him for "intent to sale [sic] marijuana and cocaine." Passmore states that he did not enter the residence to search for drugs or to arrest Brown, and that his sole responsibility in the operation was to arrest and secure Giordano Rolle. (Ex.D).

Jean-Poix and Braddy state that they were "tasked" to intercept Eldrick Brown, whose description was given over the radio. They each state that they approached Rolle, and that as they passed him he yelled "9" to Brown, that they each identified themselves to Brown as police officers, that Brown began to run inside the residence at 5918 NW 13th Avenue, and that they gave chase, never losing sight of Brown; that they arrested Brown inside, and that "Officer Passmore did not participate in the apprehension of Mr. Brown nor did he search the house." (Exs. H and I). Jean-Poix states: "I recall the drugs being in plain sight on a table near the kitchen area," and that the drugs were turned in to the Department's property unit. (Ex.H). Braddy states that "after Officer Jean-Poix and I arrested Mr. Brown and Jean-Poix impounded the narcotics this case was cleared by arrest." (Ex.I.).

Plaintiff Brown, in contrast, alleges in his complaint, as amended, and has indicated through his sworn testimony given at deposition (Ex.A, DE#55-1), that he was not outside when police came to his home on the date in question, that he was not engaged in conducting drug sales on that date with Mr. Rolle, and that no

drugs were found on him or in his residence that day. Brown testified that, without a lease, he rented the place from a relative, and that he, in turn, for about 3 months, had allowed Ms. Kerry Smith to live there. He charged Smith about \$70.00 to \$75.00 every two weeks, to reside there as a tenant/roommate. Brown testified that he had not seen Giordano Rolle since the day before the incident, and testified that he [Brown] was sound asleep in his own bed when Ms. Smith entered the room and awoke him to say that a police officer coming into the residence through his bedroom window. Brown testified that that officer was defendant Passmore. Brown testified that by the time he was fully awake Passmore had entered through the window with his gun drawn, had indicated that he was looking for somebody, asking "Where is he,?" and told Ms. Smith to step back. According to Brown, Officer Passmore looked in the bathroom, looked around his bedroom and around the bedroom occupied by Smith. Passmore walked Smith at gun point into the livingroom, and while standing in the hallway Passmore told him [Brown] to get up and go into the living room with Smith, and gave instructions for them not to move. Brown could hear other officers outside the house repeatedly saying, "Open the door." Brown testified that he heard Passmore tell them to go around to the back door, and that he believes they did not hear Passmore. Brown testified that after Passmore had been inside for a few [perhaps 5] minutes, Officers Goins and Williams kicked in his front door and entered the premises. Officer Cook entered after them. Brown testified that Goins asked, "Where is he?...Where is the drugs?," and Goins and Williams then engaged in a search, causing damage as they went, ripping the covers off of Brown's speakers and kicking a hole in his stereo; tipping over his couch and chairs, and ripping open the liners; and rummaging through the bedrooms and kitchen. According to Brown, after Officer Cook had followed Goins and Williams into the residence, a call was made for K-9 backup, and Cook went along with the unidentified K-9 Officer as the officer entered and conducted a search with help of the dog, which failed to result in the discovery of any drugs. Brown testified that only 5 officers were inside the house, Passmore who came through the window, Goins and Williams who broke down the front

door, Cook, and the unnamed K-9 officer who was accompanied by Cook during the k-9 assisted search of the premises. Eventually, officers took Brown and Smith outside, where Brown saw that the police had Rolle in custody.

It is undisputed that, although Brown was arrested by the police on 9/29/2005 at 16:15 p.m. for "possession with intent to sell" marijuana and cocaine [see Arrest Report/Affidavit, Ex.B, DE#55-2], the State Attorney chose not to pursue drug charges against Brown in relation to events of September 29, 2005. As reflected in the defendants' Composite Exhibit J, in relation to Brown and Case F05-030997, the State Attorney for the Eleventh Judicial Circuit of Florida filed an Information dated October 20, 2005, which charged in Count 1 that Eldrick Brown, "on or about September 29, 2005 [in Miami-Dade County] did unlawfully resist, obstruct, or oppose OFFICER R. PASSMORE" without violence, in violation of Fla.Stat. §843.02. (See Ex. J, DE#55-10 at pp. 4-7). As also reflected in Court Documents, the felony case F05-030997 against Brown was "Reduced and transfer[red] to County Ct" on Oct 20, 2005 (see Clerk's Minutes, at DE#55-10, p. 16), and the matter was pursued in Misdemeanor Case M05-053483, in which Brown took a plea to the 1st Degree Misdemeanor Charge of Resisting an Officer without Violence, and on 11/29/2005 was adjudicated guilty and was apparently sentenced to a term of 62 Days [DCJ 62], with 62 Days credit for time served [CTS 62]. (See Exhibit J, at DE#55-10, pp. 1-3, 15, and 19).

It is clear from the record, and the defendants acknowledge, that facts in this case are in dispute.

The defendants cite Scott v. Harris, 127 S.Ct. 1769, 1776 (2007) for the proposition that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." At page 9 of their motion [DE#55], the defendants argue that in this case, "the record evidence attached

to this motion irrefutably demonstrates that crack cocaine, powder cocaine, and marijuana were recovered and placed into the Miami Police Department's property unit by Officer Stanley Jean-Poix." They argue, in addition, that "[t]he arrest report, also attached hereto as an exhibit, supports the information contained within the property receipt because it indicates that Brown was arrested inside his apartment by Officer Jean-Poix." The officers also argue that "[w]hen considering the arrest report and affidavits of the Officers, they had at least arguable probable cause to arrest Mr. Brown for sale of narcotics." (Motion, DE#55, p.9). They further argue, based on the officers' personal affidavits stating that Brown was observed engaged with Rolle in conducting drug sales outside the house, that when Brown saw officers moving in he fled into his house closely followed by Braddy and Jean-Poix, and that Brown was arrested and the narcotics were discovered in plain view close to where Mr. Brown was apprehended, "it was imminently reasonable for the Officers to believe that Mr. Brown were selling illegal drugs"... and that "[i]t was equally reasonable for the officers to chase Brown in order to apprehend him." The defendants argue that to the extent the complaint as amended embodies a claim of false arrest, they are entitled to qualified immunity, and summary judgment in their favor. (Motion, DE#55 at p.10).

The defendants, in regard to the claim for improper search, argue that they are entitled to qualified immunity (Motion, DE#55 at p.11), where the Officers' affidavits state that Brown and Rolle were seen engaged in suspected drug sales on the street outside the residence, where Braddy and Jean-Poix chased Brown never losing sight of him, and where they apprehended Brown inside his home and found "the drugs inside his apartment in plain view." The defendants argue that they did not need a warrant to enter Brown's home "because they had exigent circumstances given the nature of the circumstances." (Id.).

The defendants invoke Heck v. Humphrey, 512 U.S. 477, 478 (1994) for the proposition that a state prisoner may not bring a claim for damages under 42 U.S.C. §1983 if judgment in his favor

would necessarily imply the validity of his conviction. They argue that, in Brown's case, despite the state's decision to take no action on the drug charges listed in the Police Report against him, the fact that Brown later was charged with and plead guilty or no contest to Resisting Without Violence [a misdemeanor] means that Brown cannot prevail on his complaint for damages in this case because doing so would necessarily undermine his conviction on the misdemeanor. [As noted supra, Brown is not in custody on his conviction in case M05-053483, and he was sentenced to time served for the misdemeanor. The defendants correctly observe that the record does not reflect that Brown's conviction and sentence in that case have been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus].

If their version of the facts were taken as true, it could stand to reason that the named defendants against whom the case is pending (i.e., Passmore, Goins, Williams, and Cook) would be entitled to qualified immunity, and summary disposition in their favor of the amended complaint alleging unlawful entry and search of Plaintiff Brown's abode on 9/29/2005. [The defendants' Affidavits state that Passmore did not interact with Brown, did not enter his home, and was only involved in the take down and arrest of Rolle, outside of the residence. They state that Goins and Williams neither participated in Brown's arrest nor entered in or participated in search of the residence, and that they merely watched from an unmarked car across the street, and alerted other officers via radio to do a "take down" after Rolle was seen accepting money from people, outside the fence, and Brown was seen inside the fence handing the individuals small objects from a sandwich bag. The defendants' Affidavits state that Officer Cook had "no involvement in this case." According to the defendants, two officers (Jean-Poix and Braddy) did enter and search the residence on 9/29/2005, did observe and impound drugs that were in plain view

on a table near the kitchen, and did arrest Brown. Jean-Poix and Braddy, however, are not named as defendants in this lawsuit.

Despite the defendants' reliance on Scott v. Harris, it is apparent that there are in this case numerous genuine issues of material fact, the existence of which precludes summary disposition of the plaintiff's claims. Celotex Corp. v. Catrett, supra.

As discussed supra, the parties' sworn versions of the facts in this case stand in stark contrast to each other. The officers named as defendants [Passmore, Williams, Goins, and Cook] state, on one hand, that they had no involvement in entry and search of Brown's home on 9/29/2005 or in his arrest on that date, but that Brown and Rolle were seen on the street engaged in suspected drug sales, and that Officers Jean-Poix and Braddy, relying on exigent circumstances, lawfully followed Brown into his home without losing sight of him, and observed in plain sight on a table drugs which they impounded, which were sent to the Police Property Room for safe keeping, and which they state are documented on the police Property Receipt filed in this case at DE#55-3 as Exhibit C. They further argue that Brown's complaint should be barred under Heck because he ultimately was convicted of resisting an officer on 9/29/2005 without violence. Plaintiff Brown, on the other hand, has sworn that Passmore, Williams, Goins, and Cook did indeed enter and search his residence on the day of his arrest, and that they along with an unnamed K-9 officer were the only officers present inside his home that day. Brown has sworn that he was not on the street selling drugs with Rolle on the date in question when the police claim he was doing so, but instead was sound asleep in his bed. Brown also has sworn that on the date of his arrest he did not have drugs on him or in his home, and claims the defendant officers' warrantless entry into and the search of his home was unlawful.

The existence of disputed material facts is compounded by close examination of the Property Receipt (Defendants' Ex.C) listing the drugs which defendants claim were found in Brown's home in plain view on 9/29/2005, the day of his arrest (see Defendants'

Ex.B, Arrest Report/Affidavit, showing 5918 NW 13th Ave as the "arrest location," 9/29/2005 as the "arrest date," and 1615 as the "arrest time"). The Property Receipt for the impounded drugs clearly indicates on its face that the date on which the drugs were "received" at the Miami Police Department Property Unit was 9/28/2005, and the date on which the Property Receipt was "prepared" was 9/28/2005. It is unexplained how drugs stored in evidence at the Police Department on 9/28/2005 could have been found in plain view a day later at Brown's home, and how [as defendants have contended] those drugs could serve as a basis for Brown's 9/29/2005 arrest, as evidence that he was engaged in drug sales on 9/29, and as evidence that officers who did enter and search the home on 9/29 without a warrant had exigent circumstances on 9/29 for doing so.

The existence of disputed material facts is further compounded by consideration of the Information pursuant to which Brown was charged with Resisting Without Violence. The defendants argue that by virtue of Brown's plea, on the charge that he resisted an officer without violence on 9/29/2005, his complaint for damages, as amended, should be barred under Heck v. Humphrey. In the prior Report (DE#32) which was adopted (Order, DE#41), reasons for dismissal of Brown's false arrest claim were discussed (DE#32, at pp.7-8) as were reasons for non-applicability of Heck (DE#32, at pp.9-13). It remains unexplained how the offense of Resisting Without Violence on 9/29/2005, as charged against Brown by Information on 10/20/2005, to which Brown took a plea, relates to the events which the police claim occurred on 9/29/2005. The 10/20/2005 Information charging Brown with the First Degree Misdemeanor (Defendants' Ex. J, at DE#55-10, pp.4-7) specifically states that Brown was charged with resisting "Officer R. Passmore" without violence on 9/29/2005; yet in the present summary judgment proceedings, the defendants contend that Passmore had no interaction whatsoever with Brown on 9/29/2005, that he did not arrest Brown on that date or participate in his arrest, and that Passmore did not enter or search Brown's residence on 9/29/2005.

IV CONCLUSION AND RECOMMENDATION

Summary judgment is not a procedure for resolving a swearing contest. Chandler v. Baird, 926 F.2d 1057 (11 Cir. 1991). In this case, resolution of the issues and facts that are in dispute, based on the parties' opposing and conflicting Affidavits/Testimony would require the Court to step outside its assigned role, and invade the province of the jury. As the Supreme Court stated in Anderson v. Liberty Lobby, Inc., supra, "[c]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he [or she] is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, supra, 477 U.S. at 255 (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970)).

In the light of existing disputed material facts, the pending claim of illegal entry and search of plaintiff Brown's home on 9/29/2005 in alleged violation of his Fourth Amendment rights is therefore not subject to summary disposition. See Celotex, supra.

It is therefore recommended that: 1) the joint motion for summary judgment by defendants Passmore, Goins, Williams, and Cook (DE#55) be DENIED; 2) the plaintiff's opposing motion for summary judgment (DE#56) be DENIED; and 3) the case remain pending as to the defendants Passmore, Goins, Williams, and Cook on the claim that an illegal warrantless entry and search of plaintiff Brown's residence was conducted on 9/29/2005, in violation of his rights under the Fourth Amendment.

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

Dated: January 3rd, 2011.



UNITED STATES MAGISTRATE JUDGE

cc: Eldrick Brown, Pro Se
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Brent John Chudachek, Esquire
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 09-20936-Civ-COOKE/WHITE

ELDRICK BROWN,

Plaintiff

vs.

ROBERT PASSMORE, *et al.*,

Defendants.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, pursuant to Administrative Order 2003-10 of this Court, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. On January 3, 2011, Judge White issued a Report recommending that (i) the Defendants', Officers Passmore, Goins, Williams and Cook, Motion for Summary Judgment (ECF No. 55) be denied, and (ii) the Plaintiff's Motion for Summary Judgment (ECF No. 56) be denied. Defendants filed objections to the Report, and Plaintiff filed a response to Defendants' objections. I have considered Judge White's Report and Recommendation, as well as objections and responses thereto, and have made a *de novo* review of the record. I find Judge White's Report and Recommendation clear, cogent, and compelling.

It is **ORDERED and ADJUDGED** that Judge White's Report and Recommendation (ECF No. 68) is **AFFIRMED and ADOPTED**. Accordingly,

1. Defendants', Officers Passmore, Goins, Williams and Cook, Motion for Summary Judgment (ECF No. 55) is **DENIED**.

2. Plaintiff's Motion for Summary Judgment (ECF No. 56) is **DENIED**.

DONE and ORDERED in chambers, at Miami, Florida, this 28th day of February 2011.



MARCIA G. COOKE

United States District Judge

Copies furnished to:

Patrick A. White, U.S. Magistrate Judge

Eldrick Brown, pro se

Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20936-CIV-COOKE/WHITE

ELDRICK BROWN,

Plaintiff,

vs.

RODERICK PASSMORE, CITY OF
MIAMI POLICE DEPARTMENT, et al.,

Defendants.

NOTICE OF INTERLOCUTORY APPEAL

Notice is hereby given that Officers Roderick Passmore, William Goins, Dairon Williams, and William Cook, Defendants in the above named case, hereby appeal to the United States Court of Appeals for the Eleventh Circuit from the order of the district court denying Defendants' motion for summary judgment based on qualified immunity entered in this action on the 28th day of February, 2011 [D.E. 73], a copy of which is attached.

JULIE O. BRU, City Attorney
KEVIN R. JONES, Assistant City Attorney
JOHN A. GRECO, Assistant City Attorney
Attorneys for **Defendants**
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Email: KRJONES@miamigov.com

By: s/ John A. Greco
John A. Greco, Assistant City Attorney
Florida Bar No. 991236

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 17, 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.

By: s/John A. Greco
John A. Greco, Assistant City Attorney
Florida Bar No. 991236

SERVICE LIST

Eldrick L. Brown vs. Officer Roderick Passmore, et. al.
Case No. 09-20936-CIV-COOKE/WHITE
United States District Court, Southern District of Florida

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 09-20936-Civ-COOKE/WHITE

ELDRICK BROWN,

Plaintiff

vs.

ROBERT PASSMORE, *et al.*,

Defendants.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, pursuant to Administrative Order 2003-10 of this Court, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. On January 3, 2011, Judge White issued a Report recommending that (i) the Defendants', Officers Passmore, Goins, Williams and Cook, Motion for Summary Judgment (ECF No. 55) be denied, and (ii) the Plaintiff's Motion for Summary Judgment (ECF No. 56) be denied. Defendants filed objections to the Report, and Plaintiff filed a response to Defendants' objections. I have considered Judge White's Report and Recommendation, as well as objections and responses thereto, and have made a *de novo* review of the record. I find Judge White's Report and Recommendation clear, cogent, and compelling.

It is **ORDERED and ADJUDGED** that Judge White's Report and Recommendation (ECF No. 68) is **AFFIRMED and ADOPTED**. Accordingly,

1. Defendants', Officers Passmore, Goins, Williams and Cook, Motion for Summary Judgment (ECF No. 55) is **DENIED**.

2. Plaintiff's Motion for Summary Judgment (ECF No. 56) is **DENIED**.

DONE and ORDERED in chambers, at Miami, Florida, this 28th day of February 2011.



MARCIA G. COOKE

United States District Judge

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

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

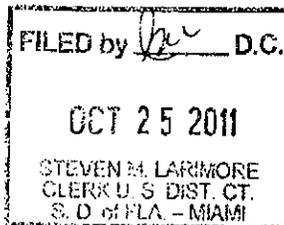
ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 20, 2011

Steven M. Larimore
United States District Court
400 N MIAMI AVE
MIAMI, FL 33128-1807



Appeal Number: 11-11242-DD
Case Style: Eldrick Brown v. Roderick Passmore, et al
District Court Docket No: 1:09-cv-20936-MGC

The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

The record on appeal will be returned to you at a later date.

The clerk of the court or agency shown above is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being mailed to counsel and pro se parties. A copy of the court's decision was previously mailed to counsel and pro se parties on the date it was issued.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Tonya L. Richardson
Phone #: (404) 335-6176

Enclosure(s)

MDT-1 Letter Issuing Mandate

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 11-11242

District Court Docket No.
1:09-cv-20936-MGC

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEPTEMBER 19, 2011
JOHN LEY
CLERK

ELDRICK BROWN,

Plaintiff - Appellee,

versus

RODERICK PASSMORE,
Pin # 5532
WILLIAM GOINS,
Pin# 2372
DARION WILLIAMS,
Pin# 7647
WILLIAM COOK,
Pin# 1184

Defendants - Appellants,

REGINALD KINCHEN,
Sgt., Pin# 3622

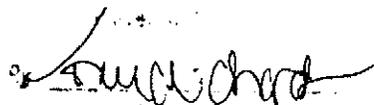
Defendant.

Appeal from the United States District Court for the
Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: September 19, 2011
For the Court: John Ley, Clerk of Court
By: Jeff R. Patch


Jeff R. Patch
Clerk of Court

Issued as Mandate:
October 20, 2011

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-11242
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEPTEMBER 19, 2011
JOHN LEY
CLERK

D.C. Docket No. 1:09-cv-20936-MGC

ELDRICK BROWN,

Plaintiff-Appellee,

versus

RODERICK PASSMORE,

Pin # 5532

WILLIAM GOINS,

Pin# 2372

DARION WILLIAMS,

Pin# 7647

WILLIAM COOK,

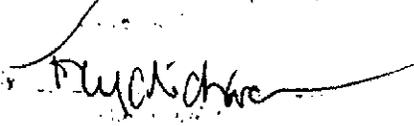
Pin# 1184

Defendants-Appellants,

REGINALD KINCHEN,

Sgt., Pin# 3622

Defendant.


REGINALD KINCHEN
Sgt., Pin# 3622

Appeal from the United States District Court
for the Southern District of Florida

(September 19, 2011)

Before WILSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Roderick Passmore, Darion Williams, William Cook, and William Goins, officers with the Miami Police Department (collectively, “Defendants”), appeal the district court’s denial of their motion for summary judgment based on qualified immunity. Eldrick Brown filed a *pro se* 42 U.S.C. § 1983 civil rights complaint against Defendants, alleging that they entered and searched his house without a warrant in violation of the Fourth Amendment. The parties offered different versions of the event. Defendants allege that (1) they observed Brown and another individual engaging in suspected drug sales outside the residence; (2) when Brown fled into his residence, two officers, who are not named defendants, pursued and arrested Brown; (3) the two officers then observed drugs in plain view inside the residence; and (4) the named Defendants had no involvement with the entry and search of Brown’s residence or his arrest. Brown, however, claims that he was sleeping and was not selling drugs, the officers did not find drugs in his house or

on his person, and the officers entered and searched his house without a warrant or exigent circumstances. Based on these conflicting accounts and inconsistencies in Defendants' evidentiary exhibits, the district court found that there were genuine issues of fact that precluded summary judgment.

Defendants argue that the district court erred in denying summary judgment because, based on the "undisputed facts," there was arguable probable cause and exigent circumstances to search the premises without a warrant. They also assert that Brown's contention that no drugs were in the home is immaterial because the appeal does not involve a challenge to his arrest, but to the lawfulness of the search. Defendants claim that the law was not clearly established regarding the "undisputed circumstances" of the search, and thus they were entitled to qualified immunity and summary judgment.

"We review the denial of summary judgment on qualified immunity grounds *de novo*," *Reams v. Irvin*, 561 F.3d 1258, 1262–63 (11th Cir. 2009), considering

all evidence and reasonable factual inferences drawn therefrom in a light most favorable to the non-moving party. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Crawford v. Carroll, 529 F.3d 961, 964 (11th Cir. 2008) (citations omitted). "The

moving party bears the initial burden of showing the court . . . that there are no genuine issues of material fact that should be decided at trial.” *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313 (11th Cir. 2007).

Once the moving party satisfies that initial showing, the burden of persuasion shifts to the non-moving party to produce evidence to establish the existence of a genuine issue for trial. *See id.* at 1314. “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (internal quotation marks omitted). When there are opposing versions of the facts, and one version is “blatantly contradicted by the record,” a court should not consider the contradicted version in deciding a motion for summary judgment. *Id.*

To state a claim under § 1983, a plaintiff must establish that he was “deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999). Under the Fourth Amendment, warrantless searches and seizures in a home are presumptively unreasonable, and thus deprive individuals of the right the amendment secures. *Bates v. Harvey*, 518 F.3d 1233, 1239 (11th Cir. 2008). The search or seizure is lawful “only when some exception to the warrant requirement—such as consent or

exigent circumstances—exists.” *Id.* Exigent circumstances include, *inter alia*, “hot pursuit of a suspect [and] risk of removal or destruction of evidence.” *Id.* at 1245.

Although Defendants phrase the issue as whether they were entitled to qualified immunity based on the “undisputed” facts, they do not address the findings of the district court—i.e., that there were a number of specific genuine issues of fact. For example, Defendants presented a version of facts in which they observed Brown and another individual engaging in suspected drug transactions outside of Brown’s residence. When the officers approached Brown, they claim he fled into his residence. At that point, two officers who are not named defendants pursued Brown, arrested him, and viewed drugs on a table. Defendants assert that none of the named Defendants arrested Brown or entered his residence.

Brown, however, testified under oath at his deposition to a different version of the facts. Brown testified that he was sleeping when Defendants forced entry into his residence without a warrant, where they searched his entire residence and, in the process, damaged his belongings. Brown is adamant that the officers found no drugs within his house. Under Brown’s version of the facts, Defendants violated his Fourth Amendment rights by searching his house without a warrant, consent, or exigent circumstances. *See id.* at 1239. Based on these conflicting

accounts, the district court did not err in denying summary judgment.

We also note that Defendants' reliance on *Harris* is misplaced. Specifically, in *Harris* the defendant police officers introduced an objective piece of evidence—a videotape—which blatantly contradicted the plaintiff's version of the facts. *Harris*, 550 U.S. at 378--80 (explaining how the videotape of the car chase clearly contradicted the plaintiff's contention that he was not driving in a manner that endangered pedestrians or other motorists, and, accordingly, the court need not credit that statement). In the instant case, Defendants' only objective evidence is the property receipt and court documents—both of which contain discrepancies. While the property receipt *would* support Defendants' assertion that drugs were found at Brown's residence, it is dated one day *before* Brown's arrest. It also lists only one green bag of cocaine, while the arrest affidavit lists fifteen. Defendants did not explain, either to the district court or on appeal, why their evidence showed the drugs in police possession one day before they were allegedly found in Brown's residence, or why there was a discrepancy in the number of bags purportedly seized. The property receipt does not clearly support Defendants' version of the facts, as did the videotape in *Harris*.

Moreover, the court documents contradict Defendants' version of the facts and supported Brown's version. Specifically, the resisting-arrest charge (to which

Brown pleaded guilty) stated that Brown resisted “Officer R. Passmore.” This objective evidence clearly contradicts Defendants’ contentions, as they all claim that none of them interacted with Brown. Defendants have not explained how Passmore allegedly did not have contact with Brown, yet Brown was charged with resisting Passmore. Thus, this exhibit supports Brown’s claim that he had direct contact with Passmore.

Because there is no objective evidence that “blatantly” contradicts Brown’s version, the district court was correct in viewing the facts in the light most favorable to Brown, the non-moving party. The district court did not err in finding that there were genuine issues of material fact, and appropriately denied Defendants’ motion for summary judgment.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 09-20936-Civ-COOKE/TURNOFF

ELDRICK BROWN,

Plaintiff

vs.

ROBERT PASSMORE, *et al.*,

Defendants.

SCHEDULING ORDER

Pursuant to Local Rule 16.1, and the Court having considered the parties' arguments and availability at the February 13, 2012 status conference, is it hereby **ORDERED and ADJUDGED** as follows:

1. **Trial Date and Calendar Call.** This case is set for trial on the Court's two-week trial period commencing **June 4, 2012, at 9:30 a.m.**, before the undersigned United States District Judge at the Federal Courthouse, Courtroom 11-2, 400 North Miami Avenue, Miami, Florida. Calendar Call shall be held on Wednesday, **May 30, 2012, at 3:00 p.m.**, at the same location. The case shall be assigned to the standard case management track.

2. **Pretrial Conference.** No Pretrial Conference shall be held in this action, unless the Court determines that a pretrial conference is necessary. Should a pretrial conference be set, the compliance deadlines as set forth in the remainder of this Order shall remain unaltered.

3. **Pretrial Deadlines.** The pretrial deadlines are as follows:

[April 13, 2012] All discovery must be completed.

[April 27, 2012] Mediation must be completed before Magistrate Judge Turnoff.

[May 7, 2012] (a) A Joint Pretrial Stipulation must be filed. The stipulation shall conform to Local Rule 16.1.E and include a joint, neutral summary of the claims and defenses in the

case, not to exceed one short paragraph per litigant claim, to be read as an introduction for voir dire examination. The Court will not accept unilateral pretrial stipulations, and will strike sua sponte any such submissions. Should any of the parties fail to cooperate in the preparation of the joint pretrial stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court shall issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) have failed to comply with the Court's order. A copy of the joint pretrial stipulation shall be delivered to chambers in MS Word (.doc) format at the time of filing via email to: cooke@flsd.uscourts.gov); and

(b) A Joint Summary of the Parties' Motion(s) *in Limine* must be filed. The joint summary shall contain a cover page providing the style of the case and an index of the motion(s) *in limine*. For each evidentiary issue, the joint summary must include: a one page argument identifying the evidence sought to be excluded or included at trial and citing legal authority supporting exclusion or inclusion; and a one page response to the argument citing legal authority in support of admission or exclusion of the disputed evidence. The parties shall work together to prepare the joint summary, and are encouraged to resolve evidentiary issues through stipulation. Motions *in limine* will not be accepted in any other form.

[May 18, 2012] (a) Final proposed jury instructions and verdict form must filed.¹ The parties shall submit a SINGLE, JOINT set of proposed jury instructions and verdict form, though the parties need not agree on the proposed language of each or any instruction or question on the verdict form. Where the parties do agree on a proposed instruction or question, that instruction or question shall be set forth in Times New Roman 14 point typeface. Instructions and questions proposed only by the plaintiff(s) to which the defendant(s) object shall be italicized. Instructions and questions proposed only the defendant(s) to which the plaintiff(s) object shall be bold-faced. Each jury instruction shall be typed on a separate sheet and must be supported by citations of authority. Each disputed jury instruction shall also state the basis for the objection(s) at the bottom of the sheet, before the citations of authority. In preparing their requested jury instructions, the parties shall utilize as a guide the Pattern Jury Instructions for Civil Cases approved by the United States Eleventh Circuit, including the Directions to Counsel contained therein. A copy of the proposed jury instructions and verdict form shall be delivered to chambers in MS Word (.doc) format at the time of filing via email to: cooke@flsd.uscourts.gov);

(b) A trial witness list indicating each witness who will testify at trial, a one-sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination;

(c) a list of witnesses with some identifying information (address or place of employment) to provide to jury; and

(d) Proposed Voir Dire questions specific to the case (general voir dire questions should not be included).

4. **Trial Instructions**. All exhibits must be pre-marked. The Plaintiff's exhibits shall be

¹ If this action is to be set for a bench trial the Parties are directed to submit proposed findings of fact