UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-61143-CIV-COHN/WHITE

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Case #
Judge Mag White Case Number: 11-61143-CIV-COHN/WHITE
Motn ifp Yes Fee pd $ NO
Receipt #

Date 5/7/11

FILED by D.C.
MAY 16 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. of FLA. – MIAMI

UNITED STATES DISTRICT COURT

Southern District of Florida

Lone Thomas
D.C. K07322

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

v.

STABILE ALFRED, /3154
City of Hollywood police-
FIRE, Hollywood Beach
FLORIDA.

(Enter above the full name of the defendant or defendants in this action.)

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

Instructions for Filing:

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

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

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

There is a filing fee of $250.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

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

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

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

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 301 North Miami Avenue, Miami, Florida 33128-7788.

I. Previous Lawsuits

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

Yes (X) No ( )

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

Read closed case # 10-21666

1. Parties to this previous lawsuit

Plaintiffs: Long v

Defendants: State - Florida - Monroe - Broward Co State Attorney office,

2. Court (if federal court, name the district; if state court, name the county): F.D.C. Southern miami Divison

3. Case Number: 10-21666 CIV-JORDAN

4. Name of Judge to whom case was assigned:

5. Disposition (for example: Was the case dismissed?; Was it appealed?; Is it still pending?): closed pending objections

6. Approximate date of filing lawsuit: 7-10-10

7. Approximate date of disposition: ?

II. Place of present confinement: Gainesville C, I,
2845 N.E 39th ave Gainesville FL.

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

Yes (x) No ( )

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

Yes ( ) No (x)

C. If your answer is YES:

1. What steps did you take? civil Action

2. What was the result?

D. If your answer is NO, explain why not: Not a criminal Action By prisoner

III. Parties

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

A. Name of plaintiff: Long Thomas D.L. #K07322
Address: Gainesvill, C, I,

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

B. Defendant ALFED STABILE,
is employed as Law Enforcement officer Hollywood P.D.
at 3250 Hollywood BLVD, Hollywood FL, 33021

C. Additional Defendants: City, of Hollywood
STATE Attorney Taylor Broward, Co,

IV. Statement of Claim

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

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

on Sept 15, 2008 (hours 1705)
officer STABILE grab me from The Back
of The Head and "Body slamed",
me To The ground with out any warning!
Knocked me out, 2 skull Fractures At
hosiptal and officer have me listed
as John Doe. (on police Report) I woke up
In Hospital and FIRE-police Removed my
my Jewelry. and never Returned. It's Stolen
By Excessive Force during ARREST
This Act was witnesed By chis Quinn
Deposition, Taken, "officer - procutor"
pursuing. Issue's and other violation of
civil Right, are Involed In This case
my Retaliatory claim can only Be Asserted
Against a law Enforcement officer, who "Induced"
The prosecutions, decision to prosecute,
we will discuss The Burden's I "dual motive,
and Action's By (State prosecutor Tayor) - officer
A-STABILE. Hollywood police, Dept). (page 2 on
Additional Sheet

5-7-11

Lon v. STABILE,
Hollywood Beach police.

page 2-2.
part IV.

UNITED STATES DISTRICT COURT
Southern DISTRICT of FloriDA.

Here are some operative ground for This 1983. complaint,

1. unlawful Search - OR excessive FORCE ARREST
(A) conclusion By other case's
(1983 Practing Law Ins. HandBook page 973), (volume 2)
(IF A consititutional violation Based on Excessive force, or Improper Search At time of ARREST, and not necessary To overturn conviction Before a 1983 claim can go Forward, case # 1. Simpson v Rowan 73 F3d. 134 7th cir (1995),
Thus Suit can go forward without challenging underlying STATE conviction. (See moore v Sims)

(copus - v. city of Edgerton)

(B.) 1983 claim for Excessive force can go Forward even If ARRESTEE later convicted of underlying crime, Antonelli - v - Foster 104. F3d. 899 (7th cir 1997)
4th Amendment claim does not challenge lawfulness of confinement.

(C.) Relation To Habas corpus. 1983 claim (ie.. unReasonable force on ARREST IS Brought By STATE prisoner, Federal court can hear latter claim without Requiring Exhaustion Through HABEAS corpus, Delaney - v - Giarrusso 633. F2d. 1126. 5th cir (1981)
(D) "discussing Burden's In "dual motive" First Amendment Retaliatory motive, case's

V. Relief

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

1,) Because of The State of florida contempt of court, and my Amendment Rights I need my case Heard, and some legal Action Taken, By This Federal court.
2) meet your Requirments TO Address my Rights By This court.
3, get monetary Relief, And Return to a Normal life. I'm Asking for 2 million dollars, in damage.
4. protect my 1st Amentment Rights
5, Get a fair TRIAL.
6 was? it structural ERROR. of my 1st Amendment Rights. I Because it was. Because It is not a harmless, ERROR.

Signed this 7th day of may, 20 11.

Thomas Jones
Gainesville F.L. D.C. K07322
2845 N.E. 39th Ave
Gainesville Florida
32609

(Signature of plaintiff or plaintiffs)

I declare under penalty of perjury that the foregoing is true and correct. Executed on 7-may-2011

Thomas Jones
(Signature of plaintiff)

Dear clerk of court

Here is a New 1983, complaint. Enclosed is 1, copy for court! handwritten, along with forma pauperis. will you please Help me and make copyies and mail to other partyies this prison doesn make copyies In less you pay I dont have any money Because of my Legal Lien from my 1st, complaint, I filed Back I June - 2010 Enclosed Is a Inmate TRUST Account from this prison. If you have any problems please let me know, Sorry about my hand writting I am a working man

Thank you

Tommy Long

D.C. # K07322

P.S.

my Appeal has been Denied

And my 1st Amendment Right of FREE speech, To Enter photographs, and written Evidence and verbal, "NO Evidence could Be spoken, during TRIAL, any defense Evidence witnesses deposition could not Be Spoken, or TALKed About.

"Bad pen!" Sorry (TL) P.S. guilty as charged.

Thomas T Long
D.C.# K07322
Gainesville, C.I
A1-104L
2845 N.E. 39th Ave
Gainesville, Florida
32609

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-61143-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

THOMAS LONG, :

Plaintiff, :

v. : REPORT OF MAGISTRATE JUDGE

ALFED STABILE, :

Defendant, :

I. Introduction

Thomas Long filed a pro se civil rights complaint while confined in the Gainesville Correctional Institution (DE#1). He is proceeding in forma pauperis.

This Cause is before the Court upon a preliminary review of the complaint pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

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

* * *

> (B) the action or appeal –
>
> * * *
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief from a defendant who is immune from such relief.

This is a civil rights action pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state See 42 U.S.C. §1983; Polk County v. Dodson, 454 U.S. 312 (1981); Whitehorn v. Harrelson, 758 F.2d 1416, 1419 (11 Cir. 1985). The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). When reviewing complaints pursuant to 28 U.S.C. §1915(e)(2)(B), the Court must apply the standard of review set forth in Fed.R.Civ.P. 12(b)(6), and the Court must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998),See: Whitehorn, 758 F.2d at 1419 id. Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it

appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."' Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A complaint is “frivolous under section 1915(e) “where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are “indisputably meritless,” id., 490 U.S. at 327, or when the claims rely on factual allegations that are “clearly baseless.” Denton v. Hernandez, 504 U.S. 25, 31 (1992).

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

the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.[1]

B. Factual Allegations

This complaint names Hollywood Officer Alfed Stabile, the City of Hollywood, and state prosecutor Taylor as defendants. The plaintiff claims that on September 15, 2008, Officer Stabile grabbed him from the back of his head and body slammed him to the ground without warning. He claims he was knocked out and woke up in the hospital with two skull fractures. He claims his jewelry was taken and never returned. He seeks monetary and other relief.

C. Sufficiency of the complaint
Excessive force

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

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

its 'reasonableness' standard"); Ortega v. Schram, 922 F.2d 684, 694 (11 Cir. 1991).

The plaintiff seeks monetary damages for the use of excessive force by the police officer. Under certain circumstances a use of excessive force claim can continue in a civil rights suit, if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff. Further, "as long as it is possible that a §1983 suit would not negate the underlying conviction, then the suit is not Heck-barred." Dyer v. Lee, 488 F.3d 876, 879-880 (11 Cir. 2007).

The Eleventh Circuit has permitted §1983 suits for claims of excessive force by police and for claims of Fourth Amendment search and seizure violations to proceed, concluding that these suits did not necessarily imply the invalidity of the underlying convictions. See Dyer, 488 F.3d at 881-82 (permitting a plaintiff convicted of resisting arrest to bring a §1983 claim for excessive force by police); Hughes v. Lott, 350 F.3d 1157, 1160-61 (11 Cir. 2003) (allowing a plaintiff convicted of burglary to bring a §1983 claim for a Fourth Amendment search and seizure violation in the face of a Heck challenge).

In this case the plaintiff was convicted of battery upon a law enforcement officer.[2] It may be that this claim of use of unlawful force is ultimately a challenge to his conviction. Further, it may be that his conviction may be used to demonstrate that the force used against him was not excessive. However, at this preliminary

[2] Research at the Florida Department of Correction's website indicates that the plaintiff was sentenced to three years incarceration in 2009, in Broward County, for battery upon a law enforcement officer.

stage, until further facts are developed, the plaintiff has stated a claim for use of excessive force by Officer Stabile.

Defendants Taylor, a state prosecutor, and the City of Hollywood should be dismissed. To allege a §l983 action against a municipality, the plaintiff must assert that a constitutional deprivation resulted from a custom, policy, or practice. Monell v. Department of Social Services, supra, 436 U.S. 658 (1978); Boilerplate allegations of policy or custom, without supporting facts, are insufficient to sustain a §1983 claim. See Hossman v. Blunk, 784 F.2d 793 (7 Cir. 1986); Gutierrez v. City of Hialeah, 723 F.Supp. 1494 (S.D. Fla. 1989). The plaintiff has failed to demonstrate a custom or policy authorized by the City of Hollywood responsible for violating his constitutional rights.

State Prosecutor Taylor is entitled to immunity in suits for damages. Prosecutors performing "prosecutorial functions" receive absolute immunity and are therefore not subject to suit in a federal civil rights action. See Imbler v. Pachtman, 424 U.S. 409 (1976). Absolute prosecutorial immunity applies where a prosecutor's activities are "intimately associated with the judicial phase of the criminal process. . . ." Imbler, 424 U.S. at 430. The plaintiff fails to state a claim against Taylor that states a constitutional violation, and would subject him to civil liability.

Lastly, any claims for deprivation of property must be raised in the state courts, and are not cognizable in a civil rights complaint. The courts have long expressed concern with a reading of section 1983 which would turn the Fourteenth Amendment into a font of tort law to be superimposed upon whatever systems may already be administered by the states. Parratt v. Taylor, 451 U.S. 527, 544

(1981) (overruled in part not relevant here, by Daniels v. Williams, 474 U.S. 327, 330-31 (1986)); Baker v. McCollan, 443 U.S. 137 (1979); Paul v. Davis, 424 U.S. 693, 701 (1976); Cannon v. Taylor, 782 F.2d 947 (11 Cir. 1986). In Baker v. McCollan, supra, the Supreme Court warned that §1983 must not be used to duplicate state tort law on the federal level. Therefore, this claim should be dismissed.

III. Conclusions

It is therefore recommended as follows:

1. Defendant Taylor, and the City of Hollywood should be dismissed pursuant to 28 U.S.C. 1915(e)(2)(B)(ii), for failure to state a claim.

2. The case may proceed against Officer Sabile for use of excessive force by an officer upon his arrest.

3. The claim of deprivation of property should be dismissed for failure to state a claim.

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

Dated this 16th day of June, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Thomas T Long, Pro Se
Gainesville Correctional Institution
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS LONG,

Plaintiff,

CASE NO.: 11-61143-CIV-COHN

v.

MAGISTRATE JUDGE: P.A. WHITE

ALFRED STABILE,

Defendant.
_____/

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
AND INCORPORATED SUPPORTING MEMORANDUM OF LAW

Defendant, City of Hollywood Police Officer Alfred Stabile ("Officer Stabile"), by and through undersigned counsel and pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure and S.D. Fla. L.R. 7.1, , seeks an order dismissing the Complaint (the "Complaint") [DE 1] filed by Plaintiff, Thomas Long ("Long"), and states:

OVERVIEW

The Complaint [DE 1] contends that Officer Stabile utilized excessive force during Long's arrest outside a 7-Eleven store in Hollywood, Florida. The Complaint is subject to dismissal because it does not allege sufficient facts to satisfy the heightened pleading standard required in §1983 excessive force claims against an individual police officer. There are simply no factual allegations regarding the circumstances surrounding the arrest and Long's actions prior to Officer Stabile's decision to utilize force. These omissions are significant in light of the Complaint's explicit admission that Long was convicted of obstructing his arrest with violence. Additionally, the facts alleged in the Complaint do not constitute "unreasonable" force pursuant to §1983. The Complaint should be dismissed.

RELEVANT FACTS[1]

On September 15, 2008 at approximately 5:05 p.m., Officer Stabile arrested Long outside a 7-Eleven store located at 1600 N. Federal Highway in Hollywood, Florida. During the arrest, Officer Stabile "grab(bed) (Long) from the back of the head and 'body slammed' (him) to the ground without any warning." This action "knocked (Long) out" and fractured his skull. Long was subsequently convicted of an unspecified crime[2] during the incident.

MEMORANDUM OF LAW

I. OFFICER STABILE IS ENTITLED TO QUALIFIED IMMUNITY ON PLAINTIFF LONG'S EXCESSIVE FORCE CLAIM

A. Qualified Immunity Generally

Qualified immunity "offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Vinyard v. Wilson,* 311 F. 3d 1340, 1346 (11th Cir. 2002) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). "The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law." *Lee v. Ferraro,* 284 F. 3d 1188, 1194 (11th Cir. 2002) (internal quotation marks and citations omitted).

For qualified immunity to be denied, "pre-existing law must dictate, that is, truly compel...the conclusion for every like-situated, reasonable government agent that what the

[1] The below relevant facts are derived from Section IV ("Statement of Claim") of the Complaint. For the purpose of this motion only, Stabile accepts the facts as presented in the Complaint as true.

[2] The Special Magistrate's Report [DE 7] noted that the Florida Department of Correction's website indicated that Long was convicted of battery upon a law enforcement officer, and was sentenced to three (3) years incarceration. *See* Page 5 of Special Magistrate Report, DE 7.

defendant is doing so violates federal law in the circumstances." *McMillian v. Johnson*, 88 F. 3d 1554, 1562, *amended on other grounds*, 101 F. 3d 1363 (11th Cir. 1996), *cert. denied*, 521 U.S. 1121 (1997) (emphasis added).

B. Qualified Immunity and Excessive Force Claims

Claims that law enforcement officers used excessive force in apprehending a criminal suspect are governed by the Fourth Amendment. *Samarco v. Neumann*, 44 F.Supp. 2d. 1276, 1284 (S.D. Fla. 1999), *citing Graham v. Connor*, 490 U.S. 386 (1989). Thus, Officer Stabile is entitled to qualified immunity if he can show that he was acting in his discretionary capacity[3] and if Long fails to show that the force utilized by Officer Stabile violated "clearly established law based upon objective standards." *Samarco*, at 44 F.Supp. 2d at 1291.

To satisfy the above burden, Long must identify factual scenarios in preexisting case law which demonstrate that the force utilized by Officer Stabile was illegal. *Id.* at 1292. However, the "myriad of case law interpreting the Fourth Amendment has staked out no bright line for identifying force as excessive." *Id.* at 1293. It is well settled that a citizen's Fourth Amendment right against excessive force claims is based on the reasonableness of the conduct from the objective perspective of a reasonable officer. *Id.* Thus, under the Fourth Amendment, law enforcement officers are permitted to use only that amount of force, which, under the circumstances, is objectively reasonable to effectuate the seizure of a person. *Id.* at 1284.

To determine whether the use of force to effect a seizure is reasonable in a particular instance, courts balance "the nature and quality of the intrusion on the [the suspect's] Fourth Amendment interests" against the government's countervailing interest in effective law enforcement. *Id.* at 1285. Several factors are considered in balancing the respective interests:

---

[3] There has been no allegation that Officer Stabile was acting outside his discretionary capacity.

(1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight. *Id. See also, Gold v. City of Miami,* 121 F. 3d 1442, 1446 (11th Cir. 1997). These factors cannot be applied with mathematical precision; rather, they must be evaluated within the context of how the seizure was carried out. *Id.*

The Eleventh Circuit recognizes that an arrest usually involves some type of force and some injury. *Rodriguez*, 286 F. 3d at 1352. It is important that a "reviewing court judge the use of force 'from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight' and refrain from slipping into the role of a Monday morning quarterback." *Fernandez v. City of Cooper City*, 207 F.Supp. 2d 1371, 1377 (S.D. Fla. 2002). This is because the "calculus of reasonableness must embody allowance for the fact that police officers are forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation." *Id. citing Graham*, 490 U.S. at 396-397.

C. The Complaint Fails To Assert An Excessive Force Claim Under The Heightened Pleading Standard.

The Eleventh Circuit has stated that "a heightened standard applies to §1983 cases against individuals who are eligible to claim qualified immunity." *Amnesty Int'l. v. Battle*, 559 F.3d 1170, 1179 (11th Cir. 2009). In applying this heightened pleading standard, courts have granted motions to dismiss §1983 excessive force claims where the complaint failed to plead facts regarding the plaintiff's own conduct. *Jackson v. City of Beaumont Police Department*, 958 F. 2d 616 (5th Cir. 1992)(granting motion to dismiss excessive force claim where plaintiff failed to "plead any facts regarding [plaintiff's] own conduct during the incident, the reasons given, if any, by the officers for being called to the scene, or any other factors relating to the

circumstances leading to, and surrounding, his arrest"); *Keim v. City of El Paso*, 162 F.3d 1159 (5th Cir. 1998)(granting motion to dismiss where plaintiff's complaint "admit(ted) Plaintiff resisted (the) assault in some fashion, but (did) not specify the extent of that resistance"). Significantly, in both *Jackson* and *Keim*, *supra*, the complaint did not affirmative allege that plaintiff was convicted of battery (or other crime) on the arresting officer (as is the case in Long's Complaint).

The Complaint fails to satisfy this heightened pleading standard because it fails to describe: 1) the facts which lead to Long's arrest: 2) Long's conduct during the arrest; and 3) whether Long actively resisted arrest prior to Officer Stabile's use of force. Moreover, the Complaint explicitly admits that Long was convicted of obstructing the arrest. In light of the Complaint's admission that Long was convicted of a crime relating to Long's conduct during the arrest, the Complaint does not sufficiently allege facts demonstrating that Officer Stabile's force was unreasonable.

D. Officer Stabile is Entitled to Qualified Immunity Because The Force Used Was Objectively Reasonable

The conduct Long alleges on the part of Defendant Stabile does not rise to the level of conduct the Eleventh Circuit has determined to constitute excessive force. For instance, in *Nolin v. Isbell,* 207 F.3d 1253 (11th Cir.2000), the Eleventh Circuit granted a motion to dismiss where plaintiff alleged the defendant officer grabbed him from behind by the shoulder and wrist; threw him against a van three or four feet away; kneed him in the back and pushed his head into the side of the van; searched his groin area in an uncomfortable manner; and handcuffed him. *Id.* at 1255; *see e.g., Jones v. City of Dothan,* 121 F.3d 1456, 1458 (11th Cir.1997) (defendant police officer who slammed plaintiff against the wall and kicked his legs apart was entitled to qualified immunity); *Post v. City of Fort Lauderdale,* 7 F.3d 1552, 1556 (11th Cir.1993) (police officer

who pushed plaintiff against wall while handcuffed was entitled to qualified immunity), *modified,* 14 F.3d 583 (11th Cir.1994).

Long's Complaint merely contends that Officer Stabile "body slammed" him during the arrest "without any warning." See Complaint. The Complaint does not assert that Officer Stabile exerted any additional force until Long was taken into custody, or state whether Long physically resisted arrest prior to Officer Stabile's use of force. Based on the above authorities, the Complaint's allegations regarding Officer Stabile do not constitute "unreasonable" force. Officer Stabile is therefore entitled to qualified immunity on Long's claim for excessive force under § 1983.

WHEREFORE, Defendant Officer Stabile respectfully requests an Order dismissing the Complaint and for such additional relief as the Court deems proper.

Respectfully submitted,

WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.
Attorneys for Defendant Alfred Stabile
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: /s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No.: 767115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent it via U.S. Mail to the Plaintiff, Thomas Long.

/s/ Daniel L. Abbott
DANIEL L. ABBOTT

SERVICE LIST

Thomas Long v. Alfred Stabile

Case No. 11-61143-CIV-COHN

Thomas T. Long (DC # K07322)
Gainesville C.I.
2845 N.E. 39th Avenue
Gainesville, Florida 32609-2668
Pro se Plaintiff

Daniel L. Abbott. Esq.
dabbott@wsh-law.com
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.L.
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Facsimile: (954) 764-7770
Counsel for Defendant Alfred Stabile

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-61143-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

THOMAS LONG, :

Plaintiff, :

v. : REPORT OF MAGISTRATE JUDGE

ALFRED STABILE, : (DE#13)

Defendant, :

I. Introduction

Thomas Long filed a pro se civil rights complaint while confined in the Gainesville Correctional Institution (DE#1). He is proceeding in forma pauperis.

This Cause is before the Court upon a review of Defendant Stabile's Motion to Dismiss (DE#13).

II. Analysis

A. Applicable Law for Motion to Dismiss

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint because the plaintiff has failed to state a claim upon which relief may be granted. See Fed.R.Civ.P. 12(b)(6). A Rule 12(b)(6) motion questions the legal sufficiency of a complaint; therefore, in assessing the merits of a Rule 12(b)(6) motion, the court must assume that all the factual allegations set forth in the complaint are true. Erickson v. Pardus, 127 S.Ct. 2197 (2007); Christopher v. Harbury, 536 U.S. 403, 406 (2002). To satisfy the pleading requirements of Federal Rule of Civil Procedure 8, a complaint must

contain a short and plain statement showing an entitlement to relief, and the statement must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) (citing Fed.R.Civ.P. 8). See also Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964 (2007) (citations omitted); Erickson v. Pardus, 127 S.Ct. at 2200; Watts v. Florida Intern. University, ___ F.3d ___, 2007 WL 2331029 (11 Cir. 2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [ ] a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 127 S.Ct. at 1964-65 (citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." Id. at 1965. The plaintiff must plead enough facts to state a plausible basis for the claim. Id. Dismissal is warranted under Fed.R.Civ.P. 12(b)(6) if, assuming the truth of the factual allegations of plaintiff's complaint, there is a dispositive legal issue which precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Brown v. Crawford County, 960 F.2d 1002, 1009-10 (11 Cir. 1992).

B. Factual Allegations

The plaintiff claims that on September 15, 2008, during arrest, Officer Stabile grabbed him from the back of his head and body slammed him to the ground without warning. He alleges he was knocked out and woke up in the hospital with two skull fractures. He seeks monetary and other relief.

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

C. Defendant's Motion to Dismiss

Defendant Officer Stabile filed a Motion to Dismiss on the following grounds: 1)he is entitled to qualified immunity on the claim of excessive force, and 2) the plaintiff failed to assert an excessive force claim under the heightened pleading standard.

The defendant's claim of qualified immunity is unavailing at this time. Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." Saucier v. Katz, 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, Lee v. Ferraro, 284 F.3d 1188, 1194 (11 Cir. 2002) (citing Anderson v. Creighton, 483 U.S. 635, 638 (1987)), and it shields from suit "all

but the plainly incompetent or one who is knowingly violating the federal law." Lee, supra, 284 F.3d at 1194 (quoting Willingham v. Loughnan, 261 F.3d 1178, 1187 (11 Cir. 2001)). Since qualified immunity is a defense not only from personal liability for government officials sued in their individual capacities, but also a defense from suit, it is important for the Court to determine the validity of a qualified immunity defense as early in the lawsuit as is possible. Lee v. Ferraro, supra, at 1194; GJR Invs., Inc. v. County of Escambia, 132 F.3d 1359, 1370 (11th Cir. 1998).

Generally, government officials performing discretionary functions are protected by qualified immunity if their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

In Saucier, supra, the Supreme Court set forth a two-part test for evaluating a claim of qualified immunity. As a "threshold question," a court must ask, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Lee, supra at 1194 (quoting Saucier, 533 U.S. 194, 201); and then, if a constitutional right would have been violated under the *plaintiff's* version of the facts, the court must then determine “whether the right was clearly established." Lee, supra, 284 F.3d at 1194 (quoting Saucier, supra). This second inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." Id.; see also Marsh v. Butler County, 268 F.3d 1014, 1031-33 (11 Cir. 2001) (en banc).

Claims that law enforcement officers used excessive force in apprehending a criminal suspect are governed by the Fourth

Amendment. Samarco v Neumann, 44 F.Supp 2nd 1276, 1284 (SD Fla 1999), citing Graham v Connor, 490 U.S. 386 (1989). Officer Sabile is entitled to qualified immunity if the plaintiff fails to demonstrate that the force utilized by the defendant violated "clearly established law based upon objective standards. Samarco, supra. Law enforcement officers are permitted to use only that amount of force which, under the circumstances is objectively reasonable to effectuate the seizure of a person. Id. at 1284.

The Court is aware that an arrest may involve some type of force and injury, and the Judge must view the use of force from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight, and refrain from slipping into the role of the Monday morning quarterback. Fernandez v City of Cooper City, 207 F. Supp 2d 1371, 13711 (S.D. Fla 2002).

In this case, the plaintiff contends that Officer Stabile body slammed him into the ground during the arrest, without warning, and that he woke up in the hospital with skull fractures. It is difficult to determine whether that amount of force was excessive, in light of the limited facts available to the Court.

As stated in the Preliminary Report, the Court is aware that this plaintiff was convicted of battery upon a law enforcement officer.[1] It may be that this claim of use of unlawful force is ultimately a challenge to his conviction. Further, it may be that his conviction may be used to demonstrate that the force used against him was not excessive. However, at this preliminary stage, until further facts are developed, the plaintiff has stated a claim

[1] Research at the Florida Department of Correction's website indicates that the plaintiff was sentenced to three years incarceration in 2009, in Broward County, for battery upon a law enforcement officer.

for use of excessive force by Officer Stabile.

Secondly, the issue of whether the claim, as stated against Officer Stabile passes the Twombly standard and the 12(b)(6) standard has been determined in the Preliminary Report. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) (used for preliminary screening) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). The Preliminary Report recommended that the claim proceed against Stabile for use of excessive force. This Report and Recommendation was adopted by the District Judge. Therefore the defendant's Motion to Dismiss is without merit.

III. Conclusions

It is therefore recommended as follows:

1. Defendant Stabile's Motion to Dismiss(DE#13)shall be denied.

2. The case may proceed against Officer Stabile for use of excessive force by an officer upon arrest.

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

Dated this 19th day of August, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Thomas T Long, Pro Se
DC#K07322
Gainesville Correctional Institution
Address of record

Daniel L. Abbott, Esq.
Attorney of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS LONG,

Plaintiff,

CASE NO.: 11-61143-CIV-COHN

v.

MAGISTRATE JUDGE: P.A. WHITE

ALFRED STABILE,

Defendant.
_____/

DEFENDANT'S OBJECTION TO REPORT OF MAGISTRATE JUDGE AND INCORPORATED SUPPORTING MEMORANDUM OF LAW

Defendant, City of Hollywood Police Officer Alfred Stabile ("Officer Stabile"), by and through undersigned counsel and pursuant to S.D. Fla. Magistrate Judge Rule 4, files this objection to the Report of Magistrate Judge (the "Report") [DE 20], and states:

OVERVIEW

While the Report recognizes the pleading defects contained in the Complaint [DE 1] filed by Plaintiff, Thomas Long ("Plaintiff" or "Long"), the Magistrate Judge nevertheless recommends that the Motion to Dismiss [DE 13] be denied. It is respectfully submitted that the recommendation should be rejected, and the Motion granted.[1]

ARGUMENT

The Report (accurately) recognizes that the entire factual basis for the claim contained in the Complaint is that Officer Stabile "grabbed (Plaintiff) from the back of the head and body slammed him to the ground without warning." Report at 2. Since Plaintiff's excessive force claim is evaluated under the "reasonableness" standard, Report at 3, the critical question is

[1] A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). *See also United States v. Farias–Gonzalez,* 556 F.3d 1181, 1184 n. 1 (11th Cir.2009).

whether the Complaint alleges facts that would justify the conclusion that Officer Stabile behaved "unreasonably" when he allegedly, without warning, grabbed Long by the back of the head and body slammed him to the ground. Obviously, there are circumstances under which it would be perfectly reasonable for a police officer to "body slam" an individual without giving the individual "warning" that he planned to do so.[2] One such circumstance would be if the individual had initiated an unprovoked physical attack upon the police officer.

The Complaint, however, is completely silent as to Long's conduct prior to his being "body slammed." The only relevant bit of information available to the Court at this juncture is that Long was convicted of feloniously battering Officer Stabile, and was sentenced to 3 years in prison. Report at 5. As the Report notes, "(i)t is difficult to determine whether that amount of force was excessive, in light of the limited facts available to the Court." Report at 5. The Magistrate Judge is being modest. It is simply *impossible* to determine Long's "entitlement to relief" within the meaning of *Twombly*[3], even assuming all of the facts pled are true, without *any* allegations of Long's own conduct that preceded his being "body slammed" "without warning."

Contrary to the assumption implicit in the recommendation, a complaint that makes it impossible to determine whether a plaintiff would be entitled to relief, even if the allegations contained therein are assumed to be true, requires dismissal. Federal Circuit Courts of Appeal, when faced with nearly identical circumstances, have reached exactly this conclusion. For instance, in *Jackson v. City of Beaumont Police Department*, 958 F. 2d 616 (5th Cir. 1992), the

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[2] Given that self-defense is a complete defense to a battery claim, Officer Stabile's alleged actions were reasonable if done in response to Long's battery of Officer Stabile. *See S.J.C. v. State*, 906 So. 2d 1115 (Fla. 2d DCA 2005)(stating that self-defense is generally a defense to battery); *S.R. v. State*, 11 So. 3d 442, 444 (Fla. 3d DCA 2009)(reversing defendant's battery conviction where the State failed to establish that the defendant did not act in self-defense).

[3] Page 2 of the Report accurately described the holding of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

court granted the defendant's motion to dismiss an excessive force claim where the plaintiff failed to "plead any facts regarding [plaintiff's] own conduct during the incident, the reasons given, if any, by the officers for being called to the scene, or any other factors relating to the circumstances leading to, and surrounding, his arrest." The court concluded that without these facts, it was impossible to conclude whether the officers' conduct was unreasonable. *Id.* at 621. The court added that plaintiff's allegations that the assault was "without justification" and in "bad faith" constituted "conclusory allegations insufficient to overcome the immunity defense." *Id.* Similarly, in *Keim v. City of El Paso*, 162 F. 3d 1159 *1 (5th Cir. 1998), the court granted the defendant's motion to dismiss where the plaintiff's complaint "admit(ted) plaintiff resisted (the) assault in some fashion, but (did) not specify the extent of that resistance." Significantly, in both *Jackson* and *Keim*, *supra*, the complaint did not affirmatively allege that the plaintiff was convicted of battery (or other crime) on the arresting officer (as is the case in Long's Complaint), and the grounds for dismissing those complaints were less compelling than in the instant case.

CONCLUSION

The Complaint fails to allege an excessive force claim under this Circuit's heightened pleading standard. It is impossible to determine whether Officer Stabile's use of force was "reasonable" given that the Complaint is silent as to Long's conduct prior to Officer Stabile's use of force. The omission is especially problematic in light of the Complaint's admission that Long was convicted of obstructing the arrest. The Complaint should be dismissed.

WHEREFORE, Defendant Officer Stabile respectfully requests an Order: i) rejecting the Magistrate Judge's recommendation; ii) dismissing the Complaint; and iii) for such additional relief as the Court deems proper.

Respectfully submitted,

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Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: /s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No.: 767115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 2, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent it via U.S. Mail to the Plaintiff, Thomas Long.

/s/ Daniel L. Abbott
DANIEL L. ABBOTT

SERVICE LIST

Thomas Long v. Alfred Stabile

Case No. 11-61143-CIV-COHN

Thomas T. Long (DC # K07322)
Gainesville C.I.
2845 N.E. 39th Avenue
Gainesville, Florida 32609-2668
Pro se Plaintiff

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Telephone: (954) 763-4242
Facsimile: (954) 764-7770
Counsel for Defendant Alfred Stabile

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS LONG,

Plaintiff,

v.

ALFRED STABILE,

Defendant.
_____/

CASE NO.: 11-61143-CIV-COHN

MAGISTRATE JUDGE: P.A. WHITE

DEFENDANT ALFRED STABILE'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Alfred Stabile ("Stabile"), individually and in his official capacity as a police officer of the City of Hollywood, through undersigned counsel, hereby answers the Complaint [DE 1] filed by Plaintiff, Thomas Long ("Long"), and states:

1. Stabile admits that he arrested Long outside a 7-Eleven store (located at 1600 N. Federal Highway, Hollywood, Florida) on September 15, 2008. Stabile denies all allegations that he utilized excessive force or violated Long's federal civil rights during the subject arrest, and demands strict proof thereof.

2. Stabile denies that he removed any property belonging to Long, and demands strict proof thereof.

3. Stabile denies that he made any false statements regarding Long and/or the subject arrest, and demands strict proof thereof.

4. Stabile denies that Long is entitled to any relief (Section V of the Complaint), and demands strict proof thereof.

*Any allegation contained in the Complaint which is not specifically admitted is denied.

AFFIRMATIVE DEFENSES

1. Stabile states that Long is estopped from recovery because he physically resisted arrest prior to being ultimately detained thereby causing Stabile to utilize whatever force was necessary and reasonable under the circumstances to subdue and subsequently arrest Long. Stabile's use of force was necessary and reasonable under the circumstances.

2. Stabile states that Long is estopped from recovery because he physically resisted arrest prior to being ultimately detained and that any and all damages allegedly suffered by Long were solely and proximately caused by his unlawful actions.

3. Stabile states that all actions he undertook were done so in good faith and he is therefore immune from liability under the doctrine of qualified immunity.

4. Stabile states that his actions to intentionally touch Long during the incident described in the Complaint constitute an ordinary incident of detention.

5. Stabile states that Long has failed to mitigate his alleged damages, if any.

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By: /s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No.: 767115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent it via U.S. Mail to the Plaintiff, Thomas Long.

/s/ Daniel L. Abbott_____
DANIEL L. ABBOTT

SERVICE LIST

Thomas Long v. Alfred Stabile

Case No. 11-61143-CIV-COHN

Thomas T. Long (DC # K07322)
Gainesville C.I.
2845 N.E. 39th Avenue
Gainesville, Florida 32609-2668
Pro se Plaintiff

Daniel L. Abbott. Esq.
dabbott@wsh-law.com
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Counsel for Defendant Alfred Stabile

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 23rd day of September, 2011, to Thomas T. Long (DC # K07322), Gainesville C.I., 2845 N.E. 39th Avenue, Gainesville, Florida 32609-2668.

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/s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No. 767115
DANIEL A. SEIGEL
Florida Bar No. 0867861

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS LONG,

Plaintiff,

v.

ALFRED STABILE,

Defendant.
_____/

CASE NO.: 11-61143-CIV-COHN

MAGISTRATE JUDGE: P.A. WHITE

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4. Stabile states that his actions to intentionally touch Long during the incident described in the Complaint constitute an ordinary incident of detention.

5. Stabile states that Long has failed to mitigate his alleged damages, if any.

WEISS SEROTA HELFMAN
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By: /s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No.: 767115

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent it via U.S. Mail to the Plaintiff, Thomas Long.

/s/ Daniel L. Abbott_____
DANIEL L. ABBOTT

SERVICE LIST

Thomas Long v. Alfred Stabile

Case No. 11-61143-CIV-COHN

Thomas T. Long (DC # K07322)
Gainesville C.I.
2845 N.E. 39th Avenue
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Pro se Plaintiff

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Facsimile: (954) 764-7770
Counsel for Defendant Alfred Stabile

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by mail this 23rd day of September, 2011, to Thomas T. Long (DC # K07322), Gainesville C.I., 2845 N.E. 39th Avenue, Gainesville, Florida 32609-2668.

WEISS SEROTA HELFMAN PASTORIZA
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/s/ Daniel L. Abbott
DANIEL L. ABBOTT
Florida Bar No. 767115
DANIEL A. SEIGEL
Florida Bar No. 0867861

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-61143-CIV-COHN
MAGISTRATE JUDGE P. A. WHITE

THOMAS LONG, :

Plaintiff, :

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

ALFRED STABILE, :

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 3, 2012**. This shall include all motions relating to discovery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) discuss the possibility of settlement;

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

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

that impeachment documents need not be revealed;

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

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

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

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

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

DONE AND ORDERED at Miami, Florida, this 5th day of October, 2011.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Thomas T. Long, Pro Se
DC #K07322
Columbia Correctional Institution
216 S.E. Corrections Way
Lake City, FL 32025-2013

Daniel L. Abbott, Esquire
Weiss, Serota, et al.
200 East Broward Boulevard
Suite 1900
Fort Lauderdale, FL 33301

Hon. James I. Cohn, United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THOMAS LONG,

Plaintiff,

CASE NO.: 11-61143-CIV-COHN

v.

MAGISTRATE JUDGE: P.A. WHITE

ALFRED STABILE,

Defendant.
_____/

DEFENDANT'S NOTICE OF FILING DEPOSITION OF THOMAS LONG, TO BE CONSIDERED IN CONNECTION WITH DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AND SUPPORTING MEMORANDUM OF LAW

Defendant, City of Hollywood Police Officer Alfred Stabile ("Officer Stabile"), pursuant to S.D.Fla.L.R. 26.1(d), files the transcript of the deposition of Thomas Long, taken February 20, 2012.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 20th, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent it via U.S. Mail to the Plaintiff, Thomas Long.

/s/ Daniel L. Abbott_____
DANIEL L. ABBOTT

SERVICE LIST
Thomas Long v. Alfred Stabile
Case No. 11-61143-CIV-COHN

Thomas T. Long
c/o Walter Shuetz
6510 SW 22nd Court
Miramar, Florida 33023

Daniel L. Abbott. Esq.
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WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.L.

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
2
THOMAS LONG,
3 CASE NO.: 11-61143-CIV-COHN
Plaintiff,
4 MAGISTRATE JUDGE: P.A. WHITE
vs.
5
ALFRED STABILE,
6
Defendant.
7 ----------/
8 COLUMBIA COUNTRY WORKCAMP
251 Southeast Correction Way
9 Lake City, Florida
Monday, February 20, 2012
10 10:00 a.m.
11
12
13
14 D E P O S I T I O N
15 OF
16 THOMAS LONG,
17 taken on behalf of the Defendant
Pursuant to Notice of Taking Deposition
18
19
20
21
22
23
24 REPORTED BY JACQUELINE MONSON
25

1 APPEARANCES:

2 DANIEL L. ABBOTT, ESQUIRE, 200 East Broward. Boulevard, Suite 1900, Fort Lauderdale, Florida

3 33301, appearing on behalf of the Defendant.

4

5

6 I N D E X

7 WITNESS PAGE

8 THOMAS LONG

9 Direct Examination by Mr. Abbott 3

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14 EXHIBITS

15 1 - Memo from Emmett Thomas **

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THOMAS LONG,

having been produced and first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. ABBOTT:

Q Would you please state your name for the record, sir.

A Thomas Timothy Long.

Q Good morning, Mr. Long, my name is Dan Abbott. I'm an attorney that represents Alfred Stabile, a Hollywood police officer that you have sued in connection with the lawsuit we're here about today.

Have you ever had your deposition taken before?

A No. Yes. Yes, one time.

Q And when did you give a deposition?

A A murder trial in Vegas, a double homicide. I was a witness, witnessed it. I got to help the cops apprehend the murderer.

Q Then having had your deposition taken before, you may know some of this, but let me just go through a handful of ground rules if you don't mind.

I'm going to ask you a series of questions today. The court reporter, who's over to

your left, is going to be typing down all the words we use, all of my questions and all of your answers. You're going to help her if we make sure that we communicate verbally, because she's not going to be able to type down nods or shakes of the head, so --

A I understand that.

Q Okay. If you don't understand any question that I ask you --

A I will ask.

Q Okay.

A I can object to some forms of questions. I know all of that.

Q That's true, sir. Feel free to do that.

If you don't understand a question, you'll let me know and I will rephrase it?

A Yes, sir.

Q And if you don't ask me to rephrase it, I'm going to go ahead and assume that you understood the question that I asked --

A Yes.

Q -- fair enough?

A Yeah.

Q And let me know any time you want to take a break. It's not an endurance test. If you need to go to the bathroom or anything, you let me know.

A I have a question. I have some more interrogatories that need to be answered. Are those going to be handled here today too?

Q Well, I'm not really here to give you legal advice, but if you have interrogatories --

A I wrote a letter, and I asked for a continuance until March 27th. I don't know if you got your copy yet from the court.

Q I did. In fact, my understanding is that motion has been granted.

A It what?

Q It was granted, the continuance of the -- of whatever deadlines you were asking for a continuance for, the judge has granted that.

A Till March 27th?

Q I think so, yes, sir.

A Okay, I'll be released on the 9th of next month.

Q You're scheduled to be released on March 9th?

A Yes.

Q Do you know where you intend to live when you're going to be released?

A Yes. I intend to stay down in West Broward out of Hollywood so I won't be harassed by them.

Q West Broward County. Do you know what city that will be in?

A Yeah, Miramar.

Q Do you know what address you're going to be living at?

A Yeah, it's listed on -- it's listed with the probation office.

Q You don't remember the address?

A I know -- I don't have the address on me right now.

Q Does anyone -- is there anyone currently living at that address?

A Yes.

Q Who?

A In-laws, sister's husband.

Q And you're going to be living with them at least at the time of your release?

A Yes, until I get the CRD lifted off me. I'm going to file an injunction to have this CRD lifted off me.

Q What does CRD stand for?

A Conditional release, good-time release.

Q What are the -- what's your understanding of what the current conditions will be of your release?

A I don't know, but I got to get out of this state. I've got the -- with the economic times I've been trying to -- it's held me back for -- since my arrest in 2008. So I've got a job in Louisiana with the oil --

Q Your understanding is that at least one of the current conditions for your release will be that you live in the State of Florida?

A Uh-huh.

Q Yes?

A Yes.

Q And you hope to have that condition released so that you can move to Louisiana and get a job?

A Yeah, until this case comes to a head, until we go to trial. The sooner it can go to trial, the better off it will be for me. I'm ready now. I'm ready to go to trial now as long as I -- I just got one more thing to ask you about.

I noticed that I need to find out the exact wording, what was the command given to Officer Stabile on the 911 dispatch call. He said at trial that he could hear the noise in the background.

Q So you intend to ask if there is a tape of the phone call made from the Seven/11 employee to the

1 dispatcher in Hollywood?
2 A Well, he said that he could hear background
3 noise from the dispatcher of me yelling over the
4 phone. I want to know what he heard. I have it
5 written down. I'll give it to you after we get done
6 here.
7 Q Okay. I see that you brought some
8 paperwork with you today.
9 A Yes.
10 Q What have you brought?
11 A Anything pertaining to this case, some
12 questions, another interrogatory. I haven't had the
13 chance to fill it out. I didn't know if we were -- I
14 asked that -- like this photograph here, I need to
15 get this blown up. I writ Hollywood, and they told
16 me they were going to give me this -- that I could
17 get any of these pictures, it was going to cost me
18 money. All right? So I got to get a blowup of this
19 picture and a blowup of this picture.
20 Q Those were photographs taken at Memorial
21 Hospital?
22 A No. Apparently this was taken at Broward
23 County after I left the hospital, and you can see how
24 excellent the healthcare was they gave me at the
25 hospital after they tranquilized me. There's blood

all up in my head and my eyes. I had -- this is six hours after the arrest, and I still don't have any bandages on my face. I've had my hands behind my back for over six hours since the arrest if not as long as that from being arrested.

In the hospital they had me tied down to a gurney, and I was having convulsions and having a seizure, so they had to shoot me with tranquilizers to settle me down.

Q Mr. Long, when were you born?

A 8-17-59.

Q And where were you born?

A Mason, Michigan.

Q What is your social security number, sir?

A 373-62-1699.

Q Mr. Long, on the date of your arrest that has resulted in the lawsuit we're here about today, where were you living?

A In 1570 something -- I was living at the hotel apartments. Shoot, I don't even know the name of them now. Right next to the car wash. What the heck was the name of them?

Q So it was 1570 something Federal Highway?

A No. It was Mackenzie Avenue. I don't have the address right here, the name of the apartments, I

was living there.

Q In the City of Hollywood?

A Yes.

Q How far distance from the Seven/11 that you were in that day?

A Half a block.

Q And you don't remember the name of the hotel apartment complex?

A I should. I lived there for a year, but I'm trying to think. No. it's right on Mackenzie Avenue right behind the bar. And I think -- no, I can't even remember the name of that bar. What is it, Brass Monkey or -- it's a bar right across from the car wash. There's a bar, and then the hotel is right behind that directly off of -- so it's one lot away from US 1.

Q And you had been living there for about a year prior to your 2008 arrest?

A No, one day.

Q Oh, one day?

A I had my property stored there while I was in prison.

Q Okay. So the address on Mackenzie, you had been living at for one day, true?

A Yes, I'd just got out.

1 Q And you -- and two days before your arrest
2 you were in prison you're saying?
3 A Yeah.
4 Q And where?
5 A South Florida.
6 Q Is that the name of the facility that you
7 were in?
8 A South Florida Reception Center.
9 Q How long had you been in the South Florida
10 Reception Center?
11 A About eight months, violation of probation
12 for living at the address at that hotel there. They
13 said it wasn't stable enough, so they violated my
14 probation.
15 Q So you were on probation?
16 A Community control. I was on probation.
17 They violated me because of an -- I've got that --
18 I've got my first present sentence under appeal. All
19 right? As soon as I handle this charge and get this
20 charge cleared off my record, I'm going after Monroe
21 County. I filed a joint lawsuit, a fraudulent
22 prosecutions against the State of Florida on two
23 charges in two different counties.
24 Q Okay. The underlying conviction in Monroe
25 County was for robbery?

A Yes.

Q And you were not --

A I was the victim.

Q Well, you were convicted of the crime of robbery --

A No.

Q -- true?

A No.

Q You pled guilty to robbery?

A Pled guilty. I pled guilty on an illegal sentence. They told me I had to leave Monroe County for three years when I was working and living there. If that isn't a constitutional violation of your freedom, I don't know what is.

Q I'm just trying to follow the time line. So you pled guilty to robbery in Monroe County?

A Yes, sir.

Q And you were --

A I was the victim, they stole my fishing pole. It was a misdemeanor. They charged me with a class one felony for a piece of property that was under $50 in value.

Q And you pled guilty to it?

A I had to because they don't like Yankees down there.

1 Q I don't want to quibble with you about the
2 underlying facts, but you pled guilty to the robbery
3 in Monroe County, and as part of your sentence for
4 that plea you were given community control, you were
5 given conditions of probation?
6 A Yes.
7 Q And one of the conditions was to not live
8 in Monroe County, is that what you're telling me?
9 A Yeah, three-year sentence. I have it in
10 writing. If you want the plea agreement, I can give
11 it to you.
12 Q I think I've got it. And it came to the
13 attention of your probation officer or somebody else
14 that you were living at the hotel apartments on
15 Mackenzie?
16 A Uh-huh.
17 Q Yes?
18 A Yes.
19 Q And the probation officer found that to be
20 a violation of the terms of your probation?
21 A Yes. Said I couldn't go outside and work
22 on my Jeep, I couldn't leave the four walls, I
23 couldn't even go outside to smoke a cigarette.
24 Q And a judge in Monroe --
25 A They said I couldn't leave Broward County

to go look for a job in Miami. They said I couldn't look for a job in Palm Beach. I had to stay within the county. I was totally confined.

Q In any event, a Monroe County judge agreed that you had violated your probation?

A No, I had to plead to that too, because they wouldn't give me a hearing or my attorney. He asked for a hearing. They gave me a hearing 87 days away, so they forced me to plead to that violation so that I could get out on community control instead of sitting in jail, the county jail, for 87 days.

So I pled out to that, and then I hired Mr. Carter to appeal the whole sentence because the whole sentence was illegal. Monroe County is -- leads the state in probation violations because they even got a sticker that says in Key West, Come on vacation, leave on probation, come back on violation.

If they think you're not from Florida, they'll put you on probation and tell you you have to leave the county. And then when you leave, a week later they call you up and violate you for failure to report. That's what they did with me.

The only problem is they didn't know that I was building the new bridge on US 1 and living in Key Largo at that time working for Granite

1 Construction. They thought Granite Construction was
2 in Fort Lauderdale. I don't know where they got all
3 their assumptions, but their assumptions were wrong
4 and in total violation of my constitutional rights to
5 live and work in any county that I commit a crime in
6 or to live freely as a citizen of the United States.
7 Q In any event, Mr. Long, you pled guilty to
8 violation of your probation?
9 A Yes.
10 Q And --
11 A We could not get a hearing --
12 Q -- and served eight months at the South
13 Florida --
14 A Reception Center.
15 Q -- Reception Center, yes?
16 A Yes, sir.
17 Q And you were released from that center, do
18 you know the date?
19 A Yeah, the 14th.
20 Q September 14th of 2008?
21 A The day before.
22 Q Am I right that it's September 14th of
23 2008?
24 A Yes.
25 Q And upon your release you went to the motel

1 apartments on Mackenzie?
2 A Yes, got my property. My vehicle was
3 stored there for eight months.
4 Q Did you still have a room there?
5 A Yes.
6 Q You had been paying for your room in those
7 apartments for that eight-month time period?
8 A They were saving me the spot. They rented
9 it out to whoever they chose to.
10 Q But you had some personal property that was
11 in your room there?
12 A No, I had some personal property stored
13 there at the motel.
14 Q Okay. So you went to --
15 A I had some property there, and I had some
16 property in a storage unit too.
17 Q Where was the storage unit?
18 A Griffen Road.
19 Q Where did you sleep the evening of
20 September 14th?
21 A In my room, room 10.
22 Q At the hotel apartments on Mackenzie?
23 A Yes. See, when they told me I had to leave
24 Broward County -- or Monroe County on probation for
25 three years, I had to move from Monroe County down in

1 Key Largo all the way back to Fort Lauderdale, so it
2 took me a while to get -- it took me a week or so to
3 find an apartment. I was living in a Motel 6 and
4 then I found that place until I could find -- it was
5 just temporary until I could find a place to live.
6 But I don't think we're here to argue
7 about my prior conviction in Monroe County. It's not
8 a conviction, it was a plea agreement, but I'll
9 address that issue in federal court as soon as I have
10 this charge expunged from my record.
11 Q Your intention is to try to undo the
12 conviction for violation of probation?
13 A I'm going to -- the plea agreement was
14 totally unlawful. You cannot -- let's put it this
15 way, you cannot -- if I was a resident of Monroe
16 County and I lived there all my life and I got drunk
17 in a bar and got in my car and drove down the road
18 and I got pulled over for DUI and I went to court and
19 the judge told me, Well, I'm going to put you on
20 probation, Mr. Long, but you've got to leave Monroe
21 County for three years. We'll give you unsupervised
22 probation, but you got to leave the county for three
23 years, is that understood? Yes, sir. I got to pack
24 up my belongings and move out of the county. Now,
25 what is this, 1896, get out of Dodge?

1 Q All right.
2 A Come on.
3 Q So the answer to my question, Mr. Long, is
4 you are going to attempt to invalidate the violation
5 of probation, true?
6 A Yes, it was an illegal sentence. I'm going
7 to appeal the whole thing.
8 Q And do you intend to also challenge the
9 underlying conviction for robbery in Monroe County?
10 A Yes.
11 Q Do you have any lawsuits currently pending
12 for either of those things, to invalidate the robbery
13 conviction or the violation of probation?
14 A I had -- Mr. Carter, my attorney, passed
15 away, and I found out on the 15th of September, the
16 day after I got out. He kept my retainer. So I'm
17 looking for counsel.
18 Q There is nothing currently pending, there's
19 no --
20 A I filed in federal court. I filed a 1983.
21 I intend to enforce that as soon as I get this case
22 cleared.
23 Q Is it your understanding that one of the
24 remedies available in that 1983 lawsuit is to expunge
25 your record to invalidate the convictions we've been

1 talking about?
2 A No, no, I have to do that in state court.
3 Q But there's nothing pending in state court
4 as we speak?
5 A On Monroe County?
6 Q Yes.
7 A Well, I filed a complaint. It hasn't been
8 answered yet.
9 Q You filed a complaint in Monroe County?
10 A I filed a complaint against Monroe County.
11 The judge, the federal judge turned it down. I tried
12 to go to court on both of these cases because you're
13 both similar. You both violated my constitutional
14 rights and you both fraudulently prosecuted me for
15 things I was not guilty of.
16 Q Mr. Long, all I'm trying to find out is, is
17 there currently pending a lawsuit that is designed to
18 overturn your convictions for either the robbery or
19 the violation of probation?
20 A Yeah, I filed. I filed it the same time I
21 filed this lawsuit. This is the only one I got
22 approved. As soon as I win this case, I'm going to
23 go back to federal court and have Monroe expunged.
24 Q Okay. So you filed the lawsuit to attempt
25 to invalidate the robbery and the violation of

1 probation convictions, but those lawsuits were
2 dismissed?
3 A It was too complicated for the federal
4 court, too -- jurisdiction.
5 Q Is the answer to my question, Mr. Long --
6 A Yes. Yes.
7 Q -- that those lawsuits were dismissed?
8 A Yes. But they can be reinstated at any
9 time.
10 Q Okay.
11 A Once you file a 1983 under current law
12 conditions, I don't have to keep going on this. I
13 got one case in federal court right now. As soon as
14 I win this case, then I will go and have the Monroe
15 record expunged.
16 Q Is it your understanding that the lawsuit
17 that you have pending, the lawsuit that I'm asking
18 you questions about, that if you win that your
19 criminal record will be expunged in some way?
20 A When I win this lawsuit?
21 Q Yes.
22 A Yes. It's illegal arrest.
23 Q Your understanding is if you win this case,
24 your criminal conviction will be expunged?
25 A No, no. You're trying to make arguments to

1 the law there. For one thing, a 1983 will not
2 expunge my criminal record. I'll have to do that in
3 state court. The reason why I'm here in this case
4 today is to show a violation of my constitutional
5 right.
6 Q And to get what? If you win, you will get
7 what?
8 A I will receive relief.
9 Q Money?
10 A That's part of it. I want judicial relief
11 and I want these officers in prison for grand theft
12 of my necklace.
13 Q Your understanding is if you win this
14 lawsuit, that's a potential item of relief?
15 A The retributions on this illegal activity
16 and this misconduct by the police is going to be
17 addressed in this lawsuit. I will leave that for the
18 jury to decide.
19 Q Including getting the police officers put
20 in jail?
21 A If they are guilty of excessive force, they
22 need to be in jail. If they are guilty of grand
23 theft, they need to be in jail.
24 Q Mr. Long, my only question to you is, is it
25 your understanding that the relief available in this

lawsuit will be the police officers being put in jail?

A No.

Q What relief is available in this lawsuit, what are you suing for?

A I'm suing for excessive force.

Q For what remedy, what do you hope --

A Money --

Q -- will be awarded to you?

A -- and some kind of legal relief.

Q What besides money?

A Well, like I said, I want to find out what I can do to go after the state prosecutors just like the federal attorney. The day I got -- I want to tell you something about Broward County. The day I got convicted, I wasn't allowed my witness deposition, I wasn't allowed any evidence in that courtroom. That judge and that prosecutor violated me because I called the store clerk a nigger. Nobody ever violates me, nobody ever calls me a redneck, a cracker, or anything else, right? They never call me a bum. I've been called it all, but when you give it back, their own prejudice, they have a little bit of a problem.

Well, it just so happens that I'm not

1 guilty of this, and I have witnesses to prove it.
2 They knew they were fraudulently prosecuting me from
3 the onset. There's nothing I can do to the
4 prosecutor or the judge. They took away my First
5 Amendment right to freedom of speech in a fair trial.
6 They threw out all my evidence.
7 Q You filed a lawsuit against both the judge
8 and the prosecuting attorney, didn't you?
9 A Yes. It was turned down. But after I win
10 this case, I intend to not stop until I have justice
11 that was done by -- undone. What makes this judge
12 think that he has the power to take away my freedom
13 of speech in the courtroom and tell me if I'm not
14 quiet and if I enter my evidence, I will be locked up
15 or restrained by a plaintiff -- or the bailiff and
16 had the public defender take over my representation
17 of counsel. What gives him the right to think that
18 he's God in his courtroom and can violate my freedom
19 of speech right by not allowing a photograph of my
20 mug shot by the abuse of the police officer? That's
21 a violation of my freedom of speech, my First
22 Amendment right.
23 He violated my Sixth Amendment right
24 by not allowing any evidence in my trial.
25 Q That lawsuit that you filed against that

1 judge was dismissed, though, right?
2 A Yes.
3 Q Mr. Long, what is your educational
4 background, please?
5 A Oh, let's see. Denver Automotive and
6 Diesel College, two years.
7 Q Is that to learn mechanical skills?
8 A It's shop manage -- it's the whole
9 business. It was the number one school in the
10 country back in the seventies.
11 Q Is that when you attended there?
12 A Yes.
13 Q What years?
14 A '78, '79.
15 Q Did you go to high school?
16 A Yes, sir.
17 Q Did you graduate?
18 A Yes.
19 Q What high school?
20 A East Lansing, East Lansing, Michigan.
21 Q That's the name of the high school, East
22 Lansing High School?
23 A Yep.
24 Q Have you had any education after high
25 school other than the Denver Automotive and Diesel?

A Yes, Union 797 apprenticeship out of Las Vegas, union carpenter, 274 out of, let me see, Louisiana or -- I don't know all the union numbers anymore. Ironworkers union. I hold about six journeymen cards. I've worked from coast to coast, from state to state.

Q What states have you lived in?

A Every -- just about every state in the country that are in the lower 48 I've either been through or working in them. Depends on if I'm running utility lines or whatever. Lived in Vegas for 12 years during the boom.

Q What years did you live in Las Vegas?

A Oh, like 1989 to 2000.

Q Mr. Long, after you were released from the correctional facility on September 14th of 2008, you went over to the hotel apartments on Mackenzie?

A Yep.

Q On that day or the next day did you drink alcohol?

A I drank it on the night before. The night after I got out, I had some drinks at home there, at the room.

Q On September 14th?

A Yes.

Q And what did you drink?

A Some beers and that's about it. I don't do drugs. Never have.

Q How much beer did you drink on the 14th?

A Probably about ten.

Q When was the last beer that you drank?

A Probably about 10:00 a.m.

Q 10:00 a.m. on the 15th?

A Yes.

Q Did you drink any alcohol other than beer?

A I think I had some -- a couple of whiskey and Cokes.

Q You were drinking those in your room you say?

A Yes.

Q When did you have your last whiskey?

A Probably the night before. I never drink more than a pint.

Q Is that about how much whiskey you drank on the 14th?

A Yes.

Q Did you take any drugs on September 14th or September 15?

A No, I have never -- I haven't done drugs since probably '91, '92. I've never -- I just did it

for an experiment. I've never been convicted of a drunk driving charge, I've never been convicted of any drug charge. I don't do drugs. I'm a high aerial specialist in construction. I'm not going to be 700 feet off the ground and be high on drugs and fall and lose my life. All the refinery work I've done in Louisiana and other states, oil refineries, they don't -- you have to take drug tests. I'm constantly being drug tested for work in the Caribbean and out of this country. I can't afford drugs. I'm sorry, I can't do it. I make too much money to.

Q You didn't take any legal or illegal drugs --

A No.

Q -- on the 14th or the 15th?

A No, I don't take no drugs, no prescription drugs. I have no prescriptions whatsoever. Never have.

Q Did you go to a Seven/11 in Hollywood on September 15th of 2008?

A Yes, I did.

Q What time of day?

A I'm pretty sure it was after 3:30. I was waiting to call somebody back, so it was between 3:30

and I think roughly around 5:00. I don't -- I don't really know the exact time. It was in between 3:30 and 5:00.

Q Mr. Long, what did you do -- well, let me ask you this: You were in your room until at least 10:00 a.m. on the 15th?

A Oh, yes.

Q Because that's when you had your last beer?

A Yes.

Q And what did you begin doing at 10:00 a.m. on September 15th of 2008?

A Well, I made some phone calls and then I went and took a nap.

Q A nap in the same room that you were drinking?

A Yes, in my hotel room, apartment. It's a studio.

Q Do you remember when you woke up?

A Yeah, right around 2:00.

Q And what did you begin doing at 2:00?

A I went and called trying to collect some money from people that owed me money.

Q And you were making those calls from the room?

A No, from a pay phone next to Seven/11. One

of them from right inside the -- right at the Seven/11, the pay phone. My cell phone wasn't hooked up yet. I just got out of day before. I didn't have any auto insurance. I was trying to get money that people owed to me. While I was incarcerated, I was supposed to have $5,000 waiting for me the day I got out. I didn't have it.

Q Who was supposed to give you $5,000?

A An attorney that owed me some money.

Q What attorney?

A That's irrelevant. His name's -- it had to do with some inheritance money.

Q What's the name of the attorney, sir?

A His name's -- it's irrelevant. I don't want my family knowing.

Q Are you refusing to answer that question, Mr. Long?

A Yes.

Q You understand --

A That's personal. That's personal family. It has no -- no -- no relevance to this case.

Q Do you understand, sir, that I'm going do ask the judge in this case to compel you to answer that question?

A Okay.

Q Did you speak with that attorney that morning?

A Yes.

Q And you're still not going to tell me his name?

A No.

Q Okay.

A Well, okay. His name is Joe Carter.

Q Joe Carter?

A Yeah.

Q Is that the attorney that you told me you have since learned has passed on?

A Yeah, I found out that morning he died.

Q The morning of September 15th of 2008?

A Yes. No, he died while I was in prison. I just found out about it on that phone call.

Q I'm sorry if my question wasn't clear. You found out on the morning of September 15th of 2008 that Mr. Carter had died?

A Yes.

Q About what time of day did you complete making your phone calls?

A About maybe five minutes before I went into Seven/11.

Q And that was sometime after 3:30, but

before 5:00?

A Yeah, about just before my arrest.

Q And why did you go to the Seven/11?

A Well, I went -- was getting kind of hungry, so I went to get a hot dog. And when I ordered the hot dog, they were handing me the hot dog across the counter, and I went to reach for my wallet, and I'd left my damn wallet at home.

Q Your wallet was in the apartment on Mackenzie?

A Yeah, I had -- I thought I had it in my pants pocket, but I didn't, and I didn't find out about it until after he'd already retrieved the hot dog out of the machine for me and put it on a bun.

Q Did you have any money on your person?

A Yes, I did. I had like $1.09. I was twenty cents short on the hot dog.

Q By the way, do you know the name of the person that was working at the Seven/11 that you tried to buy the hot dog from?

A Yeah, Mr. Audrey Allen.

Q Did you know Mr. Allen prior to September 15th of 2008?

A No.

Q What conversation did you --

A Well, yes, I did. Yes, I did. From living there beforehand. Yes, I did.

Q Did you ever have any dealings with Mr. Allen when you used to live there?

A Sure, I'd come in there and buy stuff from him all the time.

Q Did you ever have any problems with him?

A Yeah, I've had some problems getting some adequate service in there.

Q Had you complained to Mr. Allen about the quality of service he was giving you prior to September 15th of 2008?

A No.

Q Had you ever had any conversations with Mr. Allen prior to that date, you know, other than routine conversation for your purchase of goods at the Seven/11?

A Have I ever had any conversations with him?

Q Yes, sir.

A Sure, just transactions within the store and other things done by himself and other employees in there. I used to tip them all the time. I'd go over there and buy cigarettes for my girlfriend and tip them all the time.

Q Do you remember, sir, what you were wearing

when you went into the Seven/11 on September 15th of 2008?

A Yes, shorts, an $80 western shirt, my money and car keys and my necklace around my neck.

Q The money we're talking about is the dollar and nine cents?

A Yeah. Well, I had more than that when I left the apartment, it's just that I spent it in the pay phone. I had a whole roll of quarters, and I thought I had more quarters than that, but I only had a dollar left because I made like four different phone calls. I called a man that owed me $20,000. He didn't have it or anything for me. I had another boss that sold a Jeep for me, a $30,000 Jeep while I was incarcerated, and he had $16,000 of my money, and he wasn't available. He left me $300 for a week in the hotel, so I wasn't too happy because I had auto insurance I had to get and other personal things, get my phone hooked up, get my vehicle insured and the tags for my vehicle and everything like that.

Q All right. But as of the time that you walked into the Seven/11 you had shorts and a shirt, true?

A Yes.

Q And you had a dollar and nine cents?

A Yeah, I found out at the counter.

Q And you had car keys?

A Yes.

Q And you had a necklace?

A Yeah.

Q Were you wearing any shoes?

A No.

Q So tell me the conversation you had with Mr. Allen when you realized that you didn't have enough money to buy the hot dog?

A Well, he kind of like called me a bum, told me to get out of his store, so I called him a few names too. And then I got into it with, I think, another customer in there, and we -- he pretty much called me a bum and I called him a nigger.

Q Do you recall him using that word, he called you a bum?

A I believe that he did.

Q Do you specifically remember that word being used?

A I don't have the recording inside the store, so I don't know. They said there wasn't one at trial. When we went to trial they said -- somebody said there was no recording inside the store, but I don't know. There was a recording of

the 91 (sic) call of me calling him a nigger over the phone.

Q How about what you remember, do you remember him calling you a bum?

A Yes, or implying that, like get the hell out of here. And I was like, What, you want me to go out and panhandle it or what? Come on.

I tipped those guys all the time, I always tip. After living in Vegas, you're pretty much required to tip. You don't sit there and leave somebody that has a menial job as a store clerk and you paid 2.75 for a pack of cigarettes, you just leave them the change.

Q He did tell you to leave the store?

A Yes, he told me to leave the store.

Q Did you leave the store?

A Yes, I did.

Q But not before you had some words for him?

A Yes, I had a verbal argument in here -- I had a verbal argument in the store about the 20 cents I was short.

Q After he asked you to leave?

A No, during the argument. During the argument he was telling me, Well, if you don't have the 20 cents. I'm like, Come on, dude, it's more

than that, I know when I'm being -- when I'm discriminated against.

Q What do you mean discriminated against?

A Well, there's a difference between reverse discrimination and --

Q Are you telling me Mr. Allen wouldn't excuse you from paying the price of a hot dog because of your race?

A Yes. I felt that way. I've worked with all black construction crews. I've worked -- I lived in Louisiana, New Orleans, and Baton Rouge. I've run great, big concrete crews. I ain't no dummy. I've worked on the Virgin Islands over there with black Rastafarians and the whole nine yards. I know when I'm being discriminated against. I know in this prison right here today when I'm being discriminated against.

Q What made you conclude that the reason Mr. Allen wouldn't give you a hot dog for less than its price was because of --

A His demeanor, he's prejudiced. He thinks us white people are nothing but heathens. He's an islander, he's a Jamaicaner, that's what they come up with.

Q Is that the basis of your conclusion that

he --

A Yes, he's prejudiced. He's prejudiced. I've sat right there in that store and had to wait five or ten minutes for a black customer that was twenty cents short on his purchase, and I've seen Mr. Allen pull out his money in front of me and give it to this guy, stone drunk and high off his ass, but he knew him because he's always in there buying lottery tickets, or you'd have to stand in line and wait five minutes while some black guy is up there buying 15 lottery tickets. He had to pick all his numbers. They'd make you wait. Yeah, I know all about the discrimination that goes on in that store. Yeah. I know all about that. I mean, it's not just that store, it's other stores too.

Q What do you recall saying to Mr. Allen?

A I tried to get him to let me slide on 20 cents. I was going home to get my wallet and come back and buy some beer and some cigarettes.

Q What else do you remember saying to him?

A That's pretty much it. He called me what he wanted to and I called him what I wanted to. We got in a verbal argument. Have you ever been thrown out of a bar?

Q What did you call him?

A I called him a nigger.

Q How many times?

A Less than 15, I can guarantee you that. That's what he testified in court, but I never challenged it.

Q How many times do you believe you called him a nigger?

A Probably about six times. Not only him, but I called the other lady in the store too. She was black, I called her a nigger too. She was the one standing out on the sidewalk pointing to the cops.

Q Is that the customer that you began to tell me about earlier?

A Yes.

Q That customer was a female black lady?

A Yes.

Q And you called her a nigger in the store?

A Yeah, she called me -- she was butting in on our conversation. I think she called me a racial name too, like cracker or honkey, you know. You can't call them a nigger, but they can call you a cracker or any racial word they want to.

Q Do you remember her calling you a racial name?

A Yes, I believe I got in an argument with her too. Anyways, but I left the store, plain and simple.

Q Did you --

A But what I did after I left the store is what's important, that's what's relevant.

Q But you don't remember the particular racial name that the customer called you?

A I think she called me honkey. White cracker, mother fucker I think is what she called me.

Q Do you recall anyone else being present in the store during this time besides you and Mr. Allen and the one customer?

A No, there was probably some other customers. I don't recall exactly. I think there was one other clerk too, one other store clerk.

Q Did you say anything to any of these other people?

A No, I don't believe I did.

Q Do you recall those people saying anything to you?

A No, just give me funny looks and so forth.

Q How many times did Mr. Allen ask you to leave the Seven/11?

A I just remember the one time.

Q Do you know if Mr. Allen placed a call to the police?

A I don't know if it was him or his clerk. I don't know, I was leaving the store. I didn't look back.

Q You didn't see anyone make a call to the police?

A No, I didn't see anybody make a call to the police, I was leaving the store. I turned my back to them.

Q And you would have seen if Mr. Allen was making a phone call when you were still in the store?

A Yes.

Q And you're telling me he didn't make a call?

A I didn't see -- he said he was going to call the police, so I left.

Q But you're telling me that he did not, in fact, call the police while you were in the store?

A I don't remember him doing that, no.

Q Well, you're saying that he didn't or you're saying you don't know?

A Not in front of me he didn't. Now, his -- he might have left the counter and went in the back or his clerk might have called them. I don't know

1 what happened behind my back.
2 Q But after --
3 A I turned my back to them.
4 Q After you left is what you're saying, any
5 call that was made was after you left, is that your
6 testimony?
7 A Yes, as far as I know.
8 Q What did you do when you left the Seven/11?
9 A I walked up to the street, and traffic was
10 heavy. I was weaving my way across US 1.
11 Q Would you say, sir, that you were
12 intoxicated at this time?
13 A Little bit. I was coherent enough to make
14 it home. I was coherent enough to walk down the
15 street. I was coherent enough to use a telephone.
16 Q So you were crossing US 1 from what
17 direction to what direction?
18 A I was crossing US 1 east to west.
19 Q Were you walking directly west?
20 A No, I was directly east. I was crossing --
21 I left Seven/11's property, I crossed one lane of
22 traffic, crossed the other lane of traffic, crossed
23 the meridian (sic), and then I stopped.
24 Q You stopped when you were --
25 A Waiting for traffic to clear.

Q Okay. In US 1?

A Yes.

Q Why were you walking east?

A Because my apartment's on the other side of the road.

Q Did you walk north or south when you were on the median?

A Yes, I was weaving in and out of traffic trying to cross the street to get out of traffic, you know. There's some crazy drivers down there. I didn't want to get hit out in the street, so I was pretty aware -- no cars were honk -- I wasn't drunk enough that cars were honking at me or I was impairing the drivers in any way. I was just walking across the street. And the officer said that I was staggering. I wasn't staggering, I had bare feet, there's rocks in the road. You got to walk light footed when you're walking on rocks, so he might have thought I was too intoxicated to walk across the road or something, but I was barefooted.

Q When is the first time that you saw the officer?

A His car pulled up within about 30 feet of me in the middle -- in the center lane like he was going to turn into Seven/11.

1 Q So the first time you saw the officer he
2 was in the turn lane on US 1?
3 A He pulled up probably about 35, 40 feet
4 from me. I was at the left part of the -- I was
5 crossing on the left side of the boundary of the
6 property of Seven/11 across US 1. He pulled up as I
7 got into the center lane, was waiting for traffic to
8 pass.
9 Q All right. Just so I'm clear, the first
10 time you saw the police officer you were in the
11 median?
12 A Yes.
13 Q And he was in the turn lane?
14 A Right.
15 Q And his car was facing northbound?
16 A Yes.
17 Q And he stopped about 30 feet from you?
18 A Yes.
19 Q What kind of car was he in?
20 A I don't know -- we got into an argument
21 about that. I would say some kind of police vehicle.
22 Q Was it a marked police vehicle?
23 A You know, it was some kind of a black and
24 white, and it had such dark tinted windows I couldn't
25 see, you know. It was a police vehicle, but I didn't

1 think I committed any crime. You know, I didn't
2 steal anything from the Seven/11, there was no intent
3 to commit a crime, I just got in a verbal argument.
4 He didn't like me and I didn't like him, so I left
5 the store.
6 I was walking across the street, the
7 cops pulled up. While I was crossing he advanced
8 about ten feet, stopped his brake like he was trying
9 to get by me. I walked out of the street, he passed
10 me, went northbound, and I went southbound on the
11 sidewalk.
12 Q You knew he was a police officer, true?
13 A Yes, but he made no indication that he was
14 trying to stop me.
15 Q What was the make and model of the police
16 vehicle?
17 A Well, it could have been a Crown Vic, it
18 could have been a Mustang, but it had like dark
19 tinted windows on the thing.
20 Q Well, Mr. Long, does a Crown Vic look like
21 a Mustang?
22 A Yeah, kind of. They're both Fords.
23 Q All right. So if I understand you
24 correctly, he was in -- he was facing northbound in
25 the turn lane, and he stopped about 30 feet from you?

A Yes. No, a little more than that, 30, 40 feet. He was right at the -- right at the street corner half a block away from me. He was right at the street corner moving towards me, and then he stopped. And then while I crossed one lane of traffic, I started walking again, he advanced and then stopped ten feet, and I crossed all the way across the street. And then he continued moving northbound and passed me, didn't stop, didn't warn me, didn't signal me, didn't tell me, Hey, I got to talk to you. You know, he let me cross the street. He drove past me. I guess from what he told me in court, he did a U-turn. I was walking southbound, I didn't see him come up on me.

Q Mr. Long, I'm not interested in what you read or what you heard in court. I'm interested in what you specifically recall happening that day?

A I just told you.

Q When he stopped the first time, he stopped about 30 or 40 feet from you?

A Yes.

Q And then he moved closer and stopped again?

A Yes.

Q And how far were you from he when he stopped that second time?

A Maybe 30 feet.

Q And then you completed crossing US 1 heading east?

A Yes.

Q And he stayed in the turn lane and passed you heading north?

A No, he went into the right -- the left hand -- he crossed out of the turn lane into the right lane and then drove by me just like he was going -- going to take a turn. He stopped, and then he proceeded back in the left turn lane. He merged into the left turn lane, which would have been to his right.

You see there's two lanes. There's two lanes. There's four lanes, and then there's a turn lane in the center. He was in the turn lane, and he went northbound and merged into the right -- first right-hand lane.

Q All right. He moved into the travel lane for northbound traffic?

A Yes.

Q And are you telling me he moved into the right lane, in other words, he crossed through the first northbound lane?

A No, the left-hand lane. He was in the

1 left-hand lane.
2 Q The left northbound lane?
3 A Right.
4 Q And passed you as you were crossing the
5 street?
6 A Yes, passed me.
7 Q And you completed crossing the street. And
8 then when is the next time you saw the police
9 officer?
10 A Well, he didn't stop me, so I was like, I
11 didn't get in trouble with the -- I didn't do
12 anything wrong. I didn't steal nothing, I didn't do
13 anything wrong. They told me to leave the store, I
14 left the store.
15 So I continued walking southbound
16 probably another 60 feet, 60 feet past -- 60, 70 feet
17 past down the sidewalk. I walked down across the one
18 street, went down past the doctor's office, and then
19 at the doctor's office there's the entrance way to
20 the alley and to the car wash, and I crossed there.
21 Q So you crossed US 1 to --
22 A Then I walked 60, 70 feet down the
23 southbound sidewalk southbound. And then it's
24 probably got -- from the store it's probably a good
25 thousand feet.

1 Q You did not speak with the officer on US 1
2 the first time you saw him?
3 A No. He didn't -- he didn't --
4 Q And you didn't hear him speak with you?
5 A No. He didn't try to signal me or nothing.
6 I couldn't really see because when I crossed the
7 first -- when I was crossing those lanes all I could
8 see was the dark tinted windows, I couldn't see what
9 was going on.
10 Q So you crossed the street, you started to
11 head south, and then you reached an alley and started
12 to head east?
13 A Well, right at the alley, I was crossing
14 the alley, and I was on the -- going towards the back
15 access of the car wash because you can't walk across
16 directly in front of the car wash because the guys
17 are out there washing the cars, so you'd be impeding
18 their services. So I just went around -- I was
19 trying to go around the back of the car wash like I
20 normally do. There's a little alleyway there too.
21 Q But you were trying to walk around the car
22 wash by walking eastbound in the alley?
23 A No, I was heading -- yeah, yeah. I went --
24 I went probably 60, 70 feet southbound on US 1 on the
25 sidewalk. And then I turned and took a left, and I

1 was walking probably 30, 40, maybe 50 feet in off of
2 the sidewalk to the car wash, the side of the car
3 wash where I was taken down by Officer Stabile.
4 Q When's the next time you saw the police
5 officer? After you saw him on US 1, when's the next
6 time you saw the police officer?
7 A Probably when I was incoherent after he
8 knocked me out.
9 Q So you didn't speak with the officer ever
10 prior to him making physical contact with you, true?
11 A This is true.
12 Q And did you know that he was present on the
13 alley before he made physical contact with you?
14 A No. I was just walking home. No, I didn't
15 steal anything, I didn't -- I mean, what am I guilty
16 of, freedom of speech? The man wants to imply that
17 I'm a bum, tells me to get out of his store. I
18 called him some -- a few racial names. I blew off
19 some steam. He told me what he thought of me. That
20 was it, we got in a verbal argument, you know.
21 Q Did you see Officer Stabile prior to him
22 making physical contact with you?
23 A No.
24 Q And you didn't know he was there?
25 A No.

Q Is it true that the first thing you know you were falling to the ground?

A The first thing I remember was something hit me in the back of the neck, in the shoulder area and in the neck. And the next thing I know is I woke up, I was in the hospital.

Q So you felt something in the back of your neck?

A Something hit me and then -- something hit me.

Q In the back of your neck or across your upper shoulders?

A Yes, something hit me there and that's --

Q And that's the last you remember?

A I remember my hitting the ground and my head reeling, and then I went totally blank. I was in and out of consciousness, in and out of consciousness all in the hospital. I didn't know what happened to me.

Q All right. So you remember feeling something against the back of your head and the top of your shoulders?

A I remember getting hit.

Q And you remember hitting the ground?

A Yes.

1 Q And what is the next thing that you
2 remember?
3 A I woke up in the hospital, in and out of
4 consciousness, I don't know, probably, three, four
5 times.
6 Q I want to know the first time. The next
7 thing that you remember is you were in the hospital,
8 true?
9 A Oh, I remember getting mad, losing my
10 temper.
11 Q Well, just so I have the chronology right,
12 the next thing that you remember you were physically
13 in the hospital, true?
14 A Yes.
15 Q And you regained consciousness?
16 A No, I was in and out of consciousness.
17 Q Well, obviously if it's something you
18 remember, you had regained consciousness?
19 A Yeah, it was all blurry and everything. I
20 wasn't totally conscious. If you ever watched a
21 boxing match where somebody gets their bell rung or
22 gets punched ten times and he's about ready to get
23 knocked out and he falls down and then he stands up
24 and the referee makes him count fingers on his hand,
25 no, I wasn't conscious because they didn't even know

1 what my name was. I was listed as John Doe on the
2 medical report. I was listed as John Doe on the
3 police report. They didn't even know who I was. I
4 wasn't coherent enough to even tell them my name in
5 the hospital.
6 Q Do you know, Mr. Long, whether or not you
7 were unconscious between the time that you hit the
8 ground in the alley and the time that you woke up in
9 the hospital?
10 A Oh yes, I was unconscious.
11 Q So you were --
12 A Like I was in and out of consciousness.
13 Q So you're comfortable saying, for instance,
14 that you must have been carried into the police
15 cruiser?
16 A Yes.
17 Q There's no way you assisted going into the
18 police cruiser?
19 A Umm --
20 Q Or are you instead saying you may have and
21 you just don't remember?
22 A No, no. I -- after I was hit, I hit the
23 ground, it was like reflex. I don't know who was
24 hitting me. I've been stabbed so many times in the
25 back. I've been stabbed for cigarettes twice within

1 a month out in Vegas just walking down the street,
2 you know. I've been shot, I've been stabbed
3 repeatedly all across big cities in this country,
4 man. And when somebody touches me from the back,
5 it's just self-defense, you might flinch or try to
6 throw them off. I'm a little jumpy when somebody
7 hits me from the back.
8 Q So are you telling me that you probably
9 were not unconscious, you think your body was moving?
10 A Oh, I remember getting mad.
11 Q In the hospital?
12 A Yes, I remember getting mad in the hospital
13 because I had blood coming down in my eyes, and I
14 couldn't touch my face. They wouldn't let me -- they
15 had my hands confined behind my back or in the
16 gurney. And I woke up and I was in -- I was in a
17 trauma. That's why they put when in the trauma unit,
18 I was --
19 Q I'm going to get to that point. I promise
20 I'm going to get to that point. I just want to make
21 sure we have covered everything that you know up
22 until the time that you regained consciousness in the
23 hospital.
24 And so I'm just trying to find out, do
25 you believe that you were totally immobile, that you

1 were unconscious, that your body was not moving
2 unless somebody physically picked you up and moved
3 you from the time you hit the ground in the alley
4 until you woke up in the hospital?
5 A That is correct.
6 Q All right. I promised we would -- so let
7 me ask you this: You then -- you don't recall any
8 conversation, any words that were said by anybody in
9 that alley?
10 A There was no, no, no warning whatsoever.
11 No warning whatsoever. I didn't know who hit me
12 until I started coming part way through, and I was
13 like out of it, you know. I was going in and out
14 of -- everything was blurred. And then I'd wake up
15 in the hospital and it was still blurred. And then
16 they tranquilized me because I was shaking so bad and
17 I was cold and my body was -- and my heartbeat was
18 speeding up, and I couldn't -- I couldn't control my
19 bodily functions, I was twitching, so they
20 tranquilized me.
21 Q Let me see if I can do this
22 chronologically. What is the first thing that you
23 remember after hitting the ground in the alley? The
24 first time you remember regaining consciousness in
25 the hospital, right?

A People were moving around me, and I seen this -- I smelled cologne, and somebody was moving at my neck. And somebody used bolt cutters to cut my necklace off is what I found out. And the lady that cut my necklace off, she was a firefighter, and I know exactly what she looks like. She had dark black hair with baby curls, and she walked over in front of the light. I guess I was in some kind of a quiet room because I was yelling and stuff. And they -- she showed the other firefighter the necklace that she just cut off my neck, and she goes, Look at this, this is really nice, but the clasp is kind of screwed up. That's the last I seen of my necklace.

Q And that's the first thing that you remember --

A When I woke up.

Q The first thing that you remember after hitting the ground in the alley?

A Right.

Q Now, you say that you were in the quiet room because you were yelling and stuff, but you don't remember that?

A I don't remember anything that happened -- the only thing that I woke up to where I could remember totally what was going on -- in other words,

1 I was in fear for my life. I didn't know who hit me
2 in the back. I didn't know what was going on. If it
3 was the cops, I'm bipolar as hell, I get mad, I'll
4 lose -- I'll lose it. If -- I'm bipolar, okay, if
5 somebody hits me from behind, I'm going to get mad.
6 Q You've been diagnosed as being bipolar?
7 A Oh, I just know it. I've had girlfriends
8 that are bipolar.
9 Q What are your symptoms of being bipolar?
10 A Huh?
11 Q What does it mean that you're bipolar, what
12 do you do that has led you to conclude that you are
13 bipolar?
14 A Oh, I'll get verbally violent with
15 somebody.
16 Q Do you remember any words that you
17 exchanged with Stabile on that day?
18 A None.
19 Q Do you remember any words you exchanged
20 with any other police officer that day?
21 A No.
22 Q Do you recall any words that you exchanged
23 with a doctor that day?
24 A Yes.
25 Q What do you recall either saying to or

hearing from a doctor?

A I asked him what -- Where am I, what are you doing with my necklace, and why are you -- what's in that needle? They had this great big horse needle, and they squirted the -- cleared the air out of the tube, and then she shoved it in my butt and gave me a tranquilizer shot. And then that's when I figured, oh, well, that's the last I'm going to see of this necklace, because they're going to steal it from me.

Q This was --

A And so I started cussing them out because I knew they were stealing my necklace.

Q This was a female doctor?

A I think it was a nurse that -- well, I remember seeing her face. I think she was wearing glasses. And then the firefighter that cut my necklace off me, I remember her because I remember the long fire -- the pants she had on and the boots, and I remember her hair. I know exactly what she looks like.

And I went down to the police station to try to file theft charges on her, and the police chief wouldn't talk to me. He wouldn't let me file a theft report. He wouldn't have nothing to do with

1 this case.
2 Q Just so I'm clear, Mr. Long, you remember
3 asking the nurse, Where am I? Yes?
4 A Yes.
5 Q And you remember asking the nurse what's in
6 the needle?
7 A Right.
8 Q Yes. Do you remember anything that the
9 nurse said?
10 A Just something to calm you down.
11 Q And you're telling me that you knew from
12 the moment you were given that injection that
13 somebody intended to steal your necklace?
14 A Yeah, they removed it, and I didn't give
15 anybody permission to remove it.
16 Q No, I -- you've made that clear. I'm just
17 trying to figure out how you knew that was going to
18 happen when you were given the tranquilizer?
19 A Because they removed my necklace and then
20 they tranquilized me.
21 Q I see. The necklace was removed with bolt
22 cutters?
23 A Yeah. And that's what brought me awake. I
24 woke up, and they were cutting my necklace off.
25 Q And that's the point --

A And then -- and then I was running in and out of consciousness. And then all of a sudden the next thing I know is they woke me up, and they shot me with a -- because I was shaking so bad because I was naked and they had me in this air conditioned room and I was freezing cold. And I was shaking. And they took all my clothes. I was strapped down to the gurney, and I was naked. I don't know what happened to my clothes. I didn't know where I was at. It was like I was in a Nazi concentration camp. They were stealing my jewelry and drugging me all at the same time.

Q This was all the first time that you were regained consciousness or are you telling me about a second time? Was it --

A Well, that's the most consciousness I gained at the hospital. I was in and out of consciousness since my point of contact.

Q I understand, Mr. Long, and I'm not quibbling with you, but I'm -- the first time you regained consciousness, you felt your necklace being cut off with bolt cutters, right?

A Yes.

Q You asked the nurse, Where am I, what's that needle, and the nurse said, Something to calm

you down, and then the nurse gave you the injection?

A Yes.

Q Now, you're starting to tell me about being cold and sensing that you were naked. Is that the same time that you were conscious or are you telling me a second time that you woke up?

A That was the -- that was -- I believe that was -- no, that was the same time, because I only remember coming conscious enough where -- I mean, they moved my neck around and that's what -- they lifted me up off the, I think, the gurney or they undid one of my hands or something to get to the back of my necklace to cut it off, and I smelled her cologne, women's cologne, and that's what woke me up.

Q And you saw it was the female firefighter --

A Right.

Q -- with curly hair?

A Right. Her old man's probably wearing my necklace on his Harley right now.

Q What -- I read you said that before.

What is the next thing that you remember, sir, after this incident with the necklace and feeling cold?

A I remember waking up in jail it seemed like

1 three days later.
2 Q And what jail were you in?
3 A Broward County. How I got there, I have no
4 idea.
5 Q Now, Mr. Long, we have now discussed
6 everything that you recall between the time your head
7 hit the alley and the time that you woke up in jail
8 at Broward County?
9 A Right.
10 Q Yes?
11 A Yeah, I think -- well -- well, I think I --
12 I woke up a little bit in the back of the police car,
13 and I got mad and started yelling at the cops I think
14 because I didn't know where I was. They had me
15 handcuffed, and my head was killing me, and I was
16 going in and out of consciousness. So I had maybe
17 like -- maybe about a half a minute consciousness,
18 and then I just -- I lost it. I lost it. I got, you
19 know, in convulsions, I was in shock.
20 Q This was when you were back in the back of
21 the police car heading where?
22 A I don't know. I just came -- I was in and
23 out of consciousness. It was like -- I don't know
24 when --
25 Q I'm just trying to find out

1 chronologically, because you were -- you have since
2 learned or you've since deduced you were transported
3 from the scene to the hospital in a police car,
4 right?
5 A Yes.
6 Q And you were transported from the hospital
7 to jail in a police car?
8 A I have no idea.
9 Q I'm just trying to figure out if you know
10 which of those times you're telling me about that you
11 woke up in a police car.
12 A Okay. That's -- I don't even --
13 Q You don't know?
14 A I don't know. I remember getting mad
15 because my head was bleeding and I had injuries in
16 the head, my hands cuffed behind my back, and I
17 remember getting mad. I was like, Oh, God, what did
18 they do, did they crack -- my head is thumping, I got
19 blood in my eyes and I can't even wipe it off, and
20 I'm getting mad. So I got mad, and I lost it. I
21 lost it.
22 Q What I'm trying to find out is, do you know
23 if you had already been to the hospital or this was
24 before you got to the hospital?
25 A I look back now, I think it was probably

1 during -- before I went to the hospital.
2 Q And you say you got mad. What did you do
3 when you got mad?
4 A Umm -- I blacked out. I got so mad, my
5 heart, you know --
6 Q You don't remember anything that you said
7 or anything that you did?
8 A Probably it wasn't nice. I was probably
9 cussing and swearing at them. I think anybody would
10 if you get hit behind without any warning for no
11 reason at all. You haven't committed any crime, you
12 got in a verbal argument over a 20 cent short on a
13 hot dog. And I left the store. I didn't steal
14 anything. I didn't take the hot dog with me.
15 Q Do you remember any of the particular
16 cusses or swears that you said to that police officer
17 in that police vehicle?
18 A No, I do not. I wasn't coherent enough. I
19 was in and out of consciousness.
20 Q Okay. Have we now, Mr. Long, discussed
21 everything that you can recall between you walking
22 into the Seven/11 that day and the time that you woke
23 up at BSO?
24 A Yes.
25 Q Mr. Long, who is Chris Quinn?

A He is -- was an employee of the car wash.

Q When did you first meet him?

A October -- I would say I think it was October 12th when I got out on bond.

Q October 12th of 2008?

A Yes. When I got out on bond for this offense, I had a thousand -- $1100 bond.

Q You didn't know Quinn before this incident that's brought us here today?

A No, he was just one of the car detailers over there at -- he knew some people in the apartment, I guess, did some work for them, but I had no contact with him. I didn't really -- he wasn't a friend of mine, he wasn't an acquaintance, he just worked over at the car wash. He seen the comings and goings. He knew that was my Jeep because I guess him and all the other guys wanted to buy my Jeep that was parked out in front of the apartment there.

Q Did you know his name prior to October 12th of 2008?

A No, I did not.

Q And you had never socialized with him?

A No.

Q How did you come to meet him on October 12th of 2008?

A I walked outside of my apartment, took the top down on my Jeep, getting the water out of the thing, airing it out, checking the battery, putting the battery back in it, you know, just getting it ready, road ready, and he seen me out there playing around with it. And then I walked over to -- I was out there working on my Jeep, and I went over to Seven/11 to get some concessions.

Q Okay. You're telling me how you met Quinn, are we there yet?

A I went over to Seven/11, and as I was leaving Seven/11 I was walking by the car wash just like I always do towards the back of the building and then cross over to my apartment. So I'm not walking close down to the mad, wild drivers on US 1, I take that route. I get off the main drag. I don't like to walk around where people might run you over, hit you with a car. It gets pretty dangerous walking down there.

Q Mr. Long, I want to know how you met Quinn.

A Well, that's what I'm telling you. I was walking across the --

Q All right.

A -- car wash. And this guy says, Hey, you're that guy that those cops beat up. That's your

1 Jeep over there, isn't it? I said, Yeah. And he
2 goes, Well, I got your car keys. And I says, Okay,
3 well, how did you get my car keys? I had no
4 recollection. That's why -- I mean, I didn't know
5 because I was knocked unconscious. I had my bell
6 rung like that (slams hand on table). He said in his
7 testimony that he heard my head hit the pavement like
8 that (slams hand on table).
9 Q Mr. Long, I think I've said this before,
10 I'm really not here to find out what you've read
11 since the incident, because I can read that as
12 well --
13 A If you're not coherent, you got to take it
14 for granted what people are telling you.
15 Q Right, but I just want to be clear that
16 during this deposition I don't want to know how you
17 may have reconstructed what happened that day by
18 reading other things. I'm here to ask you what you
19 remember. All right?
20 A Okay.
21 Q So Quinn told you that he had -- he has
22 your keys.
23 A Right.
24 Q And you ask how he got your keys, and what
25 did Quinn say?

A He said, The cop got pissed off and he yelled, Fuck, and threw the keys across the alleyway into the bushes in the grass.

Q When is -- all right. When's the last time you spoke with Chris Quinn?

A Probably about three weeks before the trial.

Q Your trial was in 2009?

A Yes. October something.

Q And where did you see him in October of '09?

A Car wash.

Q And did you speak with him in October of '09?

A Yes, I just -- all year long, the 11 months I was out on bond I was in contact with Chris due to this case. And he said he would testify for me. And we even went so far as I told the public defender in October of 2008 right after I got out on bond on the first court hearing, I told her I had four witnesses, four or five witnesses that worked at the car wash that seen the cop hit me without any warning from behind that were willing to testify.

Q How did you know that there were four witnesses? You had already spoken with Quinn the

first time?

A When he gave me my keys back that he retrieved from the alleyway, across the alleyway -- next to the doctor's office I guess is where they threw the keys. He retrieved those and walked inside and gave them to his boss, Vickie.

Well, he went back into the store when he told me that he had my keys. He got my keys off the key rack and came back out and gave me my keys. I said to him, I said, Well, I wish you could have given me back these yesterday because I've already replaced the ignition column on my Jeep because I didn't have these keys, so it's a day late and a dollar short. But thank you anyways, I got my keys back. There were some other keys that went to my Jeep on the same ring, plus my apartment key. So he returned my keys back. Then he told me what went down.

Q Okay. And amongst the things that he told you, did he say words to the effect of, Me and three other people saw what happened?

A He said, Four or five guys were standing there, we all saw it, other employees.

Q Do you know the names of those people?

A I tried to get them, but they -- I don't

speak Spanish and they don't speak English without an interpreter. Chris isn't fluent in Spanish either, so one of the foremen there at the car wash is bilingual, he can speak both, so he kind of translates for us people that don't speak Spanish.

Anyways, what we did was we talked -- I talked to one of the guys that worked at the car wash, and I asked the Spanish guys if they would make statements, and they said, Well, no. They were scared at first because they're illegals, they're in this country illegally. So I said --

Q You had this -- I don't mean to interrupt you. You had this conversation with the foreman acting as the translator?

A I don't know what his actual -- the guy had like dyed hair, he had this red dyed hair on the top of his head. He might have just been one of Chris's coworkers, another detailer or whatever.

Q Do you know what that fellow's name is?

A I don't remember his name.

Q But in any event, whatever his job title was, he helped you translate in your conversation with the other car wash employees?

A Yes.

Q I'm sorry I interrupted you. You were

1 telling me what you learned from the other car wash
2 workers. You learned that they didn't want to give a
3 statement and they were in the country illegally,
4 right?
5 A Right. They didn't want to go to court.
6 They didn't want to go downtown, but they would make
7 a deposition or a declaration. So they said they'd
8 make a statement.
9 But Chris said, I'll testify for you,
10 and they can just back up my testimony. I said,
11 Well, great, four is better than one, because then
12 they can't challenge that. So I told the public
13 defender, I said, Listen, here's my witnesses,
14 there's four or five of them at the car wash. And
15 she goes, I'll send somebody down there to get their
16 statements.
17 I told her what the problem was in
18 between being -- the guys being illegal didn't want
19 to make a statement down at the DA's office, they
20 didn't want to have to go downtown or to the police
21 department -- the police. They would make statements
22 to a public defender, but not to the police officer
23 because they didn't want to have any contact with the
24 police because they're illegals.
25 So she sent an investigator down

1 there, and I have his name here. His name is Emmett
2 Thomas. I have -- I just received word from the
3 public defender's office. And here is the report
4 that he made on my behalf to the public defender's
5 office.
6 Q This is your only copy of this document?
7 A Yes, that's my only copy. I'd like to --
8 they don't have copiers here, and they won't copy
9 anything for you. You have to go to the law library,
10 and they don't have one at this camp.
11 So I was going to put that on -- enter
12 that as evidence.
13 Q Yes, sir.
14 A But I thought I'd handle it with you here
15 sometime today.
16 Q What's the best way for us to accomplish
17 the point that I would have a copy but you would
18 still have a copy?
19 A You can take that with you --
20 Q And sent it to you?
21 A And send me a copy --
22 Q Send you the original of it back?
23 A Yes.
24 Q Okay. Well, we will not attach it to the
25 deposition -- well, at least I can't leave it with

1 the court reporter. We will eventually attach it as
2 Exhibit 1 to the deposition, but I promise I will
3 send you this copy back, and I will send one to the
4 court reporter that will be physically part of the
5 deposition.
6 A That would help me out greatly.
7 Q And I'll keep a copy.
8 A That would help me out greatly.
9 Q Let me see if -- I'll read it into the
10 record, and you can make the record clear if I
11 misread it. It looks like it is a memo from Emmett
12 Thomas, the gentleman you just told me about, and
13 it's to Ava-Gaye Marie Hue, H-u-e.
14 Ms. Hue was the public defender who
15 acted as your attorney?
16 A Yes.
17 Q And this is what the investigative report
18 says. It says: Today I spoke with Chris Quinn who
19 lives at 460 Northeast 69th Street, Miami, Florida,
20 no phone. He works at the car wash at 1503, not
21 1305, North Federal -- it says N Highway, but North
22 Federal Highway. He said that he did not see what
23 went on inside the store, but did see the defendant
24 leaving. Quinn said Long was not running away, and
25 the police officer in the black car tried to run Long

1 down and then tackled him. Quinn will testify.
2 Did I read that investigative report
3 correctly?
4 A Yes, sir, you did.
5 Q Let me ask you this. We talked about your
6 contact, at least your sight of Officer Stabile. Do
7 you remember Stabile trying to run you down with his
8 car?
9 A No, not really, because I don't remember
10 anything after I lost consciousness at the car wash.
11 Q I understand.
12 A I mean, I was going in and out. Everything
13 was all fuzzy. I don't even think -- the nurses said
14 I -- I read the police report from the hospital. It
15 was atrocious the things they said I did. They said
16 I was spitting on them, I was spitting on the cops.
17 I was yelling and screaming. I don't know if I did
18 this or not. I wasn't coherent. My -- when you
19 receive two injuries as extensive as I received, I
20 would call that attempted murder, so I was hit hard
21 enough to fracture my skull and lose body fluids. I
22 pretty much say that was almost an act of attempted
23 murder on Mr. Stabile's part.
24 Q Do you, Mr. Long, know the names of anyone
25 else who worked at that car wash who witnessed any

1 part of this incident other than Mr. Quinn?
2 A Yes, his other -- there was like Juan or
3 Julio and Felipe, and I don't remember their exact
4 names. In fact, when I get out before we go to
5 trial, I'll go back to Vickie and see if she can look
6 up on the records and get other employees. But I
7 doubt you're going to be able to find them because
8 they're illegals. Some of them might even be
9 exported by now.
10 Q Vickie is an office worker at the car wash?
11 A I believe she's the owner.
12 Q And do you know her last name?
13 A No, I don't. She keeps that private.
14 Q Do you know where Quinn is living these
15 days?
16 A No, I don't. If I did -- all I know is
17 that he left state with his girlfriend. Apparently
18 his girlfriend worked at Seven/11 over there, and she
19 quit her job at Seven/11 and they moved out. That's
20 what I found out from one of the Spanish coworkers,
21 but -- after he left and I went to the car wash
22 looking for Chris to get him to testify for me at
23 trial.
24 Well, here he did a deposition, so I
25 knew by law that I could enter that in at any time

1 into the hearing, but I found out different at court.
2 Q You tried to contact Quinn to get him to
3 show up at your criminal trial?
4 A Right.
5 Q And you learned that he had left the state
6 with his girlfriend?
7 A Right.
8 Q And his girlfriend, you learned, worked at
9 the same Seven/11 that we've been talking about
10 earlier in this deposition?
11 A Yeah, she either worked at that Seven/11 or
12 the other convenience store next to it.
13 Q All right. And I --
14 A That's the first I ever heard that he --
15 him having a girlfriend that worked at the store, so
16 that's new to me.
17 Q I probably essentially asked --
18 A I don't know that much about him.
19 Q I probably essentially asked you this, but
20 let me make sure. Do you know the names or contact
21 information of any other witness to this incident?
22 A No, there was no other contact witness --
23 it was right on the car wash property. That was the
24 only people that were around me that were close
25 enough to see it.

1 Q You had told me that when you regained
2 consciousness you were at BSO?
3 A Total conscious?
4 Q Yes, sir.
5 A Yes. About -- I remember waking up and it
6 was morning time and they were feeding us breakfast,
7 is what I remember.
8 Q Did you remain incarcerated up until the
9 time of your criminal trial?
10 A No, I was out on bond.
11 Q And how long were you in jail before you
12 were out on bond?
13 A Thirty days.
14 Q And after those 30 days when you were
15 released, where did you begin living?
16 A Back at the same apartment. She still had
17 my apartment. I had it paid for.
18 Q While you were incarcerated before being
19 released on bond, did you receive any medical
20 treatment?
21 A While I was incarcerated? Oh, after I left
22 the hospital?
23 Q Yes, sir.
24 A Yes, they brought me into the infirmary at
25 the county jail and looked me over.

1 Q And did they -- what did they do besides
2 looking you over?
3 A Not a whole lot.
4 Q Did they prescribe any medication?
5 A No, I think the only thing they gave me is
6 Tylenol for my headache.
7 Q And they obviously didn't do any surgery?
8 A No.
9 Q Did they give you any stitches or any other
10 medical treatment that you recall?
11 A No.
12 Q After you were released on bond, did you
13 get any medical treatment?
14 A No, I can't remember. No, but I don't
15 believe so. I can't remember though. It's a long
16 time, it was 11 months of my life now.
17 Q And you were free on bond until your
18 criminal trial?
19 A Yes.
20 Q And after your conviction, you were
21 incarcerated again?
22 A Yes.
23 Q And since you've been back incarcerated,
24 have you gotten any medical treatment for any of the
25 injuries you sustained in the incident that's brought

1 us here today?
2 A Yeah, they've been working on my knee
3 injury. My knee injury that I received that day, I
4 like pulled a ligament in my leg trying to fight, get
5 out of the -- what do you call it -- the gurney.
6 When I was strapped down in the gurney, I remember
7 waking up and I was fighting, and, you know, I was
8 like resisting until I lost -- got so mad I just lost
9 consciousness, and then I put so much stress on my
10 muscle I'd torn a ligament in there, and then it was
11 bothering me. I couldn't do anything physical that
12 whole 11 months I was out. And then when I came in
13 here, my legs were so swelled up, they had to give me
14 medication to relieve the swelling on my leg. You
15 could push into it, it had what they call some kind
16 of a sponge to it.
17 Q That medical treatment that you got was
18 here at the Columbia Correctional facility?
19 A Yes.
20 Q And are you -- did they prescribe
21 medication for you?
22 A Yeah, they give me something to thin down
23 my blood, and they were giving me antibiotics because
24 I had an infection in my right knee from the twisted
25 ligament, and I don't know what it was, but it was

1 all -- I was having problems with my stool, I was
2 constantly having diarrhea, upset stomach. And I
3 had -- it felt like an infection in my leg. Well, as
4 soon as they gave me about six months worth of
5 antibiotics, it started clearing up, and the swelling
6 went down in my leg, and they gave me these
7 compression stockings.
8 Q Any other medical treatment that you've
9 gotten here at Columbia?
10 A No. Other than -- no.
11 Q Have you gotten any treatment, any medical
12 treatment at all for the head injury that you
13 allegedly sustained?
14 A No, I just try to keep taking my aspirin.
15 I get headaches all the time now.
16 Q Still?
17 A Yeah. My sinus cavity was totally smashed.
18 And it's like maybe like a half inch to
19 three-quarters of an inch depression on my left side
20 than my right side, my cheek is higher on the left
21 side -- I mean on the right side that wasn't damaged
22 to the left side. The left side they -- that's the
23 one the officer slammed my head into the ground, and
24 I received a fracture there and one above my eye.
25 Q Does it hurt?

A Yeah, I get headaches in and out.

Q Even today?

A Yes.

Q Any other pain that you feel other than headaches?

A Sometimes sweaty, hot for no reason.

Q How much do you estimate that the necklace that was taken by the female firefighter was worth?

A Oh, I probably spent -- I'd say between -- I'd say roughly around $7 -- 7,000 just for the necklace, if I could begin to replace it. If I could begin to replace it.

Q Mr. Long, why are you giving me an estimate? Was the necklace constructed over time or something?

A No. Yeah. Well, it took me about two different trips to Arizona to find a piece that nice.

Q And by the piece you mean you bought the necklace intact or were you buying the component stones and making a necklace out of it?

A No, I bought it intact. It was roughly a 350 year old American Native Indian jewelry.

Q And how much did you pay for it?

A Somewhere between -- I paid three something for that necklace. I paid --

Q When you say three something, $3,000 and something?

A Yeah. I bought my daughter's piece, the one that I lost when they incarcerated me here, I would put her piece estimated at around $15,000 to replace it.

Q So just so I'm clear, the necklace that you think was taken from you by the firefighter, you paid somewhere between three and $4,000?

A Yes, but the expenses that I inquired (sic) in purchasing that thing, it would cost me every bit to seven to $10,000 to go out and buy a new one.

Q Because you got a good deal on it?

A Yes, I got a fantastic deal because I bought four other -- three other pieces with it.

Q One of which was a necklace that you gave to your daughter?

A Yes.

Q And you were wearing that necklace when you first became incarcerated here at Columbia?

A I wore it to trial that day to show the jury that I had a necklace the exact same color as that one. I wanted them to see how rare that jewel was.

Q And that necklace, what has happened to

your daughter's necklace that you were wearing?

A That and two bracelets estimated, I'd say, in -- around $5,000 in value apiece on the two bracelets got confiscated by the Department of Corrections because I didn't pick them -- or have any place to send my property while I was incarcerated here. After 30 days they end up owning it.

As soon as I have this charge expunged, I will be paying a reward and putting out a bounty on those items that were stolen not only by the Hollywood Police Department but the Department of Corrections here too while I was incarcerated.

Q What do you mean by a bounty?

A I'm going to issue a reward through the media for my jewelry to be retrieved.

Q Why do you say the Hollywood Police Department, I thought you were telling me it was a Hollywood firefighter?

A It's the Hollywood Police Department. As far as I know, Mr. Cooke was responsible for me at the hospital. He's the one that had charge of my property.

Q So Mr. Cooke was charged with preventing the firefighter from taking your necklace?

A No, he was the commanding officer at -- he

1 was in charge of me while I was at the hospital.
2 Q I understand that, but --
3 A Mr. Stabile hauled ass. He dropped -- he
4 went in there, dropped me off, and hauled ass.
5 That's what he told me. He didn't care. He told me
6 that outside the police department when I got out on
7 bond back in November, 11 months prior to trial. He
8 told me after he dropped me off he don't know what
9 happened to my necklace, he don't know what happened
10 to me, and he don't care what happened to me.
11 Q And you don't disagree with that, right?
12 A No, he didn't steal my necklace. He stole
13 my keys and threw them in the bushes.
14 Q But the necklace -- I'm trying to get a
15 handle on Officer Cooke versus the female
16 firefighter. It was the female firefighter that took
17 the necklace off of your neck?
18 A Yes.
19 Q And do you think she gave it to Cooke?
20 A I don't -- that's what was written on the
21 medical report, property given to officer.
22 Q I see.
23 A That I retrieved from medical records. As
24 soon as I got out, I went to the hospital to try to
25 retrieve my necklace. Three times I went to the

1 Hollywood Police Department and tried to file theft
2 charges on that necklace, and three times I was told
3 to leave the property or I would be arrested for
4 trespassing.
5 Q You ended up representing yourself at the
6 criminal trial?
7 A Yes.
8 Q Why did you fire the attorney, the criminal
9 attorney that you had?
10 A Because she didn't do -- she didn't do what
11 she said she was going to do and she was very
12 prejudiced.
13 Q What did she say that she was going to do
14 that she didn't do?
15 A She said she was going to send an
16 investigator down to the car wash to get the other
17 three illegals' statements.
18 Q And you don't think that she did?
19 A He didn't, as you can read from the report.
20 He only talked to Chris Quinn. He didn't have any
21 care in the world whether I was innocent or not. The
22 only thing he did was made a brief contact with
23 Mr. Quinn, handed him his card and said, You're going
24 to have to come down and do a deposition.
25 He didn't try to retrieve the other

1 names from the other car wash employees. I found
2 this after -- I found this out after -- this was
3 March. I had the witnesses since October. So let's
4 see, October, November, December, January, February,
5 March, six months later the public defender's office
6 sends an investigator out to talk to the witnesses
7 that work on a day-to-day basis. They might be
8 working there at the car wash today, might not work
9 there tomorrow, two weeks later they might work there
10 again. It's touch and go.
11 So the importance of what the
12 investigator needs to do was get everybody's
13 statement. He did not on this day, on the 10th of
14 March. He was in too big of a hurry to get their
15 statements, so he left. As soon as I found out he
16 wasn't -- that's how much he cared about me and
17 that's how much Ms. Abigail (sic) Hue cared about me,
18 I fired her.
19 Q Okay.
20 A I called her up and I expressed how
21 displeased I was with her. And I'll tell you exactly
22 what she told me. She said to me when she first
23 talked to me about this case, she goes, I talked to
24 Mr. Allen, the store clerk, and he told me what you
25 called him. And she's biracial. I think she's part

1 black. And, anyways, I called her -- so when I fired
2 her I called her a nigger over the phone. She called
3 me back the next day and told me never to contact her
4 again. And I said, I'd be more than happy to abide
5 by that policy. And I never talked to the lady again
6 until I went into court. She kept coming -- she was
7 the public defender assigned to that courtroom, so
8 she got assigned to my case during the trial.
9 She gave me no help whatsoever and sat
10 there and watched my civil rights get violated, not
11 only in the courtroom repeatedly that day, but she
12 wouldn't give me any help either.
13 Q Why do you think she's prejudiced?
14 A Why?
15 Q Yes, sir.
16 A Because she said to me, Well, I heard what
17 you called that store clerk. And I said, So I called
18 him a nigger, I don't sit there and cry when people
19 call me a redneck, a construction bum, white trash,
20 bum, drunk, I've been called it all. I don't get --
21 I don't get bent out of shape. They call me a
22 fuckin' cracker, I'm going to call them a nigger.
23 Q Mr. Long, we have talked about the arrest
24 that resulted in the lawsuit we're here about, and
25 we've talked about a couple of other criminal

1 matters. We talked at least briefly about the
2 robbery in the Keys and the violation of probation.
3 Besides those incidents, sir, have you ever been
4 arrested?
5 A What state?
6 Q Well, all of them.
7 A And I'm glad you talked about this because
8 I'm going to stipulate at the trial that anything
9 past ten years has no bearing on this case, it's not
10 to be entered by law. It has no bearing, anything
11 over ten years old, a conviction or other words,
12 should not be brought into this case. I'm not a
13 violent man. Like I said, I've never had any prison
14 time till I came to Florida.
15 And the only reason why I got any
16 prison time in Monroe County is because I was a
17 Yankee and they told me to leave, and they do things
18 like the way they want to do down in Monroe County.
19 Q All right. Mr. Long, what's the answer to
20 my question? Have you been arrested for any
21 occasion --
22 A I said what state?
23 Q And I said any state.
24 A I said what state?
25 Q Any state, sir. Have you been arrested

other than the arrest --

A How about Nevada?

Q What were you arrested in Nevada for?

A Oh, I couldn't remember all the times.

Q Can you estimate how many times?

A No, I cannot.

Q How many times were you convicted of crimes in Nevada?

A Never. Never by a jury.

Q No convictions. Well, how about convictions for anything?

A I got pleas. All of them, I pleaded on everything, misdemeanors, all misdemeanors.

Q They were all misdemeanors. And you don't know what particular misdemeanors they were?

A No.

Q How about any -- I guess that's all you remember about Nevada. How about any --

A Oh, let's see, let's see. The last time I was arrested before this charge, it was on an airport on Thanksgiving weekend in Chicago, and that came up at the trial. She said I was apprehended in Chicago for stolen property or something, and I was taken off an airplane. In my transfer from Fort Lauderdale at Chicago I left one plane and went to another and I

was drinking on the plane in Fort Lauderdale all the way to Chicago, and then when I got off the plane in Chicago and transferred to the other plane, they arrested me for drinking -- for being drunk, intoxicated on an airplane. That's why I was arrested in Chicago.

Q So it wasn't stolen property. You were arrested for some alcohol related incident in Chicago?

A Yes, that's Cook County, that's where that charge came from. And she -- she tried to twist it around in front of the jury. And I didn't find this out till later, but I remember that I was arrested in Cook. She said it was Cook County, but she wouldn't tell me what state.

Q Cook County, Illinois?

A Yes.

Q Any other arrests that you're aware of that we have not now discussed?

A I said what state? I can't be specific. I've gotten arrested for minor things all over this country. Some of them I was guilty for, some of them I wasn't. Misdemeanors, no thefts, no robberies, not that I can remember.

Q How many felonies have you been convicted

of?

A This one.

Q Right. Only this one?

A This one. Like I said, I hired Mr. Carter who was working on that case down in Monroe County. I planned to have that case expunged too, because I can't work in a port, I can't work on any government contract as a convicted felon, I can't get a port card, I can't work building a new bridge.

I had a job as assistant superintendent through Moss Construction down there on the bridge project coming into the port of Port Everglades in Fort Lauderdale, and I couldn't work on it because I was out on bond.

Q Was the Monroe County robbery conviction, was that a felony robbery?

A Yes.

Q So that's at least two felonies then, right?

A Yes.

Q Monroe County and this one. Any others, just the two felony convictions?

A No.

Q What I said is true, only two felony convictions in your life?

A Right. A plea is not a conviction. A plea agreement is not a conviction.

Q Well, I --

A I plead -- I had to make a plea agreement because Monroe County put me in duress.

Q All right. Have you pled to any felonies that we have not discussed so far?

A No, I can't --

Q So you pled to one felony in Monroe County and you were convicted of the felony in Broward County?

A Right.

Q And no other felony convictions either by plea or by trial?

A No.

Q True?

A No, I can't remember any, no. Misdemeanors I think. I pleaded guilty to misdemeanors, but no felonies.

MR. ABBOTT: Mr. Long, I don't have any other questions for you. Thank you for your time today. I promise I'm going to return what we have marked.

COURT REPORTER: He does have the right, I believe, to read or waive.

1 MR. ABBOTT: Yes. Mr. Long, it's a little
2 bit unusual, but I assume that you have the
3 right since you are not represented by counsel
4 to ask yourself questions or to narratively
5 provide any testimony you would like in this
6 deposition. Would you -- do you have any
7 testimony you want to volunteer for the record?
8 THE WITNESS: Yes. I got in a store -- an
9 argument with the store clerk. I thought he was
10 being very petty and racial with me over 20
11 cents. I had my jewelry, and my clothing was
12 well above -- I was getting ready to go out to
13 dinner to Hard Rock Cafe, so I was -- I had my
14 dress shirt on and my necklace that I was going
15 to wear that evening, so just them two items,
16 they were in excess of thousands of dollars, and
17 he wants to sweat me for 20 cents. I felt that
18 Mr. Allen was being very racial with me,
19 prejudiced, and I told him so. And we had
20 words, and I left the store.
21 I was walking home, and I was hit from
22 behind, I remember that. And I didn't know who
23 hit me. And apparently the officer said I was
24 kicking and elbowing him while he was on top of
25 me on the ground. I don't remember. I was in

and out of consciousness. I wasn't really coherent until -- I know I got really mad when they removed my necklace from me because when I heard that officer say, Well, look at this, this is really nice, the clasp is kind of screwed up, but the necklace is really nice.

Well, she doesn't understand that I had that necklace tie-wired on my neck so it couldn't be removed because I've got a scar on my face right now from somebody in North Palm Beach hitting me and stealing a necklace with a 13-quarter carat diamond cross off my neck in a McDonald's on 10:00 on a Saturday morning. He broke the chain and ripped it right off my neck, hit me three times, and stole my necklace while I was in line trying to get some hash browns at a McDonald's. So I had that necklace tie-wired on so it could not be removed from my body unless I was dead.

Well, they thought that they could remove it without my permission because of medical reasons, they had to give me an X-ray, so they did, but they stole my necklace because the price of gold and silver is, I guess, too tempting for them, and most people have never

1 seen jewelry that exquisite in the eastern
2 United States. They don't even know what it is.
3 So they stole it.
4 The question is now, is I know who stole
5 it, and I'm going to retain services to retrieve
6 my property, so help me God, until the day I
7 die. I'm going to get my necklace back and my
8 daughter's necklace back from the Department of
9 Corrections. You can beat me up and try to kill
10 me, but you didn't succeed. Now I am going to
11 retrieve my property and get my life back which
12 you took from me by your fraud and perjury.
13 BY MR. ABBOTT:
14 Q Mr. Long, just a couple more questions I
15 forgot to ask you. Have you ever lived at 2021
16 Griffen Road?
17 A Yeah, that's my storage unit.
18 Q That's where your personal property was
19 stored?
20 A I had a mailbox there because I travel
21 around so much in construction. I got -- I could be
22 working in Fort Lauderdale one day, Palm Beach the
23 next, Orlando, Miami, the Keys. I'm constantly on
24 the road. I'm a single 48, 49, 50 year old man with
25 no responsibilities other than myself. I travel all

over this country and enjoy what I do.

Q Mr. Long, at 2021 Griffen, that is a self-storage unit?

A Yes.

Q And do you still have that self-storage unit?

A No.

Q Mr. Long, when you were arrested for this report and you -- for this incident and before you bonded out at BSO, did you get in a fight at BSO?

A Before I was what?

Q Before you bonded out when you were at BSO, did you get in a fight at BSO?

A No. While I was incarcerated?

Q Yes, sir.

A No. No.

MR. ABBOTT: All right, that's all I've got.

THE WITNESS: No disciplinary reports, here or there.

MR. ABBOTT: Mr. Long, I'm going to order this deposition transcript to be typed up. You have the right to read this transcript to --

THE WITNESS: I waive it too.

MR. ABBOTT: Would you -- well --

THE WITNESS: I don't see at this time that it would do any good to waive it. Now, I do have --

COURT REPORTER: Just repeat that.

MR. ABBOTT: That was a little bit --

THE WITNESS: At this time I don't see that it -- I need to waive anything at this time.

MR. ABBOTT: So you want to read it, is that what you're saying?

THE WITNESS: Yeah, let me read it. I don't think I said anything that is fraudulent, I don't think I said anything that's bad.

COURT REPORTER: Do you want to read it, yes or no?

THE WITNESS: I'll read it before the trial.

MR. ABBOTT: Well, you're going to probably get --

THE WITNESS: Either that or just give me -- let me hear the recording.

MR. ABBOTT: Mr. Long, she's going to probably -- if you want to read it --

THE WITNESS: If she transcripts (sic), it'll cost you a lot more money.

MR. ABBOTT: -- the court reporter will

probably give you 30 days to read it, to correct any errors you see in the transcript.

COURT REPORTER: Correct.

THE WITNESS: Well, I don't know if we got that much time. We got pretrial statements on April 15th.

MR. ABBOTT: I'm not asking you the question to trick you in any way. I'm just saying, the court reporter will need to know today whether or not you want to exercise your right to read the transcript before it becomes official or whether or not you want to waive that right.

THE WITNESS: Yeah, I'd like to read it.

(The witness was excused at 12:15 p.m.)

1 CERTIFICATE OF OATH

2 STATE OF FLORIDA)

3 COUNTY OF ALACHUA)

4

5 I, the undersigned authority, certify that

6 THOMAS LONG, personally appeared before me and was

7 duly sworn on the 20th day of February, 2012.

8

9 WITNESS my hand and official seal this 25th

10 day of February, 2012.

11

12

13

14 _____

Jacqueline Monson

15 Court Reporter

Notary Public - State of Florida

16 My commission No. EE 24900

My Commission expires:

17 January 1, 2015

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF ALACHUA)

4 I, Jacqueline Monson, Court Reporter,

5 do hereby certify that I was authorized to and

6 did stenographically report the deposition of

7 THOMAS LONG, that a review of the transcript

8 was requested; and that the foregoing

9 transcript, pages 1 through 98 is a true and

10 complete record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,

12 employee, attorney, or counsel of any of the parties,

13 nor am I a relative or employee of any of the

14 parties, attorney or counsel connected with the

15 action, nor am I financially interested in the action.

16 DATED THIS 25th day of February, 2012.

17

18

19 _____

Jacqueline Monson

20 Court Reporter

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22

23

24

25