

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION
CASE NO. 12:80648-CIV-MARRA
MAGISTRATE JUDGE P.A. WHITE

FILED by *gl* D.C.
MAY 06 2013
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

ANTHONY GEORGE EVANS,
Plaintiff,

Vs

DAVID STEED, et. al.
Defendants.

**PLAINTIFF'S VERIFIED MOTION FOR SUMMARY
JUDGMENT**

Plaintiff in the above-entitled action pursuant to Rule 56, Federal Rules of Civil Procedure, moves the court for an order directing entry of a summary judgment in favor of plaintiff. Because Plaintiff is pro se and access to the facility law library is limited, should the Court deem any portion of Plaintiff's motion insufficient, Plaintiff requests fifteen days pursuant to section 56(c) of the Federal Rules of Civil Procedure to supplement the motion.

1. Basis of the Motion:

The motion is made on the ground that the pleadings, interrogatories, and depositions filed in this action and the attached affidavit of plaintiff sufficiently establish plaintiff's cause of action to warrant direction of judgment in favor of

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plaintiff as a matter of law, and show the absence of a triable issue of fact in this action, other than as to the amount of plaintiff's damages.

2. Facts of the Motion:

The following material facts essential to plaintiff's cause of action are uncontroverted by defendant: Plaintiff's complaint alleges excessive force in his arrest. The complaint is drafted on the form required by the federal court for allegations of 42 USC 1983 violations.

Delray Beach Police Officer David Steed and his supervisor Lieutenant Michael Moschette committed an act of unnecessary violence and employed unneeded and malicious excessive force while taking the Plaintiff into custody. The officer and his supervisor battered the Plaintiff causing him to require medical treatment and injuring him for no proper purpose. Both the officer and the lieutenant have a history of investigations for excessive force, a history which the Plaintiff has only recently been able to discover and which is the subject of additional discovery requests. Officer Steed has been the subject of eight separate disciplinary actions while in the employ of the Delray Beach Police Department Lieutenant Moschette has been the subject of twenty-four investigations, including the death of a prisoner in custody, four of which resulted in adverse disciplinary action. The actions giving rise to the complaint occurred on January 26th, 2012 as the Plaintiff was exiting his yard. At the time of the encounter with Officer Steed,

the Plaintiff had a pending lawsuit against the officer for previous conduct. Officer Steed, a large individual exceeding 300 pounds, punched and kicked the Plaintiff despite the Plaintiff being a slender man of less than 180 pounds. While striking the Plaintiff, Officer Steed forced his baton into the plaintiff's mouth causing severe injury. Photographs of the Plaintiff's injuries were taken by the Delray Beach Police Department and the Palm Beach County Sheriff's Department. The Delray Beach photographs were inexplicably destroyed though the Sheriff's Department photographs were preserved and copies have been filed with the court.

In direct violation of Police Department Operating Procedure, no Use of Force report was ever filed.

3. Matters of Law to Be Argued:

The substantial matters of law to be argued, on hearing of this motion, include:

A. Excessive Force in an Arrest.

The complaint is drafted on the form required by the federal court for allegations of 42 USC 1983 violations. The crux of the argument is that the Plaintiff was severely injured unnecessarily though not resisting in any way. The use of force was excessive as the Plaintiff never resisted.

B. Qualified Immunity.

In **Fennel vs Gilstrap** 559 F.3d 1212 (US Ct of App, 11th Circ, 2009) a pretrial detainee brought Fourteenth Amendment excessive force claim against sheriff's deputy under § 1983. The United States District Court for the Northern District of Georgia, entered summary judgment for the deputy. The detainee appealed. The Court of Appeals held that once the District Court decided that detainee had shown excessive force, it could not then find that deputy was qualifiedly immune because his use of excessive force was not in violation of clearly established law. The court stated,

“In determining whether an officer has applied force maliciously and sadistically to cause harm, and thus violated the Fourteenth Amendment, a court considers: (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted upon the prisoner; (4) the extent of the threat to the safety of staff and inmates; and (5) any efforts made to temper the severity of a forceful response.”

In like manner, in **Oliver vs Fiorino** 586 F.3d 898 (US Ct of App, 11th Circ) the survivors of a pedestrian who had died after being shocked by electroshock weapon sued police officers, asserting excessive force claims under § 1983. The United States District Court for the Middle District of Florida, denied the officers' motions for

summary judgment based on qualified immunity. The officers appealed. The Court of Appeals, held that the officers' alleged actions, if proven, constituted excessive force, and the law was clearly established that officers' alleged actions were excessive under the circumstances. The court stated,

“Police officers' alleged action of continuing to shock pedestrian with electroshock weapon at least seven more times in two-minute period, after shocking him initially as he struggled to free himself from officer in street, if proven, constituted excessive force in violation of Eighth Amendment, where officers made no attempt to handcuff or arrest pedestrian during shock cycle, and pedestrian, who later died as result of shocks, was not accused of or suspected of any crime, and posed no immediate threat to officers.”

Further guidance can be derived from Galvez vs Bruce (US CT of App, 11th Circ. 2008) Arrestee brought § 1983 Fourth Amendment action against sheriff's deputy, alleging that deputy had used excessive force in effecting arrest for misdemeanors of petit theft and resisting arrest. The United States District Court for the Middle District of granted summary judgment for deputy on qualified immunity grounds. The arrestee appealed. The Court of Appeals held that fact issues existed as to whether force used by deputy in effecting arrest had been disproportionate, and the deputy was not entitled to qualified immunity. The court stated,

“Fact issues existed as to whether sheriff's deputy had used disproportionate amount of force in effecting arrest for misdemeanors of petit theft and resisting arrest without violence, precluding summary judgment for deputy in arrestee's § 1983 excessive-force suit; arrestee alleged that after being handcuffed he had been forcefully dragged outside and then repeatedly slammed into corner of concrete structure, which would constitute disproportionate force given seriousness of charged crimes and alleged lack of resistance.”

C. Recklessness and Malice.

In **Thomas vs Bryant** 614 F.3d 1288 (US Ct of App 2010) inmates incarcerated at Florida State Prison (FSP) brought § 1983 action against various officers and employees of Florida Department of Corrections (DOC), alleging that use of chemical agents on inmates with mental illness and other vulnerabilities violated Eighth Amendment's prohibition on cruel and unusual punishment. Claims against individual correctional officers responsible for administering the agents were settled. After five-day bench trial on remaining claims against Secretary of DOC and FSP warden for declaratory judgment and injunctive relief, the United States District Court for the Middle District of Florida, entered findings of fact and conclusions of law and entered final judgment and final permanent injunction in inmates' favor. The Secretary and warden appealed. The Court of Appeals, held that defendants waived any challenge to district court's

use of deliberate indifference standard, instead of higher standard applicable to challenges to excessive use of force and district court did not err in concluding that DOC's policy permitting non-spontaneous use of chemical agents, as applied to inmate with mental illness, violated the Eighth Amendment. The court instructed that,

“With respect to subjective inquiry under the Eighth Amendment, in both prison conditions and medical needs cases, relevant state of mind for purposes of liability is deliberate indifference; excessive force claims, however, require showing of heightened mental state, that defendants applied force maliciously and sadistically for the very purpose of causing harm”.

The use of police dogs is an area that the federal courts have addressed in previous opinions. As with any tort claim, the unrestrained use of an attack dog is no different than the use of a loaded trap imposed to ensnare an unsuspecting and unfortunate suspect. The force, if uncontrolled by the dog handler, is by nature excessive because the dog has no parameters on when the suspect is restrained or immobilized.

In **Crenshaw vs Lister** 556 F.3d 1283 (US Ct of App, 2009) Armed robbery suspect who had been bitten 31 times by police dog during his capture brought § 1983 action against sheriff and sheriff's deputies, alleging excessive force in violation of his Fourth and

Fourteenth Amendment rights. The United States District Court for the Middle District of Florida, denied deputies' qualified immunity-based motion for summary judgment, and deputies sought interlocutory appeal. The Court of Appeals held that Court of Appeals would not credit suspect's allegation concerning what deputies had seen at time of capture, and use of canine was objectively reasonable, considering deputies' belief that suspect was armed and dangerous, and other factors. The court stated,

“Factors in determining whether arresting officer's use of force was objectively reasonable or excessive include severity of crime at issue, whether suspect posed immediate threat to safety of officer or others, whether suspect was actively resisting arrest or attempting to evade arrest by flight, relationship between need for force and amount of force used, extent of injury inflicted, and whether force was applied in good faith or maliciously and sadistically.”

D. Failure to Intervene.

In Galvez vs Bruce 552 F. 3d 1238 (US Ct Of App, 11th Circ. 2008), Plaintiff, arrestee brought § 1983 Fourth Amendment action against sheriff's deputy, alleging that deputy had used excessive force in effecting arrest for misdemeanors of petit theft and resisting arrest. The United States District Court for the Middle District of Florida, granted summary judgment for deputy on qualified immunity grounds. Plaintiff appealed. The Eleventh Circuit Court of Appeals held that: (1)

fact issues existed as to whether force used by deputy in effecting arrest had been disproportionate, and (2) deputy was not entitled to qualified immunity.

In Dyer vs Lee 488 F 3d 876 (US Ct of App, 11th Circ, 2007) a case on all fours with the instant case, Plaintiff brought § 1983 action against sheriff's deputies, alleging use of excessive force. The United States District Court for the Middle District of Florida, granted summary judgment for defendants, and arrestee appealed. The Court of Appeals held that the action was not barred by Heck v. Humphrey, even though arrestee was convicted of resisting arrest with violence in state court, and successful § 1983 suit might have indicated that arrestee acted in self-defense. The court stated,

“Arrestee's § 1983 action for excessive force was not barred by Supreme Court's Heck v. Humphrey decision, holding that a § 1983 action for damages in which a judgment for the plaintiff would necessarily imply the invalidity of a state court conviction is barred unless the conviction has already been invalidated, even though arrestee was convicted of resisting arrest with violence in state court, and successful § 1983 suit might have indicated that arrestee acted in self-defense, an affirmative defense to charge of resisting arrest; § 1983 suit would not necessarily establish such affirmative defense, as court could not say, to a logical certainty, that every act of violence by arrestee was charged in the information, and that every such act was act of self-defense in response to officers' use of excessive force. 42 U.S.C.A. § 1983.”

In Ensley vs Soper 142 F.3d 1402, 11 Fla. L. Weekly Fed. C 1473 (US Ct of App, 11th Circ. 1998) Retail store proprietors brought § 1983 action against police officer for false arrest and use of excessive force,

in violation of their rights under Fourth and Fourteenth Amendments.

The United States District Court for the Northern District of Georgia,

No. 1:95-CV-1165-CC, Clarence Cooper, J., found that officer was

entitled to qualified immunity for false arrest claims, but it denied

officer's motion for summary judgment on excessive force claim.

Officer appealed. The Court of Appeals, Birch, Circuit Judge, held

that, under the circumstances, officer had no clearly established duty to

warn plaintiffs they were entering crime scene, nor to intervene to

protect them from alleged excessive force by other officers, thus

entitling officer to qualified immunity. The court stated,

"it is clear that "[i]f a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983." Byrd v. Clark, 783 F.2d 1002, 1007 (11th Cir.1986)... Further, in order for an officer to be liable for failing to stop police brutality, the officer must be "in a position to intervene." Id.; see also Thompson v. Boggs, 33 F.3d 847, 857 (7th Cir.1994)."

E. Damages and Punitive Damages.

In Myers vs Central Florida Investments, Inc. 592 F.3d 1201 (US Ct of App, 11th Circ, 2010) a former employee brought suit against her former boss and his company in state court alleging state and federal claims for sexual harassment and state law battery claim. Following removal, the United States District Court for the Middle District of Florida, granted defendants summary judgment on sexual

harassment claims, and remanded battery claim to state court. Employee appealed. The Court of Appeals, reversed and remanded. The District Court found sexual harassment claims to be time-barred, but awarded employee compensatory and punitive damages against both defendants for battery. Defendants appealed, and employee cross-appealed. The Court of Appeals, held that: the award of compensatory damages equal to employee's earnings during year of her discharge was not abuse of discretion and the award of punitive damages award in amount of statutory cap of \$500,000 was not excessive and punitive award did not violate due process. The court stated,

“In determining whether award of punitive damages is grossly excessive, in violation of due process, court considers: (1) degree of reprehensibility of defendant's actions; (2) disparity between harm or potential harm suffered by plaintiff and his punitive damages award; and (3) difference between this remedy and civil penalties authorized or imposed in comparable cases.”

WHEREFORE, THE Plaintiff requests Summary Judgment for the Plaintiff as there are no material issues of fact and the Plaintiff is entitled to judgment as a matter of law.

UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C.A. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2013.



ANTHONY EVANS

DC# 187491

Lawtey CI

7819 NW 228th Street

Raiford, Florida 32026

Enclosures

- a. **Exhibit 1** Attached Computer docket print-out dated 10/10/2012 pertaining to Michael Moschette as consisting of 24 dated incidents from 9/9/1995 until 6/10/2012.
- b. **Exhibit 2** Attached Computer docket print-out dated 1/11/2011 pertaining to David Steed as consisting of 8 dated incidents from 9/29/2008 to 12/27/2009.
- c. **Exhibit 3** Six Photos from the Sheriff's office, Palm Beach County of the Plaintiff taken 1/26/12 identified as presented in the Plaintiff's notice of Filing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was provided to

C. C. Carter, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray Beach, Florida 33344 and the Clerk of the Court, United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, Florida 33128 this 1 day of May, 2013.

Anthony Evans
ANTHONY EVANS
DC# 187491
Lawtey CI
7819 NW 228th Street
Raiford, Florida 32026

Invest. Actions By Employee

Report Date: 01/11/2011

Page: 1

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: E Date: 11/20/2008 Action:NONE Final Dispo: EXONERATED	SR08084	10/16/2006	09/29/2008
			Rule/Reg: RR25 Charge:	-1
944	STEED, DAVID (PTL) Type: ADM Desc: REPORT FAIL SUBMIT Statute: Dispo: S Date: 06/25/2007 Action:TRAINING Final Dispo: TRAINING	SR07046	05/16/2007	05/15/2007
			Rule/Reg: RR1 Charge:	-2
944	STEED, DAVID (CIV) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 11/19/2009 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR08081	10/09/2008	10/09/2008
			Rule/Reg: RR26 Charge:	-3
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: S Date: 11/24/2008 Action:LETTER REP Final Dispo: LETTER REPRIMAND	SR08085	10/16/2008	10/06/2008
			Rule/Reg: RR25 Charge:	-4
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 FAILURE TO REPORT Statute: Dispo: S Date: 05/01/2010 Action:WRITEN REP Final Dispo: SUSTAINED	SR09112B	12/29/2009	12/27/2009
			Rule/Reg: R & R #1 Charge:	-5
944	STEED, DAVID (PTL) Type: ADM Desc: FAILURE TO REPORT DAMAGE TO VEHICLE Statute: Dispo: N Date: 04/02/2010 Action:NONE Final Dispo: NOT SUSTAINED	SR10009	02/06/2010	02/02/2010
			Rule/Reg: R & R #1 Charge:	-6
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: N Date: 08/11/2010 Action:NONE Final Dispo: NON- SUSTAINED	SR10045	06/22/2010	06/17/2010
			Rule/Reg: R & R #23 Charge:	-7
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 IMPROPER RADIO PROCEDURE Statute: Dispo: S Date: 05/01/2010 Action:VERBAL REP. Final Dispo: SUSTAINED	SR09112A	12/29/2010	12/27/2009
			Rule/Reg: R & R #1 Charge:	-8

Investigations By Employee

Report Date: 10/10/2012

Page: 1

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: UFI Desc: DEATH IN CUSTODY Statute: Dispo: E Date: 12/12/1995 Action:NONE Final Dispo: EXONERATED	IA95044	09/11/1995	09/09/1995
			Rule/Reg: RR5 Charge: NONE	-1
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: UNSAT PERFORM Statute: Dispo: E Date: 07/14/1996 Action:NONE Final Dispo: EXONERATED	SR96089A	05/26/1996	05/25/1996
			Rule/Reg: RR1 Charge:	-2
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: DETAIL O/D FTA Statute: Dispo: S Date: 01/23/1997 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR96158	12/09/1996	10/03/1996
			Rule/Reg: RR1 Charge:	-3
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: COMMENT IMPROPER Statute: Dispo: U Date: 06/27/1997 Action:NONE Final Dispo: UNFOUNDED	SR97053	05/28/1997	05/12/1997
			Rule/Reg: RR23 Charge:	-4
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: CONDUCT IMPROPER Statute: Dispo: U Date: 09/29/1997 Action:NONE Final Dispo: UNFOUNDED	SR97061	07/12/1997	07/11/1997
			Rule/Reg: RR23 Charge:	-5
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 12/01/1997 Action:VRBL COUNSEL Final Dispo: VERBAL COUNSELING	SR97099	11/04/1997	11/04/1997
			Rule/Reg: RR26 Charge:	-6
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DISCOURTESY Statute: Dispo: N Date: 01/06/1998 Action:NONE Final Dispo: NOT SUSTAINED	SR97112	12/02/1997	12/11/1997
			Rule/Reg: RR23 Charge:	-7
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: CONDUCT PROFESSIONAL Statute: Dispo: E Date: 04/24/1998 Action:NONE Final Dispo: EXONERATED	IA98011A	03/11/1998	03/11/1998
			Rule/Reg: RR30 Charge:	-8

Investigations By Employee

Report Date: 10/10/2012

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: THEFT Statute: Dispo: E Date: 10/12/1998 Action:NONE Final Dispo: EXONERATED	IA98022B	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE CT 1 Statute: Dispo: U Date: 10/12/1998 Action:NONE Final Dispo: UNFOUNDED	IA98022C	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE CT 2 Statute: Dispo: U Date: 10/12/1998 Action:NONE Final Dispo: UNFOUNDED	IA98022D	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: REPORT FALSE Statute: Dispo: E Date: 10/12/1998 Action:NONE Final Dispo: EXONERATED	IA98022E	08/17/1998	08/14/1998
			Rule/Reg: RR20 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: U Date: 10/08/1998 Action:NONE Final Dispo: UNFOUNDED	SR98069	08/28/1998	08/27/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: U Date: 04/12/1999 Action:NONE Final Dispo: UNFOUNDED	SR99018A	02/25/1999	02/23/1999
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: PERJURY Statute: Dispo: E Date: 11/17/1999 Action:NONE Final Dispo: EXONERATED	IA99006A	04/14/1999	01/05/1999
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: PERJURY SUBORNATION Statute: Dispo: E Date: 11/17/1999 Action:NONE Final Dispo: EXONERATED	IA99006B	04/14/1999	01/05/1999
			Rule/Reg: RR30 Charge:	

9
-10
-11
312

Investigations By Employee

Report Date: 10/10/2012

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DEPO PREPAREDNESS Statute: Dispo: E Date: 11/19/1999 Action:NONE Final Dispo: EXONERATED	IA99006C	04/14/1999	01/05/1999
			Rule/Reg: RR1 Charge:	(12)
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DISCOURTESY Statute: Dispo: E Date: 03/28/2000 Action:NONE Final Dispo: EXONERATED	SR00015	02/14/2000	02/12/2000
			Rule/Reg: RR23 Charge:	-13
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: TRIP TICKET PREP Statute: Dispo: S Date: 06/28/2001 Action:VRBL COUNSEL Final Dispo: VERBAL COUNSELING	SR01030A	03/24/2001	03/23/2001
			Rule/Reg: RR1 Charge:	} 14
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: VEHICLE DAMAGE Statute: Dispo: U Date: 06/28/2001 Action:NONE Final Dispo: UNFOUNDED	SR01030B	03/24/2001	
			Rule/Reg: RR29 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: OC AEROSOL Statute: Dispo: E Date: 11/05/2001 Action:NONE Final Dispo: EXONERATED	SR01064B	09/06/2001	09/04/2001
			Rule/Reg: RR5 Charge:	-15
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 04/19/2002 Action:NONE Final Dispo: EXONERATED	IA02001A	01/30/2002	01/30/2002
			Rule/Reg: RR5 Charge:	-16
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 05/30/2002 Action:NONE Final Dispo: EXONERATED	IA02007	04/16/2002	04/16/2002
			Rule/Reg: RR5 Charge:	17
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: ACCIDENT Statute: Dispo: E Date: 03/30/2006 Action:NONE Final Dispo: EXONERATED	SR06020	02/16/2006	02/15/2006
			Rule/Reg: RR26 Charge:	18

Investigations By Employee

Report Date: 10/10/2012

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 10/09/2006 Action:NONE Final Dispo: EXONERATED	IA06005	05/13/2006	05/10/2006
			Rule/Reg: RR5 Charge:	19
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: ACCIDENT Statute: Dispo: S Date: 05/21/2007 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR07032	04/06/2007	04/06/2007
			Rule/Reg: RR26 Charge:	20
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 12/11/2007 Action:NONE Final Dispo: EXONERATED	IA07014	08/15/2007	04/27/2007
			Rule/Reg: RR5 Charge:	21
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: HOSTILE WORK ENVIRONMENT Statute: Dispo: U Date: 03/13/2008 Action:NONE Final Dispo: UNFOUNDED	IA07021	09/21/2007	
			Rule/Reg: RR10 Charge:	22
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 03/17/2008 Action:NONE Final Dispo: EXONERATED	IA07024	12/22/2007	12/21/2007
			Rule/Reg: RR5 Charge:	23
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: R&R#1 DUTY RESP/ACCIDENTAL TASER DISCHARGE Statute: Dispo: S Date: 07/02/2012 Action:VERBAL & REIMB Final Dispo: SUSTAINED	SR12024	06/12/2012	06/10/2012
			Rule/Reg: R&R#1 Charge:	24

Investigations Printed = 30

Investigations By Employee

Report Date: 01/11/2011

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
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Investigations Printed = 8

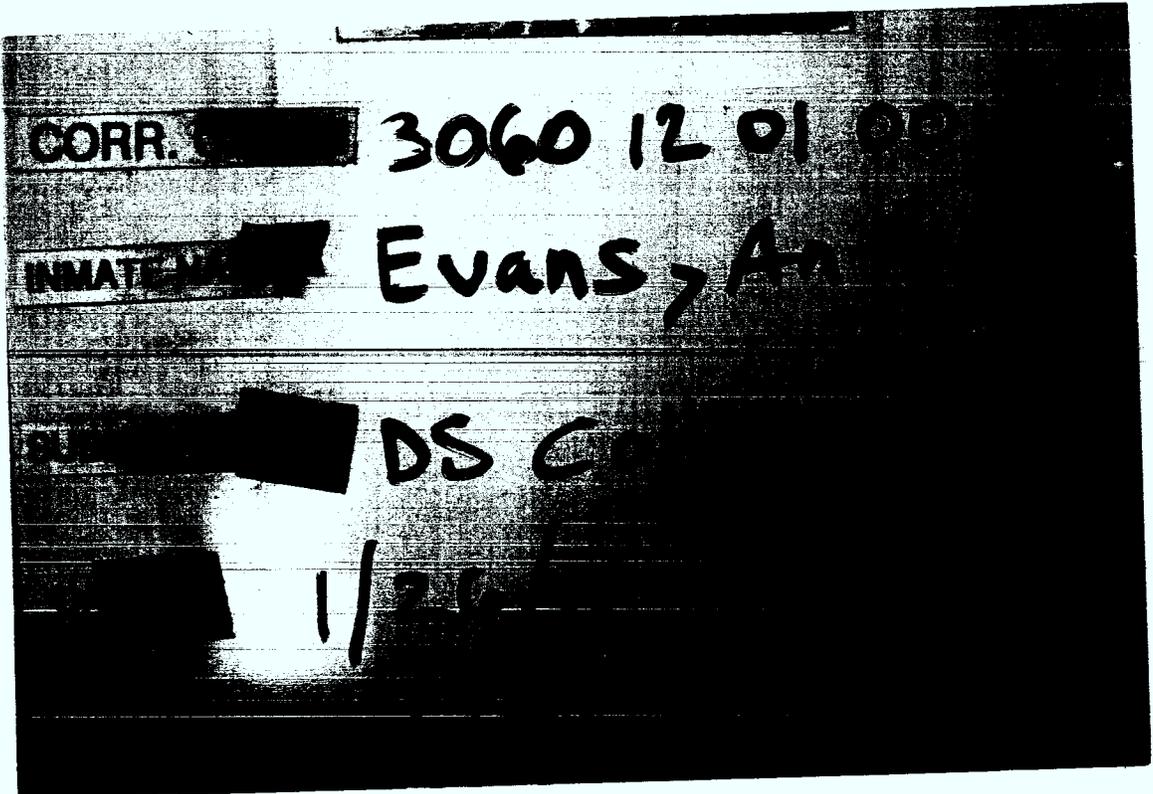
Total 8 Cases

PALM BEACH COUNTY SHERIFF'S OFFICE 180566

11/15, 2012
 Received from ANTHONY ENIGUS
 the sum of \$10⁰⁰ as follows:
 Fine \$ _____ Defendant 44 3060 12-01-151
 Deposit \$ _____ Account of _____
 Costs \$ _____ Case of _____ vs. _____ No. _____
 Suspense \$ _____ Case of _____ vs. _____ No. _____
 Cash Bond \$ _____ Bond Nos. _____
 Other \$ _____ For 5 4x6 PHOTOS
 Total \$ _____
 Cash _____ Check M.O.
 Entered _____ Sheriff By Jul Rogers

PBSO #0081A REV. 11/01

TO INDIVIDUAL







United States District Court
Southern District of Florida

Case Number: 12-80648 - CV - KAM / PAW

SUPPLEMENTAL ATTACHMENT(S)

Please refer to the supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

NOT SCANNED

Due to Poor Quality

Bound Extradition Papers

Photographs

Surety Bond (Original or Letter of Understanding)

CD or DVD (Court Order or Trial Purposes only)

Other: _____

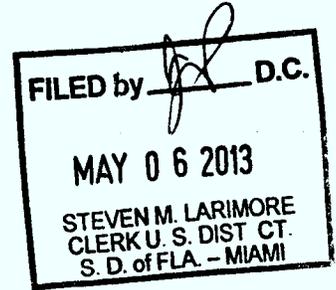
SCANNED

But Poor Quality / Pictures

Habeas Cases (State Court Record/Transcript)

Date: 5/6/13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION
CASE NO. 12:80648-CIV-MARRA
MAGISTRATE JUDGE P.A. WHITE



ATHONY GEORGE EVANS,
Plaintiff,

Vs

DAVID STEED, et. al.
Defendants.

REQUEST FOR ADMISSIONS

Plaintiff, **ATHONY GEORGE EVANS**, requests pursuant to Federal R. Civ. P. 36, that you, **DAVID STEED**, before date within 30 days if the request is made on a party other than a defendant or, if request served on a defendant, make the following admissions for the purpose of this action only, and subject to all pertinent objections as to the admissibility of such admissions that may be interposed at the trial:

1. **Each of the following documents, copies of which are attached to this request, is genuine:**

[description of each document].

- a. Attached Computer docket print-out dated 10/10/2012 pertaining to Michael Moschette as **“Exhibit 1”** consisting of 24 dated incidents from 9/9/1995 until 6/10/2012.

LEGAL MAIL
PROVIDED TO LAWTEY C.I.
5113 FOR MAILING.
AE

b. Attached Computer docket print-out dated 1/11/2011 pertaining to David Steed as “**Exhibit 2**” consisting of 8 dated incidents from 9/29/2008 to 12/27/2009.

c. Six Photos from the Sheriff’s office, Palm Beach County of the Plaintiff taken 1/26/12 identified as “**Exhibit 3**” presented in the Plaintiff’s notice of Filing.

2. Each of the following statements are true:

a. Delray Beach Police Officer David Steed and his supervisor Lieutenant Michael Moschette committed an act of unnecessary violence and employed unneeded and malicious excessive force while taking the Plaintiff into custody.

b. The officer and his supervisor battered the Plaintiff causing him to require medical treatment and injuring him for no proper purpose.

c. Both the officer and the lieutenant have a history of investigations for excessive force, a history which the Plaintiff has only recently been able to discover and which is the subject of additional discovery requests.

d. Officer Steed has been the subject of eight separate disciplinary actions while in the employ of the Delray Beach Police Department Lieutenant Moschette has been the subject of twenty-four investigations, including the death of a prisoner in custody, four of which resulted in adverse disciplinary action.

- e. The actions giving rise to the complaint occurred on January 26th, 2012 as the Plaintiff was exiting his yard. At the time of the encounter with Officer Steed, the Plaintiff had a pending lawsuit against the officer for previous conduct.
- f. Officer Steed, a large individual exceeding 300 pounds, punched and kicked the Plaintiff despite the Plaintiff being a slender man of less than 180 pounds.
- g. While striking the Plaintiff, Officer Steed forced his baton into the plaintiff's mouth causing severe injury.
- h. Photographs of the Plaintiff's injuries were taken by the Delray Beach Police Department and the Palm Beach County Sheriff's Department.
- i. The Delray Beach photographs were inexplicably destroyed though the Sheriff's Department photographs were preserved and copies have been filed with the court.
- j. In direct violation of Police Department Operating Procedure, no Use of Force report was ever filed.

Dated: May 1, 2013

Anthony Evans

ANTHONY EVANS

DC# 187491

Lawtey CI

7819 NW 228th Street

Raiford, Florida 32026

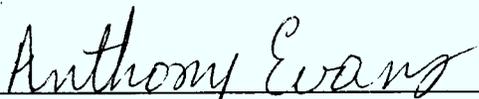
Enclosures

- a. **Exhibit 1** Attached Computer docket print-out dated 10/10/2012 pertaining to Michael Moschette as consisting of 24 dated incidents from 9/9/1995 until 6/10/2012.
- b. **Exhibit 2** Attached Computer docket print-out dated 1/11/2011 pertaining to David Steed as consisting of 8 dated incidents from 9/29/2008 to 12/27/2009.
- c. **Exhibit 3** Six Photos from the Sheriff's office, Palm Beach County of the Plaintiff taken 1/26/12 identified as presented in the Plaintiff's notice of Filing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was provided to

, Legal Mail Officer, Lawtey CI, 7819 NW 228th Street, Raiford, Florida 32026 for delivery by first class US mail to Catherine M. Kozol, Esquire, Delray Beach Police Department, 300 West Atlantic Avenue, Delray Beach, Florida 33344 and the Clerk of the Court, United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, Florida 33128 this 1 day of May, 2013.


ANTHONY EVANS
DC# 187491
Lawtey CI
7819 NW 228th Street
Raiford, Florida 32026

Investigations By Employee

Report Date: 10/10/2012

Page: 1

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: UFI Desc: DEATH IN CUSTODY Statute: Dispo: E Date: 12/12/1995 Action:NONE Final Dispo: EXONERATED	IA95044	09/11/1995	09/09/1995
			Rule/Reg: RR5 Charge: NONE	-1
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: UNSAT PERFORM Statute: Dispo: E Date: 07/14/1996 Action:NONE Final Dispo: EXONERATED	SR96089A	05/26/1996	05/25/1996
			Rule/Reg: RR1 Charge:	-2
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: DETAIL O/D FTA Statute: Dispo: S Date: 01/23/1997 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR96158	12/09/1996	10/03/1996
			Rule/Reg: RR1 Charge:	-3
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: COMMENT IMPROPER Statute: Dispo: U Date: 06/27/1997 Action:NONE Final Dispo: UNFOUNDED	SR97053	05/28/1997	05/12/1997
			Rule/Reg: RR23 Charge:	-4
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: CONDUCT IMPROPER Statute: Dispo: U Date: 09/29/1997 Action:NONE Final Dispo: UNFOUNDED	SR97061	07/12/1997	07/11/1997
			Rule/Reg: RR23 Charge:	-5
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 12/01/1997 Action:VRBL COUNSEL Final Dispo: VERBAL COUNSELING	SR97099	11/04/1997	11/04/1997
			Rule/Reg: RR26 Charge:	-6
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DISCOURTESY Statute: Dispo: N Date: 01/06/1998 Action:NONE Final Dispo: NOT SUSTAINED	SR97112	12/02/1997	12/11/1997
			Rule/Reg: RR23 Charge:	-7
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: CONDUCT PROFESSIONAL Statute: Dispo: E Date: 04/24/1998 Action:NONE Final Dispo: EXONERATED	IA98011A	03/11/1998	03/11/1998
			Rule/Reg: RR30 Charge:	-8

Investigations By Employee

Report Date: 10/10/2012

Page: 2

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: THEFT Statute: Dispo: E Date: 10/12/1998 Action:NONE Final Dispo: EXONERATED	IA98022B	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE CT 1 Statute: Dispo: U Date: 10/12/1998 Action:NONE Final Dispo: UNFOUNDED	IA98022C	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE CT 2 Statute: Dispo: U Date: 10/12/1998 Action:NONE Final Dispo: UNFOUNDED	IA98022D	08/17/1998	08/14/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: REPORT FALSE Statute: Dispo: E Date: 10/12/1998 Action:NONE Final Dispo: EXONERATED	IA98022E	08/17/1998	08/14/1998
			Rule/Reg: RR20 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: U Date: 10/08/1998 Action:NONE Final Dispo: UNFOUNDED	SR98069	08/28/1998	08/27/1998
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: U Date: 04/12/1999 Action:NONE Final Dispo: UNFOUNDED	SR99018A	02/25/1999	02/23/1999
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: PERJURY Statute: Dispo: E Date: 11/17/1999 Action:NONE Final Dispo: EXONERATED	IA99006A	04/14/1999	01/05/1999
			Rule/Reg: RR5 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: PERJURY SUBORNATION Statute: Dispo: E Date: 11/17/1999 Action:NONE Final Dispo: EXONERATED	IA99006B	04/14/1999	01/05/1999
			Rule/Reg: RR30 Charge:	

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-10
-11
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Investigations By Employee

Report Date: 10/10/2012

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DEPO PREPAREDNESS Statute: Dispo: E Date: 11/19/1999 Action:NONE Final Dispo: EXONERATED	IA99006C	04/14/1999	01/05/1999
			Rule/Reg: RR1 Charge:	(12)
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: DISCOURTESY Statute: Dispo: E Date: 03/28/2000 Action:NONE Final Dispo: EXONERATED	SR00015	02/14/2000	02/12/2000
			Rule/Reg: RR23 Charge:	-13
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: TRIP TICKET PREP Statute: Dispo: S Date: 06/28/2001 Action:VRBL COUNSEL Final Dispo: VERBAL COUNSELING	SR01030A	03/24/2001	03/23/2001
			Rule/Reg: RR1 Charge:	} 14
642	MOSCHETTE, MICHAEL (PTL) Type: ADM Desc: VEHICLE DAMAGE Statute: Dispo: U Date: 06/28/2001 Action:NONE Final Dispo: UNFOUNDED	SR01030B	03/24/2001	
			Rule/Reg: RR29 Charge:	
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: OC AEROSOL Statute: Dispo: E Date: 11/05/2001 Action:NONE Final Dispo: EXONERATED	SR01064B	09/06/2001	09/04/2001
			Rule/Reg: RR5 Charge:	-15
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 04/19/2002 Action:NONE Final Dispo: EXONERATED	IA02001A	01/30/2002	01/30/2002
			Rule/Reg: RR5 Charge:	-16
642	MOSCHETTE, MICHAEL (PTL) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 05/30/2002 Action:NONE Final Dispo: EXONERATED	IA02007	04/16/2002	04/16/2002
			Rule/Reg: RR5 Charge:	17
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: ACCIDENT Statute: Dispo: E Date: 03/30/2006 Action:NONE Final Dispo: EXONERATED	SR06020	02/16/2006	02/15/2006
			Rule/Reg: RR26 Charge:	18

Investigations By Employee

Report Date: 10/10/2012

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 10/09/2006 Action:NONE Final Dispo: EXONERATED	IA06005	05/13/2006	05/10/2006
			Rule/Reg: RR5 Charge:	19
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: ACCIDENT Statute: Dispo: S Date: 05/21/2007 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR07032	04/06/2007	04/06/2007
			Rule/Reg: RR26 Charge:	20
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 12/11/2007 Action:NONE Final Dispo: EXONERATED	IA07014	08/15/2007	04/27/2007
			Rule/Reg: RR5 Charge:	21
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: HOSTILE WORK ENVIRONMENT Statute: Dispo: U Date: 03/13/2008 Action:NONE Final Dispo: UNFOUNDED	IA07021	09/21/2007	
			Rule/Reg: RR10 Charge:	22
642	MOSCHETTE, MICHAEL (SGT) Type: CIT Desc: EXCESSIVE FORCE Statute: Dispo: E Date: 03/17/2008 Action:NONE Final Dispo: EXONERATED	IA07024	12/22/2007	12/21/2007
			Rule/Reg: RR5 Charge:	23
642	MOSCHETTE, MICHAEL (SGT) Type: ADM Desc: R&R#1 DUTY RESP/ACCIDENTAL TASER DISCHARGE Statute: Dispo: S Date: 07/02/2012 Action:VERBAL & REIMB Final Dispo: SUSTAINED	SR12024	06/12/2012	06/10/2012
			Rule/Reg: R&R#1 Charge:	24

Investigations Printed = 30

Invest. tions By Employee

Report Date: 01/11/2011

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Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: E Date: 11/20/2008 Action:NONE Final Dispo: EXONERATED	SR08084	10/16/2006	09/29/2008
			Rule/Reg: RR25 Charge:	-1
944	STEED, DAVID (PTL) Type: ADM Desc: REPORT FAIL SUBMIT Statute: Dispo: S Date: 06/25/2007 Action:TRAINING Final Dispo: TRAINING	SR07046	05/16/2007	05/15/2007
			Rule/Reg: RR1 Charge:	-2
944	STEED, DAVID (CIV) Type: ADM Desc: ACCIDENT AT FAULT Statute: Dispo: S Date: 11/19/2009 Action:VRBL REP Final Dispo: VERBAL REPRIMAND	SR08081	10/09/2008	10/09/2008
			Rule/Reg: RR26 Charge:	-3
944	STEED, DAVID (CIV) Type: ADM Desc: COURT FTA Statute: Dispo: S Date: 11/24/2008 Action:LETTER REP Final Dispo: LETTER REPRIMAND	SR08085	10/16/2008	10/06/2008
			Rule/Reg: RR25 Charge:	-4
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 FAILURE TO REPORT Statute: Dispo: S Date: 05/01/2010 Action:WRITEN REP Final Dispo: SUSTAINED	SR09112B	12/29/2009	12/27/2009
			Rule/Reg: R & R #1 Charge:	-5
944	STEED, DAVID (PTL) Type: ADM Desc: FAILURE TO REPORT DAMAGE TO VEHICLE Statute: Dispo: N Date: 04/02/2010 Action:NONE Final Dispo: NOT SUSTAINED	SR10009	02/06/2010	02/02/2010
			Rule/Reg: R & R #1 Charge:	-6
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #23 CONDUCT TOWARDS PUBLIC Statute: Dispo: N Date: 08/11/2010 Action:NONE Final Dispo: NON- SUSTAINED	SR10045	06/22/2010	06/17/2010
			Rule/Reg: R & R #23 Charge:	-7
944	STEED, DAVID (PTL) Type: CIT Desc: R & R #1 IMPROPER RADIO PROCEDURE Statute: Dispo: S Date: 05/01/2010 Action:VERBAL REP. Final Dispo: SUSTAINED	SR09112A	12/29/2010	12/27/2009
			Rule/Reg: R & R #1 Charge:	-8

Investigations By Employee

Report Date: 01/11/2011

Page: 2

Off ID	Employee Name/Rank	Case Nbr	Rpt Date	Occur Date
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Investigations Printed = 8

Total 8 Cases

PALM BEACH COUNTY SHERIFF'S OFFICE 180566

1/15, 2012

Received from ANTHONY EVANS

The sum of 3000.00 as follows:

Fine	\$		Defendant	<u>3060 12 01 51</u>
Deposit	\$		Account of	
Costs	\$		Case of	vs. No.
Suspense	\$		Case of	vs. No.
Cash Bond	\$		Bond Nos.	
Other	\$		For	<u>3 420 photos</u>
Total	\$			
Cash		Check	<u>M.O.</u>	
Entered			Sheriff By	<u>Joe Rogers</u>

PBSO 90681A REV. 11.01

TO INDIVIDUAL

CORR. CASE# 3060 12 01 00151

INMATE NAME Evans, Anthony

SUBMITTER DS Collins 7622

DATE 1/26/12

TIN 0417





United States District Court
Southern District of Florida

Case Number: 12-80648-CV-KAM/PAW

SUPPLEMENTAL ATTACHMENT(S)

Please refer to the supplemental paper "court file" in the division where the Judge is chambered. These attachments must not be placed in the "chron file".

NOT SCANNED

Due to Poor Quality

Bound Extradition Papers

Photographs

Surety Bond (Original or Letter of Understanding)

CD or DVD (Court Order or Trial Purposes only)

Other: _____

SCANNED

But Poor Quality

Habeas Cases (State Court Record/Transcript)

Date: 5/6/13