

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 18-13902-E

VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Plaintiff-Appellant,

v.

SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County and CHRISTOPHER NEWMAN,

Defendants/Appellees.

Appeal from the United States District Court
For the Southern District of Florida Fort Pierce Division

APPENDIX TO APPELLANT'S INITIAL BRIEF

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U.S. District Court
Southern District of Florida (Ft Pierce)
CIVIL DOCKET FOR CASE #: 2:16-cv-14072-RLR

Bryant v. Mascara et al
Assigned to: Judge Robin L. Rosenberg
Referred to: Magistrate Judge Bruce E. Reinhart
Case in other court: USCA, 17-12547-A
USCA, 18-13902-E
19th Judicial Circuit Court,
562016CA000029 (OC)
Cause: 28:1441 Notice of Removal

Date Filed: 03/09/2016
Date Terminated: 05/30/2018
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Viola Bryant
*as Personal Representative of the
Estate of Gregory Vaughn Hill, Jr.*

represented by **John Michael Phillips**
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V.

Defendant

Sheriff Ken Mascara
*in his official Capacity as Sheriff of St.
Lucie County*

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Defendant

Christopher Newman
an individual

represented by **Bruce Wallace Jolly**
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ATTORNEY TO BE NOTICED

Gregory James Jolly
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew Joseph Wildner
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ATTORNEY TO BE NOTICED

Summer Marie Barranco
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/09/2016	<u>1</u>	NOTICE OF REMOVAL (STATE COURT COMPLAINT) Filing fees \$ 400.00 receipt number 113C-8551811, filed by Christopher Newman, Ken Mascara. (Attachments: # <u>1</u> Exhibit)(Barranco, Summer) (Entered: 03/09/2016)
03/09/2016	<u>2</u>	Judge Assignment to Judge Robin L. Rosenberg and Ch. Magistrate Judge Frank J. Lynch, Jr (jc) (Entered: 03/09/2016)
03/09/2016	<u>3</u>	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge Frank J. Lynch is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (jc) (Entered: 03/09/2016)
03/09/2016	<u>4</u>	Clerks Notice to Filer re: Electronic Case. No Civil Cover Sheet. Filer is instructed to file a Notice (Other) with the Civil Cover Sheet attached within 24 hours of the notice. (jc) (Entered: 03/09/2016)
03/10/2016	<u>5</u>	NOTICE by Ken Mascara, Christopher Newman re <u>1</u> Notice of Removal (State Court Complaint), 4 Clerks Notice to Filer re: Electronic Case (Attachments: # <u>1</u> Civil Cover Sheet) (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	<u>6</u>	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Christopher Newman. (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	<u>7</u>	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Ken Mascara. (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	<u>8</u>	ORDER SETTING STATUS CONFERENCE, CALENDAR CALL, AND TRIAL DATE AND ORDER OF REFERENCE TO MAGISTRATE: (Pretrial Conference set for 3/1/2017 09:30 AM before Judge Robin L. Rosenberg., Jury Trial set for 4/10/2017 09:00 AM in Fort Pierce Division before Judge Robin L. Rosenberg., Calendar Call set for 4/5/2017 09:00 AM before Judge Robin L. Rosenberg.), ORDER REFERRING CASE to Magistrate Judge Frank J. Lynch, Jr. for Discovery Matters Signed by Judge Robin L. Rosenberg on 3/10/2016. (yha) (Entered: 03/11/2016)
03/11/2016	<u>9</u>	ORDER SETTING TELEPHONIC SCHEDULING CONFERENCE AND ORDER REQUIRING JOINT SCHEDULING REPORT: Scheduling Conference set for 5/11/2016 02:00 PM before Ch. Magistrate Judge Frank J. Lynch Jr.. -Joint Scheduling Report due by 5/9/2016 Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 3/11/2016. (yha) (Entered: 03/11/2016)
03/17/2016	<u>10</u>	RESPONSE/REPLY to <u>7</u> ANSWER to Complaint (Notice of Removal) <i>Reply to Affirmative Defenses of Defendant Mascara</i> by Viola Bryant. (Phillips, John) (Entered: 03/17/2016)
03/17/2016	<u>11</u>	

		RESPONSE/REPLY to <u>6</u> ANSWER to Complaint (Notice of Removal) <i>Reply to Affirmative Defenses of Defendant Newman</i> by Viola Bryant. (Phillips, John) (Entered: 03/17/2016)
05/09/2016	<u>12</u>	SCHEDULING REPORT - Rule 26(f) by Viola Bryant (Phillips, John) (Entered: 05/09/2016)
05/11/2016	<u>13</u>	Minute Entry for proceedings held before Ch. Magistrate Judge Frank J. Lynch, Jr: Scheduling Conference held on 5/11/2016. Scheduling Order entered (Digital 140519.) (cga) (Entered: 05/11/2016)
05/11/2016	<u>14</u>	ORDER SETTING PRE - TRIAL SCHEDULE AND ORDER REFERRING CASE TO MEDIATION: (Amended Pleadings due by 6/10/2016., Discovery due by 11/11/2016., Fact Discovery due by 9/16/2016., Joinder of Parties due by 6/10/2016., Mediation Deadline 2/10/2017., In Limine Motions due by 12/9/2016., Pretrial Dispositive Motions due by 12/9/2016., Joint Pretrial Stipulation due by 3/13/2017.), ORDER REFERRING CASE to Mediation. Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 5/11/2016. (jas) (Entered: 05/12/2016)
05/20/2016	<u>15</u>	Initial Disclosure(s) of Plaintiff's Initial Rule 26(A)(1) Disclosure by Viola Bryant (Phillips, John) (Entered: 05/20/2016)
05/26/2016	<u>16</u>	NOTICE by Viola Bryant of <i>Selection of Mediator</i> (Phillips, John) (Entered: 05/26/2016)
05/27/2016	17	Clerks Notice to Filer re <u>16</u> Notice (Other). Mediator Not Added; ERROR - The Filer failed to add all parties to the case. Filer is instructed to file a Notice of Entry of Parties and add the mediator. (asl) (Entered: 05/27/2016)
06/02/2016	<u>18</u>	Notice of Entry of Parties Listed NOTE: New Filer(s) will appear twice, since they are also a new party in the case. New Filer(s)/Party(s): E. Hugh Chappell. (Phillips, John) (Entered: 06/02/2016)
09/16/2016	<u>19</u>	Plaintiff's MOTION for Extension of Time to Complete Discovery by Viola Bryant. (Attachments: # <u>1</u> Text of Proposed Order)(Phillips, John). Added MOTION to Continue on 9/19/2016 (asl). (Entered: 09/16/2016)
09/19/2016	20	Clerks Notice to Filer re <u>19</u> Plaintiff's MOTION for Extension of Time to Complete Discovery <i>and to Continue Trial</i> . Motion with Multiple Reliefs Filed as One Relief; ERROR - The Filer selected only one relief event and failed to select the additional corresponding events for each relief requested in the motion. The docket entry was corrected by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (asl) (Entered: 09/19/2016)
09/20/2016	21	PAPERLESS ORDER Setting Hearing on <u>19</u> Plaintiff's MOTION for Extension of Time to Complete Discovery and to Continue Trial for 9/21/2016 02:00 PM in Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear telephonically but must file a notice of telephonic appearance at least one (1) day prior to the hearing. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. 1. Toll-Free Number: 1 (877) 873-8018; 2. Access Code: 9890482; 3. Security Code: 4008.

		Signed by Judge Robin L. Rosenberg on 9/20/2016. (as00) (Entered: 09/20/2016)
09/20/2016	<u>22</u>	NOTICE by Ken Mascara, Christopher Newman re 21 Order Setting Hearing on Motion,, (Barranco, Summer) (Entered: 09/20/2016)
09/20/2016	<u>23</u>	NOTICE by Viola Bryant re 21 Order Setting Hearing on Motion,, (Phillips, John) (Entered: 09/20/2016)
09/21/2016	<u>24</u>	Paperless Minute Entry for proceedings held before Judge Robin L. Rosenberg: Telephonic Motion Hearing held on 9/21/2016 re <u>19</u> Plaintiff's MOTION for Extension of Time to Complete Discovery <i>and to Continue Trial</i> MOTION to Continue filed by Viola Bryant. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov (lw1) (Entered: 09/21/2016)
09/21/2016	<u>25</u>	PAPERLESS ORDER directing the parties to submit a Proposed Amended Pre-Trial Plan to the Court's e-mail address in Word format. For purposes of the Proposed Amended Pre-Trial Plan, the deadline for dispositive motions shall be re-set to December 30, 2016. The parties' Proposed Amended Pre-Trial Plan may adjust all deadlines preceding the new dispositive motion deadline of December 30, 2016. All deadlines following the dispositive motion deadline, including the date of the trial itself, shall remain as set in [DE 14] Order Setting Pre-Trial Schedule and Order Referring Case to Mediation. The parties are also directed to file a Discovery Plan in a separate filing. This Discovery Plan shall contain a detailed schedule for the first phase of depositions, which, as discussed at the Status Conference held on September 19, 2016, will include approximately 6 depositions by Plaintiff and approximately 3 depositions by Defendant. The Discovery Plan shall reflect that these depositions are to be completed by October 7, 2016, and include the dates and times of the depositions. Both the Proposed Amended Pre-Trial Plan and the Discovery Plan shall be filed with the Court by September 23, 2016 at 5:00pm. A status conference is scheduled for Monday, October 24, 2016, at 8:30 a.m. in West Palm Beach. Counsel may appear telephonically but must file a notice of telephonic appearance at least one (1) day prior to the hearing. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. 1. Toll-Free Number: 1 (877) 873-8018; 2. Access Code: 9890482; 3. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 9/21/2016. (as00) (Entered: 09/21/2016)
09/21/2016		Dispositive Motions due by 12/30/2016. (as00) (Entered: 09/21/2016)
09/22/2016		Set/Reset Hearings: Status Conference set for 10/24/2016 at 8:30 AM in West Palm Beach Division before Judge Robin L. Rosenberg. SEE DE 25 ORDER (ail) (Entered: 09/22/2016)
09/23/2016	<u>26</u>	REPORT REGARDING Proposed Amended Pretrial Plan by Viola Bryant (Phillips, John) (Entered: 09/23/2016)
09/23/2016	<u>27</u>	REPORT REGARDING Joint Discovery Plan by Viola Bryant (Phillips, John) (Entered: 09/23/2016)
09/26/2016	<u>28</u>	AMENDED SCHEDULING ORDER: Discovery due by 12/16/2016. Fact Discovery due by 10/21/2016. Mediation Deadline 2/10/2017. In Limine

		Motions due by 12/30/2016. Pretrial Motions due by 12/30/2016. Joint Pretrial Stipulation due by 3/13/2017. Signed by Judge Robin L. Rosenberg on 9/26/2016. (jas) Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here . (Entered: 09/26/2016)
09/26/2016	<u>29</u>	Joint Discovery Plan re <u>26</u> Report Regarding filed by Viola Bryant. Signed by Judge Robin L. Rosenberg on 9/26/2016. (jas) (Entered: 09/26/2016)
09/26/2016	<u>30</u>	MOTION for Protective Order <i>as to Sheriff's deposition being set for next Monday October 3, 2016</i> and Memorandum of Law by Ken Mascara. (Barranco, Summer) Modified title text on 9/27/2016 (asl). (Entered: 09/26/2016)
09/27/2016	<u>31</u>	ORDER OF RECUSAL. Ch. Magistrate Judge Frank J. Lynch, Jr recused. Case reassigned to Magistrate Judge James M. Hopkins for all further proceedings Motions referred to Judge James M. Hopkins Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 9/27/2016. (vjk) (Entered: 09/28/2016)
09/28/2016	<u>32</u>	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge James M. Hopkins is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (vjk) (Entered: 09/28/2016)
09/30/2016	<u>33</u>	PAPERLESS ORDER Setting Hearing on <u>30</u> Defendant's MOTION for Protective Order for TODAY, 9/30/2016, at 02:00 PM in the West Palm Beach Division before Magistrate Judge James M. Hopkins. The parties may appear telephonically using the call-in information provided by the Court. Signed by Magistrate Judge James M. Hopkins on 9/30/2016. (ckr) (Entered: 09/30/2016)
09/30/2016	<u>34</u>	PAPERLESS Minute Order for proceedings held before Magistrate Judge James M. Hopkins: GRANTING <u>30</u> Defendant's Motion for Protective Order for the reasons stated on the record during the 9/30/16 Hearing on the Motion. (Digital 14:09:36.) (ckr) (Entered: 09/30/2016)
10/14/2016	<u>35</u>	NOTICE by Ken Mascara, Christopher Newman <i>of Telephonic Appearance</i> (Barranco, Summer) (Entered: 10/14/2016)
10/17/2016	<u>36</u>	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 10/17/2016)
10/24/2016	<u>37</u>	Paperless Minute Entry for proceedings held before Judge Robin L. Rosenberg: Telephonic Status Conference held on 10/24/2016. **Telephonic Appearances: Thomas Roberts, Esq. present on behalf of the Plaintiff. Summer Barranco, Esq. present on behalf of the Defendants. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov (lw1) (Entered: 10/24/2016)
10/25/2016	<u>38</u>	PAPERLESS ORDER directing the parties to submit a Second Proposed Amended Pre-Trial Plan to the Court's e-mail address in Word format. For purposes of the Second Proposed Amended Pre-Trial Plan, the deadline for dispositive motions may be re-set no later than January 30, 2016. The parties'

		Second Proposed Amended Pre-Trial Plan may adjust all deadlines preceding the new dispositive motions deadline. The trial shall remain as set in [DE 8] Order Setting Status Conference, Calendar Call, and Trial Date. The Proposed Amended Pre-Trial Plan shall be filed with the Court by October 28, 2016 at 12:00pm. Signed by Judge Robin L. Rosenberg on 10/25/2016. (as00) (Entered: 10/25/2016)
10/31/2016	<u>39</u>	SECOND AMENDED SCHEDULING ORDER: Discovery due by 1/17/2017. Fact Discovery due by 12/6/2016. Mediation Deadline 2/10/2017. In Limine Motions due by 1/30/2017. Pretrial Motions due by 1/30/2017. Joint Pretrial Stipulation due by 3/13/2017. Signed by Judge Robin L. Rosenberg on 10/31/2016. (jas) <u>Pattern Jury Instruction Builder</u> - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 11/01/2016)
01/17/2017	<u>40</u>	Plaintiff's EMERGENCY MOTION with Certification of Emergency attached by Viola Bryant. Responses due by 1/31/2017 (Attachments: # <u>1</u> Certification of Emergency, # <u>2</u> Affidavit in Support)(Phillips, John) (Entered: 01/17/2017)
01/17/2017	41	PAPERLESS ORDER decertifying <u>40</u> Plaintiff's Unopposed Emergency Motion to Extend Discovery Deadline, Mediation, and to Continue Trial as an emergency motion and denying the same without prejudice. Several aspects of this motion cause the Court concern. The only ground cited for the three to four month extension of all deadlines and continuation of trial requested therein is the fact that three lawyers, including one who played a large role in this case, have left Plaintiff's counsel's law firm. However, these three lawyers, according to the motion, left on January 13, 2017--only four days before the scheduled close of discovery on January 17, 2017. The Court simply does not understand how the work left to be done during those four days could warrant the three to four month extension of the discovery deadline requested. And the motion itself provides no clarification; it is silent as to what discovery remains to be conducted in this case. Therefore, the requirement stated in Local Rule 7.1(d) that an emergency motion "shall set forth in detail the necessity for <input type="checkbox"/> expedited procedure" is unmet. The Court also notes that it has already extended the deadlines in this case twice, having entered both an <u>28</u> Amended Scheduling Order and a <u>39</u> Second Amended Scheduling Order. Since the Second Amended Scheduling Order was entered on October 31, 2016, the Court has received no indication that the parties were straining to complete discovery or that complications had arisen until the instant motion was filed on the day of the discovery deadline. Should Plaintiff persist in this request for relief, an amended motion that addresses the Court's concerns must be filed on or before 5:00 p.m. on January 18, 2017. Signed by Judge Robin L. Rosenberg on 1/17/2017. (as00) (Entered: 01/17/2017)
01/18/2017	<u>42</u>	Amended EMERGENCY MOTION with Certification of Emergency attached by Viola Bryant. Responses due by 2/1/2017 (Attachments: # <u>1</u> Certification of Emergency, # <u>2</u> Affidavit in Support)(Phillips, John) (Entered: 01/18/2017)
01/18/2017	43	

		PAPERLESS ORDER decertifying <u>42</u> Plaintiff's Amended Unopposed Emergency Motion to Extend Discovery Deadline, Mediation, and Continue Trial as an Emergency Motion. Signed by Judge Robin L. Rosenberg on 1/18/2017. (as00) (Entered: 01/18/2017)
01/19/2017	<u>44</u>	PAPERLESS ORDER denying without prejudice <u>42</u> Plaintiff's Amended Unopposed Emergency Motion to Extend Discovery Deadline, Mediation, and Continue Trial. Absent an account of what discovery has been conducted and what discovery is yet to be completed in this case, the Court cannot meaningfully evaluate the Motion. The Court, therefore, requires that counsel review the firm's records in an effort to establish what discovery has been completed and what remains to be completed. The Court is sympathetic to counsel's plight and understands that a forensic reconstruction of discovery is not a simple undertaking, particularly without the aid of the attorney who handled the bulk of discovery--but it is a necessary one. This information must be included in the Second Amended Motion, which shall be filed on or before 5:00pm on Friday January 20, 2017. It should not be filed as an emergency motion. Signed by Judge Robin L. Rosenberg on 1/19/2017. (as00) (Entered: 01/19/2017)
01/20/2017	<u>45</u>	Second MOTION for Extension of Time to Extend Discovery Deadline and Continue Trial <i>Amended</i> re <u>43</u> Order, <u>42</u> Amended EMERGENCY MOTION with Certification of Emergency attached, <u>39</u> Scheduling Order,, <u>44</u> Order on Emergency Motion/Certification of Emergency,, <u>40</u> Plaintiff's EMERGENCY MOTION with Certification of Emergency attached, <u>41</u> Order on Emergency Motion/Certification of Emergency,,,,,, by Viola Bryant. Responses due by 2/3/2017 (Attachments: # <u>1</u> Affidavit)(Phillips, John) (Entered: 01/20/2017)
01/20/2017	<u>46</u>	PAPERLESS ORDER setting hearing on <u>45</u> Plaintiff's Second Amended Unopposed Motion to Extend Discovery Deadline and Continue Trial for 1/23/2017 at 3:00 PM in West Palm Beach Division before Judge Robin L. Rosenberg. Counsel may appear at the hearing by telephone but must file a notice of telephonic appearance by 1:00pm on 1/23/2017. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. The toll-free number is: 1 (877) 873-8018. The access code is: 9890482. The security code is: 4008. Signed by Judge Robin L. Rosenberg on 1/20/2017. (as00) (Entered: 01/20/2017)
01/23/2017	<u>47</u>	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 01/23/2017)
01/23/2017	<u>48</u>	NOTICE by Ken Mascara, Christopher Newman <i>of Telephonic Hearing</i> (Barranco, Summer) (Entered: 01/23/2017)
01/23/2017	<u>49</u>	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 01/23/2017)
01/23/2017	<u>50</u>	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Motion Hearing held on 1/23/2017 re <u>45</u> Second MOTION for Extension of Time to Extend Discovery Deadline and Continue Trial <i>Amended</i> re <u>43</u> Order, <u>42</u> Amended EMERGENCY MOTION with Certification of Emergency attached, <u>39</u> Scheduling Order,, <u>44</u> Order on Emergency Mot filed

		by Viola Bryant. **Attorney Appearance(s): John Phillips, Esq. present (via phone) on behalf of the Plaintiff. Summer Barranco, Esq. present (via phone) on behalf of the Defendants. Total time in court: 45 minutes. (Digital 14:59:24) (lwl) (Entered: 01/23/2017)
01/24/2017	51	PAPERLESS ORDER granting in part and denying in part Plaintiffs Second Amended Unopposed Motion to Extend Discovery Deadline and Continue Trial. Plaintiff represented that an extension of the discovery deadline was required so that Plaintiff could: (i) propound approximately 10 to 20 additional interrogatories, (ii) propound a supplemental request for production, (iii) take the deposition of Christopher Lawrence who has been identified as Defendants expert, and (iv) take the depositions of Ray Bedard and William R. Anderson, M.D., whom have been identified as Plaintiffs experts. Defendant, during the status conference, also expressed a desire to depose Mr. Anthony Brown, a recently located fact witness. The Court hereby extends the discovery deadline until February 8, 2017 in order to facilitate these requests, as follows. Plaintiff may propound an additional 20 interrogatories and a supplemental request for production on or before January 25, 2017. Defendants must respond thereto on or before February 7, 2017. By 5:00pm on February 24, 2017 the parties shall jointly file a notice indicating the schedule of the three expert depositions discussed above to be taken on or before February 7, 2017. The Court emphasizes that the parties are required to make all reasonable efforts to schedule these depositions within that time frame. If a deposition cannot be scheduled, the notice shall explain in detail why not. The dispositive motion deadline of January 30, 2017 is hereby stayed. The matter of the motion deadline will be revisited following the parties mediation on February 8, 2017, as will the scheduling of Mr. Anthony Browns deposition. Immediately following the mediation on February 8, 2017, counsel for Plaintiff shall file a notice informing the Court of the outcome of the mediation. Moreover, lead counsel for Defendant shall file a notice with the Court by days end on January 25, 2017 informing the Court of the outcome of the mediation being held in Adams v. Bradshaw, another of counsels cases. If Adams v. Bradshaw does not settle, counsel for Defendant shall file another notice on January 26, 2017, following the calendar call in that case, informing the court of when Adams v. Bradshaw will be tried and how long that trial is expected to last. Signed by Judge Robin L. Rosenberg on 1/24/2017. (as00) (Entered: 01/24/2017)
01/24/2017		Reset Deadlines per 51 Order. Discovery due by 2/8/2017. (asl) (Entered: 01/24/2017)
01/24/2017	<u>52</u>	NOTICE of Compliance to Court's Order dated January 24, 2017 by Viola Bryant re 51 Order on Motion for Extension of Time,,,,,,,,, (Phillips, John) (Entered: 01/24/2017)
01/25/2017	<u>53</u>	NOTICE by Ken Mascara, Christopher Newman re 51 Order on Motion for Extension of Time,,,,,,,,, (Barranco, Summer) (Entered: 01/25/2017)
01/26/2017	<u>54</u>	NOTICE by Ken Mascara, Christopher Newman re 51 Order on Motion for Extension of Time,,,,,,,,, (Barranco, Summer) (Entered: 01/26/2017)
02/07/2017	<u>55</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer to Plaintiff's Expert Witness Discovery Dated 1/25/2017 by Ken Mascara,

		Christopher Newman. (Attachments: # <u>1</u> Exhibit)(Barranco, Summer) Modified title text on 2/7/2017 (asl). (Entered: 02/07/2017)
02/08/2017	<u>56</u>	PAPERLESS ORDER granting <u>55</u> Defendants' Unopposed Motion for Extension of Time to Respond to Plaintiff's Expert Discovery Dated January 25, 2017. Defendants must respond on or before February 10, 2017. Signed by Judge Robin L. Rosenberg on 2/8/2017. (as00) (Entered: 02/08/2017)
02/09/2017	<u>57</u>	NOTICE by Viola Bryant re 51 Order on Motion for Extension of Time,,,,,,,,, (Phillips, John) (Entered: 02/09/2017)
02/23/2017	<u>58</u>	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 02/23/2017)
02/23/2017	<u>59</u>	FINAL MEDIATION REPORT by Hugh Chappell. Disposition: Case did not settle.(Chaplin, James) (Entered: 02/23/2017)
02/23/2017		PAPERLESS ORDER re-setting pre-trial status conference for 2/24/2017 at 11:00 AM in West Palm Beach Division before Judge Robin L. Rosenberg. Counsel may appear at the hearing by telephone but must file a notice of telephonic appearance by 1:00pm on 1/23/2017. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. The toll-free number is: 1 (877) 873-8018. The access code is: 9890482. The security code is: 4008. Signed by Judge Robin L. Rosenberg on 2/23/2017. (as00) (Entered: 02/23/2017)
02/23/2017	<u>60</u>	NOTICE by Viola Bryant <i>Telephonic Appearance</i> (Phillips, John) (Entered: 02/23/2017)
02/24/2017	<u>61</u>	NOTICE by Ken Mascara, Christopher Newman re Set/Reset Hearings,, (Barranco, Summer) (Entered: 02/24/2017)
02/24/2017	<u>62</u>	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Status Conference held on 2/24/2017. **Telephonic Attorney Appearance(s): John Phillips, Esq. present (via phone) on behalf of the Plaintiff. Summer Barranco, Esq. present (via phone) on behalf of the Defendants. Total time in court: 42 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (lw1) (Entered: 02/24/2017)
02/27/2017	<u>63</u>	PAPERLESS ORDER memorializing the outcome of the status conference held on February 24, 2017. During the status conference counsel jointly requested a continuance of trial. The Court construed this request as an ore tenus motion to continue trial and granted the same. Jury Trial is hereby set for June 13, 2017 at 9:00 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Calendar Call is hereby set for June 7, 2017 at 9:30 AM in Fort Pierce Division before Judge Robin L. Rosenberg. The remaining deadlines are hereby adjusted as follows: Counsel's Jury Instructions or Proposed Findings of Fact and Conclusions of Law are due on June 6, 2017; Counsel's objections to designations of deposition testimony are due on May 30, 2017; Counsel's Joint Pretrial Stipulation, designations of deposition testimony, and witness and exhibit lists are due on May 12, 2017; and Dispositive motions are due on March 31, 2017. Dispositive motions, which are now on March 31, 2017, are

		hereby set on an expedited briefing schedule as follows: Responses are due on April 7, 2017 and Replies are due on April 12, 2017. Counsel is also hereby required to submit a discovery plan in Word format to the Courts e-mail address. The discovery plan shall contain a detailed schedule for all discovery that remains to be conducted in this case, including the date, time, and location of any depositions. Signed by Judge Robin L. Rosenberg on 2/27/2017. (as00) (Entered: 02/27/2017)
02/27/2017		Reset Deadlines per 63 Order. Pretrial Stipulation due by 5/12/2017. (asl) (Entered: 02/28/2017)
03/01/2017	<u>64</u>	PAPERLESS ORDER terminating the status conference previously set for March 1, 2017, in light of the fact that the status conference was re-set for, and held on, February 24, 2017. Signed by Judge Robin L. Rosenberg on 3/1/2017. (as00) (Entered: 03/01/2017)
03/06/2017	<u>65</u>	ORDER MEMORIALIZING JOINT DISCOVERY PLAN. Signed by Judge Robin L. Rosenberg on 3/6/2017. (jas) (Entered: 03/06/2017)
03/31/2017	<u>66</u>	MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) by Ken Mascara. Responses due by 4/14/2017 (Barranco, Summer) (Entered: 03/31/2017)
03/31/2017	<u>67</u>	MOTION for Summary Judgment by Christopher Newman. Responses due by 4/14/2017 (Barranco, Summer) (Entered: 03/31/2017)
03/31/2017	<u>68</u>	Statement of: Material Facts in Support of Motions for Summary Judgment by Ken Mascara, Christopher Newman re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>), <u>67</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Exhibit Exhibit A - Deposition Transcript of Christopher Newman, # <u>2</u> Exhibit Exhibit B - Deposition Transcript of Stefani Mill, # <u>3</u> Exhibit Exhibit C - Deposition Transcript of Edward Lopez, # <u>4</u> Exhibit Exhibit D - SWAT memo, # <u>5</u> Exhibit Exhibit E - Photo of Hill in garage, # <u>6</u> Exhibit Exhibit F - Photo of gun, # <u>7</u> Exhibit Exhibit G - Transcript of Radio Transmissions, # <u>8</u> Exhibit Exhibit H - Deposition Transcript of Lisa McGuire, # <u>9</u> Exhibit Exhibit I - Deposition Transcript of Lizbeth Enriquez Ruiz, # <u>10</u> Affidavit Exhibit J - Affidavit of Lt. Michael Sheelar, # <u>11</u> Exhibit Composite Exhibit 1 to Exhibit J - SLCSO General Orders, # <u>12</u> Exhibit Composite Exhibit 2 to Exhibit J - Additional SLCSO General Orders)(Barranco, Summer) (Entered: 03/31/2017)
04/07/2017	<u>69</u>	RESPONSE in Opposition re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Viola Bryant. Replies due by 4/14/2017. (Phillips, John) (Entered: 04/07/2017)
04/07/2017	<u>70</u>	RESPONSE in Opposition re <u>67</u> MOTION for Summary Judgment filed by Viola Bryant. Replies due by 4/14/2017. (Phillips, John) (Entered: 04/07/2017)
04/07/2017	<u>71</u>	Statement of: Material Facts in Opposition by Viola Bryant re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) <u>67</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Exhibit A - Deposition of Edward Lopez, # <u>2</u> Exhibit B - CAD Report, # <u>3</u> Exhibit C - Medical Examiner's Report, # <u>4</u> Exhibit D - Deposition of Andrew Brown, # <u>5</u> Exhibit E - Deposition of Stephani Mills, # <u>6</u> Exhibit F - Deposition of Lizabeth Enriquez-Ruiz, # <u>7</u> Exhibit G - Deposition of Joseph Hall, # <u>8</u> Exhibit H - Deposition of Juanita

		Wright, # <u>9</u> Exhibit I - Deposition of Lisa McGuire, # <u>10</u> Exhibit J - Deposition of Donna Hellums, # <u>11</u> Exhibit K - Deposition of David Morales, # <u>12</u> Exhibit L - Deposition of D. Hill, # <u>13</u> Exhibit M - Indian River Crime Lab, # <u>14</u> Exhibit N - Deposition of William Anderson, M.D., # <u>15</u> Exhibit O - Deposition of Roy Bedard, # <u>16</u> Exhibit P - Deposition of Christopher Newman, # <u>17</u> Exhibit Q - Deposition of Brian Hester, # <u>18</u> Exhibit R - Deposition of Christopher Cicio, # <u>19</u> Exhibit S - Deposition of Wade Courtemanche, # <u>20</u> Exhibit T - Deposition of Michael Gajewski)(Phillips, John) Modified Links on 4/10/2017 (ls). (Entered: 04/07/2017)
04/10/2017	<u>72</u>	Clerks Notice to Filer re <u>71</u> Statement,,,,. Incorrect Document Link; ERROR - The filed document was not correctly linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (ls) (Entered: 04/10/2017)
04/12/2017	<u>73</u>	REPLY to Response to Motion re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Ken Mascara. (Barranco, Summer) (Entered: 04/12/2017)
04/12/2017	<u>74</u>	REPLY to Response to Motion re <u>67</u> MOTION for Summary Judgment filed by Christopher Newman. (Attachments: # <u>1</u> Exhibit "K" - aerial photo attached to Joseph Hall depo.)(Barranco, Summer) (Entered: 04/12/2017)
04/13/2017	<u>75</u>	PAPERLESS ORDER setting hearing on <u>67</u> Defendant Christopher Newman's Motion for Summary Judgment and on <u>66</u> Defendant Ken Mascara's Motion for Summary Judgment for 4/27/2017 at 11:00 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear by telephone but must file a notice of telephonic appearance at least one day prior to the Status Conference. Instructions for appearing by telephone are as follows: Please call five minutes prior to the Status Conference. Toll-Free Number: 1 (877) 873-8018. Access Code: 9890482. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 4/13/2017. (as00) (Entered: 04/13/2017)
04/26/2017	<u>76</u>	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 04/26/2017)
04/26/2017	<u>77</u>	PAPERLESS ORDER re-setting hearing on <u>67</u> Defendant Christopher Newman's Motion for Summary Judgment and on <u>66</u> Defendant Ken Mascara's Motion for Summary Judgment for 5/4/2017 at 11:30 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear by telephone but must file a notice of telephonic appearance at least one day prior to the Status Conference. Instructions for appearing by telephone are as follows: Please call five minutes prior to the Status Conference. Toll-Free Number: 1 (877) 873-8018. Access Code: 9890482. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 4/26/2017. (as00) (Entered: 04/26/2017)
05/04/2017	<u>78</u>	PAPERLESS ORDER memorializing the outcome of the hearing held on May 4, 2017. As stated on the record, Plaintiff's Statement of Material Facts [DE 71] is hereby stricken for failure to comply with Local Rule 56.1(a). Plaintiff must file a reorganized Statement of Material Facts on or before Tuesday, May 9, 2017 at 12:00pm. The Court cautions that the changes made should be

		organizational only. By Thursday, May 11, 2017, Defendants shall file a notice to the docket indicating whether or not they object to any aspect of Plaintiff's reorganized Statement of Material Facts. If so, the notice must detail the nature of the objection. The Court further notes that at the Calendar Call scheduled for June 7, 2017 at 9:30am, the parties must be prepared to address the following issues: (i) The number of days trial is expected to last; (ii) How many jurors should be called up; (iii) How many alternate jurors should be selected; and (iv) How many peremptory strikes each party will have. The parties must meet and confer about these matters before calendar call in an effort to reach agreement. Signed by Judge Robin L. Rosenberg on 5/4/2017. (as00) (Entered: 05/04/2017)
05/04/2017	79	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Motion Hearing held on 5/4/2017 re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Ken Mascara, <u>67</u> MOTION for Summary Judgment filed by Christopher Newman. Total time in court: 1 hour (s) : 15 minutes. Attorney Appearance(s): John Michael Phillips, Thomas Caldwell Roberts, Summer Marie Barranco, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/08/2017)
05/08/2017	<u>80</u>	Statement of: Amended Statement of Material Facts in Opposition fo The Motions for Summary Judgment of Defendants by Viola Bryant re <u>66</u> MOTION for Summary Judgment (<i>as to Counts I, III & V</i>), <u>67</u> MOTION for Summary Judgment (Attachments: # <u>1</u> Exhibit A- Deposition of Edward Lopez, # <u>2</u> Exhibit B - CAD Report, # <u>3</u> Exhibit C - Medical Examiner's Report, # <u>4</u> Exhibit D - Deposition of Andrew Brown, # <u>5</u> Exhibit E - Deposition of Stefani Mills, # <u>6</u> Exhibit F - Deposition of Lizabeth Enriquez-Ruiz, # <u>7</u> Exhibit G - Deposition of Joseph Hall, # <u>8</u> Exhibit H - Deposition of Juanita Wright, # <u>9</u> Exhibit I - Deposition of Lisa McGuire, # <u>10</u> Exhibit J - Deposition of Donna Hellums, # <u>11</u> Exhibit K - Deposition of David Morales, # <u>12</u> Exhibit L - Deposition of Destiny Hill, # <u>13</u> Exhibit M - Indian River Crime Lab Reports, # <u>14</u> Exhibit N - Deposition of William Anderson, M.D., # <u>15</u> Exhibit O - Deposition of Roy Bedard, # <u>16</u> Exhibit P - Deposition of Christopher Newman, # <u>17</u> Exhibit Q - Deposition of Brian Hester, # <u>18</u> Exhibit R - Deposition of Christopher Cicio, # <u>19</u> Exhibit S - Deposition of Wade Courtemanche, # <u>20</u> Exhibit T - Deposition of Michael Gajewski) (Phillips, John) (Entered: 05/08/2017)
05/09/2017	<u>81</u>	NOTICE of Attorney Appearance by John Michael Phillips on behalf of Viola Bryant (Phillips, John) (Entered: 05/09/2017)
05/09/2017	82	PAPERLESS ORDER requiring the parties to file notices by 4:00pm on May 10, 2017 directing the Court to any evidence already cited in support of the parties' respective motions for summary judgment which indicates how quickly the bullets fired by Deputy Newman were fired. Signed by Judge Robin L. Rosenberg on 5/9/2017. (as00) (Entered: 05/09/2017)
05/10/2017	<u>83</u>	RESPONSE to 82 Order, by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2017)
05/10/2017	<u>84</u>	

		NOTICE by Viola Bryant re 82 Order, <i>Directing Court to Cited Evidence In Support of The Parties' Respective Summary Judgment Motions</i> (Phillips, John) (Entered: 05/10/2017)
05/11/2017	<u>85</u>	NOTICE by Ken Mascara, Christopher Newman re <u>80</u> Statement,,,,, of <i>Objection</i> (Barranco, Summer) (Entered: 05/11/2017)
05/12/2017	<u>86</u>	NOTICE by Ken Mascara, Christopher Newman of <i>Filing Defendants' Designation of Deposition Excerpts</i> (Barranco, Summer) (Entered: 05/12/2017)
05/12/2017	<u>87</u>	NOTICE by Viola Bryant of <i>Filing Plaintiff's Designation of Deposition Excerpts</i> (Phillips, John) (Entered: 05/12/2017)
05/12/2017	<u>88</u>	PAPERLESS NOTICE regarding <u>85</u> Plaintiff's Notice of Objections to Plaintiff's Amended Statement of Material Facts. The Court instructed in its Order that the changes in Plaintiff's Amended Statement of Material Facts were to be "organizational only." Accordingly, the Court will not consider the statement that Plaintiff has learned of a subsequent claim of excessive force against Deputy Newman which was not otherwise disclosed," which is repeated in paragraphs 39, 49, and 50. Signed by Judge Robin L. Rosenberg on 5/12/2017. (as00) (Entered: 05/12/2017)
05/12/2017	<u>89</u>	PRETRIAL STIPULATION by Viola Bryant (Attachments: # <u>1</u> Exhibit "A" Plaintiff's Exhibit and Witness List, # <u>2</u> Exhibit "B" Defendants' Exhibit and Witness List)(Phillips, John) (Entered: 05/12/2017)
05/13/2017	<u>90</u>	PAPERLESS ORDER noting that the parties' Joint Pretrial Stipulation includes, in the "Undisposed of Motions" section, several motions in limine designated "to be filed." However, the motions deadline passed on March 31, 2017. While the March 31, 2017 deadline set in the 63 Paperless Order is styled a "dispositive motions deadline," all of the scheduling orders in this case since the initial scheduling order entered by Judge Lynch on May 11, 2016 have included only a single motions deadline applicable to all pretrial motions including dispositive motions, motions in limine, and Daubert motions. Moreover, trial in this case is set to begin June 12, 2017. Even if the motions in limine were filed on Monday May 15, 2017, they would not be ripe until four business days before the start of trial. Signed by Judge Robin L. Rosenberg on 5/13/2017. (as00) (Entered: 05/13/2017)
05/16/2017	<u>91</u>	ORDER granting in part and denying in part <u>66</u> Motion for Summary Judgment filed by Defendant Mascara; denying <u>67</u> Motion for Summary Judgment filed by Defendant Newman. The Court hereby requires that the parties jointly contact Judge Brannon's chambers on or before Thursday May 18, 2017 at 5:00 pm to schedule a settlement conference in this matter. The settlement conference is to be held no later than June 2, 2017. Signed by Judge Robin L. Rosenberg on 5/16/2017. (mc) (Entered: 05/16/2017)
05/18/2017	<u>92</u>	PAPERLESS ORDER requiring that the parties confer and submit a joint notice estimating the length of the trial to be held in this case on or before May 19, 2017 at 12:00pm. Signed by Judge Robin L. Rosenberg on 5/18/2017. (as00) (Entered: 05/18/2017)
05/18/2017	<u>93</u>	

		Joint NOTICE by Ken Mascara, Christopher Newman re 92 Order <i>in Response to Court Order</i> (Barranco, Summer) Modified title text on 5/19/2017 (asl). (Entered: 05/18/2017)
05/18/2017	<u>94</u>	ORDER SCHEDULING SETTLEMENT CONFERENCE BEFORE U.S. MAGISTRATE JUDGE (Settlement Conference set for 6/2/2017 10:00 AM in West Palm Beach Division before Magistrate Judge Dave Lee Brannon). Signed by Magistrate Judge Dave Lee Brannon on 5/18/2017. (mc) (Entered: 05/19/2017)
05/25/2017	<u>95</u>	MOTION to be Excused from Settlement Conference by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/25/2017)
05/25/2017	<u>96</u>	PAPERLESS ORDER denying <u>95</u> Motion to be Excused from Settlement Conference. Signed by Judge Robin L. Rosenberg on 5/25/2017. (as00) (Entered: 05/25/2017)
05/30/2017	<u>97</u>	NOTICE by Ken Mascara, Christopher Newman re <u>87</u> Notice (Other) of <i>Counter Deposition Designations and Objections to Plaintiff's Deposition Designations</i> (Barranco, Summer) (Entered: 05/30/2017)
06/01/2017	<u>98</u>	PAPERLESS ORDER requiring Plaintiff to file any objections to Defendants' <u>97</u> Counter Deposition Designations by 5:00pm on June 2, 2017. Signed by Judge Robin L. Rosenberg on 6/1/2017. (as00) (Entered: 06/01/2017)
06/01/2017	<u>99</u>	Plaintiff's MOTION to Bring Electronic Equipment into the courtroom by Viola Bryant. Responses due by 6/15/2017 (Phillips, John) (Entered: 06/01/2017)
06/01/2017	<u>100</u>	PAPERLESS ORDER granting <u>99</u> Plaintiff's Motion to Bring Electronic Equipment into the Courtroom. Plaintiff's attorney, John M. Phillips, Esq., may use and bring his cell phone and laptop computer to the Settlement Conference scheduled for Friday, June 2, 2017, at 10:00 A.M. Signed by U.S. Magistrate Judge Dave Lee Brannon on 6/1/2017. (jrz) (Entered: 06/01/2017)
06/02/2017	<u>101</u>	Minute Entry for proceedings held before U.S. Magistrate Judge Dave Lee Brannon: Settlement Conference held on 6/2/2017. John Phillips, Esq. present with Plaintiff and decedent's fiancée. Summer Barranco, Esq. and Adam Fetterman, Esq. present with Defendant Deputy Newman and defense representative Joe Belitzky. Negotiations held. Case did not settle. (Digital/Time in Court: 10:07:48 / 2 hrs. 29 mins.) (jrz) (Entered: 06/02/2017)
06/02/2017	<u>102</u>	NOTICE by Viola Bryant <i>Objections to Defendants' Counter Deposition Designations</i> (Phillips, John) (Entered: 06/02/2017)
06/02/2017	<u>103</u>	Notice of Interlocutory Appeal as to <u>91</u> Order on Motion for Summary Judgment,,, by Christopher Newman. Filing fee \$ 505.00 receipt number 113C-9785522. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Barranco, Summer) (Entered: 06/02/2017)
06/04/2017	<u>104</u>	

		MOTION to Stay <i>Trial Pending Interlocutory Appeal</i> by Ken Mascara, Christopher Newman. Responses due by 6/19/2017 (Barranco, Summer) (Entered: 06/04/2017)
06/05/2017		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re <u>103</u> Notice of Interlocutory Appeal, Notice has been electronically mailed. (apz) (Entered: 06/05/2017)
06/05/2017	<u>105</u>	Plaintiff's MOTION to Continue <i>Trial and Response in Opposition to Defendants' Motion to Stay</i> by Viola Bryant. Responses due by 6/19/2017 (Phillips, John) (Entered: 06/05/2017)
06/05/2017	<u>106</u>	NOTICE by Ken Mascara, Christopher Newman of <i>Telephonic Appearance at Calendar Call</i> (Barranco, Summer) (Entered: 06/05/2017)
06/05/2017	<u>107</u>	NOTICE by Viola Bryant <i>Joint Trial Plan</i> (Phillips, John) (Entered: 06/05/2017)
06/06/2017	<u>108</u>	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 06/06/2017)
06/06/2017	<u>109</u>	PAPERLESS ORDER requiring that the parties be prepared to address <u>104</u> Defendants' Motion to Stay Pending Appeal and <u>105</u> Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal during the status conference set for June 7, 2017. Defendants are also hereby required, by 5:00pm today, June 6, 2017, to file an expedited response to <u>105</u> Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal. Signed by Judge Robin L. Rosenberg on 6/6/2017. (as00) (Entered: 06/06/2017)
06/06/2017	<u>110</u>	Proposed Jury Instructions by Viola Bryant. (Phillips, John) (Entered: 06/06/2017)
06/06/2017	<u>111</u>	RESPONSE in Opposition re <u>104</u> MOTION to Stay <i>Trial Pending Interlocutory Appeal</i> , <u>105</u> Plaintiff's MOTION to Continue <i>Trial and Response in Opposition to Defendants' Motion to Stay</i> filed by Ken Mascara, Christopher Newman. Replies due by 6/13/2017. (Barranco, Summer) (Entered: 06/06/2017)
06/07/2017	<u>112</u>	<p>PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Calendar Call held on 6/7/2017. Total time in court: 15 minutes. Attorney Appearance(s): John Michael Phillips, Summer Marie Barranco, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov.</p> <p>NOTICE OF NEW POLICY RE ELECTRONIC SUBMISSION OF EXHIBITS. Unless otherwise ordered by the presiding Judge, Administrative Order 2016-70 directs that within three (3) days of the conclusion of a proceeding, parties must file in the CMECF system electronic versions of most documentary exhibits admitted into evidence (excluding sealed exhibits in criminal cases), including photographs of non-documentary physical exhibits. At the time of filing the electronic exhibits, the attorney for the filing party shall complete and file a Certificate of Compliance Re Admitted Evidence.</p>

		Electronically filed exhibits are subject to CM/ECF Administrative Procedures, Section 6, Redaction of Personal Information, Privacy Policy, and Inappropriate Materials. Failure to file the electronic exhibits and Notice of Compliance within three (3) days may result in the imposition of sanctions. The Certificate of Compliance Re Admitted Evidence, a Quick Reference Guide to Electronically Filing Trial Exhibits, and the full text of Administrative Order 2016-70 can be found at the Courts website, http://www.flsd.uscourts.gov (mg) (Entered: 06/07/2017)
06/07/2017	113	PAPERLESS ORDER memorializing the outcome of the status conference held on June 7, 2017. On or before July 10, 2017, the parties shall file a joint status report addressing the issues raised in Plaintiff's <u>105</u> Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal and in Defendants' <u>111</u> Response in Opposition-namely, whether the proceedings should be stayed or the trial continued and whether any additional discovery is appropriate and if so, the timeframe for conducting such discovery. The joint status report shall clearly outline any areas of agreement. Where there is disagreement, the parties shall clearly outline the matters which remain for ruling and note their respective positions thereon. Signed by Judge Robin L. Rosenberg on 6/7/2017. (as00) (Entered: 06/07/2017)
06/07/2017	<u>114</u>	NOTICE by Viola Bryant of <i>Serving Proposal for Settlement to Christopher Newman</i> (Phillips, John) (Entered: 06/07/2017)
06/07/2017	<u>115</u>	NOTICE by Viola Bryant Of <i>Serving Proposal for Settlement to Defendant Sheriff Ken Mascara</i> (Phillips, John) (Entered: 06/07/2017)
06/07/2017	<u>116</u>	Acknowledgment of Receipt of NOA from USCA re <u>103</u> Notice of Interlocutory Appeal, filed by Christopher Newman. Date received by USCA: 6/5/2017. USCA Case Number: 17-12547-A. (apz) (Entered: 06/07/2017)
07/10/2017	<u>117</u>	NOTICE by Viola Bryant <i>Joint Status Report</i> (Phillips, John) (Entered: 07/10/2017)
07/10/2017	120	JOINT STATUS REPORT by Viola Bryant, Ken Mascara, Christopher Newman. (See DE# <u>117</u> for image). (jas) (Entered: 07/11/2017)
07/11/2017	118	PAPERLESS ORDER granting <u>104</u> Defendants' Motion to Stay Pending Appeal. A stay will be entered by separate order. This case shall be stayed pending Defendants' appeal except that discovery will be re-opened for the sole purpose of allowing Plaintiff to depose Earl Ritzline, a request Defendants do not oppose. Earl Ritzline's deposition shall be conducted within 45 days of the date of this Order. Signed by Judge Robin L. Rosenberg on 7/11/2017. (as00) (Entered: 07/11/2017)
07/11/2017	119	PAPERLESS ORDER granting in part and denying in part <u>105</u> Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal. Discovery will be re-opened for the sole purpose of allowing Plaintiff to depose Earl Ritzline, a request Defendants do not oppose. The parties shall complete Earl Ritzline's deposition within the deadline set in the <u>118</u> Paperless Order. However, all other requests for relief are denied, including Plaintiff's unopposed request to file motions in limine following the

		resolution of Defendants' appeal. The Court notes that the present appeal was taken shortly before trial and that the discovery and motions deadlines had already passed. Once the Eleventh Circuit has completed its consideration of Defendants' appeal, the Court will hold a status conference to set this case for a new trial docket. Signed by Judge Robin L. Rosenberg on 7/11/2017. (as00) (Entered: 07/11/2017)
07/11/2017	121	Clerks Notice to Filer re <u>117</u> Notice (Other). Wrong Event Selected; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see DE# 120 . It is not necessary to refile this document. (jas) (Entered: 07/11/2017)
07/12/2017	<u>122</u>	ORDER STAYING CASE AND DIRECTING THE CLERK OF THE COURT TO CLOSE THIS CASE FOR STATISTICAL PURPOSES. This case is STAYED pending the outcome of Plaintiffs interlocutory appeal. Plaintiff shall immediately apprise the Court of any change in the status of the appeal. The Clerk of the Court is directed to CLOSE THIS CASE FOR STATISTICAL PURPOSES. This closure shall not affect the merits of any partys claim. Signed by Judge Robin L. Rosenberg on 7/11/2017. (jas) NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. (Entered: 07/12/2017)
07/28/2017	123	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>103</u> Notice of Interlocutory Appeal, Appeal No. 17-12547-CC. The entire record on appeal is available electronically. (apz) (Entered: 07/28/2017)
02/22/2018	<u>124</u>	MANDATE of USCA (certified copy). AFFIRM Order of the district court with court's opinion re <u>103</u> Notice of Interlocutory Appeal, filed by Christopher Newman; Date Issued: 2/22/2018; USCA Case Number: 17-12547-CC. (apz) (Entered: 02/22/2018)
02/22/2018	125	PAPERLESS ORDER Setting Status Conference for 3/2/2018 10:00 AM in West Palm Beach Division before Judge Robin L. Rosenberg. Signed by Judge Robin L. Rosenberg on 2/22/2018. (ege) (Entered: 02/22/2018)
02/23/2018	<u>126</u>	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 02/23/2018)
02/23/2018	<u>127</u>	NOTICE of Telephonic Appearance by Ken Mascara, Christopher Newman re 125 Order Setting Status Conference (Barranco, Summer) Modified text on 2/23/2018 (kpe). (Entered: 02/23/2018)
03/02/2018	128	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Status Conference held on 3/2/2018. Total time in court: 30 minutes. Attorney Appearance(s): John Michael Phillips, Summer Marie Barranco, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 03/02/2018)
03/02/2018	129	

		PAPERLESS ORDER memorializing status conference held on March 2, 2018. By March 7, 2018 at 5:00 p.m., the parties shall inform the Court of their positions regarding having a settlement conference before a magistrate judge. This case is set for trial May, 16, 2018 in Fort Pierce and a back-up trial date of June 11, 2018 in Fort Pierce, if this case cannot proceed on May 16. Calendar call is scheduled for May 7, 2018 at 9:30 a.m. in West Palm Beach. Proposed jury instructions are due by May 9, 2018. By March 12, 2018 at 5:00 p.m. the parties shall file a joint amended trial plan. In this plan, the parties shall notify the Court of any witness who is not available for either the May 16 or June 11 trial period. The parties shall indicate which trial period the witness is not available and how the parties wish to proceed with each witness who will not be available, including whether the party seeks to designate portions of a deposition or conduct a video deposition. Signed by Judge Robin L. Rosenberg on 3/2/2018. (ege) (Entered: 03/02/2018)
03/07/2018	<u>130</u>	NOTICE to Court Per Court's Order [DE 129] by Ken Mascara, Christopher Newman re 129 Set Trial Management Order Deadlines, Set Scheduling Order Deadlines, Order Lifting Stay,,,,,,,,,,,,, <i>TO COURT PER COURTS ORDER [DE 129]</i> (Barranco, Summer) Modified text on 3/8/2018 (kpe). (Entered: 03/07/2018)
03/12/2018	<u>131</u>	NOTICE of Joint Amended Trial Plan by Viola Bryant re 129 Set Trial Management Order Deadlines,,,,, Set Scheduling Order Deadlines,,,,, Order Lifting Stay,,,,,,,,, <i>Joint Amended Trial Plan</i> (Phillips, John) (Entered: 03/12/2018)
03/15/2018	<u>132</u>	PAPERLESS ORDER. The Court is in receipt of <u>131</u> the parties' Joint Amended Trial Plan, which indicates several witnesses who may be unavailable during the trial period. Although the Court has placed the case on both the May 16 and June 11 trial periods, the parties shall be prepared to proceed with the trial on May 16. In its March 2, 2018 Order, the Court stated that "the parties [shall indicate how they] wish to proceed with each witness who will not be available, including whether the party seeks to designate portions of a deposition or conduct a video deposition." Accordingly, the parties shall file a Notice by March 20, 2018 indicating how the parties have resolved to handle each witness who may not be available for the trial period, as the Court wants to ensure there are no last minute issues. Additionally, the Court was under the impression that the parties were going to resolve the issue related to Plaintiff's witness, Stefani Mills. If the parties have resolved the issue, they shall include the resolution in their Notice due by March 20, 2018. If the parties have not resolved the issue, Plaintiff shall file a Motion requesting whatever relief she seeks from the Court. Signed by Judge Robin L. Rosenberg on 3/15/2018. (ege) (Entered: 03/15/2018)
03/15/2018		Set/Reset Deadlines/Hearings Jury Trial set for 5/16/2018 in Fort Pierce Division before Judge Robin L. Rosenberg. (ege) (Entered: 03/15/2018)
03/19/2018	<u>133</u>	Case Reassignment of Paired Magistrate Judge pursuant to Administrative Order(s) 2018-15 to Magistrate Judge Bruce E. Reinhart. Magistrate Judge James M. Hopkins no longer assigned to case. (jmd) (Entered: 03/19/2018)
03/20/2018	<u>134</u>	

		NOTICE of Compliance with Court's Order Dated March 15, 2018 by Viola Bryant re 132 Order,,,,,, Order Reopening Case,,,,,, Order Lifting Stay,,,,, (Phillips, John) (Entered: 03/20/2018)
03/21/2018	<u>135</u>	Plaintiff's MOTION to Take Deposition from Stefani Mills by Videography by Viola Bryant. (Phillips, John) (Entered: 03/21/2018)
03/21/2018	136	PAPERLESS ORDER expediting briefing on <u>135</u> Plaintiff's Motion for Authorization to Perpetuate Trial Testimony by Videography of Unavailable Witness, Stefani Mills. Response due by 3/23/18. Signed by Judge Robin L. Rosenberg on 3/21/2018. (ege) (Entered: 03/21/2018)
03/23/2018	<u>137</u>	RESPONSE in Opposition re <u>135</u> Plaintiff's MOTION to Take Deposition from Stefani Mills by Videography filed by Ken Mascara, Christopher Newman. Attorney Matthew Joseph Wildner added to party Ken Mascara (pty:dft), Attorney Matthew Joseph Wildner added to party Christopher Newman(pty:dft). Replies due by 3/30/2018. (Wildner, Matthew) (Entered: 03/23/2018)
03/26/2018	138	PAPERLESS ORDER denying <u>135</u> Plaintiff's Motion for Authorization to Perpetuate Trial Testimony by Videography of Unavailable Witness, Stefani Mills, for the reasons set forth in <u>137</u> Defendants Sheriff and Newman's Response in Opposition to Plaintiff's Motion for Authorization to Perpetuate Trial Testimony by Videography of Unavailable Witness, Stefani Mills. Signed by Judge Robin L. Rosenberg on 3/26/2018. (ege) (Entered: 03/26/2018)
03/26/2018	139	In the parties' Joint Trial Plan, the parties state that they "will notify the Court of any potential witness availability issues with the above referenced witnesses upon notification by witness and how the parties have resolved to handle each witness. If the parties can not resolve the issue [the parties] will file the appropriate Motion with the Court seeking the relief requested." Any motions seeking the Court's relief with respect to the unavailability of these witnesses must be filed by 4/9/18. Designations of deposition testimony shall be filed by 4/16/18. Counter-designations of deposition testimony and objections to designations of deposition testimony shall be filed by 4/20/18. Objections to counter-designations of deposition testimony and responses to objections to designations of deposition testimony shall be filed by 4/25/18. Objections to counter-designations of deposition testimony and responses to objections to designations of deposition testimony shall be filed by 4/30/18. The Court's procedure regarding deposition designations is below: First, the parties are ordered to provide the Court with a deposition designation notebook. This notebook must be delivered to Chambers on the same day that the parties' jury instructions or proposed findings and conclusions are due. Second, the notebook (or notebooks) must contain the full deposition transcript for each designated witness. Third, the designated (or counter-designated) testimony for each witness must be highlighted and easy to locate and identify. Fourth, objections to the designated testimony must be supplemented with an appendix that contains detailed legal argument explaining the objections, together with a response from the opposing party. Fifth and finally, an objection to designated testimony may only be raised after a full, reasonable conferral between the parties on the issue in dispute as more fully set forth below. Deposition

		designation objections must be accompanied by a certification, by the party objecting, that: (i) the parties have conferred on the objection, (ii) the objection is raised in good faith, (iii) the objection raises an issue that the parties, working together as professionals, cannot resolve without court intervention, and (iv) the expenditure of judicial labor is the only avenue by which the dispute may be resolved. The Court will carefully consider all of the objections brought to its attention. In the event the Court concludes that a designating party or counsel, or an objecting party or counsel, has failed "to secure the just, speedy, and inexpensive determination of every action and proceeding," the Court may consider sanctions, as appropriate. Similarly, if the Court concludes that objections to designations must be ruled upon contemporaneously with the reading of designated testimony at trial because of a party or counsel's failure to comply with this Order, the Court may consider sanctions, as appropriate. The parties shall file a joint trial plan that complies with the requirements in the Court's Order Setting Status Conference, Calendar Call, and Trial Date by 5/3/18. DE 8 at 4-5. Jury instructions must be filed by 5/9/18. Signed by Judge Robin L. Rosenberg on 3/26/2018. (ege) (Entered: 03/26/2018)
04/10/2018	<u>140</u>	MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 04/10/2018)
04/10/2018	<u>141</u>	PAPERLESS ORDER expediting briefing on <u>140</u> Defendant's MOTION TO EXCLUDE JEREMIAH HILL'S TESTIMONY AT TRIAL. Response due by 4/12/2018 at 5:00 p.m. Reply due by 4/16/2018 at 5:00 p.m. Signed by Judge Robin L. Rosenberg on 4/10/2018. (ege) (Entered: 04/10/2018)
04/12/2018	<u>142</u>	RESPONSE to Motion re <u>140</u> MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL filed by Viola Bryant. Replies due by 4/19/2018. (Phillips, John) (Entered: 04/12/2018)
04/16/2018	<u>143</u>	NOTICE by Viola Bryant re <u>87</u> Notice (Other) of Plaintiff's Supplemental Designation of Deposition Excerpts (Phillips, John) (Entered: 04/16/2018)
04/16/2018	<u>144</u>	RESPONSE in Support re <u>140</u> MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL filed by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 04/16/2018)
04/16/2018	<u>145</u>	NOTICE by Ken Mascara, Christopher Newman of Filing Updated Designation of Deposition Excerpts (Barranco, Summer) (Entered: 04/16/2018)
04/17/2018	<u>146</u>	NOTICE by Viola Bryant re <u>143</u> Notice (Other) Amended Supplemental Designation of Deposition Excerpts (Phillips, John) (Entered: 04/17/2018)
04/18/2018	<u>147</u>	ORDER DENYING WITHOUT PREJUDICE DEFENDANTS <u>140</u> MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL. Signed by Judge Robin L. Rosenberg on 4/18/2018. (kpe) (Entered: 04/18/2018)
04/19/2018	<u>148</u>	Unopposed MOTION Request for Non-Party Witness to Testify at Trial by Contemporaneous Video Conference by Viola Bryant. (Attachments: # <u>1</u> Exhibit "A")(Phillips, John) (Entered: 04/19/2018)
04/20/2018	<u>149</u>	

		NOTICE by Viola Bryant re <u>145</u> Notice (Other) of Counter Designations and Objections to Defendants' Updated Designation of Deposition Excerpts (Phillips, John) (Entered: 04/20/2018)
04/20/2018	<u>150</u>	NOTICE by Ken Mascara, Christopher Newman re <u>146</u> Notice (Other), <u>87</u> Notice (Other) Counter Deposition Designations and Objections to Plaintiff's Deposition Designations (Barranco, Summer) (Entered: 04/20/2018)
04/23/2018	<u>151</u>	ACKNOWLEDGMENT OF SERVICE on Subpoena to Appear and Testify at a Hearing or Trial as to Stefani Mills. (kpe) (Entered: 04/24/2018)
04/24/2018	<u>152</u>	PAPERLESS ORDER granting <u>148</u> Plaintiff's Unopposed Request for Non-Party Witness to Testify at Trial by Contemporaneous Video Conference from Another Location. Plaintiff shall contact the Court's IT specialist, Ricardo Gerena, at 561-803-3730 to set up the logistics of having the witness appear by video during the trial. The Court notes that Plaintiff shall be prepared to proceed through the use of deposition testimony if for any reason the witness cannot appear via video during the trial. Signed by Judge Robin L. Rosenberg on 4/24/2018. (ege) (Entered: 04/24/2018)
04/25/2018	<u>153</u>	NOTICE by Ken Mascara, Christopher Newman re <u>149</u> Notice (Other) Counter Deposition Designations and Objections to Plaintiff's Deposition Designations and Responses to Plaintiff's Objections (Barranco, Summer) (Entered: 04/25/2018)
05/01/2018	<u>154</u>	PAPERLESS ORDER. The parties' deposition designation notebook, which is due by 5/9/18, shall be delivered to Chambers in West Palm Beach. The Court also notes that the parties may appear telephonically at the calendar call set for 5/7/18 in West Palm Beach. Instructions for appearing via telephone are as follows: (1) Please call five (5) minutes prior to the Calendar Call; (2) The toll-free number is: 1 (877) 873-8018; (3) The access code is: 9890482; (4) The security code is: 4008. Signed by Judge Robin L. Rosenberg on 5/1/2018. (ege) (Entered: 05/01/2018)
05/02/2018	<u>155</u>	NOTICE of Attorney Appearance by Gregory James Jolly on behalf of Ken Mascara, Christopher Newman. Attorney Gregory James Jolly added to party Ken Mascara(pty:dft), Attorney Gregory James Jolly added to party Christopher Newman(pty:dft). (Jolly, Gregory) (Entered: 05/02/2018)
05/03/2018	<u>156</u>	NOTICE by Ken Mascara, Christopher Newman of Telephonic Appearance at Calendar Call scheduled for Monday, May 7, 2018 (Barranco, Summer) (Entered: 05/03/2018)
05/03/2018	<u>157</u>	NOTICE by Viola Bryant re 139 Order,,,,,,,,,,,,, Joint Second Amended Trial Plan (Phillips, John) (Entered: 05/03/2018)
05/04/2018	<u>158</u>	NOTICE by Viola Bryant of Telephonic Appearance (Phillips, John) (Entered: 05/04/2018)
05/04/2018	<u>159</u>	NOTICE by Ken Mascara, Christopher Newman Defendants' Designation of Karen Stephens' Deposition Excerpts (Barranco, Summer) (Entered: 05/04/2018)
05/04/2018	<u>160</u>	

		PRETRIAL STIPULATION <i>Updated</i> by Viola Bryant (Attachments: # <u>1</u> Exhibit "A" Plaintiff's Amended Exhibit and Witness List, # <u>2</u> Exhibit Defs' Second Amended Exhibit and Witness List)(Phillips, John) (Entered: 05/04/2018)
05/05/2018	<u>161</u>	NOTICE of Attorney Appearance by John Michael Phillips on behalf of Viola Bryant (Phillips, John) (Entered: 05/05/2018)
05/07/2018	<u>162</u>	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Final Pretrial Conference held on 5/7/2018. Total time in court: 45 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/07/2018)
05/07/2018	<u>163</u>	PAPERLESS ORDER. Trial will now begin on Thursday, May 17, 2018, not on Wednesday May 16, 2018. The Court overlooked three sentencings on May 16, 2018 that it is reluctant to reschedule. The following are due by 5/10/18: (1) The parties' proposed jury instructions and verdict form. The parties shall submit one copy of the jury instructions and they should be in the order that they will be read to the jurors. The parties shall indicate any instructions that are disputed. (2) The parties' deposition designation notebook and joint trial notebook are due to Chambers in West Palm Beach. (3) Given Plaintiff representation during the Calendar Call that Plaintiff will file a motion to strike one of Defendants' witnesses, Defendants shall try to respond by 5/10/18. If Defendants cannot respond fully by 5/10/18, Defendants shall respond as fully as possible and if not all issues can be addressed in the response, Defendants shall indicate how much time they need to respond and indicating what remaining issues they need to address. (4) The parties shall file a list of any agreed upon questions for the venire that they would like the Court to consider including in its juror questionnaire. (5) The parties shall file an agreed statement of the case that the Court will read to the venire. (6) The parties shall file an amended joint trial plan, narrowing the number of witnesses if possible and indicating which witnesses will be called by Plaintiff, which will be called by Defendants, and which will be called by both Plaintiff and Defendants. (7) The parties shall file amended exhibit and witness lists that eliminate objections that the parties have worked out and eliminate exhibits that the parties are not going to use during trial. The Court reiterates the importance of counsel working together to resolve disputes relating to exhibits and all other matters that may affect the conduct of the trial. Signed by Judge Robin L. Rosenberg on 5/7/2018. (ege) (Entered: 05/07/2018)
05/07/2018		Reset Hearings per 163 Order. Jury Trial set for 5/17/2018 before Judge Robin L. Rosenberg. (asl) (Entered: 05/07/2018)
05/07/2018	<u>164</u>	Plaintiff's MOTION to Exclude Deposition Testimony of Deputy Karen Stephens for Use at Trial by Viola Bryant. (Phillips, John) (Entered: 05/07/2018)
05/07/2018	<u>165</u>	NOTICE by Viola Bryant re <u>159</u> Notice (Other) of <i>Objections and Counter Designation to Defendants' Designation of Karen Stephens' Deposition Excerpts</i> (Phillips, John) (Entered: 05/07/2018)
05/10/2018	<u>166</u>	

		Proposed Voir Dire Questions by Viola Bryant. (Phillips, John) (Entered: 05/10/2018)
05/10/2018	<u>167</u>	Plaintiff's MOTION to Bring Electronic Equipment into the courtroom <i>for Use at Trial</i> by Viola Bryant. Responses due by 5/24/2018 (Attachments: # <u>1</u> Exhibit Proposed Order)(Phillips, John) (Entered: 05/10/2018)
05/10/2018	<u>168</u>	Unopposed MOTION for Extension of Time to submit the Joint Trial Notebook and Defendants' Deposition Designation Notebook by Ken Mascara, Christopher Newman. Responses due by 5/24/2018 (Jolly, Gregory) (Entered: 05/10/2018)
05/10/2018	<u>169</u>	NOTICE by Viola Bryant re 163 Order,,,,,, <i>Joint Third Amended Trial Plan</i> (Phillips, John) (Entered: 05/10/2018)
05/10/2018	<u>170</u>	PAPERLESS ORDER granting <u>168</u> Defendants' Unopposed Motion for Extension of Time to Submit the Joint Trial Notebook and Defendants' Deposition Designation Notebook. Joint Trial Notebook and Defendants' Deposition Designation Notebook due by 4:30 p.m. today, May 10, 2018. Signed by Judge Robin L. Rosenberg on 5/10/2018. (ege) (Entered: 05/10/2018)
05/10/2018	<u>171</u>	MOTION to Allow the Use of Electronic Equipment and Communication Devices During Trial by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	<u>172</u>	PAPERLESS ORDER. The Court is in receipt of Plaintiff's Proposed Voir Dire Questions. DE 166. It appears that page 2 of the proposed questions is missing. Accordingly, Plaintiff shall file the Amended Proposed Voir Dire Questions by 5:00 p.m. today, May 10, 2018, if Plaintiff would like the Court to consider adding the questions to its Juror Questionnaire. Signed by Judge Robin L. Rosenberg on 5/10/2018. (ege) (Entered: 05/10/2018)
05/10/2018	<u>173</u>	ORDER GRANTING PLAINTIFFS <u>167</u> MOTION TO ALLOW ELECTRONIC EQUIPMENT IN COURTROOM FOR USE AT TRIAL Signed by Judge Robin L. Rosenberg on 5/10/2018. (kpe) (Entered: 05/10/2018)
05/10/2018	<u>174</u>	RESPONSE in Opposition re <u>164</u> Plaintiff's MOTION to Exclude Deposition Testimony of Deputy Karen Stephens for Use at Trial filed by Ken Mascara, Christopher Newman. Replies due by 5/17/2018. (Jolly, Gregory) (Entered: 05/10/2018)
05/10/2018	<u>175</u>	Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	<u>176</u>	Proposed Jury Instructions by Viola Bryant. (Phillips, John) (Entered: 05/10/2018)
05/10/2018	<u>177</u>	PRETRIAL STIPULATION (<i>JOINT</i>) by Ken Mascara, Christopher Newman (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	<u>178</u>	

		Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	<u>179</u>	Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/11/2018	<u>180</u>	PAPERLESS ORDER. The Court notes the parties' Proposed Joint Questions for the Venire. DE 179. The final Juror Questionnaire that the Court will use is attached to this Order. The Court notes, however, that this does not preclude Counsel from asking their proposed questions in their respective fifteen minutes of voir dire following the Courts voir dire, which will be based on the attached Juror Questionnaire. Signed by Judge Robin L. Rosenberg on 5/11/2018. (ege) (Entered: 05/11/2018)
05/12/2018	<u>181</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 168, 169 and 170</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	<u>182</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Numbers 228-230 & 361-368</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	<u>183</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Number 27</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	<u>184</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Numbers 24 and 25</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	<u>185</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Evidence as to Mr. Hill's Intoxication</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	<u>186</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Evidence regarding Mr. Hill's Probationary Status</i> (Phillips, John) (Entered: 05/12/2018)
05/14/2018	<u>187</u>	PAPERLESS ORDER requiring responses to <u>181</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 168, 169, and 170 as Listed on Defendants' Third Amended Exhibit and Witness List; <u>182</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 228-230 and 361-368 on Defendants' Third Amended Exhibit and Witness List; <u>183</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Number Twenty Seven as Listed on Defendants' Third Amended Exhibit and Witness List; <u>184</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers Twenty-Four and Twenty Five as Listed on Defendants' Third Amended Exhibit and Witness List; <u>185</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Evidence of Mr. Hill's Intoxication at the Time of the Subject Incident; and <u>186</u> Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Evidence Regarding Mr. Hill's Probationary Status at the Time of Incident. Responses due by 5/15/18 at 5:00 p.m. Signed by Judge Robin L. Rosenberg on 5/14/2018. (ege) (Entered: 05/14/2018)

05/14/2018	<u>188</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Exhibit Number 30</i> (Phillips, John) (Entered: 05/14/2018)
05/14/2018	<u>190</u>	ORDER DENYING WITHOUT PREJUDICE PLAINTIFFS <u>164</u> MOTION TO EXCLUDE DEPOSITION TESTIMONY OF KAREN STEPHENS FOR USE AT TRIAL. Signed by Judge Robin L. Rosenberg on 5/14/2018. (kpe) (Entered: 05/15/2018)
05/15/2018	<u>189</u>	PAPERLESS ORDER requiring response to <u>188</u> Plaintiff's Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Exhibit Number 30 Pursuant to Defendant's Third Amended Exhibit and Witness List by 5:00 p.m. today, 5/15/18. Defendants shall also file the exhibits to which Plaintiff filed notices of objections in docket entries 181, 182, 183, 184, 185, 186, and 188. Signed by Judge Robin L. Rosenberg on 5/15/2018. (ege) (Entered: 05/15/2018)
05/15/2018	<u>191</u>	PAPERLESS ORDER denying without prejudice Defendants Sheriff and Newman's Motion to Allow the Use of Electronic Equipment and Communication Devices During Trial. The Motion does not contain the necessary information. The parties should reference http://www.flsd.uscourts.gov/sites/flsd/files/JudgeRosenberg-Sample-Order-Permitting-Equipment.pdf for a sample order granting a motion to allow electronic equipment in courtroom for use at trial. The parties may contact the Clerk's Office in Fort Pierce at 772-467-2300 to inquire what electronic equipment is in the courtroom and, thus, does not need to be brought by the parties. Signed by Judge Robin L. Rosenberg on 5/15/2018. (ege) (Entered: 05/15/2018)
05/15/2018	<u>192</u>	MOTION To Allow Unloaded Firearm in Courtroom as an Exhibit During Trial by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/15/2018)
05/15/2018	<u>193</u>	PAPERLESS ORDER requiring a response to <u>192</u> Defendants Sheriff and Newman's Motion to Allow Unloaded Firearm in Courtroom as an Exhibit During Trial. Response due by 12:00 p.m. on 5/16/18. Signed by Judge Robin L. Rosenberg on 5/15/2018. (ege) (Entered: 05/15/2018)
05/15/2018	<u>194</u>	MOTION to Bring Electronic Equipment into the courtroom <i>for Use During Trial</i> by Ken Mascara, Christopher Newman. Responses due by 5/29/2018 (Attachments: # <u>1</u> Text of Proposed Order)(Barranco, Summer) (Entered: 05/15/2018)
05/15/2018	<u>195</u>	NOTICE by Ken Mascara, Christopher Newman re <u>188</u> Notice (Other), <u>185</u> Notice (Other), <u>181</u> Notice (Other), <u>183</u> Notice (Other), <u>184</u> Notice (Other), <u>186</u> Notice (Other), <u>182</u> Notice (Other) of <i>Omnibus Response to Plaintiff's Bench Memoranda</i> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Jolly, Gregory) (Entered: 05/15/2018)
05/15/2018	<u>196</u>	NOTICE by Ken Mascara, Christopher Newman re <u>189</u> Order, of <i>Filing Exhibits</i> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, #

		<u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Exhibit, # <u>21</u> Exhibit) (Jolly, Gregory) (Entered: 05/15/2018)
05/15/2018	<u>197</u>	ORDER GRANTING DEFENDANTS SHERIFF AND NEWMANS <u>194</u> MOTION TO ALLOW THE USE OF ELECTRONIC EQUIPMENT AND COMMUNICATION DURING TRIAL. Signed by Judge Robin L. Rosenberg on 5/15/2018. (kpe) (Entered: 05/16/2018)
05/16/2018	<u>198</u>	RESPONSE in Opposition re <u>192</u> MOTION To Allow Unloaded Firearm in Courtroom as an Exhibit During Trial filed by Viola Bryant. Replies due by 5/23/2018. (Attachments: # <u>1</u> Exhibit "A")(Phillips, John) (Entered: 05/16/2018)
05/16/2018	<u>199</u>	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Evidence Regarding Mr. Hill Playing Poker</i> (Phillips, John) (Entered: 05/16/2018)
05/16/2018	<u>200</u>	PAPERLESS ORDER requiring reply to <u>198</u> Plaintiff's Response in Opposition to Defendant's Motion to Allow Unloaded Firearm as an Exhibit During Trial. Signed by Judge Robin L. Rosenberg on 5/16/2018. (ege) (Entered: 05/16/2018)
05/16/2018	<u>201</u>	AMENDED PAPERLESS ORDER requiring reply to <u>198</u> Plaintiff's Response in Opposition to Defendant's Motion to Allow Unloaded Firearm as an Exhibit During Trial by 5/16/18 at 5:00 p.m. Signed by Judge Robin L. Rosenberg on 5/16/2018. (ege) (Entered: 05/16/2018)
05/16/2018	<u>202</u>	NOTICE by Viola Bryant re <u>195</u> Notice (Other), <i>Pl's Reply to Defs' Omnibus Response to Pl's Bench Memoranda</i> (Phillips, John) (Entered: 05/16/2018)
05/16/2018	<u>203</u>	ORDER granting in part and deferring ruling in part on <u>192</u> Defendants Sheriff and Newman's Motion to Allow Unloaded Firearm in Courtroom as an Exhibit During Trial. Signed by Judge Robin L. Rosenberg on 5/16/2018. (ege) (Entered: 05/16/2018)
05/16/2018	<u>204</u>	NOTICE of Attorney Appearance by Bruce Wallace Jolly on behalf of Ken Mascara, Christopher Newman. Attorney Bruce Wallace Jolly added to party Ken Mascara(pty:dft), Attorney Bruce Wallace Jolly added to party Christopher Newman(pty:dft). (Jolly, Bruce) (Entered: 05/16/2018)
05/16/2018	<u>205</u>	REPLY to Response to Motion re <u>192</u> MOTION To Allow Unloaded Firearm in Courtroom as an Exhibit During Trial filed by Ken Mascara, Christopher Newman. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Barranco, Summer) (Entered: 05/16/2018)
05/17/2018	<u>206</u>	NOTICE by Ken Mascara, Christopher Newman <i>of Filing Exhibit 26</i> (Attachments: # <u>1</u> Exhibit) (Barranco, Summer) (Entered: 05/17/2018)
05/17/2018	<u>207</u>	PAPERLESS ORDER. By 11:59 p.m. on 5/18/18, Plaintiff shall file a supplement to docket entry <u>188</u> specifically explaining her objection to Defendants' Exhibit 30. By 11:59 p.m. on 5/18/18, Defendants shall file a response to docket entry <u>199</u> Plaintiff's objection to Defendants' introduction of

		evidence that Mr. Hill was playing poker on the date of the incident. Signed by Judge Robin L. Rosenberg on 5/17/2018. (ege) (Entered: 05/17/2018)
05/17/2018	209	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Selection/Voir Dire held on 5/17/2018, Jury Trial begun on 5/17/2018. Total time in court: 10 hour(s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/18/2018)
05/18/2018	208	PAPERLESS ORDER requiring Defendants to respond to Plaintiff's supplement to docket entry 188 regarding Defendants' Exhibit 30 by 9:00 a.m. on May 21, 2018. Signed by Judge Robin L. Rosenberg on 5/18/2018. (ege) (Entered: 05/18/2018)
05/18/2018	<u>210</u>	NOTICE by Ken Mascara, Christopher Newman re 207 Order, <u>199</u> Notice (Other) <i>Defendants' Response to Plaintiff's Bench Memoranda in Support of Plaintiff's Objections to Defendants' Introduction of Evidence regarding Mr. Hill Playing Poker on the date of the Subject Incident [DE199]</i> (Barranco, Summer) (Entered: 05/18/2018)
05/18/2018	<u>211</u>	NOTICE by Viola Bryant re <u>188</u> Notice (Other) <i>Supplemental Memorandum in Support of Pl's Objection to Defs' Introduction of Exhibit Number 30</i> (Phillips, John) (Entered: 05/18/2018)
05/18/2018	214	RESPONSE to <u>199</u> Notice (Other)/Bench Memoranda In Support Plaintiff's Objection to Defendant's Introduction of Evidence by Ken Mascara, Christopher Newman. (kpe) See DE [210] for image. (Entered: 05/21/2018)
05/18/2018	217	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Trial held on 5/18/2018. Day 2. Total time in court: 8 hour(s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/21/2018)
05/20/2018	<u>212</u>	NOTICE by Ken Mascara, Christopher Newman re 208 Order, <u>211</u> Notice (Other) <i>Response to Plaintiff's Supplemental Memorandum regarding Defendants' Exhibit 30</i> (Barranco, Summer) (Entered: 05/20/2018)
05/20/2018	<u>213</u>	Proposed Jury Instructions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/20/2018)
05/20/2018	215	RESPONSE to <u>211</u> Notice (Other)/ Plaintiff's Supplemental Memorandum regarding Defendants' Exhibit 30 by Ken Mascara, Christopher Newman. see DE <u>212</u> for image. (kpe) (Entered: 05/21/2018)
05/21/2018	216	Clerks Notice to Filer re <u>210</u> Notice (Other), <u>211</u> Notice (Other). Wrong Event Selected; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see DE 215 Response/Reply (Other), 214 Response/Reply (Other). It is not necessary to refile this document. (kpe) (Entered: 05/21/2018)
05/21/2018	218	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Trial held on 5/21/2018. Day 3. Total time in court: 10 hour (s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/22/2018)

05/22/2018	<u>219</u>	Court's First Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/22/2018. (ege) (Entered: 05/22/2018)
05/22/2018	<u>220</u>	NOTICE by Viola Bryant re <u>213</u> Proposed Jury Instructions <i>Pl's Objection to Defs' Special Jury Instruction [DE213]</i> (Phillips, John) (Entered: 05/22/2018)
05/23/2018	<u>221</u>	Court's Second Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/23/2018. (ege) (Entered: 05/23/2018)
05/23/2018	<u>222</u>	Court's Third Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/23/2018. (ege) (Entered: 05/23/2018)
05/25/2018	<u>223</u>	JURY VERDICT. (mg) (Additional attachment(s) added on 5/25/2018: # <u>1</u> Restricted Unredacted Jury Note/Verdict) (mg). (Entered: 05/25/2018)
05/25/2018	<u>224</u>	Court's Final Jury Instructions. (kpe) (Entered: 05/25/2018)
05/25/2018	<u>225</u>	Jury Notes. (mg) (Additional attachment(s) added on 5/25/2018: # <u>1</u> Restricted Unredacted Jury Note/Verdict) (mg). (Entered: 05/25/2018)
05/25/2018	<u>226</u>	Plaintiff's Second Amended Exhibit and Witness List by Viola Bryant.(kpe) (Entered: 05/25/2018)
05/25/2018	<u>227</u>	Defendants' Third Amended Exhibit and Witness List by Ken Mascara, Christopher Newman.. (kpe) (Entered: 05/25/2018)
05/30/2018	<u>228</u>	TRIAL EXHIBITS <i>Plaintiff's</i> 7, 17, 18, 22, 27, 28, 33, 38, 45, 50, 55, 75, 76, 81, 92, 94, 98, 101, 104, 106, 107, 112, 115, 117, 123, 124, 141, 143, 148, 151, 152, 163, 165, 168, 169, 171, 172, 173, 174, 175, 179, 186, 188, 189, 196 by Viola Bryant. (Attachments: # <u>1</u> Certification of Compliance Re Admitted Evidence, # <u>2</u> Exhibit 7, # <u>3</u> Exhibit 17, # <u>4</u> Exhibit 18, # <u>5</u> Exhibit 22, # <u>6</u> Exhibit 27, # <u>7</u> Exhibit 28, # <u>8</u> Exhibit 33, # <u>9</u> Exhibit 38, # <u>10</u> Exhibit 45, # <u>11</u> Exhibit 50, # <u>12</u> Exhibit 55, # <u>13</u> Exhibit 75, # <u>14</u> Exhibit 76, # <u>15</u> Exhibit 81, # <u>16</u> Exhibit 92, # <u>17</u> Exhibit 94, # <u>18</u> Exhibit 98, # <u>19</u> Exhibit 101, # <u>20</u> Exhibit 104, # <u>21</u> Exhibit 106, # <u>22</u> Exhibit 107, # <u>23</u> Exhibit 112, # <u>24</u> Exhibit 115, # <u>25</u> Exhibit 117, # <u>26</u> Exhibit 123, # <u>27</u> Exhibit 124, # <u>28</u> Exhibit 141, # <u>29</u> Exhibit 143, # <u>30</u> Exhibit 148, # <u>31</u> Exhibit 151, # <u>32</u> Exhibit 152, # <u>33</u> Exhibit 163, # <u>34</u> Exhibit 165, # <u>35</u> Exhibit 168, # <u>36</u> Exhibit 169, # <u>37</u> Exhibit 171, # <u>38</u> Exhibit 172, # <u>39</u> Exhibit 173, # <u>40</u> Exhibit 174, # <u>41</u> Exhibit 175, # <u>42</u> Exhibit 179, # <u>43</u> Exhibit 186, # <u>44</u> Exhibit 188, # <u>45</u> Exhibit 189, # <u>46</u> Exhibit 196)(Phillips, John) (Entered: 05/30/2018)
05/30/2018	<u>229</u>	FINAL JUDGMENT. The Clerk of Court shall CLOSE this case. Signed by Judge Robin L. Rosenberg on 5/30/2018. (kpe) NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. (Entered: 05/31/2018)
06/04/2018	<u>230</u>	NOTICE by Ken Mascara, Christopher Newman <i>Notice of Filing Exhibits Admitted into Evidence</i> (Attachments: # <u>1</u> Exhibit Exhibit 7 CAD, # <u>2</u> Exhibit Exhibit 26 Medical Examiners Report, # <u>3</u> Exhibit Exhibit 34 Toxicology Report, # <u>4</u> Exhibit Exhibit 89 SLCSO Photos 01150002, # <u>5</u> Exhibit Exhibit

		102 SLCSO Photos 01150040, # <u>6</u> Exhibit Exhibit 121 SLCSO Photos 01150064, # <u>7</u> Exhibit Exhibit 122 SLCSO Photos 01150065, # <u>8</u> Exhibit Exhibit 150 SLCSO Photos 01150095, # <u>9</u> Exhibit Exhibit 157 SLCSO Photos 01150102, # <u>10</u> Exhibit Exhibit 158 SLCSO Photos 01150103, # <u>11</u> Exhibit Exhibit 183 SLCSO Photos 01150128, # <u>12</u> Exhibit Exhibit 189 SLCSO Photos 01150134, # <u>13</u> Exhibit Exhibit 204 SLCSO Photos 01150150, # <u>14</u> Exhibit Exhibit 205 SLCSO Photos 01150151, # <u>15</u> Exhibit Exhibit 352 SLCSO Photos DSCN0040, # <u>16</u> Exhibit Exhibit 358 SLCSO Photos set0019 new image, # <u>17</u> Exhibit Exhibit 369 Gun, magazine, and shorts) (Barranco, Summer) (Entered: 06/04/2018)
06/04/2018	<u>231</u>	Defendant's CERTIFICATE of Compliance Re Admitted Evidence for exhibit (s): 7, 9, 26, 34, 89, 102, 121, 122, 150, 157, 158, 183, 189, 204, 205, 352, 358, 369 by Summer Marie Barranco on behalf of Ken Mascara, Christopher Newman (Barranco, Summer) (Entered: 06/04/2018)
06/07/2018	<u>232</u>	CLERK'S Notice Directing Counsel to Retrieve Original Exhibits within 5 days as to Viola Bryant, Ken Mascara, Christopher Newman. Original exhibits to be retrieved: Plaintiff's and Defendant's Original Trial Exhibits. For retrieval information, please contact the Clerks Office - Records Section of the Paul G. Rogers Federal Building and U.S. Courthouse, 701 Clematis Street, Room 202, West Palm Beach, FL 33401, (561) 803-3400. (dj) (Entered: 06/07/2018)
06/12/2018	<u>233</u>	RELEASE OF TRIAL EXHIBITS released to Law Office of John M. Phillips. (gp) (Entered: 06/13/2018)
06/14/2018	<u>234</u>	RELEASE OF DEFENDANT'S TRIAL EXHIBITS released to USA Legal Services, Inc. (gp) (Entered: 06/15/2018)
06/27/2018	<u>235</u>	Plaintiff's MOTION to Change Venue by Viola Bryant. Responses due by 7/11/2018 (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Exhibit "C", # <u>4</u> Exhibit "D", # <u>5</u> Exhibit "E", # <u>6</u> Exhibit "F", # <u>7</u> Exhibit "G")(Phillips, John) (Entered: 06/27/2018)
06/27/2018	<u>236</u>	Plaintiff's MOTION to Compel <i>Release of Property</i> by Viola Bryant. Responses due by 7/11/2018 (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Exhibit "C")(Phillips, John) (Entered: 06/27/2018)
06/27/2018	<u>237</u>	Plaintiff's MOTION for New Trial by Viola Bryant. (Attachments: # <u>1</u> Exhibit "A", # <u>2</u> Exhibit "B", # <u>3</u> Exhibit "C", # <u>4</u> Exhibit "D", # <u>5</u> Exhibit "E", # <u>6</u> Exhibit "F")(Phillips, John) (Entered: 06/27/2018)
06/28/2018	<u>238</u>	TRANSCRIPT of Jury Trial held on 5.17.18 before Judge Robin L. Rosenberg, Volume Number 1 of 6, 1-348 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # <u>1</u> Transcripts) (mg). (Entered: 06/28/2018)
06/28/2018	<u>239</u>	

		TRANSCRIPT of Jury Trial held on 05.18.2018 before Judge Robin L. Rosenberg, Volume Number 2 of 6, 1-274 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)
06/28/2018	<u>240</u>	TRANSCRIPT of Jury Trial held on 05.21.2018 before Judge Robin L. Rosenberg, Volume Number 3 of 6, 1-341 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)
06/28/2018	<u>241</u>	TRANSCRIPT of Jury Trial held on 05.22.2018 before Judge Robin L. Rosenberg, Volume Number 4 of 6, 1-308 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)
06/28/2018	<u>242</u>	TRANSCRIPT of Jury Trial held on 05.23.2018 before Judge Robin L. Rosenberg, Volume Number 5 of 6, 1-220 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # <u>1</u> unredacted transcript) (mg). (Entered: 06/28/2018)
06/28/2018	<u>243</u>	TRANSCRIPT of Jury Trial held on 05.24.2018 before Judge Robin L. Rosenberg, Volume Number 6 of 6, 1-38 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # <u>1</u> unredacted transcript) (mg). (Entered: 06/28/2018)
06/29/2018	<u>244</u>	MOTION to Tax Costs by Ken Mascara, Christopher Newman. Responses due by 7/13/2018 (Attachments: # <u>1</u> Affidavit, # <u>2</u> Bill of Costs, # <u>3</u> Supporting Bills)(Barranco, Summer) (Entered: 06/29/2018)
07/11/2018	<u>245</u>	

		RESPONSE to Motion re <u>235</u> Plaintiff's MOTION to Change Venue filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Jolly, Gregory) (Entered: 07/11/2018)
07/11/2018	<u>246</u>	RESPONSE in Opposition re <u>236</u> Plaintiff's MOTION to Compel <i>Release of Property</i> filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Jolly, Gregory) (Entered: 07/11/2018)
07/11/2018	<u>247</u>	RESPONSE in Opposition re <u>237</u> Plaintiff's MOTION for New Trial filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Attachments: # <u>1</u> Exhibit "A" Excerpt of Christopher Lawrence deposition)(Jolly, Gregory) (Entered: 07/11/2018)
07/13/2018	<u>248</u>	REPLY to Response to Motion re <u>244</u> MOTION to Tax Costs filed by Viola Bryant. (Phillips, John) (Entered: 07/13/2018)
07/18/2018	<u>249</u>	REPLY to Response to Motion re <u>236</u> Plaintiff's MOTION to Compel <i>Release of Property</i> filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/18/2018	<u>250</u>	REPLY to Response to Motion re <u>235</u> Plaintiff's MOTION to Change Venue filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/18/2018	<u>251</u>	REPLY to Response to Motion re <u>237</u> Plaintiff's MOTION for New Trial filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/20/2018	<u>252</u>	REPLY to Response to Motion re <u>244</u> MOTION to Tax Costs filed by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 07/20/2018)
08/03/2018	<u>253</u>	Plaintiff's MOTION Pl's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Pl's Timely Filed Motion for New Trial re <u>237</u> Plaintiff's MOTION for New Trial by Viola Bryant. (Phillips, John) (Entered: 08/03/2018)
08/03/2018	<u>254</u>	PAPERLESS ORDER expediting briefing on <u>253</u> Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. In light of the fact that <u>237</u> Plaintiff's Motion for New Trial is fully briefed and that <u>253</u> Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial is brief, the Court hereby expedites briefing on <u>253</u> Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. Defendants' response is due by August 7, 2018 and Plaintiff's reply is due by August 10, 2018. Signed by Judge Robin L. Rosenberg on 8/3/2018. (ege) (Entered: 08/03/2018)
08/07/2018	<u>255</u>	ORDER DENYING WITHOUT PREJUDICE PLAINTIFFS <u>236</u> MOTION TO COMPEL RELEASE OF PROPERTY. Signed by Judge Robin L. Rosenberg on 8/7/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/07/2018)
08/07/2018	<u>256</u>	RESPONSE in Opposition re <u>253</u> Plaintiff's MOTION Pl's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Pl's Timely Filed Motion for New Trial re <u>237</u> Plaintiff's MOTION for New Trial

		filed by Ken Mascara, Christopher Newman. Replies due by 8/14/2018. (Barranco, Summer) (Entered: 08/07/2018)
08/10/2018	<u>257</u>	REPLY to Response to Motion re <u>253</u> Plaintiff's MOTION Pl's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Pl's Timely Filed Motion for New Trial re <u>237</u> Plaintiff's MOTION for New Trial filed by Viola Bryant. (Phillips, John) (Entered: 08/10/2018)
08/14/2018	<u>258</u>	ORDER DENYING PLAINTIFFS <u>253</u> MOTION FOR JUROR INTERVIEW AND MOTION FOR LEAVE TO FILE ADDITIONAL EVIDENCE IN SUPPORT OF PLAINTIFFS TIMELY FILED MOTION FOR NEW TRIAL. Signed by Judge Robin L. Rosenberg on 8/14/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/14/2018)
08/14/2018	<u>259</u>	ORDER denying Plaintiff's <u>237</u> Motion for New Trial. Signed by Judge Robin L. Rosenberg on 8/14/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/14/2018)
08/14/2018	<u>260</u>	PAPERLESS ORDER denying as moot <u>235</u> Plaintiff's Motion for Change/Transfer of Venue, in light of the Court's <u>259</u> Order Denying Plaintiff's Motion for New Trial. Signed by Judge Robin L. Rosenberg on 8/14/2018. (ege) (Entered: 08/14/2018)
08/23/2018	<u>261</u>	CLERK'S Notice of Maintaining Audio-Visual Defendant's Exhibit(s) #9 consisting of 1 (CD) Re D.E. <u>231</u> as to Ken Mascara, Christopher Newman. (rrs) (Entered: 08/23/2018)
08/23/2018	<u>262</u>	CLERK'S Notice of Maintaining Audio-Visual Plaintiff's Exhibit(s) #1,2,190,191 consisting of 4 (CDS) Re D.E. <u>228</u> as to Viola Bryant. (rrs) (Entered: 08/23/2018)
09/11/2018	<u>263</u>	Notice of Appeal RE: DE <u>229</u> Final Judgment and DE <u>259</u> Order by Viola Bryant. Filing fee \$ 505.00 receipt number 113C-10985321. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Phillips, John) (linked docket entry) Text Modified on 9/12/2018 (apz). (Entered: 09/11/2018)
09/12/2018	<u>264</u>	Clerks Notice to Filer re <u>263</u> Notice of Appeal. Document Not Linked; ERROR - The filed document was not linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document. (apz) (Entered: 09/12/2018)
09/12/2018		Transmission of Notice of Appeal, Judgment/Order under appeal and Docket Sheet to US Court of Appeals re <u>263</u> Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 09/12/2018)
09/12/2018	<u>265</u>	THIS CAUSE came before the Court on Defendant's Bill of Costs, filed as a Motion to Tax Costs [DE <u>244</u>], on June 29, 2018. Although costs may properly be taxed at this time, cf. Rothenberg v. Sec. Mgmt. Co., 677 F.2d 64, 64 (11th Cir. 1982) ("[C]osts may be taxed after a notice of appeal has been filed."), the Court uses its discretion to stay this matter pending the outcome of the appeal,

		cf. Belize Telecom, Ltd. v. Govt of Belize, 528 F.3d 1298, 1310 (11th Cir. 2008) ("[W]e leave for the district court to determine whether a stay or a hearing on costs and fees is appropriate, given the pending appeal...."). Accordingly, it is ORDERED AND ADJUDGED that Defendant's Motion [DE 244] is TERMINATED in light of Plaintiff's Notice of Appeal at DE 263. Either party may move for the motion to be reinstated at such time as the pending appeal has concluded. Signed by Judge Robin L. Rosenberg on 9/12/2018. (kbs) (Entered: 09/12/2018)
09/19/2018	<u>266</u>	Acknowledgment of Receipt of NOA from USCA re <u>263</u> Notice of Appeal, filed by Viola Bryant. Date received by USCA: 9/12/2018. USCA Case Number: 18-13902-E. (apz) (Entered: 09/19/2018)
09/24/2018	<u>267</u>	TRANSCRIPT INFORMATION FORM by Viola Bryant re <u>263</u> Notice of Appeal,. No Transcript Requested. (Phillips, John) (Entered: 09/24/2018)

PACER Service Center			
Transaction Receipt			
01/23/2019 14:32:42			
PACER Login:	JohnPhillips:5709593:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:16-cv-14072-RLR
Billable Pages:	27	Cost:	2.70

TAB-1-1

Filing # 36334834 E-Filed 01/08/2016 02:28:39 PM

IN THE CIRCUIT COURT, NINETEENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. LUCIE COUNTY, FLORIDA

CASE NO.: 562016CA000029(oc)
DIVISION: JUDGE Croom

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.

Plaintiff,

v.

SHERIFF KEN MASCARA in his official
capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

COMPLAINT FOR WRONGFUL DEATH

COMES NOW the Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, hereinafter "HILL," by and through the undersigned counsel, and files this Complaint against the Defendants, SHERIFF KEN MASCARA, and Deputy CHRISTOPHER NEWMAN, individually, and state as follows:

1. This is an action for damages in excess of fifteen thousand dollars (\$15,000.00), exclusive of interest, costs, and attorneys' fees.

2. At all times material, Plaintiff, VIOLA BRYANT, was the natural mother of GREGORY VAUGHN HILL, JR, deceased, and has been appointed as the duly authorized Personal Representative of the Estate of GREGORY VAUGHN HILL, JR. by Judge Janet Croom of the Circuit Court

for St. Lucie County, Florida. A copy of the Letters of Administration is attached hereto as Exhibit "A."

3. The living HILL was an unmarried adult residing in St. Lucie County, Florida and maintaining the residence located at 1501 Avenue Q, Fort Pierce, FL 34950. The following are the beneficiaries and their relationship to HILL as set forth by the Florida Wrongful Death Act:

- a) D.H., decedent's minor child, c/o Terrica Davis, her mother;
- b) A. H., decedent's minor child, c/o Terrica Davis, her mother;
- c) G.H., decedent's minor child c/o Melody Wright, his mother.

4. Prior to the filing of this Complaint, Plaintiff served notice of this claim pursuant to Florida Statute Section 768.28, via Certified Mail Return Receipt Requested, and those claims have been denied or ignored.

5. All conditions precedent to filing this Complaint have occurred.

6. At all times material, the Plaintiff, VIOLA BRYANT was a resident of Fort Pierce, St. Lucie County, Florida.

7. At all times material, Defendant MASCARA employed Defendant CHRISTOPHER NEWMAN in his capacity as a law enforcement officer with the St. Lucie County Sheriff's Office.

8. Defendant KEN MASCARA (hereinafter referred to as "MASCARA"), is a resident of St. Lucie County, Florida and is *sui juris*. At all

times material, Defendant MASCARA was the Sheriff for St. Lucie County, Florida. Defendant MASCARA is sued herein in his official capacity as the Sheriff for St. Lucie County, Florida.

9. Defendant CHRISTOPHER NEWMAN (hereinafter referred to as "NEWMAN"), is believed to be a resident of St. Lucie County, Florida and is *sui juris*. At all times material, Defendant NEWMAN was employed by the St. Lucie County Sheriff's Office as a law enforcement officer and is sued herein in his individual capacity.

10. At all times material, Defendant NEWMAN was acting within the scope and course of his employment with Defendant MASCARA, and the St. Lucie County Sheriff's Office.

GENERAL ALLEGATIONS

11. On or about January 14, 2014, at 3:00 p.m., Defendant NEWMAN and Deputy Edward Lopez arrived at HILL's residence located at 1501 Avenue Q, Fort Pierce, St. Lucie County, Florida in response to a noise complaint for loud music emanating from the garage of the residence.

12. Unauthorized loud music is potentially a violation of Fort Pierce Municipal Code with a maximum penalty of a \$500.00 fine and/or or up to 60 days in jail ONLY after a warning is issued for the first complaint and a civil citation is issued after the second complaint.

13. At said place and said time, Defendant NEWMAN knocked on the front and garage doors of the residence in an attempt to speak with the person responsible for the loud music.

14. After NEWMAN knocked on the doors, the garage door opened revealing HILL within the comfort of his own garage and home.

15. Upon information and belief, Deputy Lopez indicated loudly that HILL had a gun and then the garage door closed.

16. Despite the door being closed, NEWMAN fired his handgun approximately four times and killed HILL.

17. After the shooting, HILL's body was found face down within the garage with an unloaded handgun in his back pants pocket.

18. At no time did HILL raise his firearm or threaten to shoot or otherwise pose a threat to Deputies NEWMAN or Edward Lopez or any other person.

19. In fact, HILL was shot through the closed garage door and one bullet struck his head at HILL's standing height while HILL was fully within his home.

20. Deputy Edward Lopez did not discharge his weapon during the incident.

21. After HILL was shot, St. Lucie County Sheriff's Office dispatched a SWAT team and many personnel who fired tear gas into the HILL home in an effort to subdue an already deceased HILL.

22. St. Lucie County Sheriff's Office effectively and needlessly employed excessive force to subdue HILL and also effectively destroyed his home.

COUNT I
CLAIM PURSUANT TO 42 U.S.C. § 1983
MUNICIPAL LIABILITY

Plaintiff adopts and re-alleges Paragraphs 1 through 22 as if set forth fully herein, and further alleges as follows:

23. This claim is brought pursuant to 42 U.S.C. § 1983 for violation of HILL's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

24. At all times material, Defendant MASCARA was Sheriff of St. Lucie County and therefore supervisor to all law enforcement personnel employed by the St. Lucie County Sheriff's Office. Defendant MASCARA is a person within the meaning of 42 U.S.C. § 1983.

25. Defendant MASCARA as the Sheriff of St. Lucie County, is liable because of his policy and custom of encouraging, tolerating, permitting, and ratifying the use of improper and excessive deadly force by law enforcement under his supervision of which he knew or should have known.

26. Defendant MASCARA as the Sheriff of St. Lucie County, has routinely ignored violations of the Fourth and Fourteenth Amendments by

his subordinates, such that he has established a custom within the St. Lucie County Sheriff's Office.

27. Defendant MASCARA, as the Sheriff of St. Lucie County, evidenced deliberate indifference by failing to respond to a need for oversight and discipline in instances of Fourth and Fourteenth Amendment violations in such a manner as to encourage his subordinates to continue engaging in constitutional violations.

28. Defendant MASCARA, as the Sheriff of St. Lucie County, failed to discipline or prosecute known instances of wrongful and excessive use of force by officers under his direction and employ.

29. Defendant MASCARA, as the Sheriff of St. Lucie County, refused to adequately investigate complaints of previous incidents of wrongful and excessive use of force by officers under his direction and employ, and instead caused law enforcement personnel to believe such conduct is permissible.

30. Defendant MASCARA, as the Sheriff of St. Lucie County, established and maintained a system of review of complaints of excessive use of force by St. Lucie County Sheriff's Office law enforcement personnel and employees, which has failed to identify constitutional violations by those officers and employees and subject the offending employees and law enforcement personnel to discipline, close supervision, or restraining. The failure was so pervasive as to become the *de facto*

policy and custom of Defendant MASCARA, as the Sheriff of St. Lucie County, to tolerate the use of excessive force by law enforcement personnel under his direction and employ.

31. The foregoing acts, omissions, and systematic deficiencies are policies and customs of Defendant MASCARA, as the Sheriff of St. Lucie County, and caused officers and employees under the employ and direction of Defendant MASCARA to be unaware or alternatively unconcerned with the rules and laws governing permissible use of force and to believe such use of force is entirely within the discretion of the deputies and employees. Further, such use of force would not be honestly and properly investigated, all with the foreseeable result that officers and employees are more likely to use excessive force in situations where such force is neither necessary nor reasonable nor legal.

32. As a direct and proximate result of the aforementioned acts and/or omissions on the part of Defendant MASCARA, HILL was caused to become deceased.

WHEREFORE, Plaintiff VIOLA BRYANT demands judgment for damages, including compensatory damages, loss of net accumulations to the Estate, all costs, interest and reasonable attorney's fees provided under the applicable law, against Defendant KEN MASCARA as the Sheriff of St. Lucie County, and any other such relief this Honorable Court deems reasonable and just.

COUNT II
CLAIM AGAINST CHRISTOPHER NEWMAN PURSUANT TO 42 U.S.C. § 1983

Plaintiff adopts and re-alleges Paragraphs 1 through 22 as if set forth fully herein, and further allege as follows:

33. The actions of Defendant NEWMAN, including the excessive use of force and battery of HILL violated clearly established law, and violated the Constitutional rights of HILL including his rights under the Fourth and Fourteenth Amendments to the United States Constitution, through the wrongful acts of using deadly force against HILL and intentionally shooting him.

34. The shooting of HILL was entirely unjustified by any of HILL's actions, and constituted an unreasonable seizure and excessive use of deadly force in an effort to intentionally acquire control over HILL by Defendant NEWMAN, a government actor.

35. The actions alleged above deprived HILL of clearly defined, established, and well-settled Constitutional rights of Plaintiff, specifically: (a) the freedom from the use of excessive and unreasonable force; (b) the freedom from unreasonable seizure; and (c) the freedom from deprivation of life and liberty without due process of law.

36. Defendant NEWMAN acted recklessly, maliciously, or deliberately indifferent toward HILL when he deprived him of his Constitutional rights.

37. As a direct and proximate result of the aforementioned acts of Defendant NEWMAN, HILL was caused to become deceased.

WHEREFORE, Plaintiff VIOLA BRYANT demands judgment for damages, including compensatory damages, loss of net accumulations to the Estate, all costs, interest and reasonable attorney's fees provided under the applicable law, against Defendant CHRISTOPHER NEWMAN and any other such relief this Honorable Court deems reasonable and just.

COUNT III
STATE LAW CLAIM OF NEGLIGENCE AGAINST SHERIFF KEN MASCARA

Plaintiff adopts and re-alleges Paragraphs 1 through 22 as if set forth fully herein, and further allege as follows:

38. At all times material and at the time of the aforementioned shooting incident, Defendant NEWMAN was an employee and uniformed law enforcement officer of the St. Lucie County Sheriff's Office and was acting within the scope of his employment.

39. As such, Defendant MASCARA, as Sheriff of St. Lucie County, liable for the negligent actions of its employee, Defendant NEWMAN.

40. Defendant NEWMAN owed a duty to HILL to refrain from firing in an unsafe or unreasonable manner and to act as a reasonable law enforcement officer under same or similar circumstances.

41. Defendant NEWMAN breached the aforementioned duty in the following ways:

- a. by unreasonably firing his firearm in the direction of HILL;

- b. by unreasonably firing his firearm when it was apparent that no forcible felony was being committed or life threatening situation existed.

42. Defendant NEWMAN's actions were negligent and were the direct and proximate cause of the death of HILL.

WHEREFORE, Plaintiff VIOLA BRYANT demands judgment for damages, including compensatory damages, loss of net accumulations to the Estate, all costs, interest and reasonable attorney's fees provided under the applicable law, against Defendant KEN MASCARA and any other such relief this Honorable Court deems reasonable and just.

COUNT IV
STATE LAW CLAIM FOR BATTERY RESULTING IN WRONGFUL DEATH AGAINST
CHRISTOPHER NEWMAN

Plaintiff adopts and re-alleges Paragraphs 1 through 22 as if fully set forth herein, and further alleges as follows:

43. On or about January 14, 2014, Defendant NEWMAN, an employee and uniformed officer with the St. Lucie County Sheriff's Office, committed a battery when he discharged his handgun to intentionally strike HILL.

44. The aforementioned act of discharging this handgun at HILL was the intended act of Defendant NEWMAN and was carried out in bad faith and with malicious intent.

45. As a direct and proximate result of the acts of Defendant NEWMAN, HILL was caused to become deceased.

WHEREFORE, Plaintiff VIOLA BRYANT demands judgment for damages, including compensatory damages, loss of net accumulations to the Estate, all costs, interest and reasonable attorney's fees provided under the applicable law, against Defendant CHRISTOPHER NEWMAN and any other such relief this Honorable Court deems reasonable and just.

COUNT V
CLAIM FOR NEGLIGENCE RESULTING IN DAMAGE TO REAL PROPERTY
AGAINST SHERIFF KEN MASCARA

Plaintiff adopts and re-alleges Paragraphs 1 through 22 as if fully set forth herein, and further alleges as follows:

46. Defendant MASCARA, agents and deputies of the St. Lucie County Sheriff's Office owed a duty to HILL to use reasonable care when entering his property during investigative and/or apprehension efforts.

47. Immediately after HILL was shot and killed by NEWMAN, St. Lucie County Sheriff's Deputies unreasonably employed militaristic tactics in an effort to subdue and apprehend Hill by employing numerous SWAT vehicles, SWAT Team members, and snipers, many of which surrounded the home of HILL.

48. St. Lucie County Sheriff's Deputies shot tear gas canisters into the HILL home through many windows while severely damaging the

windows and the interior of the home and leaving toxic tear gas residue in the home.

49. Deputies also cut holes in the garage door, and kicked in other entry doors to the home.

50. At all times material, St. Lucie County Sheriff's Office's employed militaristic tactics were unreasonable, negligent and excessive as HILL died instantly after Newman discharged his weapon eliminating any need for forced entry, tear gas or damage to the home.

51. As a result of the aforementioned conduct of St. Lucie County deputies, the HILL home was severely damaged and rendered uninhabitable.

WHEREFORE, Plaintiff VIOLA BRYANT demands judgment for property damages, including the all costs of repair, any loss of use or diminution in value, against Defendant KEN MASCARA and any other such relief this Honorable Court deems reasonable and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all issues so triable.

Respectfully submitted,

Date: 1/08/14

Law Office of John M. Phillips, LLC


JOHN M. PHILLIPS, ESQUIRE
Florida Bar Number: 0477575

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Florida Bar Number: 0099975
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TAB-6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

DEFENDANT NEWMAN'S ANSWER/DEFENSES TO COMPLAINT

The Defendant CHRISTOPHER NEWMAN, an individual, through his undersigned counsel,
files this his Answer/Defenses to the Complaint and would state as follows:

1. Admitted for jurisdictional purposes only.
2. Without knowledge and therefore denied.
3. Without knowledge and therefore denied.
4. Denied.
5. Denied.
6. Without knowledge and therefore denied.
7. Admitted that the Defendant Newman at all times material was employed by the St.

Lucie County Sheriff's office as a deputy sheriff.

8. Admitted that Ken Mascara is the Sheriff of St. Lucie County and is sued in his
official capacity only.

9. Admitted that the Defendant Newman at all times material was employed by the St.

Lucie County Sheriff's office as a deputy sheriff and is sued in his individual capacity only.

10. Admitted that at all times material the Defendant Newman was acting within the course and scope of his employment with the St. Lucie County Sheriff's office.

GENERAL ALLEGATIONS

- 11. Denied as phrased.
- 12. Denied as phrased.
- 13. Denied as phrased.
- 14. Denied as phrased.
- 15. Denied as phrased.
- 16. Denied as phrased.
- 17. Denied as phrased.
- 18. Denied.
- 19. Denied as phrased.
- 20. Admitted.
- 21. Denied as phrased.
- 22. Denied.

COUNT I
CLAIM PURSUANT TO 42 U.S.C. § 1983
MUNICIPAL LIABILITY

23 - 32. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 23 - 32.

COUNT II
CLAIM AGAINST CHRISTOPHER NEWMAN PURSUANT TO 42 U.S.C. § 1983

- 33. Denied.
- 34. Denied.

35. Denied.

36. Denied.

37. Denied.

COUNT III

STATE LAW CLAIM OF NEGLIGENCE AGAINST SHERIFF KEN MASCARA

38-42. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 38 - 42.

COUNT IV

**STATE LAW CLAIM FOR BATTERY RESULTING IN WRONGFUL DEATH
AGAINST CHRISTOPHER NEWMAN**

43. Denied.

44. Denied.

45. Denied.

COUNT V

**CLAIM FOR NEGLIGENCE RESULTING IN DAMAGE TO REAL PROPERTY
AGAINST SHERIFF KEN MASCARA**

46-51. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 46 - 51.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

DEFENSES

52. As a first Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that Plaintiff has failed to make sufficient allegation of ultimate fact from which it may be determined that a claim for relief has been stated.

53. As a further and separate Defense, the Defendant would assert that any and all

injury or damage suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

54. As a further and separate Defense, the Defendant would assert that any and all actions which were taken by him were:

- a. Without malice;
- b. With probable cause and/or reasonable suspicion;
- c. In pursuit of lawful and legal duties;
- d. With such force as was reasonable and necessary under the circumstances.

55. As a further and separate Defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

56. As a further and separate Defense, the Defendant would assert that to the extent force was used, the force was justifiable and otherwise lawful pursuant Chapter 776, Florida Statutes.

57. As a further and separate Defense, the Defendant would assert any defense or immunity that is applicable as set forth in Chapter 776, Florida Statutes.

58. As a further and separate Defense, the Defendant would assert that he is immune from any and all liability through application of the concept of qualified immunity, as he, at no time, committed any act in derogation of Plaintiff's civil rights of which a reasonable officer would have had knowledge and, at all times, otherwise acted in good faith relying upon existing statutes and policies and procedures as authority for his actions.

59. As a separate and further Defense, the Defendant would assert that he is relying upon the presumption that the exercise of police power was for the purpose of protecting the

public health, safety and/or welfare and is otherwise presumed to be for the purpose of preventing a harm. Such rebuttable presumption requires proof to the contrary by clear and convincing evidence pursuant to Florida Statute §11.066(2).

60. As a further and separate Defense, the Defendant would state that to the extent the Plaintiff has failed to mitigate the estate's damages, Defendant is entitled to a reduction of any jury award.

61. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff was caused in whole or in part by reason of the wrongful acts of others over which this Defendant had no control or responsibility for control.

62. As a further and separate Defense, the Defendant would assert that as to the state law claims, all actions he took, if any, were taken within the course and scope of his employment, and not in bad faith, or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property and consequently he is not subject to suit pursuant to §768.28(9), Florida Statutes.

63. As a further and separate Defense, the Defendant would assert that any and all injuries allegedly suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's decedent's harmful acts and/or negligent conduct for which Plaintiff and/or Plaintiff's decedent are comparatively chargeable.

64. As a further and separate Defense, the Defendant would assert the alcohol or drug defense as set forth in Florida Statute §768.36 based upon the fact that the medical examiner and/or her report and related laboratory results obtained from samples taken during the autopsy of the decedent indicated that his blood alcohol level was well in excess of 0.08 percent. Moreover, discovery may reveal further grounds for this defense to include that the decedent was

under the influence of drugs.

DEMAND FOR TRIAL BY JURY

The Defendant, Christopher Newman, hereby demands trial by jury on all issues so triable.

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this 10th day of March, 2016.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants
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BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

TAB-7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

DEFENDANT SHERIFF'S ANSWER/DEFENSES TO COMPLAINT

The Defendant SHERIFF KEN MASCARA in his official Capacity as Sheriff of St. Lucie County, through his undersigned counsel, files this his Answer/Defenses to the Complaint and would state as follows:

1. Admitted for jurisdictional purposes only.
2. Without knowledge and therefore denied.
3. Without knowledge and therefore denied.
4. Denied.
5. Denied.
6. Without knowledge and therefore denied.
7. Admitted that the Defendant Newman at all times material was employed by the St.

Lucie County Sheriff's office as a deputy sheriff.

8. Admitted that Ken Mascara is the Sheriff of St. Lucie County and is sued in his official capacity only.

9. Admitted that the Defendant Newman at all times material was employed by the St. Lucie County Sheriff's office as a deputy sheriff and is sued in his individual capacity only.

10. Admitted that at all times material the Defendant Newman was acting within the course and scope of his employment with the St. Lucie County Sheriff's office.

GENERAL ALLEGATIONS

- 11. Denied as phrased.
- 12. Denied as phrased.
- 13. Denied as phrased.
- 14. Denied as phrased.
- 15. Denied as phrased.
- 16. Denied as phrased.
- 17. Denied as phrased.
- 18. Denied.
- 19. Denied as phrased.
- 20. Admitted.
- 21. Denied as phrased.
- 22. Denied.

COUNT I
CLAIM PURSUANT TO 42 U.S.C. § 1983
MUNICIPAL LIABILITY

- 23. Denied.
- 24. Denied as phrased.
- 25. Denied.
- 26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

COUNT II
CLAIM AGAINST CHRISTOPHER NEWMAN PURSUANT TO 42 U.S.C. § 1983

33-37. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 33 - 37.

COUNT III
STATE LAW CLAIM OF NEGLIGENCE AGAINST SHERIFF KEN MASCARA

38. Denied as phrased.

39. Denied as phrased.

40. Denied.

41. Denied.

42. Denied.

COUNT IV
STATE LAW CLAIM FOR BATTERY RESULTING IN WRONGFUL DEATH
AGAINST CHRISTOPHER NEWMAN

43-45. As this Count is not brought against this Defendant, no responses are being provided to paragraphs 43 - 45.

COUNT V
CLAIM FOR NEGLIGENCE RESULTING IN DAMAGE TO REAL PROPERTY
AGAINST SHERIFF KEN MASCARA

46. Denied as phrased.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

GENERAL DENIAL

Any and all allegations to which a specific response has not previously been provided is herein denied and strict proof thereof is demanded.

DEFENSES

52. As a first Defense, the Defendant, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that Plaintiff has failed to make sufficient allegation of ultimate fact from which it may be determined that a claim for relief has been stated.

53. As a further and separate Defense, the Defendant would assert that any and all injury or damage suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's decedent's negligence and/or wrongful acts and/or misconduct.

54. As a further and separate Defense, the Defendant would assert that there is no custom, policy, practice or procedure which provided the moving force or cause of any alleged violation of Plaintiff's decedent's constitutional rights.

55. As a further and separate Defense, the Defendant would assert that any and all actions taken by his deputies and/or agents were taken:

- a. Without malice;
- b. With probable cause and/or reasonable suspicion;
- c. In pursuit of lawful and legal duties;

d. With such force as was reasonable and necessary under the circumstances.

56. As a further and separate defense, the Defendant would assert that he is entitled to a set off for any collateral sources of compensation for Plaintiff alleged injuries and/or damages.

57. As a further and separate Defense, the Defendant would assert that to the extent force was used, the force was justifiable and otherwise lawful pursuant Chapter 776, Florida Statutes.

58. As a further and separate Defense, the Defendant would assert any defense or immunity that is applicable as set forth in Chapter 776, Florida Statutes.

59. As a further and separate Defense, the Defendant would assert that he is immune from liability or liability is limited for any and all alleged injuries or damages about which Plaintiff complains by virtue and by operation of §768.28, Florida Statutes and the concept of sovereign immunity.

60. As a separate and further Defense, the Defendant would assert that he is relying upon the presumption that the exercise of police power was for the purpose of protecting the public health, safety and/or welfare and is otherwise presumed to be for the purpose of preventing a harm. Such rebuttable presumption requires proof to the contrary by clear and convincing evidence pursuant to Florida Statute §11.066(2).

61. As a further and separate Defense, the Defendant would state that to the extent the Plaintiff has failed to mitigate the estate's damages, Defendant is entitled to a reduction of any jury award.

62. As a further and separate Defense, the Defendant would assert that any and all injuries or damages suffered by Plaintiff was caused in whole or in part by reason of the wrongful acts of others over which this Defendant had no control or responsibility for control.

63. As a further and separate Defense, the Defendant would assert that any and all injuries allegedly suffered by Plaintiff was caused in whole or in part by reason of Plaintiff's decedent's harmful acts and/or negligent conduct for which Plaintiff and/or Plaintiff's decedent are comparatively chargeable.

64. As a further and separate Defense, the Defendant would assert the alcohol or drug defense as set forth in Florida Statute §768.36 based upon the fact that the medical examiner and/or her report and related laboratory results obtained from samples taken during the autopsy of the decedent indicated that his blood alcohol level was well in excess of 0.08 percent. Moreover, discovery may reveal further grounds for this defense to include that the decedent was under the influence of drugs.

65. As a further and separate Defense, the Defendant would assert that the Plaintiff has failed to properly give notice to the Sheriff of Palm Beach County and Department of Financial Services pursuant to Florida Statute §768.28(6) which are condition precedents to the subject action.

66. As a further and separate Defense, the Defendant would assert that the conditions subsequent as set forth in Florida Statute §768.28(7) have not been complied with by the Plaintiff.

67. As a further and separate Defense, the Defendant would assert that the Plaintiff fails to sufficiently plead a legally cognizable duty owed by the Defendant to the Plaintiff.

DEMAND FOR TRIAL BY JURY

The Defendant, Ken Mascara, as Sheriff of St. Lucie County, hereby demands trial by jury on all issues so triable.

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, te@floridajustice.com, brent@floridajustice.com this 10th day of March, 2016.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
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BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

TAB-223

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

Verdict Forms

Civil Rights – Special Interrogatories – 42 U.S.C. § 1983 Claim Against
Defendant Christopher Newman

Special Interrogatories to the Jury

Do you find from a preponderance of the evidence:

1. That Defendant Christopher Newman intentionally committed acts that violated
Gregory Vaughn Hill Jr.'s right to be free from excessive force?

Answer Yes or No

NO

If your answer is "No," this ends your deliberations on this claim. You should
move on to answer the questions on the page "Negligence Claim Against Sheriff Ken
Mascara, in his Official Capacity as Sheriff of St. Lucie County."

If your answer is "Yes," go to the next question.

2. That Defendant Christopher Newman's conduct caused Gregory Vaughn Hill
Jr.'s injuries?

Answer Yes or No

If your answer is "No," this ends your deliberations on this claim. You should

move on to answer the questions on the page "Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County."

If your answer is "Yes," go to the next question.

3.a. That the estate of Gregory Vaughn Hill, Jr. should be awarded compensatory damages against Defendant Christopher Newman?

Answer Yes or No _____

If your answer is "Yes," in what amount for?

- (a) Funeral expenses that Viola Bryant, as personal representative of the Estate of Gregory Vaughn Hill, Jr. incurred;

\$ _____

- (b) Minor child D.H.'s loss of parental companionship, instruction, and guidance and D.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (c) Minor child A.H.'s loss of parental companionship, instruction, and guidance and A.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (d) Minor child G.H.'s loss of parental companionship, instruction, and guidance and G.H.'s mental pain and suffering from the date of January 14, 2014 and in the future.

\$ _____

- OR -

3.b. That the estate of Gregory Vaughn Hill, Jr. should be awarded nominal damages against Defendant Christopher Newman?

Answer Yes or No _____

If your answer is "Yes," in what amount?

\$ _____

Please proceed to answer the questions on the page "Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County."

Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County

1. Was there negligence on the part of Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County, through his deputy Christopher Newman, which was a legal cause of Gregory Vaughn Hill Jr.'s injuries?

Answer Yes or No

YES

If your answer to question 1 is "No," this ends your deliberations on this claim. Please sign and date this Form. If your answer to question 1 is "Yes," please answer question 2.

2. Did the Defendant Christopher Newman act in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property?

Answer Yes or No

NO

Please answer question 3.

3. Was there negligence on the part of Gregory Vaughn Hill, Jr. which was a legal cause of his injuries?

Answer Yes or No

YES

Please answer question 4.

4. Was Gregory Vaughn Hill, Jr. under the influence of alcoholic beverages to the extent that his normal faculties were impaired and that as a result of the influence of such alcoholic beverage, Gregory Vaughn Hill, Jr. was more than 50% at fault for this incident and his resulting injuries?

Answer Yes or No

YES

Please answer question 5.

5. State the percentage of any negligence which was a legal cause of Gregory Vaughn Hill Jr.'s injuries that you charge to:

Sheriff Ken Mascara, in his Official
Capacity as Sheriff of St. Lucie County 1 %

Gregory Vaughn Hill, Jr. 99 %

Total must be 100%

Please answer question 6.

In determining the amount of damages, do not make any reduction because of the negligence, if any, of Gregory Vaughn Hill, Jr. If you find that Gregory Vaughn Hill, Jr. was negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.

If you awarded damages against Defendant Christopher Newman on the 42 U.S.C. § 1983 Claim, you should write the same damages amount below. Plaintiff will not be able to double recover, so do not split the damages between the two defendants.

If you did not award damages against Defendant Christopher Newman on the 42 U.S.C. § 1983 Claim, proceed to consider damages against Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County.

6. What is the total amount of damages sustained by the Estate of Gregory Vaughn Hill, Jr.?

(a) Funeral expenses that Viola Bryant, as personal representative of the Estate of Gregory Vaughn Hill, Jr. incurred;

\$ 1 ⁰⁰/_{xx}

(b) Minor child DH's loss of parental companionship, instruction, and guidance and D.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ 1 ⁰⁰/_{xx}

- (c) Minor child A.H.'s loss of parental companionship, instruction, and guidance and A.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ 1.00/XX

- (d) Minor child G.H.'s loss of parental companionship, instruction, and guidance and G.H.'s mental pain and suffering from the date of January 14, 2014 and in the future.

\$ 1.00/XX

Please sign and date this Form.

SO SAY WE ALL.

DATE: 5/24/2018

FOREPERSON

TAB-224

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

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

COURT'S FINAL JURY INSTRUCTIONS

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. When I have finished, you will go to the jury room and begin your discussions, sometimes called deliberations.

**The Duty to Follow Instructions—Government
Entity or Agency Involved**

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

**Consideration of Direct and Circumstantial
Evidence; Argument of Counsel; Comments by
the Court**

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

1. Did the witness impress you as one who was telling the truth?
2. Did the witness have any particular reason not to tell the truth?
3. Did the witness have a personal interest in the outcome of the case?
4. Did the witness seem to have a good memory?
5. Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
6. Did the witness appear to understand the questions clearly and answer them directly?
7. Did the witness's testimony differ from other testimony or other evidence?

**Impeachment of Witnesses Because of
Impeachment of Witnesses Because of Inconsistent Statements
or Felony Conviction**

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

**Expert Witness -- When Expert Fees Represent a Significant
Portion of the Witness's Income**

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witness where court testimony is given with regularity and represents a significant portion of the witness's income.

**Responsibility for Proof—Plaintiff's Claim[s],
Cross Claims, Counterclaims—Preponderance of
the Evidence**

In this case it is the responsibility of the Plaintiff to prove every essential part of her claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that the Plaintiff's claim is more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should ~~and~~ ^{find} against the Plaintiff.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the Plaintiff's claims by a preponderance of the evidence, you should find for the Defendant as to that claim.

**Duty to Deliberate When Only the Plaintiff
Claims Damages**

Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should, or should not, prevail in this case.

Your verdict must be unanimous—in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

**Civil Rights—42 U.S.C. § 1983 Claims—
Fourth Amendment Claim—Private Person Alleging Unlawful Arrest,
Unlawful Search, or Excessive Force Against Deputy Christopher Newman**

In this case, Viola Bryant, as Personal Representative of the Estate of Gregory Vaughn Hill, Jr., claims that Deputy Christopher Newman, while acting under color of law, intentionally committed acts that violated Gregory Vaughn Hill, Jr.'s right to be free from the use of excessive or unreasonable force.

Under the Fourth Amendment to the United States Constitution, every person has the right not to be subjected to excessive or unreasonable force.

To succeed on this claim, Plaintiff, Viola Bryant, must prove each of the following facts by a preponderance of the evidence:

First: That Christopher Newman intentionally committed acts that violated Gregory Vaughn Hill, Jr.'s constitutional right not to be subjected to excessive or unreasonable force;

Second: That Christopher Newman's conduct caused Gregory Vaughn Hill, Jr.'s injuries; and

Third: That Christopher Newman acted under color of law. The parties have agreed that Christopher Newman acted under color of law, so you should accept that as a proven fact.

Plaintiff, Viola Bryant claims that Christopher Newman used excessive force against Gregory Vaughn Hill, Jr. You must decide whether the force Christopher Newman used in this case was excessive or unreasonable based on the degree of force a reasonable and prudent law enforcement officer would have applied on the scene under the same circumstances. Whether a specific use of force is excessive or unreasonable depends on factors such as the crime's severity, whether a suspect poses an immediate violent threat to others, whether the suspect resists or flees, the need for application of force, the relationship between the need for force and the amount of force used, and the extent of the injury inflicted. Christopher Newman's underlying intent or motivation is irrelevant.

For the second element, Christopher Newman's conduct caused Gregory Vaughn Hill, Jr.'s injuries if Gregory Vaughn Hill, Jr. would not have been injured without Christopher Newman's conduct, and the injuries were a reasonably foreseeable consequence of Christopher Newman's conduct.

If you find Viola Bryant has proved each fact that she must prove, you must decide the issue of her damages. If you find that Viola Bryant has not proved each of these facts, then you must find for Christopher Newman.

Civil Rights—42 U.S.C. § 1983 Claims—Damages

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for the damages of the survivors of Gregory Vaughn Hill Jr.'s Estate—no more, no less. You must not impose or increase these compensatory damages to punish or penalize the Defendants. And you must not base these compensatory damages on speculation or guesswork.

Plaintiff does not have to introduce evidence of a monetary value for intangible things like physical pain. You must determine what amount will fairly compensate the survivors for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

You should consider the following elements of damage, to the extent you find that Viola Bryant has proved them by a preponderance of the evidence, and no others:

- (a) Funeral expenses that Viola Bryant, as personal representative of the Estate of Gregory Vaughn Hill, Jr. incurred;
- (b) Minor child D.H.'s loss of parental companionship, instruction, and guidance and D.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;
- (c) Minor child A.H.'s loss of parental companionship, instruction, and guidance and A.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;
- (d) Minor child G.H.'s loss of parental companionship, instruction, and

guidance and G.H.'s mental pain and suffering from the date of January 14, 2014 and in the future.

Nominal Damages: You may award \$1.00 in nominal damages and no compensatory damages if you find that: (a) Plaintiff has submitted no credible evidence of injury; or (b) Plaintiff's injuries have no monetary value or are not quantifiable with any reasonable certainty; or (c) Defendant Christopher Newman used both justifiable and unjustifiable force against Gregory Vaughn Hill, Jr. and it is entirely unclear whether Gregory Vaughn Hill Jr.'s injuries resulted from the use of justifiable or unjustifiable force

**Negligent Handling of a Firearm/Negligent
Decision to Use a Firearm Against Sheriff Ken Mascara, in his Official Capacity as Sheriff
of St. Lucie County, Florida**

An additional claim for your consideration is the Plaintiff's negligence claim against Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County, Florida. This is not a claim against the Sheriff, personally, but is a claim against the Office of the Sheriff, which Ken Mascara currently holds.

To prevail on this claim, the Plaintiff must prove each of the following elements by a preponderance of the evidence:

First: That Defendant Newman owed a duty to Gregory Vaughn Hill, Jr. to refrain from firing in an unsafe or unreasonable manner and to act as a reasonable law enforcement officer under same or similar circumstances.

Second: That Defendant Newman breached the aforementioned duty in the following ways:

- a. by unreasonably firing his firearm in the direction of Gregory Vaughn Hill, Jr.; or
- b. by unreasonably firing his firearm when it was apparent that no forcible felony was being committed or life threatening situation existed.

Third: That the injury to Gregory Vaughn Hill, Jr. was legally caused by Christopher Newman's breach; and

Fourth: That Gregory Vaughn Hill, Jr. suffered damages as a result of that injury.

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a legal cause of loss if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, so that it can reasonably be said that, but for the negligence, the loss would not have occurred.

In order to be regarded as a legal cause of injury or damage negligence need not be the only cause. Negligence may be a legal cause of injury or damage even though it operates in combination with some other cause if the negligence contributes substantially to producing such injury or damage.

The Sheriff is responsible for any negligence of Deputy Newman in the alleged failure to employ lethal force in a reasonable manner.

If the preponderance of the evidence does not support Plaintiff's claim, your verdict should be for the Sheriff.

If, however, the preponderance of the evidence supports Plaintiff's claim, then you shall consider the defense raised by the Sheriff.

On the first affirmative defense, the issue for you to decide is whether Gregory Vaughn Hill, Jr. was under the influence of any alcoholic beverage to the extent that his normal faculties were impaired, or that he had a blood or breath alcohol level of 0.08 percent or higher; and whether as a result of the influence of such alcoholic beverage or drug Gregory Vaughn Hill, Jr. was more than 50 percent at fault for his own harm. "Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

On the second affirmative defense, the issue for you to decide is whether Gregory Vaughn Hill, Jr. was himself negligent during the incident and, if so, whether that negligence

was a contributing legal cause of injury or damage to Gregory Vaughn Hill, Jr.

If the preponderance of the evidence does not support the Sheriff's affirmative defense and the preponderance of the evidence does support Plaintiff's claim, then your verdict should be for Plaintiff. If, however, the preponderance of the evidence shows that Gregory Vaughn Hill, Jr. was negligent and that his negligence was a legal cause of loss sustained by Gregory Vaughn Hill, Jr., you should decide and write on the verdict form what percentage of the total negligence of all parties to this action was caused by each of them.

I previously instructed you regarding the question of damages, should you find in favor of the Plaintiff on her section 1983 excessive force claim. The same instructions apply with equal force to your consideration of damages for the claim of negligence.

Wrongful Death

In this case, the Plaintiff, Viola Bryant, claims that Defendant Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County, caused the wrongful death of Gregory Vaughn Hill, Jr. under Florida State Law. To establish this claim, Plaintiff must prove the following elements by a preponderance of the evidence:

1. The conduct of the Defendant amounted to negligence;
2. That conduct caused the death of Gregory Vaughn Hill, Jr.; and
3. The conduct would have entitled Gregory Vaughn Hill, Jr. to recover damages if he had not died.

Wrongful Death Damages: Introduction

If your verdict is for Defendants, you will not consider the matter of damages. But if the greater weight of the evidence supports Viola Bryant's claims, you should determine and write on the verdict form, in dollars, the total amount of damage which the greater weight of the evidence shows the estate of Gregory Vaughn Hill, Jr. and his survivors sustained as a result of his injury and death, including any damages that the estate and the survivors are reasonably certain to incur or experience in the future.

**Wrongful Death Damages: Elements
For Estate and Survivors**

ELEMENTS FOR ESTATE:

In determining the damages recoverable on behalf of Gregory Vaughn Hill, Jr.'s estate, you shall consider the following elements:

Funeral expenses:

Funeral expenses due to Gregory Vaughn Hill, Jr.'s injury or death which were paid by or on behalf of Gregory Vaughn Hill, Jr. by one other than a survivor.

ELEMENTS FOR SURVIVING CHILDREN:

In determining any damages to be awarded Gregory Vaughn Hill, Jr.'s personal representative for the benefit of Gregory Vaughn Hill, Jr.'s surviving children, you shall consider certain additional elements of damage for which there is no exact standard for fixing the compensation to be awarded. Any such award should be fair and just in the light of the evidence regarding the following elements:

Damages by surviving children:

The loss by D.H., A.H., and G.H. of parental companionship, instruction and guidance, and their mental pain and suffering as a result of Gregory Vaughn Hill, Jr.'s injury and death. In determining the duration of those losses, you may consider the joint life expectancies of Gregory Vaughn Hill, Jr. and D.H., A.H., and G.H., together with the other evidence in the case.

**ELEMENTS FOR SURVIVORS, INCLUDING SURVIVING SPOUSE, CHILD OR PARENTS OF
CHILD:**

In determining any damages to be awarded Gregory Vaughn Hill, Jr.'s personal representative for the benefit of each of Gregory Vaughn Hill, Jr.'s survivors, D.H., A.H., G.H., you shall consider the following elements:

Lost support and services:

The Survivors', D.H., A.H., and G.H., loss, by reason of Gregory Vaughn Hill, Jr.'s injury and death, of Gregory Vaughn Hill, Jr.'s support and services. In determining the duration of any future loss, you may consider the joint life expectancy of the survivor(s) and Gregory Vaughn Hill, Jr. and the period of minority, ending at age 25, of a healthy minor child.

In evaluating past and future loss of support and services, you shall consider the survivor's relationship to Gregory Vaughn Hill, Jr., and the replacement value of Gregory Vaughn Hill, Jr.'s services to the survivor(s). "Support" includes contributions in kind as well as sums of money. "Services" means tasks regularly performed by Gregory Vaughn Hill, Jr. for a survivor that will be a necessary expense to the survivor because of Gregory Vaughn Hill, Jr.'s death.

Medical and funeral expenses paid by survivor:

Funeral expenses due to Gregory Vaughn Hill, Jr.'s paid by any survivor.

**Wrongful Death Damages Of Estate And Survivors:
Separate Awards For Estate And Survivors**

Any damages that you find were sustained by Gregory Vaughn Hill, Jr.'s estate and by D.H., A.H., and G.H. shall be separately stated in your verdict.

Mortality Tables

a. Personal representative claiming damages for benefit of decedent's estate:

In determining how long Gregory Vaughn Hill, Jr. would have lived, had he lived out his normal life, you may consider his life expectancy at the time of his death. The mortality tables received in evidence may be considered in determining how long he may have been expected to live. Mortality tables are not binding on you but may be considered together with other evidence in the case bearing on his health, age and physical condition, before his death, in determining the probable length of his life.

b. Personal representative claiming damages for loss to survivor:

In determining the duration of any future loss sustained by D.H., A.H., and G.H. by reason of the death of Gregory Vaughn Hill, Jr., you may consider the joint life expectancy of D.H., A.H., G.H., and Gregory Vaughn Hill, Jr. The joint life expectancy is that period of time when both the decedent and a survivor would have remained alive. The mortality tables received in evidence may be considered, together with the other evidence in the case, in determining how long each may have been expected to live.

**Election of Foreperson Explanation of Verdict
Form[s]**

When you get to the jury room, choose one of your members to act as forperson. The foreperson will direct your deliberations and speak for you in court. A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible— either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

Bad Faith, Malicious Purpose and Wanton and Willful

Bad faith, malice, and wanton and willful disregard describe conduct much more reprehensible and unacceptable than mere intentional conduct. Bad faith has been equated with actual malice. Actual malice requires proof of evil intent or motive. Wanton and willful means worse than gross negligence and is the equivalent of reckless conduct.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

Verdict Forms

Civil Rights – Special Interrogatories – 42 U.S.C. § 1983 Claim Against
Defendant Christopher Newman

Special Interrogatories to the Jury

Do you find from a preponderance of the evidence:

1. That Defendant Christopher Newman intentionally committed acts that violated
Gregory Vaughn Hill Jr.'s right to be free from excessive force?

Answer Yes or No _____

If your answer is "No," this ends your deliberations on this claim. You should
move on to answer the questions on the page "Negligence Claim Against Sheriff Ken
Mascara, in his Official Capacity as Sheriff of St. Lucie County."

If your answer is "Yes," go to the next question.

2. That Defendant Christopher Newman's conduct caused Gregory Vaughn Hill
Jr.'s injuries?

Answer Yes or No _____

If your answer is "No," this ends your deliberations on this claim. You should

move on to answer the questions on the page "Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County."

If your answer is "Yes," go to the next question.

3.a. That the estate of Gregory Vaughn Hill, Jr. should be awarded compensatory damages against Defendant Christopher Newman?

Answer Yes or No _____

If your answer is "Yes," in what amount for?

- (a) Funeral expenses that Viola Bryant, as personal representative of the Estate of Gregory Vaughn Hill, Jr. incurred;

\$ _____

- (b) Minor child D.H.'s loss of parental companionship, instruction, and guidance and D.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (c) Minor child A.H.'s loss of parental companionship, instruction, and guidance and A.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (d) Minor child G.H.'s loss of parental companionship, instruction, and guidance and G.H.'s mental pain and suffering from the date of January 14, 2014 and in the future.

\$ _____

- OR -

3.b. That the estate of Gregory Vaughn Hill, Jr. should be awarded nominal damages against Defendant Christopher Newman?

Answer Yes or No

If your answer is "Yes," in what amount?

\$ _____

Please proceed to answer the questions on the page "Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County."

Negligence Claim Against Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County

1. Was there negligence on the part of Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County, through his deputy Christopher Newman, which was a legal cause of Gregory Vaughn Hill Jr.'s injuries?

Answer Yes or No _____

If your answer to question 1 is "No," this ends your deliberations on this claim. Please sign and date this Form. If your answer to question 1 is "Yes," please answer question 2.

2. Did the Defendant Christopher Newman act in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property?

Answer Yes or No _____

Please answer question 3.

3. Was there negligence on the part of Gregory Vaughn Hill, Jr. which was a legal cause of his injuries?

Answer Yes or No _____

Please answer question 4.

4. Was Gregory Vaughn Hill, Jr. under the influence of alcoholic beverages to the extent that his normal faculties were impaired and that as a result of the influence of such alcoholic beverage, Gregory Vaughn Hill, Jr. was more than 50% at fault for this incident and his resulting injuries?

Answer Yes or No _____

Please answer question 5.

5. State the percentage of any negligence which was a legal cause of Gregory Vaughn Hill Jr.'s injuries that you charge to:

Sheriff Ken Mascara, in his Official
Capacity as Sheriff of St. Lucie County _____ %

Gregory Vaughn Hill, Jr. _____ %

Total must be 100%

Please answer question 6.

In determining the amount of damages, do not make any reduction because of the negligence, if any, of Gregory Vaughn Hill, Jr. If you find that Gregory Vaughn Hill, Jr. was negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.

If you awarded damages against Defendant Christopher Newman on the 42 U.S.C. § 1983 Claim, you should write the same damages amount below. Plaintiff will not be able to double recover, so do not split the damages between the two defendants.

If you did not award damages against Defendant Christopher Newman on the 42 U.S.C. § 1983 Claim, proceed to consider damages against Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County.

6. What is the total amount of damages sustained by the Estate of Gregory Vaughn Hill, Jr.?

(a) Funeral expenses that Viola Bryant, as personal representative of the Estate of Gregory Vaughn Hill, Jr. incurred;

\$ _____

(b) Minor child DH's loss of parental companionship, instruction, and guidance and D.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (c) Minor child A.H.'s loss of parental companionship, instruction, and guidance and A.H.'s mental pain and suffering from the date of January 14, 2014 and in the future;

\$ _____

- (d) Minor child G.H.'s loss of parental companionship, instruction, and guidance and G.H.'s mental pain and suffering from the date of January 14, 2014 and in the future.

\$ _____

Please sign and date this Form.

SO SAY WE ALL.

FOREPERSON

DATE: _____

TAB-225

①
On Thursday MORNING, WE WOULD
LIKE TO REVIEW DEPUTY LOPEZ'S
TESTIMONY.

Foreman

5.23.18 - 4:57

You must rely upon your
recollection of the testimony
of the witnesses.

Judge Quintana

5/23/18

16-14072-CV-KLR

(2)

2:04 -

May 24

At this time we are not
able to come to a unanimous
decision.

Foreperson

16-CV-14072

(3)

4:23

5-24-18

IF WE FIND MINIMAL
NEGLIGENCE, CAN THE COURTS
OVER RULE MONETARY AMOUNTS
PRESENTED BY THE JURY

Foreperson

The Court does not understand
the question. Could you rephrase
the question? But I caution you
not to tell me how many
jurors have voted one way
or the other.

Judge Rosenberg 5/24/18

16-14072 CV-RLR

(4)

5:04

5.24.18

WE HAVE VERDICT

Folk person

16-14072 cv-RLR

TAB-229

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072-ROSENBERG/LYNCH

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

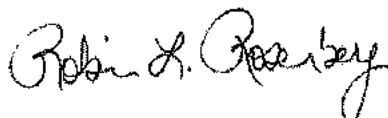
FINAL JUDGMENT

THIS CAUSE came before the Court pursuant to the jury's verdict rendered on May 24, 2018, during trial of this matter. A Verdict was reached in favor of the Defendants on all of the Plaintiff's claims. Therefore, it is

ORDERED AND ADJUDGED that Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, JR., take nothing by this action and that Defendants, SHERIFF KEN MASCARA in his official Capacity as Sheriff of St. Lucie County, and CHRISTOPHER NEWMAN, an individual, shall go hence without day.

This Court specifically reserves jurisdiction for the taxation of costs upon proper application therefor. The Clerk of Court shall **CLOSE** this case.

DONE and ORDERED in Chambers, Fort Pierce, Florida, this 30th day of May, 2018.



ROBIN L. ROSENBERG
United States District Judge

Copies furnished to:
Counsel of record

TAB-258

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 2:16-CV-14072-ROSENBERG/REINHART

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION
FOR JUROR INTERVIEW AND MOTION FOR
LEAVE TO FILE ADDITIONAL EVIDENCE IN SUPPORT
OF PLAINTIFF'S TIMELY FILED MOTION FOR NEW TRIAL**

This Cause is before the Court on Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. DE 253. Defendants responded, DE 256, and Plaintiff replied, DE 257. For the reasons set forth below, Plaintiff's Motion [DE 253] is denied.

I. BACKGROUND

This case arises from an incident in which Defendant Christopher Newman, a St. Lucie County Sheriff's Deputy, fatally shot Gregory Vaughn Hill, Jr. through Mr. Hill's garage door while responding to a noise complaint. This case proceeded to trial on May 17, 2018 on two counts: an excessive force claim under 42 U.S.C. § 1983 against Defendant Newman and a negligence claim against Defendant Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County.

On May 24, 2018, the jury returned a verdict for the Defendants. As to the § 1983 claim

against Defendant Newman, the jury found that Defendant Newman did not use excessive force. DE 223 at 1. As to the negligence claim, the jury found that there was negligence on the part of Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County, through his deputy Christopher Newman. *Id.* at 4. The jury, however, also found that Mr. Hill was under the influence of alcoholic beverages to the extent that his normal faculties were impaired and, that as a result of the influence of such alcoholic beverage, Mr. Hill was more than 50% at fault for this incident and his resulting injuries. *Id.* The jury found Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County, to be 1% negligent and Mr. Hill to be 99% negligent for Mr. Hill's injuries and awarded \$1.00 for funeral expenses and to each of Mr. Hill's three minor children. *Id.* at 5-6. Because of the finding that Mr. Hill was under the influence of alcoholic beverages to the extent that his normal faculties were impaired and that he was more than 50% at fault, Plaintiff was not entitled to any damages under Florida law. *See Fla. Stat. § 768.36.* Now before the Court is Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. DE 253.

II. LEGAL STANDARD

"A general rule has evolved to give substantial protection to verdict finality and to assure jurors that, once their verdict has been entered, it will not later be called into question based on the comments or conclusion they expressed during deliberations. This principle, itself centuries old, is often referred to as the no-impeachment rule." *Pena-Rodriguez v. Colorado*, 137 S.Ct. 855, 861 (2017). The no-impeachment rule was adopted in the Federal Rules of Evidence at Rule 606(b). It reads:

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on

that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

- (A) extraneous prejudicial information was improperly brought to the jury's attention;
- (B) an outside influence was improperly brought to bear on any juror; or
- (C) a mistake was made in entering the verdict on the verdict form.

An inquiry into jury deliberations only may occur in the "gravest and most important cases." *McDonald v. Pless*, 238 U.S. 264, 269 (1915). The Supreme Court has stated that the no-impeachment rule must be strong so as to protect jury deliberations from intrusive inquiry and to ensure finality; the Supreme Court has also noted that there are significant safeguards, including voir dire and the juror's ability to report any misconduct prior to the deliberations, that protect the fairness of the trial process. *Pena-Rodriguez*, 137 S.Ct. at 866.

"District courts are subject to very stringent limitations on their authority to question jurors about their deliberations, and to use one or more juror's testimony to impeach the verdict of all." *United States v. Foster*, 878 F.3d 1297, 1309 (11th Cir. 2018) (quoting *United States v. Siegelman*, 640 F.3d 1159, 1185 (11th Cir. 2001)). The Eleventh Circuit has explained that "[t]he duty to investigate arises only when the party alleging misconduct makes an adequate showing of extrinsic influence to overcome the presumption of jury impartiality. To justify a post-trial hearing involving the trial's jurors, the defendant must do more than speculate; he must show clear, strong, substantial and incontrovertible . . . evidence that a specific, nonspeculative impropriety has occurred." *United States v. Cuthel*, 903 F.2d 1381, 1383 (11th Cir. 1990).

Local Rule 11.1(e) states:

After the jury has been discharged, a lawyer shall not communicate with a member of the jury about a case with which the lawyer and the juror have been connected without leave of Court granted for good cause shown. In such case, the Court may allow counsel to interview jurors to determine whether their verdict is subject to legal challenge, and may limit the time, place, and circumstances under

which the interviews may be conducted.

The Eleventh Circuit “has construed the ‘good cause’ requirement to mean satisfaction of one of the exceptions listed in Rule 606(b).” *United States v. Nerey*, 877 F.3d 956, 972 (11th Cir. 2017) (citing *United States v. Griek*, 920 F.2d 840, 842 (11th Cir. 1991)). “A party’s ability to interview a juror exists on a spectrum, which is dependent upon the nature of the alleged misconduct. On one end, serious accusations usually require investigation. On the other, speculative and unsubstantiated allegations present little need to investigate.” *Nerey*, 877 F.3d at 972 (citations omitted).

III. ANALYSIS

In her Motion, Plaintiff requests that the Court allow her to interview the jurors involved in the case. Plaintiff states that a documentary is being filmed on the subject case and that Juror #6 gave an interview to the documentarian. DE 253 ¶ 7. Plaintiff states that she has acquired the full version of Juror #6’s interview. *Id.* ¶ 8. In her motion, Plaintiff includes some of Juror #6’s statements:

A. “And then there’s two suborn people in there that pissed me off (laughs) that they said they had their minds made up from the beginning and that’s what irritated me.”

B. “And then they’re just - they weren’t going to budge whatsoever no matter what I-I tried explaining everything and they just... two of them just wouldn’t budge.”

C. “I’m not going to be partial for any party and some of the jurors were like that right from the bat.”

D. “They we’re con- considered under oath but they said they weren’t going to be that way and they were once we got in the jury.”

E. “(Mr. Phillips) didn’t have them sold because they already had their minds made up.”

F. “Because we brought it up and we’re in the middle of negotiating, um, someone had brought up, was like well did- did it- do you guys already have your minds made up before you’ve seen any like ... before you even deliberate, before you even seen any evidence, and it was like yeah they are al- they were basically- they were like, “Yeah we already had our minds made up who’s side we were on.” I was like- you guys just took partial sides, and just right off red, and the

judge asked you guys not to make sure you guys are going to be fair and you guys weren't."

G. "I just think, um, it could have been more so a police thing. I'm not sure. These two people were just stubborn, just I don't know, I real- honestly don't know why they were the way they are but they shouldn't have ever been ... I don't think they were even going to try and be fair."

H. "But then the two went back after a while because they knew they wouldn't budge."

I. "Their biased opinion. Mainly the two like I said. The other ones were being realistic and listening and put everything into consideration but not the other two. They didn't want to hear anything you had to say."

Id. ¶ 9. Based on statements made by Juror #6, Plaintiff now seeks to interview Juror #6 and other jurors "to determine whether and what outside influence(s) was (were) improperly brought to bear on any juror; and . . . whether and what mistake(s) was/were made in entering the verdict on the verdict form." *Id.* ¶ 12.

Defendants respond that Juror #6's statements are vague and that

[t]here is no mention of any outside influence coming to bear on the jurors' deliberations or its verdict. Although Plaintiff states in a conclusory fashion that the two jurors "engaged [in] overtly prejudicial acts that affected the verdict", Plaintiff does not set forth why the Plaintiff believes these two jurors referenced by juror #6 had a prejudicial effect upon the verdict. Moreover, despite juror #6's purported comments, ultimately the jury rendered a verdict in favor of the defense to which all jurors, when polled, individually affirmed was in fact their verdict. Regardless, such testimony by juror #6 would be inadmissible under Federal Rule of Evidence 606(a).

DE 256 at 5.

Plaintiff has failed to show good cause for why she should be allowed to interview the jurors. Plaintiff states that she wants to interview the jurors "to determine whether and what outside influence(s) was (were) improperly brought to bear on any juror; and . . . whether and what mistake(s) was/were made in entering the verdict on the verdict form." DE 253 ¶ 12. Nothing in statements made by Juror #6, however, offers support for Plaintiff's assertion that any

outside influence was improperly brought to the jury's attention or that the jurors made a mistake in entering the verdict onto the verdict form.

First, Plaintiff has failed to meet her burden to offer evidence that extraneous prejudicial information was improperly brought to the jury's attention. Plaintiff points to Juror #6's vague allegations that two jurors may have had their minds made up before hearing evidence. See DE 253 ¶ 9(F). The allegation that some of the jurors had made up their mind before hearing evidence does not support a claim that extraneous information was brought to the jury's attention. "Generally speaking, information is deemed 'extraneous' if it derives from a source 'external' to the jury. 'External' matters include publicity and information related specifically to the case the jurors are meant to decide, while 'internal' matters include the general body of experiences that jurors are understood to bring with them to the jury room." *Warger*, 135 S.Ct. at 529. During voir dire, the Court read a summary of the case and asked the potential jurors if they knew anything about the case. Trial Tr., May 17, 2018, at 38:16–39:22. The Court and the parties questioned all of the jurors, including any juror who indicated any familiarity with the case, the parties, or the witnesses. During jury selection, the parties were afforded the right to raise any cause challenges and were afforded their preemptory challenges. During jury selection¹ and

¹ The Court instructed the venire:

So, let me read an important instruction to you that you must be guided by in every stage throughout this case.

We know, again, the jurors haven't been selected yet, but this applies to all of you until you have been selected and will continue to apply to those of you who are selected to be jurors in this case.

While serving on the jury you must not talk to anyone about anything related to the case. You may tell them you are a juror and give them information when you must be in court, but you must not discuss anything about the case itself with anyone. You shouldn't even talk about the case with each other until you begin your deliberations. You want to make sure you hear everything, all the

evidence, the lawyers' closing arguments and my instructions on the law before you begin deliberating.

You should keep an open mind until the end of the trial because premature discussions may lead to a premature decision.

In the age of technology, I want to emphasize in addition to not talking to anybody face-to-face about the case, you must not communicate anything about the case by any other means, this includes the internet, social networking, Facebook, My Space, and Twitter. You shouldn't Google online or off line about any information about the case, the parties, or the law.

Don't read or listen to the news about this case, don't visit any places related to the case or research any issue or place of the case. The law forbids any of the jurors to talk to anyone about it. It is important you understand why these rules exist and are so important. You must base your decision only on the testimony and other evidence presented in the courtroom. It is not fair to the parties if you base your decision on information that you acquire outside of the courtroom.

For example, the law often uses words and phrases in special ways, so it is important that any definitions you hear come from me and not from any other source.

Only you, as jurors, can decide the verdict in this case. The law sees only you as fair and only you have promised to be fair. No one else is so qualified.

So, if I can simplify it, this is what it means.

When you go in and out of the courtroom on breaks you can't talk to anyone about what went on in the courtroom. You can talk to each other, what were you doing this weekend, where do you work, nothing about what is going on in the courtroom, even if it is mundane like it is cold, or you don't like the way somebody is sitting, or you like somebody's suit, nothing, nothing are you to talk about with each other or with anybody else, by phone, in person, or any type of social media.

You are not to do any research. If I say something or somebody says something and it peaks your interest and you think you are being diligent to look for further information about it, that is not permitted at all. The only thing you need to know is going to be here in the courtroom.

If you start doing your own research, I don't know what you are looking at, the parties can't be looking at it, and don't know how we can address it. It is not permitted.

There may or may not be media coverage of this case. You are not to listen or review any media coverage of this case. Hypothetically, if you hear something that sounds familiar about this case, turn it off.

If you go home and there is a newspaper or news flash, and somebody in your family is watching the news and something comes up that seems remotely related to this case walk out of the room or ask that the TV been turned off.

I want to know if there is any exposure to any media the next day. If you come in the next day and you saw something, or you didn't see it, but it was in the newspaper and you turned your eyes away, I want you to let me know. Raise your

throughout the trial, the Court routinely instructed the jurors not to do their own research on the case or to view any media about the case. *See, e.g., id.* at 261:2–263:6.² Accordingly, Juror #6's allegations that two of the jurors were stubborn and made their minds up quickly is not clear,

hand and tell me what happened, but in no instance should you be getting any information from any other source, friend, family member, colleague, radio show, news report, TV, paper, period.
Very important, the internet as well.

You are insulated for purposes of this trial. Anything you need to know and should know and have to know is in the courtroom only, not a public rendition, not a friend's view, not what Google tells you, it is what is presented through the evidence. It's very important.

If I find in that you have not followed these instructions, I will leave it at this, there are consequences to that because we invest a lot of time and money in assembling a fair and impartial jury and we do not want this fair and impartial jury to be tainted by outside influences.

Does anyone have a problem with what I just said? Anyone here who cannot follow the rules I just set forth? If so, raise your hand. Seeing no hands.

Trial Tr., May 17, 2018, at 47:8–50:18.

² The Court instructed the jury on the first day of trial as follows:

This is the first time we are letting you go for more than an hour, I will not see you again until nine o'clock tomorrow morning. So, it is very likely that people you see or talk to this evening are going to be curious, I would think, maybe not, but maybe, about where you've been, what you have been doing, and what is going on, and interested in having you tell them about it.

You can certainly tell them you have been selected as a juror, you can tell them you are here at the Ft. Pierce Federal Courthouse, you can tell them you will be in trial for five or seven days, that is all. You can't tell them the name of the case, how you find it so far, interesting, not interesting, any legal issues, any of the claims or impressions you formed, nothing.

It is easy, you just say the judge told us I can't answer your questions. If I do, I will get in trouble. Hopefully they will leave you alone.

You are to do no research about anything directly, indirectly, or tangentially entered in the case. Third, if there is any media by way of television, newspaper, radio, anything else, avoid it. Don't listen to the radio or watch TV tonight or the morning if that is part of your ritual. If anything comes across the news that happens to appear related to what you have been hearing today, leave the room. If you don't let me know, I am going to assume no one saw, heard or reviewed or researched anything.

Does anyone have any questions about those instructions?

THE JURORS: No.

THE COURT: Seeing no hands.

strong, substantial and incontrovertible evidence that an extraneous prejudicial information was brought to the jury's attention. *See Cuthel*, 903 F.2d 1383.

Second, the Court notes that Juror #6 speculates that it may have been a "police thing" that made the two jurors stubborn and unwilling to consider all of the evidence. DE 253 ¶ 9(G). Juror #6 may have been speculating that the two jurors whom he believes made their minds up quickly during deliberations did so because of a pro-police bias. The Supreme Court has noted that "[t]here may be cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged. If and when such a case arises, the Court can consider whether the usual safeguards are or are not sufficient to protect the integrity of the process." *Warger*, 135 S.Ct. at 529 n.3 (2014). In *Warger*, the Supreme Court rejected a motion for a new trial in a civil case based on foreperson's alleged pro-defendant bias. *Id.* at 525.

To date, the only instance where the Supreme Court has found that juror bias was so extreme as to necessitate violating the no-impeachment rule was "where a juror ma[de] a clear statement that indicate[d] he or she relied on racial stereotypes or animus to convict a criminal defendant." *Pena-Rodriguez*, 137 S.Ct. at 869. In reaching this decision, the Supreme Court noted the unique historical role that racial discrimination plays in the history of the United States and in the criminal justice system. *See id.* at 868 ("The unmistakable principle underlying these precedents is that discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.") (citations omitted). The Supreme Court noted that in other instances of alleged jury misconduct, the no impeachment rule holds strong and the Court should not inquire into the juror's deliberations. *See id.* ("To attempt to rid the jury of every irregularity of this sort would be to expose it to unrelenting scrutiny. It is not at all clear . . . that the jury system could survive such efforts to perfect it.") (citations omitted).

Juror #6's allegation that the two jurors may have been influenced by a pro-police bias does not warrant an exception to the no impeachment rule. The allegation is both vague and is similar to the juror's pro-defendant bias in *Warger* that the Supreme Court found did not warrant a new trial, *see Warger*, 135 S.Ct. at 525. The Court notes that each potential juror filled out a questionnaire that included a question as to whether the juror or a close family member or friend ever worked for a law enforcement agency and whether there was anything in the juror's background or personal feelings which might affect the juror's ability to be fair and impartial to both sides. The Court followed up with each juror as to the juror's answers in the questionnaire and the parties, through counsel, were given the opportunity to ask questions of the jurors. The parties had copies of the completed questionnaires. Although any bias in the criminal system should be guarded against, every allegation of bias does not warrant the Court's investigation and does not require violating the no impeachment rule. *See, e.g., Warger*, 135 S.Ct. at 525. Allegations of bias in favor of police officers do not meet the narrow exception to the no impeachment rule that the Supreme Court declared for allegations of racial bias. *See Pena-Rodriguez*, 137 S.Ct. at 869. To find otherwise would open the jury system to constant scrutiny. *See id.*

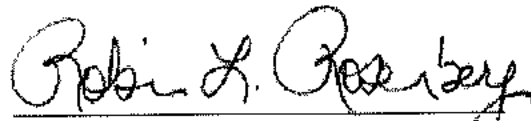
Third, Plaintiff does not offer any support for why she asserts that the jurors may have made a mistake in entering the verdict on the verdict form. Following the publication of the jury's verdict, the jurors were polled and each juror stated that the verdict, as published, was his or her verdict. Trial Tr., May 24, 2018, at 26:25–27:24. Moreover, in the statements provided by Juror #6, Juror #6 does not state that there was any error in putting the verdict on the verdict form. Plaintiff's unsupported speculation that there may have been an error is not a "serious accusation[] [that] require[s] investigation." *See Nerey*, 877 F.3d at 972. Accordingly, because

Plaintiff has not shown good cause for why she should be permitted to interview the jurors, Plaintiff's Motion is denied. Because Plaintiff's Motion for Juror Interview, which is denied, serves as the basis for her Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial, Plaintiff's Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial is also denied.

IV. CONCLUSION

It is therefore **ORDERED AND ADJUDGED** that Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial [DE 253] is **DENIED**.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 14th day of August, 2018.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 2:16-CV-14072-ROSENBERG/REINHART**

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR NEW TRIAL

This Cause is before the Court on Plaintiff's Motion for New Trial. DE 237. Defendants responded, DE 247, and Plaintiff replied, DE 251. For the reasons set forth below, the Court hereby denies Plaintiff's Motion for New Trial.

I. BACKGROUND

This case arises from an incident in which Defendant Christopher Newman, a St. Lucie County Sheriff's Deputy, fatally shot Gregory Vaughn Hill, Jr. through Mr. Hill's garage door while responding to a noise complaint. This case proceeded to trial on May 17, 2018 on two counts: an excessive force claim under 42 U.S.C. § 1983 against Defendant Newman and a negligence claim against Defendant Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County.

On May 24, 2018, the jury returned a verdict for the Defendants. As to the § 1983 claim against Defendant Newman, the jury found that Defendant Newman did not use excessive force. DE 223 at 1. As to the negligence claim, the jury found that there was negligence on the part of

Sheriff Ken Mascara in his Official Capacity as Sheriff of St. Lucie County, through his deputy Christopher Newman. *Id.* at 4. The jury, however, also found that Mr. Hill was under the influence of alcoholic beverages to the extent that his normal faculties were impaired and, that as a result of the influence of such alcoholic beverage, Mr. Hill was more than 50% at fault for this incident and his resulting injuries. *Id.* The jury found Sheriff Ken Mascara, in his Official Capacity as Sheriff of St. Lucie County, to be 1% negligent and Mr. Hill to be 99% negligent for Mr. Hill's injuries and awarded \$1.00 each for funeral expenses and to each of Mr. Hill's three minor children. *Id.* at 5-6. Because of the finding that Mr. Hill was under the influence of alcoholic beverages to the extent that his normal faculties were impaired and that he was more than 50% at fault, Plaintiff was not entitled to any damages under Florida law. *See Fla. Stat. § 768.36.* Now before the Court is Plaintiff's Motion for New Trial.¹

Before proceeding to its legal analysis, the Court notes that the tragic events that led to this case, coupled with the nature of the jury's verdict, understandably has elicited an emotional response. The Court does not take this fact lightly. It is deeply tragic that Mr. Hill lost his life; that Plaintiff, Ms. Bryant, lost her son; that Ms. Hill's fiancée lost her fiancé and the father of her children; and that three young children lost their father, following a noise complaint. Nevertheless, the Court must analyze the legal issues before it, under the applicable law, and determine if any of them alone or cumulatively give rise to a legal basis for a new trial.

II. ANALYSIS

Federal Rule of Civil Procedure 59 states that Court may grant a new trial "for any reason

¹ The Court notes that Plaintiff filed a Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. DE 253. In that Motion, Plaintiff sought leave of Court to interview the jurors because Plaintiff argued that post-trial statements made by Juror #6 raised questions of whether extraneous prejudicial information was improperly brought to the jury's attention and whether there was a mistake made in entering the verdict on the verdict form. *Id.* at 5. The Court denied the Motion. DE 258.

for which a new trial has been heretofore been granted in an action at law in federal court.” In her Motion for New Trial, Plaintiff makes the following arguments: (1) defense expert Christopher Lawrence gave improper and inconsistent testimony; (2) the Court issued erroneous evidentiary rulings regarding the firearm and shorts used as a demonstrative aid and Mr. Hill’s probationary status; (3) defense witness Sergeant Kyle King’s testimony was based on materially false facts and Defendant Newman materially changed his testimony based on evidence he heard during the trial; (4) the jurors either did not understand the jury instructions or intended their verdict to be punitive; (5) the verdict is against the clear weight of the evidence; and (6) the cumulative effect of the errors and evidentiary rulings warrants a new trial. The Court will address each argument in turn.

A. Defense Expert Christopher Lawrence

Plaintiff argues that “Defendants’ retained expert witness, Christopher Lawrence’s contumacious testimony created severe prejudice on the proceedings.” DE 237 at 4. Plaintiff’s counsel points to the fact that Mr. Lawrence asked Plaintiff’s counsel to speak up when Mr. Lawrence did not ask Defendants’ counsel to speak up on direct examination. *Id.* at 4–5. Plaintiff also notes that when Plaintiff’s counsel asked Mr. Lawrence for an accounting of costs of his services, “Mr. Lawrence bellowed out his father had recently passed away a ‘couple weeks’ prior and other questions would be difficult to answer.” *Id.* at 5. Plaintiff’s counsel states that this statement was unfair, improper, and a lie, as Mr. Lawrence’s father had died on April 10, 2018 which was more than a couple of weeks before Mr. Lawrence’s May 23, 2018 testimony. *Id.* Plaintiff states that Mr. Lawrence’s responses to Plaintiff’s counsel’s questions became increasingly non-responsive. *Id.* at 5–6. Ultimately, Plaintiff argues that “Mr. Lawrence’s non-responsive commentary, repeated sudden and selective hearing loss, exhaustion, and blaming of

Plaintiff after a completely problem free direct examination was not only a violation of Fed. R. Evid. 702, but created such irreversible prejudice that it warrants a new trial and sanctions.” *Id.* at 6.

Defendants respond that it is not surprising that Mr. Lawrence did not ask Defendants’ counsel, Mr. Bruce Jolly, to speak up as Mr. Jolly has a loud voice, and points to Mr. Lawrence’s February 7, 2017 deposition in which Mr. Lawrence specifically informed Plaintiff’s counsel of Mr. Lawrence’s hearing limitations. DE 247 at 3. Defendants also argue that the mention of the passing of Mr. Lawrence’s father is a trivial argument and clearly not a sufficient ground for a new trial. *Id.* at 3–4. Defendants state that “Mr. Lawrence conducted himself professionally at all times during the trial. This is further evidenced by the fact that it was not until after the Plaintiff lost the trial that claims of improper conduct on the part of this witness are now being lodged.” *Id.* at 4.

The Court finds that nothing in Mr. Lawrence’s testimony created prejudice on the proceedings. First, the Court notes that it is not surprising that a witness would have difficulty hearing one counsel but not another for a variety of reasons including the volume of counsel’s voice or counsel’s use of the microphone. Mr. Lawrence told Plaintiff’s counsel about his hearing limitation before cross-examination began, Trial Tr., May 23, 2018, at 50:21–23 (“I am going to remind you, please, he did a good job speaking up, my hearing is not that great, I do not want to ask you to repeat yourself.”), and had previously told him about his hearing limitation at his February 7, 2017 deposition, DE 241-1 at 2 (“A. Could I ask you to make sure you speak up? Q. Yes. A. I hear what—I can hear people speaking, but I don’t always hear clearly what has been said. My hearing is not as good as it used to be. Q. Okay. A. So I may ask you to repeat

yourself.”). Accordingly, the Court rejects Plaintiff’s argument that Mr. Lawrence “feigned hearing loss when convenient.” *See* DE 251.

Second, the Court agrees with Defendant that Mr. Lawrence mentioning that his father had passed away a few weeks before trial is not so prejudicial as to warrant a new trial. Plaintiff’s counsel asked Mr. Lawrence why Mr. Lawrence had not prepared an invoice of his fees in the case prior to trial. Trial Tr., May 23, 2018, at 51:13–15. Mr. Lawrence stated that his father had died and that he had not prepared his invoice because he had been tending to other matters. *Id.* at 51:16–20. The Court notes that Plaintiff’s counsel did not move to strike Mr. Lawrence’s testimony regarding the death of his father. The Court agrees with Defendants that this testimony was somewhat trivial and certainly did not create unfair prejudice to warrant a new trial.

Third, the Court does not find that Mr. Lawrence’s answers were non-responsive or that his testimony prejudiced Plaintiff’s rights. During the cross-examination of Mr. Lawrence, Plaintiff’s counsel only once sought the Court’s assistance as to the non-responsiveness of Mr. Lawrence’s testimony. Plaintiff’s request for Court assistance occurred when Plaintiff’s counsel asked Mr. Lawrence to step down from the witness stand and demonstrate what Mr. Lawrence understood Mr. Hill’s body mechanics were at the time of the incident:

Q. Let me fast forward some. Could you step down, please, and demonstrate what you know the facts to be insofar as Mr. Hill’s body mechanics at the time this happened?

A. Okay, clarify. That is a pretty broad statement.

Q. Certainly. You did this when you were on the stand, but the stand was blocking you. I would like you to step down here and show what you understand Mr. Hill’s body mechanics were at the time of this incident.

THE WITNESS: Is that okay, your Honor?

THE COURT: Yes, you may.

THE WITNESS: When I went to the scene, I wanted to see what the garage door looked like when it was opened and closed. I went to the scene and I opened it

and closed it. It binds, doesn't roll nice and smooth like other garage doors I have seen, it is metal.

I looked to see if there is any evidence someone backed a car against it. There is quite a bit of time between when the event occurred --

MR. PHILLIPS: Your Honor, this is nonresponsive. I asked him to recreate Mr. Hill's body mechanics.

THE COURT: Can I ask our witness if you'd stand where counsel is so both our court reporter can better hear you and the jury can hear you and see you. Thank you.

THE WITNESS: When I got there, the door bound, as I pulled down on the door, my other hand wanted to come up at the same time. It took effort to pull it down, your other hand would come up like this. I said, okay, I can see how it could play out.

BY MR. PHILLIPS:

Q. You can resume your seat.

Trial Tr., May 23, 2018, at 62:21–63:25. Plaintiff's counsel sought the Court's assistance and then continued with his cross-examination. The Court notes that Plaintiff's counsel never moved to strike Mr. Lawrence's testimony or made any argument to the Court that Plaintiff did not have a full opportunity to cross-examine the witness. There is certainly nothing in this interaction that would warrant a new trial for Plaintiff; there was no impairment of her substantial rights.

B. The Court's Evidentiary Rulings

Plaintiff argues that two of the Court's evidentiary rulings substantially prejudiced her. In assessing evidentiary rulings already made by this Court, the question is whether the admission of the evidence affected Plaintiff's substantial rights. "Error in the admission or exclusion of evidence is harmless if it does not affect the substantial rights of the parties." *Perry v. State Farm Fire & Cas. Co.*, 734 F.2d 1441, 1446 (11th Cir. 1984) (citations omitted). Plaintiff bears the burden of showing that the decision(s) affected her substantial rights. *Id.* (citation omitted). First, she argues that the Court erred in permitting the use as a demonstrative aid of the firearm and shorts found on Mr. Hill. Second, Plaintiff argues that the Court erred in permitting the introduction of evidence that Mr. Hill was on probation, even though the Court instructed the

jurors about the limited reason for which they could consider Mr. Hill's probationary status. The Court addresses each argument in turn.

i. The Firearm and Shorts Use as a Demonstrative Aid

Plaintiff argues that Defendants disclosed less than forty-eight hours before the trial that they were in possession of and intended to use as evidence the gun found in Mr. Hill's pocket. DE 237 at 6. Plaintiff states that Defendants never disclosed the gun in any of their six Federal Rule of Civil Procedure 26(a) disclosures. *Id.* at 7. Plaintiff also state that she was prejudiced because Defendants' witness "Sergeant Lebeau was permitted to testify about the handgun and perform an impromptu demonstration of placing the handgun into the back-right pocket of Mr. Hill's jean shorts." *Id.* Plaintiff states that it was improper for a lay witness to perform this demonstration, especially without advance warning to Plaintiff. *Id.* at 6-7.

Defendants respond that the Court has already ruled regarding Defendants' disclosure of the gun and the shorts. DE 247 at 5. Defendants also argue that the Court has broad discretion to permit demonstrations that it believes will assist the jury. *Id.* (citing *United States v. Rackley*, 742 F.2d 1266, 1272 (11th Cir. 1984)). Defendants state that Sergeant Labeau's demonstration of the gun fitting in the pocket of Mr. Hill's shorts was appropriate to rebut Plaintiff's suggestion "that Mr. Hill never held the gun at any point during his interaction with the deputies because he would not have had the time nor the opportunity to place the gun in his back pocket before being fatally wounded." DE 247 at 6.

The Court agrees with Defendants. Prior to the trial, Defendants filed a motion to allow an unloaded firearm in the courtroom as an exhibit during trial. DE 192. Plaintiff objected arguing that the gun was not disclosed pursuant to Rule 26(a). DE 198. According to Plaintiff, Plaintiff was completely unaware that Defendants were in possession of the gun until less than

48 hours before the start of trial; Plaintiff was never given the opportunity to inspect the gun and Plaintiff's expert did not have an opportunity to examine the gun; and utilizing the gun provided no additional insight for the jury when there were photographs available and would only prejudice Plaintiff. *Id.*

Defendants replied that the fact that the Sheriff's Office seized the firearm as well as Mr. Hill's clothing had been well documented and was known to Plaintiff's counsel throughout the litigation. DE 205. Defendants argued that they did disclose that they had the gun "in a material respect through discovery or through the Defendants' Rule 26 disclosures." *Id.* at 1. Defendants pointed to various disclosures that they argued should have informed Plaintiff that Defendants were in possession of the gun. *Id.* 1-2. For instance, they noted that several of their Rule 26 disclosures listed the reports, inventory returns and criminal investigative materials associated with the shooting investigation. *Id.* They also noted that Plaintiff listed the St. Lucie County Sheriff's Office Investigation Book in her Rule 26 disclosure; that investigation book included reports of deputies stating what evidence was seized, including the gun. *Id.* Defendants pointed to their 2017 Exhibit Lists which had Evidence Lists as exhibits and stated that Plaintiff did not object or inquire about these exhibits. *Id.* at 3. Defendants also noted that during the December 6, 2016 deposition of Sergeant Edgar Lebeau, Plaintiff's counsel inquired about whether the physical evidence of the case would still be in the Sheriff's Office evidence room. *Id.* at 3-4. Sergeant Lebeau did not know the answer but provided Plaintiff's counsel with the name of the person in the Sheriff's Office to whom Plaintiff's counsel should inquire. *Id.*

During the trial, Defendants' counsel stated that it was not seeking to have the gun and shorts admitted into evidence but wanted to use them as demonstrative aids. Trial Tr., May 21, 2018, at 9:3-6.

At the trial, the Court stated:

Federal Rule of Procedure 37(c)(1) [states that] if the parties fail to identify witness as required by 26(a) or (e), the party is not allowed to use that information or evidence on a motion unless the failure was justified or harmless.

Even if the gun was not disclosed as clearly as it could have been under Rule 26, the Court finds this is not prejudicial to Plaintiff because Plaintiff's counsel was on notice, therefore the Plaintiff's objection under Rule 37 is denied, and Defendants are not prohibited from using the gun under Rule 37.

The Court doesn't have to make a determination as to admissibility because it is going to be used for demonstrative purposes, but it does not mean it is coming in for evidence.

The gun has high probative value that Deputy Newman saw Mr. Hill holding the gun. The physical evidence would include what the gun looked like, and its size could be relevant to the jury in assessing Deputy Newman's actions. And then there is the issue of how and if the gun could make its way into the back pocket, so that clearly has been put out there, it is a relevant issue. It is up to counsel how they want to argue the issue. As far as being used for demonstrative purposes, the Court will allow it.

Trial Tr., May 21, 2018, at 11:8–12:4. The gun was not admitted into evidence but used as a demonstrative aid. Accordingly, the Court need not determine whether it should have been excluded under Federal Rule of Civil Procedure 37(c)(1). *See* Fed. R. Civ. P. 37(c)(1) (“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information . . . to supply *evidence* . . . at a trial, unless the failure was substantially justified or is harmless.”) (emphasis added). The Court notes, however, that Defendants’ failure to explicitly disclose that the gun was in their possession was harmless. Plaintiff was clearly put on notice that Defendants collected the gun and shorts following the incident and there was no indication to Plaintiff that the gun and shorts ever left Defendants’ possession.

Additionally, it was proper to allow Sergeant Labeau to demonstrate that the gun could fit into the shorts pocket. “[A] trial court has broad discretion regarding experiments it will allow in the presence of the jury.” *United States v. Rackley*, 742 F.2d 1266, 1272 (11th Cir. 1984)

(citation omitted). As the Court stated at trial, the gun had a high probative value. Trial Tr., May 21, 2018, at 11–12. Throughout the trial, Plaintiff argued that Mr. Hill never had the gun in his hand but rather the gun remained in his pocket throughout the interaction with the deputies. *See, e.g.*, Trial Tr., May 17, 2018, at 214:2–10. Because questions were raised about Mr. Hill’s ability to place the gun in his shorts, the probative value of seeing that the gun fit into the pocket of the shorts was high and there was no error in allowing Sergeant Labeau to demonstrate that the gun fit into Mr. Hill’s back pocket.

ii. Mr. Hill’s Probationary Status

Plaintiff argues that it was error for the Court to allow in any evidence of Mr. Hill’s probationary status because the fact that Mr. Hill was on probation “was not a known fact or circumstance confronting Defendant Newman.” DE 237 at 9. Plaintiff argues that evidence of Mr. Hill’s probationary status was extremely prejudicial because it informed the jury that Mr. Hill was a past criminal. *Id.* at 13. Plaintiff also notes that Defendants submitted evidence that at the time of the shooting Mr. Hill was actively committing a crime in that he was consuming alcohol and possessing a firearm in violation of his probation. *Id.* Plaintiff argues that “[t]he prejudicial impact of admitting such evidence . . . confuse[d] the jury as to the issues of the present 42 U.S.C. § 1983 and the Negligence case.” *Id.* at 14. Plaintiff notes that the Court issued the following limiting instruction: “ladies and gentlemen, as you have heard, Mr. Hill was on probation. This evidence is only admissible to the extent that you think it is relevant to Mr. Hill’s actions on the date of the incident. It is not to be considered for any other purpose. What Mr. Hill was on probation for is irrelevant and should not be considered by you.” *Id.* According to Plaintiff, the Court’s “limiting instruction did nothing to quell the prejudicial impact of informing that Mr. Hill was a criminal. It also did not delineate the relative inadmissibility

probation had in the federal versus state law claim.” *Id.* at 15.

Defendant responds that the evidence of Mr. Hill’s probationary status was properly admitted because it added credibility to Defendant Newman’s claim regarding the manner in which Mr. Hill acted. DE 247 at 7 (relying on *Escobedo v. Martin*, 702 F.3d 388, 400 (7th Cir. 2012)).

The Court finds that the evidence of Mr. Hill’s probationary status was relevant and that it was not overly prejudicial, especially considering the Court’s limiting instruction regarding the purpose for which the information was being admitted. During trial, the parties fiercely disputed whether or not Mr. Hill had a gun in his hand when he opened the garage door. Plaintiff argued that Mr. Hill did not have the gun in his hand, *see, e.g.*, Trial Tr., May 17, 2018, at 214:2–10, but that it was in Mr. Hill’s back pocket, which is where it was found by law enforcement, Trial Tr., May 23, 2018, at 109:12–13 (“[T]he evidence is entirely inconsistent with it being out of Mr. Hill’s pocket.”). To support her argument, Plaintiff offered the testimony of Earl Ritzline, a DNA expert who testified that the gun had a low level mixture of at least three individual’s DNA, *id.* at 109:2–11; the testimony of Dr. Robert Anderson, a medical examiner who testified that the shot to Mr. Hill’s brain would have rendered him incapable of any motor function, Trial Tr., May 21, 2018, at 36:1–15; and the testimony of Mr. Hill’s daughter, Destiny, who testified that her Mr. Hill was not holding a gun, *id.* at 109:2–5.

Defendants’ theory of the case was that Mr. Hill opened the garage door with the gun in his hand. According to Defendants, when Mr. Hill saw that it was law enforcement knocking on his door, he knew he was in violation of two terms of his probation by being intoxicated and possessing a firearm. *See* Trial Tr., May 23, 2018, at 155:5–24. Accordingly, Mr. Hill closed the garage door in order to avoid being found in violation of his probation. *Id.* (“[B]ecause Mr. Hill

knew he was on probation, had no business having a gun and being under the influence of alcohol, his main concern was getting that gun out of view, get it in his pocket, put it away, and it was found in his back pocket. He was able to put it there on his own.”). Defendants relied on the testimony of Deputy Lopez that Mr. Hill was holding a gun when he opened the garage door, Trial Tr., May 18, 2018, at 208:22–25; Defendant Newman’s testimony that he saw Mr. Hill holding a gun when Mr. Hill opened the garage door, Trial Tr., May 22, 2018, at 136:17–19; and the testimony of Niles Graben that Mr. Hill was on probation and that his probation prohibited the consumption of alcohol or the possession of a firearm, Trial Tr., May 21, 2018, at 129:1–23. Because of the dispute regarding whether Mr. Hill had the gun in his hand when he answered the door, Mr. Hill’s probationary status was relevant in order to add credibility to Defendant Newman’s version of the events.

The Court notes that this case is not unlike the case of *Knight v. Miami-Dade Cnty.*, 856 F.3d 795 (11th Cir. 2017). In that case, Miami-Dade police officers attempted to perform a traffic stop on an SUV but the driver did not stop the car. *Id.* at 803–04. Eventually, the car stopped at a dead end and the officers exited their car with guns drawn. *Id.* at 804. The parties disputed what happened next. The defense theory was that the driver of the car intentionally accelerated backward towards the officers who had to move to avoid being struck by the vehicle. *Id.* The officers then shot at the vehicle, killing two of the occupants and injuring a third. *Id.* The Plaintiff’s theory of what happened was that, when the car was stopped, an officer fired a single shot which hit the driver. *Id.* The driver’s body then fell forward and the car began accelerating backwards, causing the officers to shoot at the vehicle. *Id.* The Eleventh Circuit affirmed the District Court’s decision to admit the driver’s most recent conviction in the § 1983 trial “because it was material to the defense theory that his earlier conviction and his probation status caused

him to initiate, and refuse to cease, flight when confronted by the officers.” *Knight*, 856 F.3d at 816. The Eleventh Circuit further explained that:

As for [the driver’s] criminal history, the evidence was plainly admissible under Rule 404(b) to establish his motive to flee from Officers Robinson and Mendez. [The driver and the passengers] were all on probation at the time, and [the driver] had a probation hearing the next day. Evidence of [the driver’s] most recent conviction, for which he was then on probation, was therefore probative of his motive to flee from the officers: had he pulled over, he would have been caught associating with other people on probation, which might have jeopardized his probationary status.

Id. at 816–17. In Mr. Hill’s case, evidence of Mr. Hill’s probationary status was probative of his motive to close the garage door and put the gun in his back pocket, in order to avoid jeopardizing his probationary status. Evidence of Mr. Hill’s probationary status was probative of the defense theory of the case—that Mr. Hill answered the garage door with a gun in his hand and then placed it in his back pocket.

The introduction of Mr. Hill’s probationary status was also not overly prejudicial. Federal Rule of Evidence 403 states that “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” To limit the unfair prejudice of the evidence of Mr. Hill’s probationary status, the Court read the following limiting instruction: “ladies and gentlemen, as you have heard, Mr. Hill was on probation. This evidence is only admissible to the extent that you think it is relevant to Mr. Hill’s actions on the date of the incident. It is not to be considered for any other purpose.” Trial Tr., May 18, 2018, at 150:10–14. This instruction limited the danger of any prejudicial effect of the jurors knowing that Mr. Hill was on probation. Accordingly, when weighing the probative value and the danger of unfair prejudice, the Court finds that the probative value of Mr. Hill’s probationary status was not substantially outweighed by a danger of unfair prejudice.

C. Testimony of Sergeant Kyle King and Defendant Newman

Plaintiff argues that the testimony of Defendants' expert Sergeant Kyle King was based on false facts and that Defendant Newman perjured himself after listening to the testimony of other witnesses. DE 237 at 15–17. Plaintiff states that Sergeant Kyle King's powerpoint reconstruction presentation was based on Defendant Newman's prior statements that Mr. Hill had raised his gun about waist level when it was fired. *Id.* at 16. Plaintiff notes that Defendant Newman was present for the testimony of Plaintiff's expert, Dr. William Anderson, who "testified that it is unlikely that Mr. Hill raised a gun 'anywhere near' Deputy Lopez based upon the positioning of the hand relative to Mr. Hill's abdomen wound." *Id.* (citing Trial Tr., May 21, 2018, at 26:19–24). According to Plaintiff, Defendant Newman materially changed his testimony after hearing the testimony of other witnesses; Defendant Newman demonstrated at trial that Mr. Hill only raised his arm in a slightly upward direction, which is in conflict with his prior statements that Mr. Hill had raised the gun waist level. DE 237 at 17. Plaintiffs state that, because of the change in Defendant Newman's testimony, Sergeant King's powerpoint was not an accurate reconstruction but the "Defendants still called Sgt. King to testify as an expert witness at trial even though his testimony was limited to the admittedly inaccurate reconstruction of the subject incident." *Id.*

Defendants respond that, even assuming Defendant Newman's testimony at trial differed from his previous deposition testimony, Plaintiff's remedy was to impeach Defendant Newman with his prior inconsistent statements at trial, not to seek a new trial. DE 247 at 9. Defendants also state that "to the extent Plaintiff takes issue with some of the information Sgt. King received in formulating his opinions, the appropriate way to address that was in cross-examination of the witness. Plaintiff had that opportunity." *Id.* at 10.

Plaintiff replied that she did not have an opportunity to cross-examine Sergeant King on the fact that his reconstruction was not an accurate reconstruction of the circumstances of the shooting because Sergeant King testified before Defendant Newman and it was Defendant Newman's changed testimony that showed that Sergeant King's reconstruction was inaccurate. DE 251 at 10.

The Court finds that Defendant Newman and Sergeant King's testimony did not prejudice Plaintiff's rights and that their admission does not merit a new trial. Defendants are correct that Plaintiff's remedy for any changes in Defendant Newman's testimony was through impeachment. If Defendant Newman had previously stated that Mr. Hill had raised the gun higher than he demonstrated during the trial, Plaintiff should have impeached him with his prior inconsistent statements. Certainly every change in a witness's testimony cannot lead to a new trial.

Similarly, there was nothing in Sergeant King's testimony that prejudiced Plaintiff's rights. Defendants did not bring up Sergeant King's powerpoint on direct examination; rather, Plaintiff did on her cross-examination. Trial Tr., May 22, 2018, at 41:2-7. And, Sergeant King testified that his conclusions were based on photographs, physical evidence, and statements, including Defendant Newman's pre-trial statements. *Id.* at 28:12-17. Sergeant King's testimony did not even delve into where the gun was pointing when Defendant Newman shot. His testimony was simply that he did not see any inconsistencies when reviewing the evidence with the deputies' statement about what happened. *Id.* at 29:17-23. During closing arguments, Plaintiff's counsel said:

Sergeant Kyle King came in with opinions and a PowerPoint presentation that didn't get presented, I guess, or he had prepared, and admitted that PowerPoint presentation, or multiple photos like this, that he got it from evidence

directly submitted by St. Lucie County Sheriff's Office, nobody else, he didn't do any independent.

I asked him if he did a PowerPoint about the facts that the jury heard, you guys, how the arm could avoid being hit, blood spattering, DNA on the gun, no. How he put it back in the back pocket with all this going on, no.

Trial Tr., May 23, 2018, at 117:15–24. Plaintiff raised her concern with the weight the jury should give Sergeant King's testimony and made clear, as Sergeant King had on the stand, that his conclusions were based solely on the evidence that was given to him from the St. Lucie County Sheriff's Office. *Id.* The jury was able to consider what weight to give Sergeant King's testimony and, if the jury believed it conflicted with other testimony they heard, the jurors were free to reject it. There was nothing in Sergeant King or Defendant Newman's testimony that prejudiced Plaintiff's rights and Plaintiff is not entitled to a new trial on this ground.

D. Jury's Verdict

Plaintiff argues that "[t]he inconsistent and legally improper verdict indicates juror confusion over the jury instructions and verdict form. In particular, there appeared to be confusion over the jury instructions' explanation of awardable damages and how those damages are apportioned on the verdict form." DE 237 at 17. Plaintiff takes issue with the fact that the Court did not read the title to each jury instruction when the Court charged the jury. *Id.* at 18. Plaintiff argues that the result of the Court not reading the titles of the jury instructions resulted in jury confusion; this caused the jury "to make a finding that only nominal damages were appropriate or sought to punish the Plaintiff and awarded an amount unsupported by evidence. The issue here is that nominal damages only pertained to the federal civil rights claim, *not* the negligence claim." *Id.* (emphasis in original). Plaintiff states that "[t]he other logical explanation for the jury's inconsistent verdict was that it intended to be punitive." *Id.* at 19.

Defendants respond that the jury instructions properly stated the law and that Plaintiff

waived any argument that the Court erred in failing to read the title pages of the jury instructions by not objecting after the Court read the instructions. DE 247 at 10–11. Defendants note that Plaintiff’s argument that the verdict may have been intended to be punitive is mere speculation. *Id.* at 11. Defendants also note that “[i]n any event, the jury’s decision as to Plaintiff’s damages was ultimately, in practical effect, irrelevant based on its finding that Mr. Hill was intoxicated and that as a result of his intoxication was more than 50% at fault for his injuries entitling the Sheriff to judgment as a matter of law pursuant to F.S. § 768.36.” *Id.* at 12.

The Court agrees with Defendants. First, the Court rejects Plaintiff’s argument that the fact that the Court did not read the title pages of the jury instructions prejudiced Plaintiff. The Court notes that, following the Court’s reading of the jury instructions, the Court asked each party if the Court had read the instructions as discussed in the charging conference. Both parties agreed that the Court had. Trial Tr., May 23, 2018, at 96:23–97:9 (“From the Plaintiff, did the Court give the instructions as discussed in the conference? *MS. HINES*: Yes, your Honor. *THE COURT*: Are there any objections that have not already been made as a matter of record? *MS. HINES*: No, your Honor. *THE COURT*: Defense, has the Court read the instructions discussed in the conference? *MR. BRUCE JOLLY*: Yes. *THE COURT*: Are there any objections that have not been made on the record? *MR. BRUCE JOLLY*: No, your Honor.”). If Plaintiff thought that the Court should have read the title to the jury instructions, Plaintiff should have raised the objection at that time so that the Court could have remedied Plaintiff’s objection at that time. The Court also notes that each juror received a copy of the jury instructions that included the title of each instruction. Accordingly, the jurors could have referred to the title of each jury instruction if they were confused about what damages instruction applied to which claim.

Second, the Court notes that the verdict was not legally inconsistent and any confusion

the jury may have had regarding the damages portion is legally irrelevant. Legally irrelevant, in this context, means that the jury's damages calculation is without practical effect because of the jury's determination as to liability and, accordingly, does not bear on the Court's decision regarding Plaintiff's Motion for New Trial. In stating that the jury's damage award is legally irrelevant, the Court is expressing no opinion about the damages award. The Court is simply stating that the jury's award has no impact on the legal issues before the Court because of the jury's determinations as to liability; that is, the jury's determination about who was at fault—specifically the jury's determination that Mr. Hill was intoxicated and more than 50% at fault—renders any determination that the jury made as to damages irrelevant as to Plaintiff's Motion for New Trial.

Plaintiff states that the jurors were confused because they thought nominal damages were available for the negligence claim, when in fact the instruction on nominal damages applied only to the § 1983 claim. Even if the jurors were confused about the availability of nominal damages in a negligence claim, their confusion is legally irrelevant because their conclusions that Mr. Hill was under the influence of alcoholic beverages and that he was more than 50% at fault prevented Plaintiff from collecting any damages for the negligence claim. *See* Fla. Stat. § 768.36. The verdict form could have instructed the jurors that if they found that Mr. Hill was intoxicated and 50% at fault for the incident and his injuries, they need not reach the question of damages. Accordingly, any confusion they had about the availability of nominal damages does not materially impact their verdict because of the jury's determination as to liability and does not render the verdict inconsistent or flawed.

Third, the Court notes that speculation regarding why the jury arrived at their verdict cannot be the basis for a new trial. Specifically, the jury instructions instructed that nominal

damages were available for the § 1983 if the jury found that:

(a) Plaintiff has submitted no credible evidence of injury; or (b) Plaintiff's injuries have no monetary value or are not quantifiable with any reasonable certainty; or (c) Defendant Christopher Newman used both justifiable and unjustifiable force against Gregory Vaughn Hill, Jr. and it is entirely unclear whether Gregory Vaughn Hill Jr.'s injuries resulted from the use of justifiable or unjustifiable force.

DE 224 at 13. During closing arguments, Defendants pointed the jurors to (c). Defendants' counsel said:

I would have you focus on C, Defendant Christopher Newman used both justifiable and unjustifiable force against Gregory Vaughn Hill, Jr. and it is entirely unclear whether Gregory Vaughn Hill, Jr.'s injuries resulted from the use of justifiable or unjustifiable force. Again, it pains me to talk about damages, and ultimately your verdict has to be unanimous. If you went down the road of damages, I would submit to you that that would be the way to go if there was any confusion about whether or not Deputy Newman should have used deadly force on Mr. Hill.

Trial Tr., May 23, 2018, at 159:25–160:9. Given the Defendants' closing arguments and emphasis on part (c) of the nominal damages jury instruction, the jurors, in awarding nominal damages on the negligence claim, may have been indicating that they thought it was unclear if Defendant Newman used justifiable or unjustifiable force. This conclusion would not have been inconsistent with their conclusion that Mr. Hill was 99% at fault and that Sheriff Mascara in his official capacity, through Defendant Newman, was 1% at fault for Mr. Hill's death. In reading the jury's verdict with this background in mind, the jurors could have been saying that they believe that Defendant Newman used both justifiable and unjustifiable force against Mr. Hill and that the jury could not determine if Mr. Hill's injuries were the result of the use of justifiable or unjustifiable force. This would not be the punitive verdict that Plaintiff speculates the jurors intended in awarding such a low amount of damages.

Speculation aside, the Court notes that it does not matter legally whether the jurors were

intending to be punitive or were stating that they thought it was unclear whether Defendant Newman used justifiable or unjustifiable force. The jurors should not have even reached the damages section of the verdict form, which is Plaintiff's sole basis to argue that the jurors were confused. Even if the jurors were confused about the amount of damages they could award, their damages award is legally irrelevant; their conclusions were that Defendant Newman did not use excessive force and that Mr. Hill was under the influence of alcoholic beverages to the extent that his normal faculties were impaired and, that as a result of the influence of such alcoholic beverage, Mr. Hill was more than 50% at fault for this incident and his resulting injuries. Accordingly, Plaintiff was not entitled to any damages and any juror confusion regarding the type of damages they could award for each claim is immaterial and not grounds for a new trial.

Although the damages verdict was legally irrelevant, one last point bears discussion, even though it has no impact on the Court's decision. The jury's award of \$1.00 each for funeral expenses and to each of Mr. Hill's three minor children was not supported by Plaintiff's evidence as to damages. Ms. Bryant's undisputed testimony was that the funeral expenses for Mr. Hill were \$11,352. Trial Tr., May 17, 2018, at 259:6-12. All three of Mr. Hill's children testified about the relationships they had with their father, including that he took them fishing and that they missed him. Test. of G.H., Trial Tr., May 21, 2018, at 99:25-100:7; Test. of A.H., *id.*, at 101:24-102:25; Test. of D.H., *id.* at 111:2-20. The Court notes this because of the emotional nature of the case and the truly tragic outcome of the events of that day. Ultimately, however, any evidence regarding the damages suffered by Mr. Hill's children or the funeral expenses incurred by Plaintiff are legally irrelevant and do not show any flaw in the jury's verdict or any reason for this Court to grant a new trial.

E. The Weight of the Evidence

Plaintiff argues that the jury's verdict was against the clear weight of the evidence. Plaintiff points to the following evidence that she argues shows that the jury verdict was against the clear weight of the evidence:

Roy Bedard, an expert on police practices, testified extensively on proper police protocol when a subject is behind an opaque surface. He also testified specifically about the troubling paradox created by discrepancies between Defendant Christopher Newman's testimony and the physical evidence presented. (Trial Tr. Vol. 2, 181-182, 16). Dr. William Anderson, a trained Medical Examiner, gave testimony regarding Mr. Hill's gunshot wounds and the order in which they were likely sustained. Dr. Anderson's testimony supported that of Earl Ritzline of the Indian River Crime Lab who testified about the DNA results which revealed that none of Mr. Hill's DNA was conclusively found on the KelTec firearm recovered from his back pocket. Furthermore, several independent eye witnesses located directly across the street from where the shooting occurred testified that they never saw Mr. Hill holding a gun in his hand.

DE 237 at 19-20. Plaintiff states that, based on this evidence, no rational jury could have found that Defendant Newman's use of force against Mr. Hill was not excessive in violation of 42 U.S.C. § 1983 or that Mr. Hill was 99% at fault for his own death. *Id.* at 20.

Defendants respond that "Plaintiff's cherry picking of the evidence the jury heard which was favorable to her and suggesting that the jury ignored it does not entitle her to a new trial. Indeed, the jury was entitled to reject Plaintiff's evidence if it were un rebutted if it chose to." DE 247 at 13 (citations omitted).

The Court agrees with Defendants. A new trial should not be granted "unless, at a minimum, the verdict is against the great—not merely the greater—weight of the evidence." *Pensacola Motor Sales, Inc. v. E. Shore Toyota, LLC.*, 684 F.3d 1211, 1231 (11th Cir. 2012) (citation omitted). Although the Court is permitted to weigh the evidence, it must be with this standard in mind. *See Watts v. Great Atl. & Pac. Tea Co., Inc.*, 842 F.2d 307, 310 (11th Cir. 1988) ("In ruling on a motion for new trial, the trial judge is permitted to weigh the evidence, but

to grant the motion he must find the verdict contrary to the great, not merely the greater, weight of the evidence.”).

The jury’s verdict was not against the great weight of the evidence. The evidence about whether or not Mr. Hill had the gun in his hand when he opened the garage door was mixed. Plaintiff states that “several independent eye witnesses located directly across from the street from where the shooting occurred testified that they never saw Mr. Hill holding a gun in his hand.” DE 237 at 20. This is a misleading statement. The only witness who said that she could see Mr. Hill and that he was not holding a gun was Mr. Hill’s daughter, Destiny. *See* Trial Tr., May 21, 2018, at 109:2–5. All of the other witnesses who were across the street testified that they did not see Mr. Hill or his hands at all; thus, they could not tell if he was holding a gun. *See, e.g.,* Test. of Juanita Wright, Trial Tr., May 17, 2018, at 234:17–20 (“*Q.* And I understood your testimony, you were asked if you ever saw Mr. Hill with a gun. It is accurate to say you never saw Mr. Hill at all, correct? *A.* That day, no.”); Test. of Donna Hellums, Trial Tr., May 17, 2018, at 240:23–25 (“*Q.* You were asked on direct if you saw Mr. Hill with a gun. You never saw Mr. Hill at all, correct? *A.* I never saw Mr. Hill at all.”); Test. of Stefani Scheutz, Trial Tr., May 18, 2018, at 13:21–14:3 (“*Q.* And therefore, for any instant during this, I think I know the answer, but did you see anybody holding up a gun or – from inside the garage, holding up a gun or bringing the gun in the direction of anybody outside the garage? *A.* No. I couldn’t see anyone from my angle at all. If there was -- I could not see inside the garage and it was also -- it happened very fast to where I -- at that time I sped my car away, I wasn’t looking at all.”). And, both Defendant Newman and Deputy Lopez testified that they saw Mr. Hill holding a gun. Test. of Christopher Newman, May 22, 2018, at 136:17–19; Test. of Edward Lopez, Trial Tr., May 18, 2018, at 208:22–25. The great weight of the evidence did not show that Mr. Hill did not have the

gun in his hand; the jury was entitled to reject Plaintiff's evidence that Mr. Hill did not have the gun in his hand when he opened the garage door and believe the deputies testimony that Mr. Hill did have a gun in his hand when he opened the garage door.

Additionally, the jury was entitled to credit Deputy Lopez and Defendant Newman's testimony that Mr. Hill made a movement with the hand holding the gun, causing Defendant Newman to discharge his weapon. *See* Test. of Christopher Newman, May 22, 2018, at 137:4-7; Test. of Edward Lopez, Trial Tr., May 18, 2018, at 208:22-209:5. This could lead the jury to conclude that the force used by Defendant Newman was not excessive. Accordingly, the verdict was not against the great weight of the evidence and Plaintiff is not entitled to a new trial based on the weight of the evidence.

Again, the Court notes that its analysis regarding the weight of the evidence does not speak to the damages aspect of the jury's verdict. Because the jury's verdict was not against the great weigh of the evidence as to liability, the Court is not commenting on the jury's damages award because the award was a nullity in practical effect.

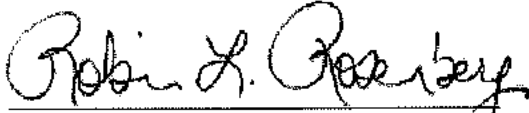
F. The Cumulative Effect

Plaintiff argues that the cumulative effects of the errors and evidentiary rulings identified in her Motion for a New Trial demonstrate that Plaintiff's substantial rights were prejudiced and, accordingly, Plaintiff is entitled to a new trial. DE 237 at 20. The Court does not find that any of the grounds raised in Plaintiff's motion, or their cumulative effect, prejudiced Plaintiff's substantial rights. Accordingly, the cumulative effect of the grounds raised in Plaintiff's motion do not entitle Plaintiff to a new trial.

III. CONCLUSION

It is therefore **ORDERED AND ADJUDGED** that Plaintiff's Motion for New Trial [DE 237] is **DENIED**.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 14th day of August, 2018.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and a copy hereof has been furnished to Summer M. Barranco, Esquire, Purdy, Jolly, Giuffreda & Barranco, P.A., 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL 33304, by email to summer@purdylaw.com, and melissa@purdylaw.com, this **24th** day of January, 2019.

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