

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

DEMETRI SIMS, INDIVIDUAL
Plaintiff,

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V.

CIVIL ACTION NO. 9:21-cv-251

**NACOGDOCHES COUNTY, TEXAS;
DAVID CRISP, INDIVIDUAL,
TYLER JOHNSON, INDIVIDUAL;**
Defendants.

JURY DEMANDED

PLAINTIFF SIMS' BRIEF IN OPPOSITION

TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

BASED ON THE ISSUE OF QUALIFIED IMMUNITY

NOW COMES Plaintiff Demitri Sims, by and through undersigned counsel and file this Brief in Opposition to Defendants' Motion for Summary Judgment Based on the Issue of Qualified Immunity, and in support thereof, would respectfully show unto the Court the following:

PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF ISSUES

1. *Heck v. Humphrey*, 512 U.S. 477 (1994) does not bar Plaintiff's excessive force claim, because *Heck* does not apply to claims for excessive force - the narrow holding in *Heck* applies only to claims that are analogous to malicious prosecution.
2. Summary judgment is not proper in this case because there are genuine issues of material fact in each one of Plaintiff's claims, including video evidence that supports Plaintiff's claims but which Defendants conspicuously neglected to cite in their motion for summary judgment.

PROCEDURAL HISTORY

On September 21, 2021, Plaintiff Demitri Sims filed his Complaint with this Court, ECF 1, and an Amended Complaint was filed October 29, 2021, ECF 8. The Amended Complaint

includes four claims of violations of Plaintiff's constitutional rights, pursuant to 42 U.S.C. § 1983 for: (1) using excessive force against Plaintiff; (2) discriminating against Plaintiff on the basis of his race; (3) filing a false police report against Plaintiff; (4) retaliating against Plaintiff. ECF 1, 7-11.¹ On January 26, 2022, an Order was issued limiting discovery to the Issue of Qualified Immunity, EFC 19, and on April 12, 2022, Defendants filed a Motion for Summary Judgment on three of Plaintiff's four claims: (1) excessive force; (2) filing a false police report; and (3) discriminating against Plaintiff based on his race. ECF 24, 1.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Undisputed Material Facts

On October 21, 2019, two employees of Defendant Nacogdoches County ("Nacogdoches") - Defendants Tyler Johnson ("Johnson") and David Crisp ("Crisp") - were captured on video brutally assaulting Plaintiff Demetri Sims ("Sims" or "Plaintiff"). *See generally* ECF 24-5 ("Johnson Video"). At the time of incident that occurred on October 21, 2019, that is the subject of this lawsuit (the "Incident"), Johnson was a deputy with the Nacogdoches Sheriff's Department ECF 24-1 ("Johnson Aff.") and Crisp was a major at the Nacogdoches Sheriff's Office and served as the jail administrator ECF 24-2 ("Crisp Aff.").

On the date of the Incident, Sims and his fiancée Destiny Moore ("Moore"), were stopped at a gas station in Nacogdoches. Pl. Ex. A ("Sims Aff."). Sims first parked the car near the air compressor to service the tires and then, while Moore went into the store, he pulled the car alongside a gas pump to refuel. *Id.* As Moore started into the store, a police officer that was only later identified to Sims as Johnson pulled his patrol car across from the gas pump that Sims was occupying; Sims did not recognize Johnson and had no recollection of previous dealings with him.

¹ Plaintiff's Table of Authorities is herein attached Appendix "A"

Id. Johnson exited his patrol car and began staring at Sims in “an intimidating manner.” *Id.* Johnson returned to his car and used his laptop to search the license plate of what he surmised to be Sims’ vehicle. Sims Aff.; Johnson Aff. at 2.

A search revealed that the car belonged to Jane Moore and that “Demetri Sims has been known to be a passenger in the vehicle. The vehicle has been located at his residence and was identified as the vehicle he left in while Deputies were attempting to [sic] a warrant on himi.” Johnson Aff. at 2; ECF 24-4 at 11. After Moore had already returned to the car and as Sims was returning the gas cap and preparing to enter the car, Johnson got out of his car and approached Sims and asked for his name. Sims Aff.; Johnson Aff. at 2. Sims asked, “Am I being detained or arrested?” To which Officer Johnson responded, “No.” Sims Aff. Sims asked, “Then what crime have I committed? This is a violation of my constitutional rights.” Sims Aff. Officer Johnson did not respond. *Id.* Officer Johnson stated, “Demitri Sims is known to drive this car.” *Id.* Sims asked again if he was being arrested, and again Johnson said, “No,” so Sims then told Johnson that “if I was not being arrested or detained, then we had nothing to talk about.” *Id.* Johnson asked, “weren’t we in court together the other week?” to which Sims gave no reply.

As Sims and Johnson spoke outside the driver’s side door, Moore began to film the exchange on her phone from the passenger seat. Pl. Ex. B (“Moore Video”). Johnson finally said, “Here’s what we are going to do. I’m going to walk to that car right there, and I’m going to pull your picture up.” Moore Video. Johnson walked away, and Sims entered the car, locked the door, rolled the window down enough to communicate with Johnson, and waited for Johnson to return. Sims Aff.

Johnson returned to the car accompanied by Crisp, a higher-ranking officer, and Crisp attempted to “talk [Sims] out of the vehicle.” Crisp Aff. at 2. By this point, Johnson had turned

on his body camera. *See generally* Johnson Video. What followed after is a matter of dispute; Defendants assert that Sims resisted, but the video evidence from Johnson's body camera and from Moore's phone tell an entirely different story and clearly show that Sims did not resist.

Defendants' version of events prior to the warrant verification is contradicted by Johnson and Moore's videos. (Johnson Video, 0:00 - 1:35; Moore Video, 0:00 - 1:05)

Crisp approaches the vehicle while Johnson communicates with dispatch via his radio to verify if there is in fact a warrant. Johnson asks Sims one time to step out of the car. Crisp then says, "you've got a warrant, now step out." Sims asked, "a warrant for what?" To which Crisp responded, "for your arrest." Until this point, Sims had not been informed of the existence of a warrant and was repeatedly assured by Johnson that he was not being detained or arrested.

Johnson advises Crisp of the situation and informs Crisp that he is currently on the radio and that he has not yet verified the existence of a warrant. Crisp stands down and waits for further verification of a warrant from Johnson's radio and, meanwhile, does not ask Sims to exit the car. Sims, meanwhile, disputes the existence of a warrant and asks what crime he committed for a warrant. Crisp tells Sims that they are trying to verify the existence of the warrant, to which Sims says, "Well ok, verify it out there, and then let me know what crime have I committed." Crisp tells him to "hold on one second." Neither Crisp nor Johnson asked Sims to exit the car while they waited for over sixty seconds for verification.

The video directly contradicts Defendants' version of events. First, Defendants falsely claim "Johnson verified by radio that Sims did in fact have a warrant" and then "motioned for Crisp to come towards him and advised him of the situation at hand." ECF 24, 3-4. The video clearly shows that Crisp was involved before Johnson had verified by radio if there was a warrant. The video also shows that Crisp was not properly "advised of the situation at hand" before asking Sims to exit the vehicle; Crisp first ordered Sims to get out of the car and told him that there was

a warrant for his arrest, but then when Johnson advised Crisp of the situation, Crisp stood down and awaited verification.

Defendants' assertion that Sims did not comply after the warrant was verified is contradicted by Johnson's and Moore's videos. (Johnson Video, 1:35 - 2:07, Moore Video, 1:05 - 1:37)

Johnson receives verification of a warrant from the radio and, for the first time, Johnson orders Sims out of the car. Johnson extends his baton and threatens to break the car window. Moore tells Sims to get out of the car but to first give her his wallet so they can pay their rent. Sims rolls down the window and unlocks the car door. He reaches into his pocket to retrieve his wallet. Johnson opens the car door and with his left-hand grabs Sims left wrist. It became immediately apparent that Sims was retrieving his wallet and not a weapon. Jonson Aff. at 3.

After Moore took possession of the wallet, Sims voluntarily removed his left leg from the car and planted his left foot firmly on the pavement outside the driver's side door. At the same time, he shifted in the driver seat so that he was positioned on the edge of the seat near the door, and his right foot was all the way at the extreme left side of the car interior, preparing to take the next step out of the vehicle. His left hand still held by Johnson; Sims makes no effort to shake loose from Johnson's grip. Sims' right hand is relaxed and opened, not clenched into a fist. Sims lifts his right hand as a sign that he is passively surrendering and complying with the order. Sims voluntarily twists his upper torso towards the officers and extended his head and upper body outside of the vehicle. Johnson gave a forceful order "GET OUT OF THE CAR!" To which Sims responded, "I'M TRYING TO!"

The video directly contradicts Defendants' version. First, Defendants falsely claim, "multiple commands were given to Sims to roll the window down, which he initially failed to comply." ECF 24, 3-4. Sims was never asked to roll down his window. He voluntarily rolled the window down slightly, without being ordered, so that he could communicate with the officers until

the warrant was verified by radio. Within seconds of verification of the warrant Sims voluntarily rolled down the window all of the way, without being ordered.

Second, Defendants claim “Johnson gave multiple commands to Sims to exit the vehicle, but he failed to comply. Johnson reached in and assisted Sims out of the vehicle, because Sims would not comply with Johnson’s orders. Sims’ resistance to exiting the vehicle required Johnson to gradually increase his force to pull Sims towards him.” This is directly contradicted by the video that clearly shows Sims complying and getting out of the car. The warrant was verified at 00:01:35. Moore took possession of Sims’ wallet at 00:01:59, and Sims had a foot on the ground outside the car to exit the vehicle at 00:02:05. Johnson was aware that Sims was trying to transfer his wallet to Moore and seemingly allowed it. Once the transfer was complete, Sims was on his way out of the car within 6 seconds. It is hard to imagine how Sims could have complied any faster.

The video also shows Sims in a passive position, not resisting Johnson’s grip on his left hand, and Sims’ right hand up in a position of compliance. Most significantly, when Johnson orders Sims to get out of the car, Sims says “I’m trying to!”

Defendants’ assertion that Sims resisted while being pulled by Crisp and Johnson from the vehicle is contradicted by Johnson’s and Moore’s videos. (Johnson Video, 2:08 - 2:23, Moore Video, 1:34 - 149)

Johnson and Crisp each grab one of Sims hands and forcibly yank Sims from the car. Sims yells, “HEY, WHAT ARE YOU DOING? I’M NOT RESISTING! I’M NOT RESISTING! I’M NOT RESISTING!” Sims continues to tell the officers that he is not resisting as they bring him to the back of the vehicle. Sims is brought to the ground by Crisp who uses his left hand to pin Sims’ right hand to the pavement, and uses his left hand to choke Sims and pin Sims’ neck to the pavement.

The video directly contradicts Defendants’ version. Defendants claim “Crisp and Johnson moved Sims to the rear of the vehicle and away from the driver’s area. Sims would not relax, and stayed tense and rigid, attempting to pull away.” Sims is not shown at any time on the video trying

to pull away. He is clearly heard telling the officers that he has no intention of resisting. "Once Sims was on the ground, he continued to yell and actively resist by pulling away and maintaining a rigid posture." Once again, the video shows this to be false. Sims is pulled from the car to the ground in a matter of seconds, with no signs of resistance, doing everything he can to yell that he is not resisting, up until the point that his voice becomes raspy because of Crisp's hand wrapped around his throat.

Defendants' assertion that Sims resisted while being handcuffed is contradicted by Moore's video.

Defendants claim, "Sims continued to yell and resist being handcuffed." ECF 24, 5. The video shows this to be false. While Sims was being handcuffed, he continued to yell "I'm not resisting!" and then made a continuous shriek like he is in pain. Moore, who was now standing outside the car recording on her phone, stated contemporaneously for the recording while the officers were handcuffing Sims that she was "recording everything" and that Sims was not resisting. Moore Video, 1:53-156.

Defendants' assertion that Moore physically interfered by pushing and pulling Crisp is contradicted by Johnson's and Moore's video.

Defendants claim, "While attempting to handcuff Sims, the passenger, who was later identified as Destiny Moore, exited the vehicle and began pushing and pulling on Crisp as well as interjecting a cell phone into the mix of the altercation." ECF 24, 3. This is directly contradicted by Johnson's and Moore's videos. While Sims was being handcuffed, Moore's shoes can be seen firmly planted at least arms lengths distance of where Sims is being pinned to the ground, and Moore's legs can be seen standing straight, indicating that she was not leaning over. Johnson Video 2:55 - 2:59. It would have been physically impossible for her to push or pull on Crisp or Johnson because her hands could not reach them. Further, Moore's video shows that at the time Crisp claims she was "pushing and pulling" him, that Moore was recording him directly. Moore

Video, 2:55 - 3:00. If Moore had in fact pushed or pulled Crisp, her hands would have appeared on either her or Johnson's video.

The video actually shows Crisp look up at Moore recording and he became concerned that she was "interjecting a cell phone into the mix of the altercation." ECF 24, 3. Crisp asks Moore to "step back." Johnson Video, 3:00. Moore can be seen complying; her shoes are seen taking a few steps away from the altercation. *Id.* This apparently did not satisfy Crisp, as Moore continued to record, so Crisp stood up from pinning Sims and charged at Moore to prevent her from recording him and Johnson handcuffing Sims, or as Crisp put it, "from interjecting a cell phone into the mix of the altercation."

Conspicuously, Defendants do not support any of the assertions in their Statement of Facts with the available video evidence; instead, Defendants chose to cite exclusively to written testimony of Defendants Johnson and Crisp. ECF 24, 2-5 (citing only Johnson Aff., Crisp Aff. and ECF 24-4, the incident report written by Johnson that is substantially similar to his affidavit). As video evidence is more credible than the testimony of the Defendants, one would expect that Defendants would cite exclusively to the video whenever possible - if the video supported their version of events. The fact that Defendants seek to direct the Court's attention away from the conflicting available video evidence shows that Defendants know their version of events is demonstrably false, or at the very least, that there exist genuine issues of material facts.

LEGAL STANDARD

Summary Judgment Standard

It is well-settled that a motion for summary judgment can be granted only if the matters considered by the court clearly demonstrate that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Anderson v. Liberty Lobby*,

Inc., 477 U.S. 242, 247 (1986); FED. R. CIV. P. 56(c). It is equally well-settled that the burden of proving that "no genuine issue of material fact exists," rests with the party moving for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). If the moving party meets this threshold, the burden shifts to the nonmoving party to demonstrate with significant probative evidence that there exists a genuine issue of fact to be tried. *Kansa Reinsurance v. Congressional Mort. Corp.*, 20 F.3d 1362, 1371 (5th Cir. 1994); *Conkling v. Turner*, 18 F.3d 1285, 1295 (5th Cir. 1994). Summary judgment is only proper when a rational jury, looking at the record as a whole, could not find for the nonmoving party. *Boeing Co. v. Shipman*, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc). In making this assessment, factual controversies are to be resolved in favor of the nonmoving party. *See Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam).

Local Rule 56(d) states, "In resolving the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the responsive brief filed in opposition to the motion, as supported by proper summary judgment evidence." When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (calling a party's version of events "visible fiction" and "utterly discredited by the record that no jury could have believed him" because it contradicted available video evidence).

Qualified immunity standard

Individual Defendants raise qualified immunity as a defense to Plaintiff's episodic acts or omissions claim against them. "Qualified immunity protects officers from suit unless their conduct violates a clearly established constitutional right." *Est. of Bonilla by & through Bonilla v. Orange Cnty., Tex.*, 982 F.3d 298, 306 (5th Cir.

2020) (quoting *Hyatt v. Thomas*, 843 F.3d 172, 177 (5th Cir. 2016). "Once an official pleads the defense [of qualified immunity], the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law." *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010). "The qualified immunity defense has two prongs: whether an official's conduct violated a statutory or constitutional right of the plaintiff; and whether the right was clearly established at the time of the violation." *Dyer v. Houston*, 964 F.3d 374, 380 (5th Cir. 2020) (quoting *Brown*, 623 F.3d at 253). A court may rest [*440] its analysis on either prong. *Id.* (citing *Morgan v. Swanson*, 659 F.3d 359, 385 (5th Cir. 2011) (en banc)).

Sims v. City of Jasper, 543 F. Supp. 3d 428, 439-40 (E.D. Tex. 2021)

ARGUMENT

Sims' excessive force claims are not barred by *Heck v. Humphrey* because *Heck* does not apply to claims for excessive force - it only applies to claims that are analogous to malicious prosecution.

Defendants argue that Sims excessive force claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) (ECF 24, 7-13), but *Heck* does not apply to this case. *Heck* held that § 1983 claims that were similar in nature to common law tort claims of malicious prosecution do not accrue until the underlying criminal conviction has terminated in the plaintiff's favor. *Id.* at 489-90 ("Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor, so also a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." (citations omitted)). Here, Plaintiff is not challenging the constitutionality of his conviction, and therefore *Heck* is not relevant and does not bar his claim.

Defendants erroneously assert that, based on *Heck*, "[Sims excessive force claim] is barred unless he proves that his conviction or sentence has already been invalidated." (ECF 24, 7-8). But *Heck* says exactly the opposite; the Supreme Court expressly held that "[i]n general, exhaustion of state remedies is *not* a prerequisite to an action under § 1983, ... even an action by a state prisoner[.]" *Heck*, 512 U.S. at 480-81 (citing *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501

(1982)) (internal quotations omitted) (emphasis in original). The Supreme Court distinguished § 1983 actions from habeas corpus proceedings which, by contrast, *do* “require that state prisoners first seek redress in a state forum.” *Id.* (citation omitted). In contrast to a petitioner seeking immediate or speedier release through habeas corpus proceedings, “since a state prisoner seeking only damages is attacking something other than the fact or length of confinement, and is seeking something other than immediate or more speedy release, a damages action by a state prisoner could be brought under § 1983 in federal court without any requirement of prior exhaustion of remedies.” *Id.* (citing *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973) (emphasis added)).

Heck introduced a unique exception to the “no exhaustion” rule of § 1983 that does not apply to Sims’ claims. Specifically, the Court held that a favorable termination of the criminal conviction is necessary in cases when the § 1983 action is really in nature a habeas corpus proceeding, or in other words, “when establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction.” Sims’ excessive force claim does not challenge the validity of his conviction, and therefore *Heck* does not apply.

The case at issue in *Heck* was one where the allegations of the § 1983 action were such that, if true, the validity of his confinement was undermined and the prisoner would be entitled to release. Accordingly, it was treated like a habeas corpus petition. In *Heck*, the Petitioner filed a § 1983 action in Federal Court seeking monetary damages for an alleged wrongful conviction in Indiana state court. *Id.* at 478-80. He alleged that the defendants, acting under color of state law, destroyed exculpatory evidence and used an illegal voice identification procedure at trial. *Id.* at 479. The Federal District Court dismissed the action without prejudice while the appeal was still pending in the Indiana Supreme Court because “the issues it raises directly implicate the legality of [petitioner’s] confinement.” *Id.* By the time the Seventh Circuit reached his appeal of the

dismissal of the § 1983 action, the Indiana Supreme Court upheld his criminal conviction. *Id.* at 479-80. The Seventh Circuit affirmed the District Court's dismissal. *Id.* The Supreme Court affirmed the Seventh Circuit's dismissal, holding that "section 1983 contains no exhaustion requirement beyond what Congress has provided" unless the § 1983 claim challenges the conviction. *Id.* at 483.

Heck stands for the proposition that federal courts, when considering questions regarding a § 1983 claim, are to look to an analogous common law claim for guidance. For example, in *Heck* the question was whether the Petitioner's § 1983 claim for damages required a favorable termination. The Supreme Court looked at the underlying allegations - destroying exculpatory evidence and illegal trial procedures - and determined that the claim was analogous to the common law tort of malicious prosecution and therefore the claim did require a favorable termination. *Id.* 483-84.

We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been [terminated in favor of the accused]. ... But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Id. at 486-87. In other words, only § 1983 claims that are analogous to malicious prosecution are subject to the requirement of a favorable termination, while other claims are allowed to proceed in absence of a favorable termination.

Excessive force claims are manifestly distinguishable from malicious prosecution claims. *See, e.g., Runyon v. Lee*, No. 12-cv-290-PB, 2013 U.S. Dist. LEXIS 32282, at *11-12, *15 (D.N.H. Feb. 14, 2013) (denying motion to dismiss Plaintiff's Fourth Amendment excessive force claims

while dismissing Plaintiff's malicious prosecution and false imprisonment claims for failing to show a favorable resolution of the charges as is required by Wallace).

The Supreme Court has not only held that excessive force claims are not subject to the favorable termination requirement of *Heck*, but quite the contrary, the Supreme Court requires excessive force claims to be brought before the underlying criminal case terminates or else risk being barred by the statute of limitations. *See Wallace v. Kato*, 549 U.S. 384 (2007). In *Wallace*, the Supreme Court held that the statute of limitations for a § 1983 claim for unlawful arrest in violation of the Fourth Amendment began to run at the time of the civil rights violation, not later when charges were dropped. *Id.* at 390. In contrast to *Heck*, where the underlying claim resembled malicious prosecution, in *Wallace* the claim resembled the common law tort of false imprisonment. *Id.* at 388. The Court expressly distinguished between the claim for false imprisonment - unlawful detention in the absence of a legal process - with the "entirely distinct" tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by *wrongful institution* of legal process.

In *Wallace*, the Supreme Court declined to apply the *Heck* rule for deferred accrual, which applies only where there is an outstanding criminal judgment and "delays what would otherwise be the accrual date of a tort action until the setting aside of an extant conviction which success in that tort action would impugn." *Id.* at 393. The Supreme Court distinguished *Wallace* from *Heck* on the basis that the claim in *Heck* was analogous to the tort of malicious prosecution, rather than false imprisonment. *Id.* at 393-94. The Court stated that while a claim of malicious prosecution would inevitably impugn the validity of a conviction, a claim of false imprisonment only impugns an *anticipated* future conviction because the claim ends well before the conviction occurs. *Id.* at 394.

The Seventh Circuit has characterized *Wallace* as holding "a claim that accrues before a criminal conviction may and usually must be filed without regard to the conviction's validity." *Evans v. Poskon*, 603 F.3d 362, 363 (7th Cir. 2010). This interpretation of *Wallace's* holding focuses "on the factual distinction between *Heck* and *Wallace*: the tort of false arrest is complete, and therefore begins to accrue, once the individual is brought before a magistrate; the tort of malicious prosecution is not complete until a conviction occurs and that conviction has been overturned,

and therefore the statute of limitations for malicious prosecution does not begin to accrue until that time." *Parish v. City of Elkhart*, 614 F.3d 677, 681-82 (7th Cir. 2010).

Jones v. Slay, 61 F. Supp. 3d 806, 842-43 (E.D. Mo. 2014).

Plaintiff's excessive force claim accrued immediately after the incident on October 21, 2019, and if he hadn't brought the claim within three years, he would have suffered the consequence of being barred by the statute of limitations. It would be an illogical catch-22 contradiction, and manifestly unjust, for *Heck* to bar a plaintiff from filing an excessive force claim prior to a favorable termination, and then for *Wallace* to bar him after the termination because of the statute of limitation. As *Heck* only applies to claims analogous to malicious prosecution, and this is not such a case, Plaintiff's claim is not barred by *Heck* and may proceed without a favorable termination.

Johnson and Crisp are not entitled to Qualified immunity

Defendants Johnson and Crisp raise qualified immunity as a defense to Plaintiff's claims regarding (1) excessive force, ECF 24, 13-16; (2) race discrimination, ECF 24, 16-17; and (3) filing a false police report, ECF 24, 17-18.

Excessive force

"To succeed on an excessive force claim [under 42 § 1983], a plaintiff bears the burden of showing (1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the force was objectively unreasonable." Glenn, 242 F.3d at 314 (internal quotation marks omitted). The injury suffered must be more than de minimis and must be evaluated in the context in which the force was deployed. *Williams v. Bramer*, 180 F.3d 699, 703 (5th Cir. 1999). When analyzing the objective reasonableness of the force used the Court "must balance the amount of force used against the need for force." *Ikerd v. Blair*, 101 F. 3d 430 434 (5th Cir. 1996). The reasonableness of a particular use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396. This context-based evaluation is subjective and defined

entirely by the context in which the injury arises. *Gutierrez v. City of San Antonio*, 139 F.3d 441, 447 (5th Cir. 1998). This determination requires careful attention to the facts of each particular case including whether the suspect actively resisted arrest. *Graham*, 490 U.S. at 396.

Spencer v. Rau, 542 F. Supp. 2d 583, 592 (W.D. Tex. 2007)

Sims has provided evidence of injuries that resulted directly and only from the force applied to him. *See* ECF 24-4 at 8 (“[Sims] was released from the NCSO jail, he then went to mem ER for a head injury he claimed to have sustained during the arrest.”). The main issue was whether the force was objectively unreasonable.

The videos of Johnson and Moore are *prima facie* evidence that the force used was unreasonable. As the video shows, Sims was complying with the officers and was peacefully exiting the car. *See generally* Johnson Video; Moore Video. While he was complying, both officers forcibly yanked him from the car and threw him straight to the ground. The video clearly shows Crisp with his hand around Sims throat. Sims did everything that he could to communicate to the officers that he was “not resisting” including yelling multiple times, “I’m not resisting.” Moore stood by recording the entire episode and also communicated contemporaneously that Sims was not resisting.

It is telling that Crisp sought to prevent Moore from recording the Incident. It is also telling that Defendants do not direct the Court to the video evidence and instead direct the court to Johnson’s and Crisp’s affidavits which tell stories that contradict the video evidence.

It is clear that there is a genuine issue of fact as to whether the force used was reasonable, and therefore, summary judgment should be denied for the claim of use of excessive force.

Racial Discrimination

The right to be free from disparate treatment based on race is a clearly established constitutional right. *Martinez v. Val Verde County Hosp.*, 46 F.3d 66, 1995 WL 29271, at *1 (5th

Cir. 1995) ("[C]onstitutional prohibitions against race and ethnic discrimination are so clearly established that a reasonable person would be aware of these rights."); *see also Felton v. Polles*, No. 3:99CV200LN, 2000 U.S. Dist. LEXIS 22902, 2000 WL 33968259, at *2 (S.D. Miss. Jan. 14, 2000).

Plaintiff alleges that he was targeted based on his race. When Johnson first encountered Sims, Johnson began staring at Sims in an "intimidating manner." Sims Aff. Sims and Moore had not done anything to engender hostility from Johnson. Johnson Aff. at 1. Johnson's Affidavit and Incident Report states that Johnson did a search on Sims' license plates because he had dealt with Sims in the past and remembered that Sims had a warrant. This statement is demonstrably false. Johnson was careful to invent this false statement because he needed a pretext for searching Sims' plates that was not based on racial animus.

Defendants assert that when he first saw Sims at the gas station, Johnson recognized Sims because he "had dealt with Sims in the past, and was aware of an outstanding felony warrant for his arrest," and therefore Johnson ran a check on the license plate of Moore's car. ECF 24, 2-3. Defendants provide no details about these alleged past dealings with Sims or how he was aware of the arrest warrant. *Id.*; Johnson Aff. There is no evidence on the record that Sims and Johnson had ever crossed paths prior to the Incident. On the contrary, there is evidence that Johnson had never dealt with Sims and was not aware of the arrest warrant.

According to the record, Sims' and Johnson's paths never crossed. September 17, 2016, was the date of Sims' last encounter with law enforcement prior to the 2019 incident; at that time, Johnson had not yet graduated from the police academy. Pl. Ex, C (Transcript Vol. 2, 11:5-10). February 17, 2018, the sentencing for the September 17, 2016 incident, was the last time Sims appeared in any court for a criminal matter, and that was months before Johnson started in

Nacogdoches. ECF 24-7. Johnson alleges he knew about the July 16, 2019 warrant, but the warrant was issued at the Shelby County courthouse - Johnson works at the Nacogdoches County courthouse. ECF 24-6. Sims has not entered the Nacogdoches courthouse where Johnson works since February of 2017, before Johnson worked there, as all child support matters that Sims has attended to during Johnson's tenure took place in an annex across the street from the courthouse.

The truth is, when Johnson searched his computer for the license plate of the car driven by Sims and Moore, Johnson had no recollection of Sims from prior dealings and was not aware of a warrant against Sims. Johnson invented out of whole cloth the false pretext, *ex post facto*, that he vaguely remembered that a neighboring county had issued a warrant for Sims for failing to attend a child support hearing there. That vague recollection of a procedural warrant in a different county became Johnson's cover for conducting a computer search of Sims' license plate, as if he remembered recently seeing Sims on the television show America's Most Wanted. The pretext is absurd on its face, and was clearly invented to cover for a real motive, which is racial animus.

As there exists a genuine issue of fact regarding Johnson's motive for searching Sims' license plate, summary judgment on the racial discrimination claim should be denied.

Due Process

The Fourteenth Amendment provides in pertinent part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Fifth Circuit has concluded that the Fourteenth Amendment guarantees a "due process right not to have police deliberately fabricate evidence and use it to frame and bring false charges against a person." *Cole v. Hunter*, 497 F. Supp. 3d 172, 189-90 (N.D. Tex. 2020) (citing *Cole v. Carson*, 802 F.3d 752, 771 (5th Cir. 2015)). A victim of intentional fabrication of evidence by law enforcement officers is denied due process whether he is convicted or acquitted, and even where

the false charges do not "survive to the trial stage." *Id.* Courts have held that the falsification of evidence is a violation of due process in all instances, regardless of outcomes, because such conduct by the state "offends the most strongly held values of our nation, and, therefore, is shocking to the conscience." *Id.* (quotation marks omitted).

Plaintiff alleges that the Defendants produced a false incident report that intentionally omitted Defendant Crisp, the officer seen in the video choking Plaintiff. This would be a violation of Texas Penal Code Sec. 37.08 which states that "a person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to a peace officer or federal special investigator conducting the investigation. An offense under this section is a Class B misdemeanor."

Pursuant to a public information request, on July 22, 2021, Defendant produced a three-page document titled "Nacogdoches County Sheriff's Office, Officer Report for Incident S19010021." Each page was marked on the top right corner with a page number that stated "page [x] of 3: page 1 is marked "page 1 of 3", page 2 is marked "page 2 of 3" and page 3 is marked "page 3 of 3." Page 1 and 2 include a list of six "responding officers, including Defendant Johnson, but Defendant Crisp was conspicuously missing. Page 3 of 3 contains a brief three sentence "narrative" that states, "On October 21st, 2019, a NCSO Deputy observed a male at a gas station who the deputy recognized to be a wanted felon. It was confirmed that the subject was in fact a wanted felon, and an arrest attempt was made. A physical altercation ensued, resulting in the arrest of that male as well as a female who attempted to interfere with the physical arrest. RTF." Conspicuously, Crisp's participation in the altercation is omitted.

On June 28; July 12, 20, and 22; and August 11, 12, 16, 18, and 21, Plaintiff made written requests for the County to confirm the identity of the missing responding officer, the one who is

seen choking Sims in the video, but Defendants would not provide his identity. Pl. Ex. D. For months, Defendants persistently ignored Plaintiff's requests for his identity, until finally, on December 16, 2021, as part of the County's Rule 26 mandatory disclosures, the County provided a 12 page document, with page numbers marked "page [x] of 12," titled "Nacogdoches County Sheriff's Office, Officer Report for Incident S19010021." ECF 24-4. Just like the 3-page document produced July 22 of the same name, pages one and 1 and 2 of the 12-page document contains the same list of six "Responding Officers," including Defendant Johnson, but Defendant Crisp is conspicuously omitted, and page 3 of 12 contains the same three sentence narrative that omits Crisp's participation in the Incident. There is no mention of Crisp until page 5 of 12 that contains a list of seven officers - the same six officers listed on pages 1-2, plus David Crisp. Pages 6-7 of 12 contain a detailed narrative written by Defendant Johnson that includes details of Crisp's participation in the altercation. ECF 24-4.

It is obvious that the original report did not mention Crisp for the same reason that Defendants concealed his identity for months - whatever that reason may be. Defendants claim in their Motion for Summary Judgment that Plaintiff was only provided an abridged portion of the Incident Report in July because they contend that under the Texas Public Information Act, they need only disclose "basic information" while a criminal case is pending. ECF 24, 17. Without arguing the merits of their interpretation of Texas Public Information Act, even if they are correct that they had no obligation to disclose the identity of the officer who choked Sims because a criminal investigation was pending, the fact remains that they doctored the abridged portion to conceal the existence of the remaining 9 pages of the Incident Report. Even if they were permitted by the Texas Public Information Act to redact the remaining pages, they were not permitted to conceal the identity of the pages.

Plaintiff plausibly alleges that Defendants conspired to conceal Crisp's identity for some reason and went through great lengths to do so. Discovery will undoubtedly reveal that the original narrative written by Johnson did not include Crisp's involvement in the Incident and that Johnson altered the document at a later date when it became apparent that Defendants would not succeed in concealing Crisp's identity.

The fact that Defendants ultimately produced the full report, does not absolve them of concealing it initially, and of possibly altering it after the fact. This fabrication of evidence is a violation of Plaintiff's due process rights, and therefore summary judgment should be denied on the due process claim.

CONCLUSION

For the foregoing reasons, Defendants Motion for Summary Judgment Based on the Issue of Qualified Immunity should be denied

Respectfully submitted,

PAUL ANDERSON, PLLC



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ATTORNEY FOR DEMETRI SIMS

THE CLEVENGER FIRM

/s/

Jonathan Gross
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E-mail: jonathansgross@gmail.com
ATTORNEY FOR DEMETRI SIMS
(Application for Admission pending with EDTx)

APPENDIX A

TABLE OF AUTHORITIES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); FED. R. CIV. P. 56(c).

Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

Celotex Corp. v. Catrett, 477 U.S. 317, 321 (1986).

Cole v. Hunter, 497 F. Supp. 3d 172, 189-90 (N.D. Tex. 2020)

Conkling v. Turner, 18 F.3d 1285, 1295 (5th Cir. 1994).

Felton v. Polles, U.S. Dist. LEXIS 22902, S.D. Miss. Jan. 14, 2000.

Heck v. Humphrey, 512 U.S. 477 (1994)

Jones v. Slay, 61 F. Supp. 3d 806, 842-43 (E.D. Mo. 2014).

Kansa Reinsurance v. Congressional Mort. Corp., 20 F.3d 1362, 1371 (5th Cir. 1994)

Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam).

U.S. E.D. Tx., Local Rule 56(d)

Martinez v. Val Verde County Hosp., 46 F.3d 66, 1995 WL 29271, at *1 (5th Cir. 1995)

Runyon v. Lee, No. 12-cv-290-PB, 2013 U.S. Dist. LX 32282, *11, Feb. 14, 2013

Scott v. Harris, 550 U.S. 372, 380 (2007)

Sims v. City of Jasper, 543 F. Supp. 3d 428, 439-40 (E.D. Tex. 2021)

Spencer v. Rau, 542 F. Supp. 2d 583, 592 (W.D. Tex. 2007)

42 U.S.C. § 1983

Wallace v. Kato, 549 U.S. 384 (2007)

AFFIDAVIT OF DEMETRI OBRYAN SIMS

STATE OF TEXAS §

NACOGDOCHES COUNTY §

"My name is Demetri Obryan Sims. I am over the age of 18, I am fully competent in all respects to swear this affidavit. I have personal knowledge of the facts of this affidavit.

On or about the 21st day of October, 2019 at approximately 12:05pm my fiancée, Destiny Moore, and I arrived at the Depot Chevron Convenience Store in Nacogdoches Texas. I proceeded to the air compressor to service the tires on the vehicle and then pulled around to the gas pumps for fuel.

Destiny Moore started into the store as a police officer in a Nacogdoches County patrol car approaches the gas pumps. This officer was later identified as Tyler Johnson, a deputy with the Nacogdoches County Sheriff Office.

Officer Johnson parked his patrol car across from the gas pump I was occupying at the time. Officer Johnson exited the vehicle and approaches the rear of patrol car. After only a moment, officer Johnson began staring at me in an intimidating manner as he returned to the front seat of his patrol car. Officer Johnson continued to stare at me as he opened his laptop and began typing.

At this time, Destiny Moore returned to the car and I completed pumping my gas. As I was securing my gas cap and closing my fuel door, officer Johnson approaches me from the rear of my vehicle. Officer Johnson asked me for my name. I stated, "Am I being detained or arrested?" Officer Johnson stated, "No.". I asked officer Johnson, "Then what crime have I committed?" "This is violation of my constitutional rights." Officer Johnson did not respond to my question.

Officer Johnson stated, "Demetri Sims is known to drive this car.". I asked officer Johnson again if I was being arrested and he stated, "No". I told officer Johnson that if I was not being arrested or detained, then we had nothing to talk about. Officer Johnson stated to me "weren't we in court together the other week?", I never replied. I asked officer Johnson, once again, if I was being arrested or detained. Officer Johnson didn't answer my question and appeared to activate his body camera. Officer Johnson stated, "Well this is what I am going to do. I'm going to go to my car and pull your picture, and if it looks like you...". Officer Johnson never finished the statement as he walked back to his patrol car.

At this time, I entered my vehicle to sit down and wait for the officer Johnson to return. I felt very unsafe because the officer was refusing to answer any of my questions for stopping me. While waiting for officer Johnson to return, I locked my car doors and rolled the window down enough to be able to communicate in a safe manner.

Officer Johnson returned to my vehicle and began demanding that I exit the vehicle. I asked him multiple times to answer my questions. I asked for a supervisor and my request was ignored. I stated that my rights were being violated. Officer Johnson stated that he would break the window of my fiancée car if I did not comply. At that time, I began removing my belongings from my person and unlocked the vehicle door. I placed my hands in the air in view for the officer with my palms open. I began to exit the vehicle and comply with the officer's request.

EXHIBIT


A

tabbles

Once officer Johnson pulled the door open, he grabbed me by my left arm and drug me from the vehicle. I stated to officer Johnson that I was not resisting. He then grabbed my right wrist and drug me to the rear of the vehicle. Officer Johnson threw me the ground. I continued to state to officer Johnson that I was not resisting.


At this time another officer responded to the incident. The officer was later identified as officer David Crisp. Officer Crisp grabbed me by my throat constricting my airway. I began gasping for air and it became very hard to breath. Both officers rolled me onto my back to place me in cuffs. As they were applying the hand cuffs, Officer Crisp jumped to his feet and charged at my fiancée who was recording the incident. I was then drug to my feet and placed in a patrol care by two unidentified officers. I was then taken to the Nacogdoches County Jail.

"FURTHER AFFIANT SAYETH NOT."


Demetri Obryan Sims

SUBSCRIBED AND SWORN TO ME on this the 29 day of October 2021




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

DEMETRI SIMS, INDIVIDUAL	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	CIVIL ACTION NO. 9:21-cv-251
	§	
NACOGDOCHES COUNTY, TEXAS;	§	<i>JURY DEMANDED</i>
DAVID CRISP, INDIVIDUAL,	§	
TYLER JOHNSON, INDIVIDUAL;	§	
<i>Defendants.</i>	§	

PLAINTIFF SIMS' BRIEF IN OPPOSITION

TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

BASED ON THE ISSUE OF QUALIFIED IMMUNITY

EXHIBIT B

Video on thumb-drive sent to Court Clerk by USPS Priority Mail.

1 an arrest to bring a subject into custody.

2 Q. Okay. Now, do you remember when you graduated from
3 the academy?

4 A. December of 2016.

5 Q. And when did you start working as a deputy for the
6 Nacogdoches Sheriff's Office?

7 A. With Nacogdoches County, it was October of '18, if I
8 recall correctly.

9 Q. And, so, from December 2016 to October 2018, where
10 did you work?

09:40AM

11 A. From when I graduated the academy until then?

12 Q. Yes.

13 A. So, I became a licensed peace officer in February of
14 2017. I was commissioned as a reserve deputy with the Shelby
15 County Sheriff's Office for a brief period of time, which was
16 then followed up with full-time employment with the City of
17 Corrigan Police Department, followed by the City of Alto
18 Police Department.

19 Q. Okay. Well, with the City of Corrigan -- well,
20 let's go to reserve deputy status in Shelby County.

09:40AM

21 A. Okay.

22 Q. Do you remember how long you were there?

23 A. I don't recall. It wasn't very long, a few months.

24 Q. Other than on-the-job training, did you receive any
25 additional training with regard to your peace officer's

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ATTORNEY AT LAW

601 N. Street | Nacogdoches, TX 75961 | 936.305.5600(o) | 936.236.6242 (fax)

June 28th, 2021

Sheriff Jason Bridges
Nacogdoches County Sherriff
2306 Douglass Rd.
Nacogdoches, Texas 75964

Via email to: jbridges@nac-sheriff.com
Via fax to: 936.560.6446

Sheriff Bridges,

I represent Demetri Simms.

On or about 10/22/2019 or 10/21/2019 Demetri Simms was violently arrested by a NCSO deputy. The arrest is described in incident #S19010021.

Demetri Simms received injuries that required medical treatment.

Video and photographic evidence taken during Mr. Simms' arrest, including the attached picture, are to be preserved. The Deputy is seen activating his body camera *during* the arrest and you are to preserve any and all body camera footage related to this incident. All documents, records or evidence, in electronic or paper form and related to this incident are to be preserved.

Please confirm the deputy in the attached photograph is Nacogdoches County Sheriff's Office Deputy Major David Crisp.

Respectfully,

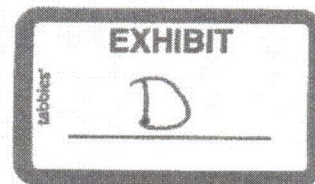


PAUL ANDERSON

CC:

John Fleming
Nacogdoches County Attorney
jfleming@co.nacogdoches.tx.us

Robert Davis
Attorney for the County of Nacogdoches
rsd@flowersdavis.com



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July 12th, 2021

Robert S. Davis
Flowers Davis
Attorney for County of Nacogdoches
1021 ESE Loop 323, Suite 200
Tyler Texas 75701

Via email to: rsd@flowersdavis.com

Mr. Davis,

I represent Demetri Simms. On 10/21/2019 Demetri Simms was violently arrested by a NCSO deputy. The arrest is described in incident #S19010021 and was video recorded.

You made it clear in your email of July 1st, 2021 that you represent the County of Nacogdoches and Sheriff Jason Bridges.

My letter to Sheriff Bridges dated June 28th, 2021 has not been responded to.

Attached to this letter is a copy of the Officer Incident Report for this incident. Responding officers Brazil, Finch, Hayward, Howell, Johnson and Martin are identified as the responding officers.

Please identify which one of these officers is choking Demetri Simms in the attached photograph.

Respectfully,

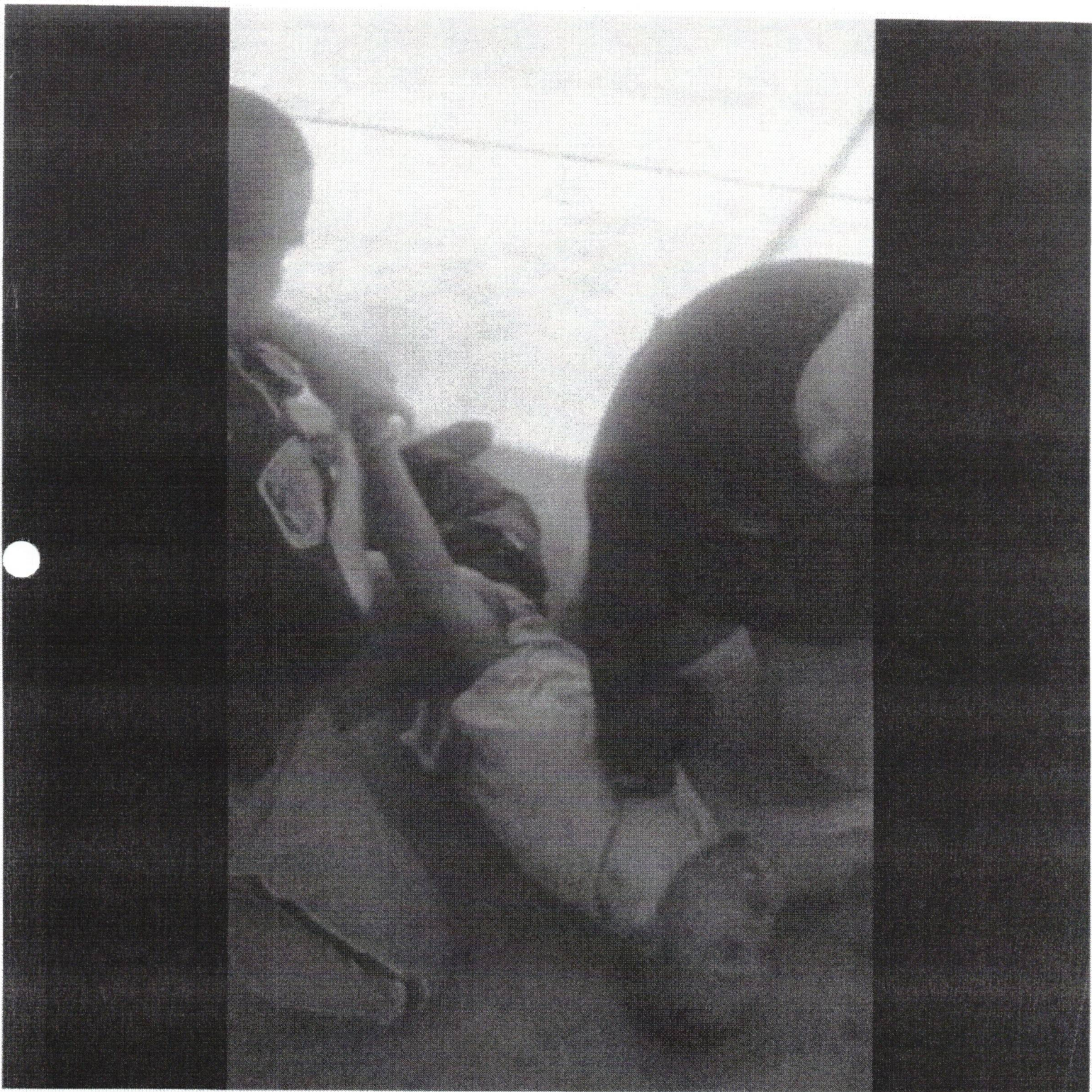


PAUL ANDERSON

CC:

John Fleming
Nacogdoches County Attorney
jfleming@co.nacogdoches.tx.us

S19010021 Incident Report
Moore Phone Screen Shot Simms Choke



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Augusts 11th, 2021

John Fleming
Nacogdoches County Attorney
101 W. Main Street, Room 230
Nacogdoches, Texas 75961
Via email: jfleming@co.nacogdoches.tx.us

Robert S. Davis
Flowers Davis
Attorney for County of Nacogdoches
1021 ESE Loop 323, Suite 200
Tyler Texas 75701
Via email to: rsd@flowersdavis.com

RE: Destiny Moore Complaint; Assault Incident, October 21st, 2019

Mr. Fleming & Mr. Davis,

I represent Destiny Moore.

Ms. Moore has attempted numerous times to file a criminal complaint with the Nacogdoches' Sheriff's Office related to her October 21st, 2019 assault and arrest.

Ms. Moore was able to give a statement to Chief Deputy Smith on July 30th, 2021. Ms. Moore's testimony is that Chief Deputy Jay Smith told Ms. Moore he would not be providing an incident number for her complaint unless Ms. Moore provided her with a names of witnesses to the October 21st, 2021 incident.

Ten days after the report was taken by Chief Deputy Smith, Chief Smith has not returned any of Ms. Smith's phone calls or otherwise provided an incident number.

A young African-American woman has filed a legitimate criminal complaint for assault by a white, still unidentified, police officer, and her complaint is being ignored and delayed based on the illegitimate and perhaps unlawful reasons.

Respectfully,



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August 12th, 2021

John Fleming
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101 W. Main Street, Room 230
Nacogdoches, Texas 75961
Via email: jfleming@co.nacogdoches.tx.us

Robert S. Davis
Flowers Davis
Attorney for County of Nacogdoches
1021 ESE Loop 323, Suite 200
Tyler Texas 75701
Via email to: rsd@flowersdavis.com

RE: Destiny Moore Complaint; Assault Incident, October 21st, 2019

Mr. Fleming & Mr. Davis,

Chief Deputy Jay Smith stated he would not provide an incident number to Destiny Moore unless she provided the names of the witnesses to the assault on Demetri Sims on October 21st, 2021. This is consistent with Nacogdoches County's refusal to identify the employee choking Mr. Sims.

We would like to take the statement of the Nacogdoches County employee choking Demetri Sims and this is the fifth written request for this information.

Currently, the known witnesses are:

Nacogdoches Police Officer Logan Finch,
Nacogdoches Police Officer Brandon Hayward,
Stephen F. Austin University Police Officer Whitney Howard,
Mario Wesley,
Dan Shoemake, and
Willie Chumbly.

We have or are seeking statements from each of these witnesses.

Respectfully,



PAUL ANDERSON

Steve Kirkland
City Attorney
202 East Pilar Street
Nacogdoches, Texas 75961
Via email to: kirklands@nactx.us

paul@paulanderson.law

From: paul@paulanderson.law
Sent: Wednesday, August 18, 2021 5:57 PM
To: 'Robert S. Davis'
Cc: 'John Fleming'; 'kirklands@nactx.us'; 'Brazil, Brian (Travis)'; 'Beverly Lynn Tillman, JD, PhD'
Subject: RE: Simms and Moore -- Nacogdoches County Criminal Complaints
Attachments: Screenshot (8) (002).png; Bridges Photo.JPG

Mr. Fleming & Mr. Davis,

A Chapter 614 criminal complaint has been filed, and the County of Nacogdoches and City of Nacogdoches have been served a copy.

Please provide a Nacogdoches County Sheriff's Office investigation number for both Demetri Sims' and Destiny Moore' August 10th, 2021 sworn complaint.

It is not beneficial conduct to refuse to identify the Nacogdoches County employee choking Mr. Sims for the purposes of interfering in a Chapter 614 complaint.

This conduct is described in the Texas Penal Code 39.03 as Official Oppression and 39.04 as Violations of the Civil Rights of a Person in Custody.

Please admit or deny the unidentified Nacogdoches County employee choking Demetri Sims is Sheriff Jason Bridges.

Mr. Davis, you can facilitate a meeting by first identifying the individuals in the attached photograph.

Cordially,

Paul Anderson
Paul Anderson, PLLC
601 North Street
Nacogdoches, Texas 75961
paul@paulanderson.law
936.305.5600

CONFIDENTIALITY NOTICE: This electronic message contains information which is privileged and confidential attorney information. The information is intended solely for the individual or entity named above and access by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is strictly prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you

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August 16th, 2021

John Fleming
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Nacogdoches, Texas 75961
Via email: jfleming@co.nacogdoches.tx.us

Robert S. Davis
Flowers Davis
Attorney for County of Nacogdoches
1021 ESE Loop 323, Suite 200
Tyler Texas 75701
Via email to: rsd@flowersdavis.com

RE: Demetri Sims/Destiny Moore Complaints; Assault Incident, October 21st, 2019

Mr. Fleming & Mr. Davis,

Demetri Sims' August 10th, 2021 Criminal Complaint fully complies with Chapter 614.021 of the Texas Government Code and, for all intents and purposes, has been filed.

The County of Nacogdoches (repeatedly) refuses to identify the Nacogdoches County employee choking Demetri Sims and slapping Ms. Moore. Therefore, John Fleming is the statutory employee proxy for the County of Nacogdoches and has been presented the criminal complaint as the "employee."

Ms. Moore has made more than eight attempts to file her complaint, including five unreturned phone calls to Nacogdoches Sheriff's Office Chief Deputy Jay Smith and still has no complaint number.

Lori Tanton, Cory Roland and Olivia Clifton get first-class preferential judicial service by the County of Nacogdoches because they are white. Demetri Sims and Destiny Moore are black and the County of Nacogdoches will not even identify their arresting officers or open an investigation.

Immediately provide investigation numbers for Destiny Moore's and Demetri Sims' complaints.

Respectfully,



PAUL ANDERSON

CC:
Steve Kirkland
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Via email to: kirklands@nactx.us

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August 21st, 2021

John Fleming
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Robert S. Davis
Flowers Davis
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1021 ESE Loop 323, Suite 200
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Via email to: rsd@flowersdavis.com

RE: Demetri Sims/No-Contact - Protective Order Notice

Mr. Fleming & Mr. Davis,

Nacogdoches County's refusal to identify the uniformed county employee choking Demetri Sims does not mean Nacogdoches County is not aware of the identity or employment status of this individual.

Demetri Sims is currently incarcerated in the Nacogdoches County Jail.

Demetri Sims has expressed concern for his well-being and safety inside the Nacogdoches County Jail in light of Nacogdoches County's policy of misidentifying perpetrators of violent assaults by uniformed law enforcement employees.

Do not permit the unidentified uniformed individual, Deputy Tyler S. Johnson, Deputy M. Brazil or Deputy P. Martin to have any contact Demetri Sims in any way until all criminal and civil matters are resolved or I will swiftly seek protective orders with no further notice.

Please affirm appropriate steps and precautions are being taken by the Nacogdoches Sheriff's Office to prevent any contact with Demetri Sims by these individual.

Cordially,



PAUL ANDERSON