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MICHAEL SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY TOTH
SECOND ASSISTANT COUNTY ATTORNEY

June 5, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Damone Taree Savage vs Michael Reardon, et al.*
Document Received: Summons and Amended Complaint
Name of Claimant: Damone Taree Savage
c/o Mid-State Correctional Facility
Box 2500
Marcy, New York 13403
Claimant's Attorney: Pro Se

Should you have any questions, please call.

Very truly yours,

MICHAEL SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP/crb
Enc.

Comm. 12D-10

Page 1 of 36

UNITED STATES DISTRICT COURT

for the

Western District of New York

RECEIVED JUN 4 - 2014

Damone Taree Savage

Plaintiff(s)

v.

Ofc. Micheal Acquino, et al.,

Defendant(s)

ERIE COUNTY DEPARTMENT OF LAW

Civil Action No. 13-CV-6376

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Superintendent Micheal Reardon
Erie County Holding Center
40 Delaware Avenue
Buffalo, New York 14202

Vertical stamp: 05-20-14 09:00 AM 13-CV-6376

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Damone Taree Savage
13-B-3361
MID-STATE CORRECTIONAL FACILITY
Box 2500
Marcy, NY 13403

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

MAY 23 2014

Date: _____

Signature of Michael J. Roemer
Signature of Clerk or Deputy Clerk

Civil Action No. 13-CV-6376

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

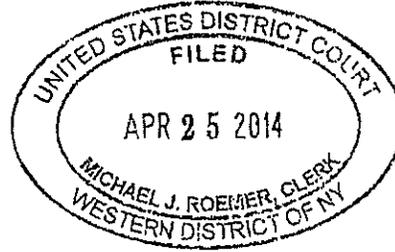
Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



-PS-O-

DAMONE TAREE SAVAGE,

Plaintiff,

-v-

DECISION AND ORDER
13-CV-6376Fe

OFC. MICHEAL ACQUINO, OFC. MARK
HAMILTON, OFC. MARK WHITE, OFC. JEREMY
CONNELLY; MICHEAL REARDON, 1st Deputy
Superintendent; DR. HIELINBURGER, Doctor of
Erie County Medical Staff; and
G. LUPA STABLER, Nurse,

Defendants.

2014 APR 25 PM 2:00
US V. FEDERAL SERVICES

INTRODUCTION

Plaintiff, a prisoner proceeding *pro se*, was directed to file an amended complaint in this action brought under 42 U.S.C. § 1983 (Docket No. 5). Plaintiff filed an amended complaint (Docket No. 7) which the Court now reviews with respect to the 28 U.S.C. §§ 1915(e)(2)(B) and 1915A criteria.

For the reasons discussed below, plaintiff's claims of excessive use of force and failure to provide medical care may go forward. Plaintiff's claim of false arrest is stayed.

DISCUSSION

Plaintiff was provided with an opportunity to amend his claim of false arrest, and also the claims he intends to bring against defendants White, Connelly and Howard. Plaintiff has filed an Amended Complaint. Howard is not included as a defendant and is dismissed from this action.

Plaintiff's claims and remaining defendants are addressed below.

EXCESSIVE USE OF FORCE

The Court previously determined that plaintiff's claim of excessive use of force may go forward against defendants Acquino and Hamilton. Plaintiff has now amended this claim to include allegations against defendants Connelly and White. This claim may now also go forward against defendants Connelly and White.

FAILURE TO PROVIDE MEDICAL CARE

The Court previously determined that plaintiff's claim for failure to provide medical care may go forward against defendants Reardon, Hielinburger and Stabler. As indicated in the prior Order, these claims may go forward.

FALSE ARREST

The Court had advised plaintiff that in order for it to screen the claim of false arrest he needed to provide additional information about the criminal proceedings taking place. In response to the Court's direction, plaintiff has amended this claim to include additional information and has attached numerous documents to the amended complaint related to the criminal proceedings. The Court considers the attached documents in its review of this claim. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes"). Plaintiff brings this claim against defendants Hamilton and Acquino.

Plaintiff indicates he was arrested on January 18, 2013, indictment was returned on March 1, 2013 by the Erie County Grand Jury, and arraignment took place on March 7, 2013. Plaintiff was subsequently convicted and sentenced and is in custody of the New York State Department of Corrections and Community Supervision ("DOCCS").

Plaintiff has provided sufficient information to allege that his claim of false arrest has accrued. A claim for false arrest accrues on the date on which plaintiff was arraigned on the charges, or “when legal process was initiated against him,....” *Wallace v. Kato*, 549 U.S. 384 (2007). The false imprisonment ends for these purposes either when the plaintiff is released or when the plaintiff’s imprisonment becomes “pursuant to [legal] process-when, for example, he is bound over by a magistrate or arraigned on charges.” *Id.* Thus, plaintiff’s claim of false arrest accrued when he was arraigned on March 7, 2013.

A § 1983 claim for false arrest, which derives from an individual’s right under the Fourth Amendment to be free from unreasonable seizures, including arrest without probable cause, is substantially the same as a claim for false arrest under New York law, *see, e.g., Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996); *Lennon v. Miller*, 66 F.3d 416, 423 (2d Cir. 1995); *Posr v. Doherty*, 944 F.2d 91, 96 (2d Cir. 1991). Under New York law, a plaintiff claiming false arrest must show, *inter alia*, that the defendant intentionally confined him without his consent and without justification. *See, e.g., Broughton v. State*, 37 N.Y.2d 451, 456, *cert. denied*, 423 U.S. 929 (1975). Justification may be established by showing that there was probable cause to arrest, and thus probable cause “is a complete defense to an action for false arrest,” *Bernard v. United States*, 25 F.3d 98, 102 (2d Cir. 1994), whether that action is brought under state law or under § 1983. *See, e.g., Broughton v. State*, 37 N.Y.2d at 458 (under New York law, “[j]ustification may be established by showing that the arrest was based on probable cause”); *Singer v. Fulton County Sheriff*, 63 F.3d 110, 118 (2d Cir. 1995) (“There can be no federal civil rights claim for false arrest where the arresting officer had probable cause”), *cert. denied*, 517 U.S. 1189 (1996).

In general, probable cause to arrest exists when the officers have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime. . . . The question of whether or not probable cause existed may be determinable as a matter of law if there is no dispute as to the pertinent events and the knowledge of the officers, . . . or may require a trial if the facts are in dispute

Weyant v. Okst, 101 F.3d at 852 (citations omitted). The determination of whether the arrest was reasonable will hinge on whether there was probable cause to justify the arrest.

The claim for false arrest has accrued, but plaintiff has not indicated he has exhausted his criminal proceedings. Until appeals are exhausted, there is no final criminal conviction. The evaluation of whether plaintiff can claim there was an unlawful arrest must wait until the conviction is final or the conviction has been overturned.

To the extent that plaintiff has set forth potentially viable claims which have accrued prior to a favorable termination ruling and plaintiff's underlying conviction is not final¹, to preserve such claims from expiring, the Court may exercise its discretion to grant a stay until a favorable termination has either been obtained or is no longer available. *See Wallace v. Kato*, 549 U.S. 384, 393–94 (2007) (citations omitted) (“If a plaintiff files a false-arrest claim before he has been convicted . . . , it is within the power of the district court . . . to stay the civil action until the criminal case . . . is ended. . . . If the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will proceed, absent some other bar to suit.”) *See also Roberites v. Huff*, No. 11-CV-521, 2012 WL 1113479, at *5 (W.D.N.Y. March 30, 2012) (staying false arrest claim until final resolution of criminal conviction). Thus, the

¹*Weyant v. Okst*, 101 F.3d at 852 (if the plaintiff was convicted of the charges against him *and that conviction survived appeal*, the conviction is conclusive evidence of probable cause) (emphasis added).

Court will stay plaintiff's false arrest claim pending final resolution of his criminal proceedings, or success in overturning his conviction.

CONCLUSION

For the reasons discussed above, plaintiff's claims of excessive use of force and failure to provide medical care may go forward. Plaintiff's claim of false arrest is stayed pending final resolution of the criminal proceedings or success in overturning the criminal conviction.

ORDER

IT IS HEREBY ORDERED, that the claim of excessive use of force may go forward against defendants Acquino, Hamilton, Connelly and White;

FURTHER, that the claim of failure to provide medical care may go forward against defendants Reardon, Hielinburger and Stabler;

FURTHER, that the claim of false arrest against defendants Hamilton and Acquino is stayed pending final resolution of the criminal proceedings or success in overturning the criminal conviction;

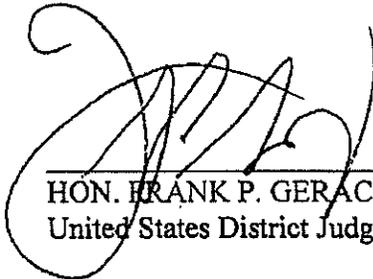
FURTHER, that plaintiff is to notify the Court within sixty days after there is final resolution of the criminal proceedings or success in overturning the criminal conviction. At such time, plaintiff is to file a motion to lift the stay and reinstate the claim of false arrest against defendants Hamilton and Acquino;

FURTHER, that the Clerk of the Court is to cause the United States Marshal to serve copies of the Summons, Amended Complaint and this Order, upon each named defendant without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminated by monetary award in plaintiff's favor; and

FURTHER, that pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint, with the exception of the claim of false arrest, which is stayed at this time.

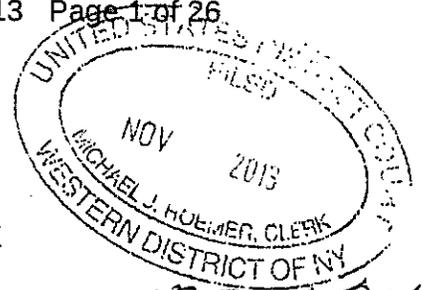
SO ORDERED.

Dated: April 25, 2014
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge

AMENDED COMPLAINT



Revised 03/06 WDNY

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

FORM TO BE USED IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983 (Prisoner Complaint Form)

13CV6306F

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

- 1. Mr. Damone Tar'ee Savage I.C.N#41776
2.

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

- 1. Ofc. Micheal Acquino
2. Ofc. Mark Hamilton
3. Ofc. Jeremy Connelly
4. Ofc. Mark White
5. Superintendent Micheal Reardon
6. Dr.Hielinburg/Nurse G.Lupa Stabler

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Mr. Damone Tar'ee Savage I.C.N.#41776
Present Place of Confinement & Address: ERIE COUNTY HOLDING CENTER
40 DELAWARE AVE.
Buffalo, New York 14202

Name and Prisoner Number of Plaintiff:

Present Place of Confinement & Address:

DEFENDANT'S INFORMATION NOTE: *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: Officer Micheal Acquino
(If applicable) Official Position of Defendant: Buffalo Housing Police Officer
(If applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: Buffalo Housing Police Headquarters
312 Perry st. Buffalo, New York

Name of Defendant: Officer Mark Hamilton
(If applicable) Official Position of Defendant: Buffalo Housing Policer Officer
(If applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: Buffalo Housing Headquarters
312 Perry St. Buffalo, New York

Name of Defendant: Officer Jeremy Connelly
(If applicable) Official Position of Defendant: Buffalo Police Officer
(If applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: 74 Franklin St.
Buffalo, New York 14202

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ___ No

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:
 Plaintiff(s): _____
 Defendant(s): _____
2. Court (if federal court, name the district; if state court, name the county): _____
3. Docket or Index Number: _____
4. Name of Judge to whom case was assigned: _____

DEFENDANT'S INFORMATION NOTE:

Name of Defendant: Mark White
(If Applicable) Official Position of Defendant: Buffalo Police Officer
(If Applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: Buffalo Police Headquarters
74 Franklin St. Buffalo, New York 14202

Name of Defendant: Micheal Reardon
(If Applicable) Official Position of Defendant: Superintendent 1st Deputy
(If Applicable) Defendant is sued in Individual and/or Official Capacity
Address of Defendant: Erie County Houlding Center
40 Delaware st. Buffalo, New York 14202

Name of Defendant: Dr. Hielinburger
(If Applicable) Official Position of Defendant: E.C.H.C. Medical Doctor
(If Applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: Erie County Houlding Center
40 Delaware St. Buffalo, New York 14202

Name of Defendant: Miss G. Lumpa Stabler
(If Applicable) Official Position of Defendant: E.C.H.C. Medical Nurse
(If Applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: Erie County Houlding Center
40 Delaware St. Buffalo, New York 14202

Name of Defendant: _____
(If Applicable) Official Position of Defendant: _____
(If Applicable) Defendant is Sued in Individual and/or Official Capacity
Address of Defendant: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ___ No ___

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

___ Dismissed (check the box which indicates why it was dismissed):

___ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

___ By court for failure to exhaust administrative remedies;

___ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

___ By court due to your voluntary withdrawal of claim;

___ Judgment upon motion or after trial entered for

___ plaintiff

___ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ___ No

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ___ No ___

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply);

Dismissed (check the box which indicates why it was dismissed):

- By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to exhaust administrative remedies;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- plaintiff
- defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|--------------------------|--------------------------------------|
| • Religion | • Access to the Courts | • <u>Search & Seizure</u> |
| • Free Speech | • <u>False Arrest</u> | • Malicious Prosecution |
| • Due Process | • <u>Excessive Force</u> | • <u>Denial of Medical Treatment</u> |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of incident) Arrest date January 18, 2013 at 6:30 p.m.
defendant (give the name and position held of each defendant involved in this incident)
Mark Hamilton and Micheal Acquino ,Buffalo Housing Police Officers

did the following to me (briefly state what each defendant named above did):Without any 911 calls or Probable Cause, the people I was walking with and I were Racially Profiled by said officers. As Andrez Osborne, Arquwn Simpson and I initially observed both officers pull a car over at a gas station from accross the street at "Gun Point" as we walking to our family house were they both live at three blocks away from the officers stop. As we kept walking down the street away from the scene the officers left the driver behind and instead "Persued" us for three city blocks without reason. They pulled up along side of stop there car on E. Delaven Offc. Hamilton got out of the car went directly to Andrez & Arquwn and begin asking them why they were in the area and to see there I.D.? He never turned around to ask me for anything therefore I continued to walk away then turned the croner onto where our family house is four houses from the croner. A few minutes past before Offc. Acquino drove along side of my and yelled "where the F-k are you going". I kept walking which caused him to get Very Irate he then drove the car over the crub onto the sidewalk in a effort to strike me with car. I stopped walked around the back of the since he had stopped my "Freedom of Movement" I walked into the street. He then got out of the car ran behind me and jumped on the back of my neck and threw me to the ground I then landed on my back he got on top of me mace me, punch me, and serched me and not find anything on me. Others officers arrived and begin attacking me visously threw me in back seat of the car bloody and dazed. I woke up at the station dragged inside and was accused of possison of a weapon I didn't have on me at all. A week later I learned that it was a Police Issued Gun and His Holster which of course does not bare any of my D.N.A

The Constitutional basis for this claim under 42 U.S.C.S 1983 is: Illegal Search & Seizure also False Arrest ;Unlawful Imprisonment, US 4th Admercment Violation

The relief I am seeking for this claim is (briefly state the releif sought): Compensatory Damages 3.million for Mental Angusih , 2.Million for Punitive Damages for false imprisonment. Also for all charges against me to be Dismissed and for my imedite release.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes No If yes, what was the result?

Held Supperssion Hearing on Dates of April 25, 2013 and May 30, 2013 in Erie County Court.

Also filed an Complaint with Internal Affairs on January 21, 2013 along with witnesses.

Did you appeal that decision? Yes No If yes, what was the result? The Judge

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: Judge Russell P. Buscaglia Denied said Suppression Hearing on Sept. 9, 2013. And Internal Affairs Denied. I am know waiting on sentacing date to file appeal for I have preserved all my Appeal Rights.

A. Second Claim: On (date of the incident) January 18, 2013 at 6:30 p.m.

defendant (give the name and position held of each defendant involved in this incident)
Officer Mark Hamilton, officer Micheal Acquino, officer Mark White, Officer Jeremy Connolly



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III
DISTRICT ATTORNEY

March 1, 2013

DAMONE T. SAVAGE
126 LISBON
BUFFALO NY 14209

Re: People v DAMONE T. SAVAGE
Indictment No. 00205-2013

Dear DAMONE T. SAVAGE:

I am writing to inform you that you have been indicted by an Erie County Grand Jury. The indictment was returned on March 1, 2013. In accordance with Criminal Procedure Law §210.10, I am advising you that an arraignment on this indictment has been scheduled for **MARCH 7, 2013 at 9:30 A.M.** before the **HON. RUSSELL P. BUSCAGLIA, J.S.C.**, presiding at **SUPREME COURT, PART 14, 2ND FLOOR, 25 DELAWARE AVENUE, BUFFALO, NEW YORK.** Please be present at that time.

If you fail to appear on the aforesaid date, an indictment warrant for your arrest will be issued.

In regard to the indictment itself, the People are ready for trial and so moved on March 1, 2013. Our investigation is complete, and all witnesses are available.

Enclosed is a copy of the indictment which was filed against you.

Very truly yours,

FRANK A. SEDITA, III
DISTRICT ATTORNEY

Handwritten signature of Amy J. Goldstein in cursive.

BY: AMY J. GOLDSTEIN
Assistant District Attorney
Chief, Grand Jury Bureau

AJG/caa
Copies to:
Arraignment Schedule
Chief Clerk's Office
Judge's Chambers
RENE JUAREZ, ADA
JAMES DEMATTEO, ESQ.
227 NIAGARA ST
BUFFALO NY 14201
DAMONE T. SAVAGE (DOB: 6/25/77) C/O ECHC

Comm. 12D-10

SUPREME/COUNTY COURT : ERIE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

Indictment No. 00205-2013

DAMONE T. SAVAGE

THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses
DAMONE T. SAVAGE of the following crime:

FIRST COUNT: CRIMINAL POSSESSION OF A WEAPON IN THE SECOND
DEGREE, AN ARMED FELONY, in violation of Penal Law §265.03(3), in that he, the said
DAMONE T. SAVAGE, on or about the 18th day of January, 2013, in this County, possessed a
loaded firearm, to wit: a revolver, said possession not taking place in defendant's home or place of
business.

S/FRANK A. SEDITA, III

FRANK A. SEDITA, III *TMF*
DISTRICT ATTORNEY OF ERIE COUNTY

RS

Hamilton - Stiller - Cross

28

1 Q And as he walked down Delavan to Newburgh, he
2 didn't do anything illegal in your presence?

3 A No.

4 Q And as he turned up Newburgh, he didn't do
5 anything illegally?

6 A No.

7 Q There was no pickup order out for him, correct?

8 A Correct.

9 Q There was no 911 call with a description that
10 matched his --

11 A Correct.

12 Q -- of any suspects in the area, correct?

13 A Correct.

14 Q Just a few short questions. When you turned on at
15 Newburgh, when you and your partner turned onto Newburgh,
16 did you turn your overhead lights on?

17 A No.

18 Q Siren?

19 A No.

20 Q Okay. At some point during this encounter Officer
21 Acquino pulled his car onto the sidewalk over the curb,
22 cutting my client's path of travel off, correct?

23 A Yes.

24 MR. STILLER: Nothing further for this
25 witness, Your Honor.

Comm. 12D-10

Page 19 of 36

Hamilton - Stiller - Cross

27

1 A He was not kicked in the body by me nor my
2 partner. My partner did strike him.

3 MR. STILLER: One moment, Your Honor, please.

4 THE COURT: Take as much time as you need.

5 BY MR. STILLER:

6 Q Just go back for a moment. I apologize to go out
7 of order. There's a couple of things I want to ask you
8 about. Initially when you saw my client --

9 A Uh-huh.

10 Q -- when you were in the parking lot on Suffolk and
11 Delavan, and he was on the other side, he wasn't doing
12 anything illegal, standing there, was he?

13 A He was walking.

14 Q That is not illegal in the City of Buffalo, is it?

15 A No.

16 Q It is not illegal to stare at an officer in the
17 City of Buffalo?

18 A No, it's not.

19 Q He wasn't, as far as you know, involved in any
20 criminal activity?

21 A I don't know if he was or wasn't.

22 Q He was walking down the street looking at a police
23 officer pulling a car over. Is there anything illegal in
24 that, sir?

25 A No, there's nothing illegal in that.

Comm. 12D-10

did the following to me (briefly state what each defendant named above did): Off. Acquino, Drove patrol car on to the curb onto the sidewalk & Stop my Freedom of movement. I walked around his car he got out of car he ran behind me grab me by my neck. he then threw me to the ground Mace me in eyes, nose, mouth. He was on top of me. He then pulled his Gun out Pointed to my Head, said he would blow my brains out If I Didn't stop yelling for Help. Hamilton then kicked me in my head pointed Gun at me said he would Break my Jaw if I did'nt move my hands from my face. Then Ofcs. White & Connelly arrived and begin to Kick, Stomp, Punch me in head, neck, legs, face. I rolled over still covering my face they took my arms twisted them two differant ways cuffed my wrist tight enough to leave scars, perment nerve damage

The constitutional basis for this claim under 42 U.S.C. § 1983 is: U.S. Constitutional Admendment under 8th of Cruel & Unusual Punishment by way of Excessive Force

The relief I am seeking for this claim is (briefly state the relief sought): 2.5 Millon for compensatory damages for Perment injuries to Neck, Nerves, in Left Shoulder, Wrist, Headaches. Black Spots in eye Punitive Damages 2.5 Million For Pain & Suffering, Mental Anguish, Ongoing Stress.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes No If yes, what was the result? Was Denied an oppertunity to for my witnesses and I to testify at Grand Jury on Jan. 18, 2013, also Internal Affairs ruled Not Subtained.

Did you appeal that decision? Yes No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I request that my entire case be reviewed by Federal Courts. That all pending charges against me be dismissed and for my im mediate relaese. That I recieve compensation for my injuries, and the pain & sufferin That I be granted the amounts of \$5. million per Law Suit for a total of \$15. million. Also that all my medical bills be paid for in regards to my many injuries and the health care to follow. E.C.H.C be Sued.

Do you want a jury trial? Yes No

**CITY OF BUFFALO POLICE DEPARTMENT
CENTRAL BOOKING BUREAU
CASE HISTORY**

DEFENDANT(S): DAMONE T. SAVAGE

AFN: 13-00399-98

THE OFFICER IN CHARGE OF A CASE IS THE OFFICER WITH THE MOST KNOWLEDGE OF THE EVENTS LEADING TO THE ARREST. THIS OFFICER WILL ALSO BE THE ONE TO SUBMIT ALL ITEMS OF AN EVIDENTIARY NATURE TO THE CPS LAB OR PROPERTY ROOM. THE OFFICER IN CHARGE MUST GIVE A CONCISE AND SUFFICIENTLY DETAILED ACCOUNT OF THE CASE WITH SPECIFICS PERTAINING TO ALL OFFICERS INVOLVED. THIS ACCOUNT WILL ACCOMPANY ALL PAPERWORK FORWARDED TO BUFFALO CITY COURT.

THE FOLLOWING SUMMARY REPRESENTS THIS CASE FILE TO THE BEST OF MY KNOWLEDGE:

NAME OF OFFICER IN CHARGE: OFFICER MICHAEL ACQUINO
FUNCTION(S) PERFORMED: DID INVESTIGATE AND MADE ARREST, DID MIRANDIZE DEF AND 710.30

NAME OF ASSISTING OFFICER #2: OFFICER MARK HAMILTON
FUNCTION(S) PERFORMED: DID ASSIST WITH INVESTIGATION AND ARREST, MADE WEAPON SAFE AND 710.30

NAME OF ASSISTING OFFICER #3: OFFICER COREY KRUG
FUNCTION(S) PERFORMED: DID ASSIST WITH INVESTIGATION AND ARREST, DID RECOVER WEAPON

NAME OF ASSISTING OFFICER #4: OFFICER KELVIN SHARPE
FUNCTION(S) PERFORMED: DID ASSIST WITH INVESTIGATION AND ARREST AND DID P-10 EVIDENCE

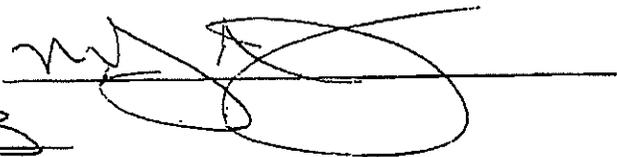
NAME OF ASSISTING OFFICER #5: LT BRIAN STROBELE
FUNCTION(S) PERFORMED: DID ASSIST WITH ARREST, AND DID SUBMIT WEAPON

NAME OF ASSISTING OFFICER #6: LT LANCE RUSSO
FUNCTION(S) PERFORMED: DID ASSIST AND SUPERVISED

NAME OF ASSISTING OFFICER #7: CAPT PATRICK ROBERTS
FUNCTION(S) PERFORMED: DID ASSIST WITH ARREST AND 710.30

NAME OF ASSISTING OFFICER #8: OFFICER JOSEPH PASZKIEWICZ
FUNCTION(S) PERFORMED: DID ASSIST AND PLACED DEF INTO CUSTODY

NAME OF ASSISTING OFFICER #9: OFFICER MARK WHITE/OFFICER JEREMY
CONNELLY
FUNCTION(S) PERFORMED: DID ASSIST AND DID PLACE DEF INTO CUFFS

OFFICER SIGNATURE: 

DATE 01-18-13



BYRON W. BROWN
MAYOR

CITY OF BUFFALO
DEPARTMENT OF POLICE



Daniel Derenda
COMMISSIONER

March 11, 2013

Mr Damone Savage
267 Newburgh Av
Buffalo, New York 14215

Dear Mr Savage

The Buffalo Police Department's Internal Affairs Division has investigated the complaint you initiated on 01-21-2013, as thoroughly as possible. Statements and reports were gathered from the persons involved and their superiors, where necessary. The Commissioner of Police then reviewed these statements and reports.

Based on a thorough review of this case, the Commissioner of Police has determined that there is not sufficient evidence at this time to clearly prove your case and has determined the case disposition be carried as "not sustained."

If you have further information or questions regarding your complaint, please feel free to contact the Internal Affairs Division at 851-4557. Refer to IAD Case Number EF2013-002. Thank you for bringing this matter to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "LT Rosenswie".

Lieutenant Robert Rosenswie
Internal Affairs Division



County of Erie
MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF CENTRAL POLICE SERVICES
April 22, 2013

John A. Glascott
Commissioner

FOR CPS USE ONLY
Request Number: 13 04 020
Date Received: April 19, 2013

Damone Savage ICN# 41776
Erie County Holding Center
40 Delaware Avenue
Buffalo, New York 14202-3999

Re: Freedom of Information Law (FOIL) request for any and all 911 calls

Dear Mr. Savage:

This letter serves to acknowledge receipt of your letter on April 19, 2013 in which you request any and all 911 calls for the area of E. Delevan and Suffolk Street between 6 and 7pm on 1/18/2013.

Your request is *denied* because Title 11 (County) of the Consolidated law of New York, sec. 308.4 states that "records, in whatever form they may be kept, of calls made to a municipality's E911 system shall not be made available to or obtained by any entity or person, other than that municipality's public safety agency, another government agency or body, or a private entity or a person providing medical, ambulance or other emergency services, ...".

Noting that the call you refer to occurred within the city of Buffalo, please direct your request to Buffalo Police Headquarters located at 74 Franklin Street, Buffalo, New York 14202.

We believe that this completes our response to your request. However, should further assistance be needed please call the undersigned at 716-858-6365.

Very truly yours,

Marlane P. Hoffman
Deputy Dir. of Information Services

Cc: John A. Glascott, Commissioner
Timothy Callan, Deputy Dir. of Budget & Management
Jeremy Toth, Second Assistant County Attorney



BYRON W. BROWN
MAYOR

CITY OF BUFFALO
DEPARTMENT OF POLICE



DANIEL DERENDA
COMMISSIONER

May 21, 2013.

Damone Savage 41776
40 Delaware Ave.
Buffalo, New York 14202

The Buffalo Police department is in possession of your request for a copy of you file pertaining to a complaint made to the Buffalo Police Department Internal Affairs Division, as well as a copy of the photographs taken of you during this interview.

Your request is denied, as per New York Public Officer's Law. These records are not releasable. You are entitled to the disposition of the complaint only.

If you wish to appeal this decision, you can direct your appeal to the Corporation Counsel, Buffalo City Hall, 65 Niagara Square, Buffalo, New York, 14202.

Mark Antonio
Captain
CIR Unit

defendant (give the name and position held of each defendant involved in this incident) E.C.H.C Medical Staff Dr.Edwin Heidelberger and NUrse G.Lupa Stabler
Superintendent Micheal Reardon

did the following to me(briefly state what each defendant named above did): Upon my entry into this facility I was examed by Nurse Stabler I had many injuries to my eyes,face, head,left shoulder was in a sling ,left wrist was bleeding needing stiches.bruses to my knees,legs,hip,and back. She refused to look into complaints or review any of my wounds instead siad I was fine just having"Head Truma" that was it.I was seen by differant nures who said they could not help me only the Doctor could give me the medication I needed.Therefore,wrote many request to see the Doctor only to be denied I even filed a Grievance on Feb.15,2013 and was denied access to the Doctor until Aprill4,2013.I didn't see him agin until may 5,2013. I was told that I needed surgery for my A.C. Joint seperation and the doctor told me himself that as long as I am in this facility I would not get such sergery and I needed to get relased to do so I then spoke to Sup. Int. Reardon on June 13,2013 about my surgery or relase he said he would see to It that I had said surgery while in facility I wrote him a reminder The constitutional basis for this claim under 42 U.S.C.§ 1983 is: Denial of Medical Treatment Constitutional right not to withstand cruéal and usasal Punishment

The relief I am seeking for this claim (briefly state the relief sought): For \$5.million, my medical bills to be paid by E.C.H.C. and for the Medical Staff to be removed from there position and that Sup. Int. to also be removed from his Post be repermended.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes No If yes, what was the result?
Wrote several request for medical treatment and also two Grievances 2/15/13&6/28/13

did you appeal that decision? Yes No If yes, what was the result? _____

Claim... Attach copies of any documents that indicate that you have exhausted this

If you did not exhaust your administrative remedies, state why you did not do so: _____

ERIE COUNTY SHERIFF'S OFFICE



MEMORANDUM

To: Damone Savage ENE-93
From: Sergeant A. Harris
Date: February 20, 2013
Re: Grievance Dated February 15, 2013

Mr. Savage,

I cannot sustain your request for an examination by the doctor. Minimum standard 9 CRR-NY 7032.4(h) says that issues outside the authority of the chief administrative officer are not grievable. The chief administrative officer cannot dictate who performs medical evaluations. Medical personnel make that determination.

You may not appeal this issue to the chief administrative officer or the Citizen's Policy and Complaint Review Council.

Cc: File

Dep D Brown
Medical Issue
Drop
SICK
Call Sick

New York State Commission of Correction
Grievance Form Part I



Facility: Erie County Sheriff's Office—Jail Management Div.
 Holding Center NY014023C 1403
 Correctional Facility NY014013C 1402
 Yankee Compound NY011043C 1410

Housing Location: E1E #93
Grievance #: _____
FACILITY ASSIGNS THIS NUMBER

Inmate's Name: DAMONE SAUVE ICN #: 41776

Brief Description of the Grievance (Completed by the Grievant): Medical Complaint Number of Additional Sheets Attached () _____

I HAVE MADE MANY ATTEMPTS TO BE SEEN BY THE MEDICAL "DR." OF THIS FACILITY. YET EACH TIME THAT I AM CALLED TO SICK CALL I AM ALWAYS SEEN BY A NURSE AND TOLD THAT THEY CANNOT HELP ME FOR THE SEVERE HEADACHES THAT I AM HAVING EVERY DAY. I WAS BEATEN AND KICKED IN MY HEAD BY THE ARRESTING OFFICERS ON 1/13/13. NEED TO BE SEEN BY THE DOCTOR IN THIS MATTER. A S.A.T. VHAUNG BURIED VISION FROM ACTION REQUESTED BY THE GRIEVANCE (Completed by the Grievant): _____
Number of Additional Sheets Attached () Injury!

I WOULD LIKE TO RECEIVE PROPER TREATMENT AND REFERRED TO THE PROPER PERSON THAT CAN HELP ME WHICH WOULD BE THE "DOCTOR" AND NOT THE NURSE. WHO HAS EXPLAINED THAT ONLY THE DOCTOR CAN FURTHER EXAMINE ME. AND THEY DON'T HAVE THE FUNDING COURTESY TO ASSIST WITH THE CONTINUOUS PAIN I'M SUFFERING!!

Grievant Signature: Damone Sauve Date/Time Submitted: _____

Receiving Staff Signature: Dr. D Brown Date/Time Submitted: 2/15/13 / 2015

Summary of Facility Staff attempts to resolve (Attach Relevant Documentation): _____ Number of Additional Sheets Attached () _____

Deputy Brown and Nurse Dr. Obie told him that he was part on for Wed to see the Doc.

" WAS NEVER CALLED TO SEE DOCTOR "

- Language Barrier, List language _____: Name of Interpreter and affiliation _____
- Cognitive Disability Barrier, Low literacy: If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature: [Signature] Date/Time: 2/15/13

() I agree to accept the informal resolution to my Grievance

(X) I do not agree to accept the informal resolution to my Grievance

Grievant Signature: Damone Sauve Date/Time Submitted: 2/15/13

Forward to the Grievance Coordinator: Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: [Signature] Date/Time: 2/15/13 22:00

Received by the Grievance Coordinator: _____
Grievance Coordinator Signature: [Signature] Date/Time: 2/20/13 9:05

SICK CALL REQUEST

INMATE SECTION: (Inmate to complete this section only)

Preso seccion: (El preso, (La presa) a completar esta seccion)

Last name: SAVAGE First name: DAMONE ICN: 41776
 Apellido Primer Nombre Preso No. Correccional

D.O.B.: 6/25/77 Sex: M F Location: ENE
 Fecha de nacimiento Sexo Hombre Mujer Ubicacion

Date of Request: 2/26/13 Time of Request: 11 AM (hrs)
 Fecha de solicitud Tiempo de solicitud

Reason for Request: To Be seen by Doctor H.
 Razon de solicitud I WAS KICKED numerous times in my
Head by ARRESTING officers. I seence then to have been
experiencing extreme Headaches both near my temple
And ALSO IN The back of my Head. I do not know
What The problem is And need some immedit Help.
Also I Am experiencing numbness in my wrist also
limited movement for during arrest cops handcuffed
and then beat both my wrist until I WAS left with
perment scars need to be seen by DR. H in
Regards to both matters. THANK you in Advance

TRIAGE SECTION: Triaged By: _____

Disposition:

Date/Time
 Received

- Immediate Evaluation
- Sick Call (Priority 1 2 3)
- Dental Referral
- RN Assessment (face to face)
- Referral to Forensics/Mental Health
- No Provider Visit Necessary (Needs comment)

COMPLETION: Date: ____/____/____ Time: _____ (hrs)

Print Name: _____ Signature: _____

Request #2

SICK CALL REQUEST

INMATE SECTION: (Inmate to complete this section only)

Preso seccion: (El preso, (La presa) a completar esta seccion)
 Last name: Savage First name: DAMONE ICN: 41776
 Apellido Primer Nombre Preso No. Correccional
 D.O.B.: 6/25/77 Sex: M F Location: ENE #77
 Fecha de nacimiento Sexo Hombre Mujer Ubicacion
 Date of Request: 7/17/13 Time of Request: 8:pm (hrs)
 Fecha de solicitud Tiempo de solicitud

Reason for Request: I AM REQUESTING TO BE GIVEN MY
 Razon de solicitud MEDICINE FOR MY HEADACHES I
WAS PRECIBED NEW MEDICATION BY THE NEUROLOGIST
ON 7/15/13 AND I HAVE NOT RECEIVED IT NOR
THE RE-FILL ON MY OTHER MEDICATION. I AM IN
CONSTANT PAIN!! ALSO I REQUEST TO
BE SEEN FOR THE BOIL I HAVE IN MY FACE
THAT IS HARD AND NOT MOVING. ALONG WITH SKIN
RASH - -
2ND SICK CALL SLIP!

TRIAGE SECTION: Triageed By: _____

Disposition:

Date/Time Received

- Immediate Evaluation
- Sick Call (Priority 1 2 3)
- Dental Referral
- RN Assessment (face to face)
- Referral to Forensics/Mental Health
- No Provider Visit Necessary (Needs comment)

COMPLETION: Date: ___/___/___ Time: _____ (hrs)

Print Name: _____ Signature: _____ Comm. 12D-10

Erie County Department of Health (ECDOH)

Division of Public & Correctional Health

SICK CALL REQUEST

INMATE SECTION: (Inmate to complete this section only)

Preso seccion: (El preso, (La presa) a completar esta seccion)

Last name: Savage First name: DAVID ICN: 41776
Apellido Primer Nombre Preso No. Correccional

D.O.B.: 6-13-57 Sex: M F Location: ENE #77
Fecha de nacimiento Sexo Hombre Mujer Ubicacion

Date of Request: 7-24-13 Time of Request: 9:30 PM (hrs)
Fecha de solicitud Tiempo de solicitud

Reason for Request: Requesting to see a spec concerning
my relatives in jail in pain
and asking if I can see more so without
the removal of my was receiving before
new medicine.

Also I continue to have a sore throat on my
face shoulder back and all these spots on
my side of my face.

Your help is highly appreciated.

TRIAGE SECTION: Triageed By: _____

Disposition:

Date/Time Received

- Immediate Evaluation
- Sick Call (Priority 1 2 3)
- Dental Referral
- RN Assessment (face to face)
- Referral to Forensics/Mental Health
- No Provider Visit Necessary (Needs comment)

COMPLETION: Date: / / Time: (hrs)

Print Name: _____ Signature: _____

Request 4

Erie County Department of Health (ECDOH)

Division of Public & Correctional Health

SICK CALL REQUEST

INMATE SECTION: (Inmate to complete this section only)

Preso seccion: (El preso, (La presa) a completar esta seccion)

Last name: Savage First name: Mark ICN: 11 8
Apellido Primer Nombre Preso No. Correccional

D.O.B.: 1/21/72 Sex: M F Location: SNE 43
Fecha de nacimiento Sexo Hombre Mujer Ubicacion

Date of Request: 8/10/13 Time of Request: 9:00 (hrs)
Fecha de solicitud Tiempo de solicitud

Reason for Request:
Razon de solicitud

I need to be seen by a doctor as
I have had pain in my left shoulder and
neck in everyday with in my left shoulder and
my head as well. I have had a surge every
day. Headache size I was taken off of the
Tylenol medicine. This is serious and I need
proper medical attention ASAP it is truly
unbearable pain and it never goes away
Please Response and Change my medication!!!
Thank you

TRIAGE SECTION: Triaged By: _____

Disposition:

Date/Time
Received

- Immediate Evaluation
- Sick Call (Priority 1 2 3)
- Dental Referral
- RN Assessment (face to face)
- Referral to Forensics/Mental Health
- No Provider Visit Necessary (Needs comment)

COMPLETION: Date: ___/___/___ Time: ___ (hrs)

Print Name: _____ Signature: _____ Comm. 12D-10

INMATE SECTION: (Inmate to complete this section only)
 Preso seccion: (El preso, (La presa) a completar esta seccion)

Last name: SALMO First name: AMANDA ICN: _____
 Apellido Primer Nombre Preso No. Correccional

D.O.B.: _____ Sex: M F Location: E 111
 Fecha de nacimiento Sexo Hombre Mujer Ubicacion

Date of Request: 11/13/13 Time of Request: 8:00 AM.
 Fecha de solicitud Tiempo de solicitud (hrs)

Reason for Request: I AM WRITING FOR YOUR HELP IN
 Razon de solicitud having my nerve medication that was
discontinued 3 weeks ago since then I have been
experiencing extreme headaches in the back of

TRIAGE SECTION: Triaged By: _____

Disposition:

- Date/Time Received
- Immediate Evaluation
 - Sick Call (Priority 1 2 3)
 - Dental Referral
 - RN Assessment (face to face)
 - Referral to Forensics/Mental Health
 - No Provider Visit Necessary (Needs comment)

COMPLETION: Date: ____/____/____ Time: _____ (hrs)

Print Name: _____ Signature: _____ Comm. 12D-10

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

Executed on November 4, 2013
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Mr. Damone T. Savage
MR. DAMONE T. SAVAGE

Signature(s) of Plaintiff(s)

RONALD OVERTURF
COMMISSIONER OF DEEDS
For the City of Buffalo, Erie County, NY
Commission Expires Dec. 31, 2014

4 NOV. 13
Ronald Overturf