

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 10-60758-CIV-HUCK/O'SULLIVAN**

THOMAS J. DEMAIO,

Plaintiff,

v.

AL LAMBERTI, SHERIFF OF BROWARD
COUNTY, FLORIDA,

Defendant.

ORDER DENYING MOTION TO DISMISS COUNT III AND MOTION TO STRIKE

This matter is before the Court on Defendant Sheriff Al Lamberti's Amended Motion to Dismiss Count III of Plaintiff's Amended Complaint (D.E. # 8) and Plaintiff's Motion to Strike Defendant's Amended Motion to Dismiss (D.E. # 12). Although Defendant requested and was granted an extension of time until July 20, 2010 to file a reply in support of the Motion to Dismiss and a response to the Motion to Strike, as of this date Defendant has filed neither a response nor a reply. The Court has reviewed the Motion to Dismiss and the Motion to Strike, Plaintiff's response to the Motion to Dismiss, and is otherwise duly advised.

Defendant requests that the Court dismiss Count III of Plaintiff's Amended Complaint (D.E. # 1-2), which alleges a violation of 42 U.S.C § 1983 not against Defendant Lamberti, but against another Defendant, Officer Mark Davis. Nonetheless, Defendant Lamberti argues that Count III should be dismissed because it fails to adequately allege supervisory liability and he cannot be held liable merely because of his supervisory position over another officer. However, Count III alleges that Defendant Davis violated the Plaintiff's civil rights by using excessive force against Plaintiff. Plaintiff concedes in his response that Count III makes no allegations against Defendant Lamberti

and is limited to Defendant Davis. Since Count III does not allege that Defendant Lamberti is subject to § 1983 liability simply because of his supervisory position, but instead makes an allegations against Defendant Davis, the motion to dismiss is DENIED.

Accordingly, because the motion to dismiss is DENIED, Plaintiff's motion to strike is DENIED as moot.

DONE AND ORDERED in Chambers, Miami, Florida, July 22, 2010.



Paul C. Huck
United States District Judge

Copies furnished to:
All Counsel of Record