

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

KORRIN OSBORNE,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION 11-00638-KD-N
)	
TONY PATTERSON, et al.,)	
)	
Defendants.)	

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated February 22, 2013 (doc. 36) is **ADOPTED, in part**, as the opinion of this Court. For the reasons set forth in the Report and Recommendation, it is **ORDERED** that defendants Kim Thomas and Tony Patterson's motion for summary judgment (doc. 30) is **GRANTED**. It is further **ORDERED** that defendants' motion for summary judgment as to defendants' Dexter Brown, Michael Watson, Brian Davis, and Jonathan Peavy is **DENIED AT THIS TIME**.¹

Viewing the evidence and factual inferences in the light most favorable to Osborne as the non-movant, the court finds that there are potential issues of fact that require an evidentiary hearing as to whether 1) Osborne was kicked, punched, and choked by defendants Brown, Watson, Davis and Peavy, and 2) whether Osborne sustained more

¹ Osborne's motion for extension of time to respond to the report and recommendation is **MOOT** (doc. 38).

than a de minimis injury. Accordingly, it is **ORDERED** that an evidentiary hearing will be held on **June 18, 2013, at 9:00 a.m.** in the Warden's Conference Room at Holman Correctional Facility, Atmore, Alabama.

In preparation of the hearing, on or before **April 26, 2013**, the Alabama Department of Corrections shall produce to the Court **UNDER SEAL** all of Osborne's medical records from October 1, 2011 through March 1, 2012. Also, Osborne and the defendants should submit by **April 26, 2013**, a list of the proposed witnesses for the evidentiary hearing along with a brief statement of the expected testimony from each. The parties should also include the addresses of each witness and a statement as to whether the witness will appear without the need of a subpoena.

The Alabama Department of Correction is **ORDERED** to either produce Osborne in person for the hearing or provide his appearance via video-conference.²

The Clerk is **directed** to mail a copy of this order to Anne Hill, General Counsel for the Alabama Department of Corrections, P. O. Box 301501, Montgomery, Alabama 36130-1501.

DONE this 27th day of March, 2013.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

² The Department should verify in advance that the video conference option will work and inform the Court on or before **June 7, 2013**, as to which option it will exercise.