

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

KENDRICK C. STORY

PLAINTIFF

V.

CASE NO. 07-CV-1062

PAUL LUCAS, Sheriff, Ouachita
County, et al.

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed July 26, 2010, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 64). Judge Bryant recommends that judgment be entered in Captain David Norwood's favor and that the complaint be dismissed with prejudice.¹ Plaintiff has responded with timely objections. (Doc. 65). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

Plaintiff complained that Captain Norwood violated his civil rights by using excessive force against him. Specifically, Plaintiff maintains that Captain Norwood attacked Plaintiff with a flashlight without provocation. Officers may use force reasonably in a good-faith effort to maintain or restore discipline but may not use force maliciously to cause harm. *Treats v. Morgan*, 308 F.3d 868, 872-74 (8th Cir. 2002). Factors to consider in deciding whether a particular use of force was reasonable are "whether there was an objective need for force, the relationship between any such need and the amount of force used, the threat reasonably perceived by the correctional officers, any efforts by the officers to temper the severity of their forceful response, and the extent of the inmate's injury." *Id* at 872. Judge Bryant considered these factors and concluded that Captain Norwood

¹Captain David Norwood is the only defendant left in this case. The other defendants, Paul Lucas, Chris Gill, and Lt. Joe Strickland, have been dismissed from the case. (Doc. 56).

reasonably believed that a threat to officer safety existed as well as a threat to the order and control of the facility, and found that Plaintiff failed to prove by a preponderance of the evidence that Captain Norwood used excessive force against Plaintiff. Judge Bryant further found that the nature of Plaintiff's injury (a left elbow contusion) was not suggestive of the nature or amount of force that Plaintiff maintains Captain Norwood used against him, especially because the injury could have occurred when Plaintiff was being pushed to the bars.

In his objections to the Report and Recommendation, Plaintiff states that he has proven by a preponderance of the evidence that Captain Norwood used excessive force against him, and there are witnesses that corroborate Plaintiff's version of events. Witnesses testified that Norwood hit Plaintiff twice with the flashlight. However, Captain Norwood stated that he did not hit Plaintiff with the flashlight but only pushed him with the flashlight in hand when Plaintiff failed to obey Captain Norwood's command. Also, Officer Chris Gill testified that Captain Norwood did not hit Plaintiff with a flashlight but pushed him. Judge Bryant had to determine the credibility of the witnesses' testimony. Here, the Court is not convinced that Plaintiff has proven that his rights were violated. Accordingly, for reasons stated herein and above, as well as those contained in Judge Bryant's Report and Recommendation (Doc. 64), Plaintiff's claims against Captain Norwood are **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED, this 30th day of August, 2010.

/s/ Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge