

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

DON EARL LEWIS

PLAINTIFF

V.

Civil No. 4:12-cv-4128

DAVID HAMPTON

DEFENDANT

ORDER

Before the Court is the Report and Recommendation filed January 3, 2013 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 6). Judge Bryant has reviewed Plaintiff's Complaint (ECF No. 1) pursuant to 28 U.S.C. § 1915 and recommends dismissal. Plaintiff has filed an objection to Judge Bryant's report. (ECF No. 7). After a *de novo* review of the record, the Court adopts Judge Bryant's report as its own.

Plaintiff brings this lawsuit under 42 U.S.C. § 1983 alleging that he was unlawfully interrogated by Defendant, a Crimes Against Children Investigator, without being read his Miranda rights. He asserts that certain statements made to Defendant during the interrogation are expected to be used against him in a criminal proceeding in an Arkansas state court. That criminal proceeding has not yet occurred. Judge Bryant found that until those statements are used against Plaintiff in his criminal case, there has been no constitutional violation. *Chavez v. Martinez*, 538 U.S. 760, 767 (2003). Judge Bryant therefore recommends that Plaintiff's Complaint be dismissed.

Plaintiff objects that Defendant never had the authority to interrogate him. He states that Defendant was "only to serve Plaintiff with notice of their agency investigation of alleged child

maltreatment.” (ECF No. 7). Plaintiff further cites Rule 17.1 of the Arkansas Rules of Criminal Procedure to argue that the statements made to Defendant will likely be used against him unlawfully.

Plaintiff’s objection, while it may have some merit in his criminal proceeding in state court, does nothing to alter the soundness of Judge Bryant’s Report and Recommendation. Plaintiff has not suffered a constitutional violation until his statements are used against him in his criminal case. Because that has not yet occurred, the Court adopts Judge Bryant’s report in its entirety. Accordingly, Plaintiff’s Complaint (ECF No. 1) should be and hereby is **DISMISSED**.

IT IS SO ORDERED, this 2nd day of April, 2013.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge