

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

LUIS E. GARCIA CAMPOS

PLAINTIFF

v.

Civil No. 07-5161

DEPUTY FREE; DEPUTY
THOMPSON; DEPUTY DAY;
CAPTAIN PETRAY

DEFENDANTS

O R D E R

Now on this 26th day of February, 2009, come on for consideration **County Defendant's Motion For Summary Judgment** (document #16); the **Report And Recommendation Of The Magistrate Judge** (document #23); and plaintiff's **Objections** thereto (document #24), and the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff contends that he was subjected to excessive force, subjected to discrimination, and denied medical care while an inmate at the Benton County Detention Center ("BCDC"). Defendants moved for summary judgment, and the Magistrate Judge propounded a questionnaire to plaintiff to assist him in responding. The Magistrate Judge then issued the Report And Recommendation now under consideration.

2. The Magistrate Judge found no evidence of racial discrimination, and no evidence that would support an unconstitutional denial of medical care, and recommended that these claims be dismissed. He recommended that summary judgment be denied as to plaintiff's claim of excessive force against

defendants Day and Thompson.

3. Plaintiff's Objections to the Report And Recommendation are without merit. He offers nothing of substance with regard to his denial of medical care claim.

With regard to his discrimination claim, plaintiff says that "after they hit me" -- which the Court understands to be a reference to Thompson and Day -- they "tell me move beano." This is not sufficient. Even if the use of "beano" indicates racial animus, under Eighth Circuit law, more than an isolated incident is required to prove discrimination. Clayton v. White Hall School District, 875 F.2d 676, 680 (8th Cir. 1989).

Plaintiff also states that when he asked for medical help, "if I wasn't hispanic maybe the answer would be differen[t]!!" This is mere supposition, and will not support a cause of action.

For these reasons, the Court finds plaintiff's Objections to be without merit.

IT IS THEREFORE ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #23) is **adopted in toto**, and plaintiff's **Objections** (document #24) are **overruled**.

IT IS FURTHER ORDERED that the **County Defendant's Motion For Summary Judgment** (document #16) is **granted in part and denied in part**.

The motion is **granted** insofar as it seeks dismissal of plaintiff's claims for discrimination and denial of medical care,

and those claims are hereby **dismissed**.

The motion is **denied** insofar as it seeks dismissal of plaintiff's claim for excessive force, and that claim is **remanded** to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE