

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

TYRONE WELCH

PLAINTIFF

v.

Civil No. 12-5135

DETECTIVE WILLIAMS

DEFENDANT

O R D E R

Now on this 20th day of February, 2013, come on for consideration the **Report And Recommendation Of The Magistrate Judge** ("R&R") (document #11), and plaintiff's **Objections** thereto (documents #12 and #13), and the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff Tyrone Welch contends that defendant Detective Williams violated his constitutional rights by:

- (a) unlawfully arresting him;
- (b) falsely accusing him of intimidating a witness, aggravated assault, unlawful discharge of a firearm from a vehicle, and conspiracy;
- (c) maliciously prosecuting him; and
- (d) slandering him.

The claim arises out of an incident on May 30, 2012, when Welch had some kind of interaction with two men at a convenience store in Fayetteville, Arkansas. It appears that a weapon was fired, but who fired at whom is disputed.

2. The R&R issued on November 16, 2012. Magistrate Judge

Erin L. Setser recommended that Welch's claims be denied because:

(a) the Constitution does not guarantee that only guilty people will be arrested;

(b) any falsity of the accusations against Welch could be addressed at his criminal trial;

(c) there is no cause of action under § 1983 for malicious prosecution; and

(d) there is no cause of action under § 1983 for slander.

3. Welch filed Objections on November 28, 2012, which go to his guilt or innocence of the crimes with which he was charged. On December 5, 2012, Welch supplemented his Objections with a statement to the effect that the charges against him had been dismissed on December 4, 2012. Welch states that the evidence proved he was innocent, and also "shows detective Williams falsely [sic] accused me because of his own personal vendetta he has toward me."

4. The Court cannot, without more, give the dismissal of the charges against Welch the broad interpretation he urges. Welch does not support his claim that the charges have been dismissed with any documentation, so it is impossible to determine whether the charges were dismissed with prejudice.

Nor does the dismissal of the charges, for whatever reason and with whatever finality, lead inevitably to the conclusion that Welch was falsely accused because of a vendetta on the part of

Williams. It could well be that Williams was honestly mistaken in connection with Welch's arrest.

However, because the R&R -- as to Welch's claims of wrongful arrest and false accusations -- was premised on Welch's apparent opportunity to address those issues at his criminal trial, and because it now appears the charges have been dismissed, the Court will sustain Welch's Objections on those issues and remand the case to the Magistrate Judge for further proceedings.

5. Welch's Objections do not touch on the legal impediments to his malicious prosecution and slander claims. Those Objections will be overruled, and the R&R will be adopted with regard to those claims.

IT IS THEREFORE ORDERED that plaintiff's **Objections** (documents #12 and #13) are **sustained** as to his claims of wrongful arrest and false accusations, and **overruled** as to his claims for malicious prosecution and slander.

IT IS FURTHER ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #11) is **adopted** as to Welch's claims for malicious prosecution and slander, and those claims are **dismissed with prejudice**.

IT IS FURTHER ORDERED that the **Report And Recommendation Of The Magistrate Judge** (document #11) is **not adopted** as to Welch's claims of wrongful arrest and false accusations, and the matter is **remanded** to United States Magistrate Judge Erin L. Setser for

further consideration in light of Welch's Objections.

IT IS SO ORDERED.

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