

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

KENNETH SCOTT RAULERSON,

Plaintiff,

v.

CASE NO. 1:08-cv-00222-MP-GRJ

ALEX P BAILY, et al.,

Defendants.

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ORDER

This cause comes on for consideration upon the Magistrate Judge's Report and Recommendation dated August 20, 2014. (Doc. 163). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). The time for filing objections has passed, and none have been filed.

Having considered the Report and Recommendation, I have determined that the Report and Recommendation should be adopted. The Court agrees with the Magistrate Judge that plaintiff has created a genuine issue of material fact concerning Officer Rivera's presence and conduct at the arrest. Therefore, summary judgment is inappropriate.

Additionally, the Court has considered plaintiff's motion for appointment of counsel, Doc. 147, and concludes that it should be denied. The district court may appoint counsel for an indigent plaintiff under 28 U.S.C. § 1915(e)(1). Shaw v. Cowart, 300 Fed. Appx. 640, 643 (11th Cir. 2008). However, "[t]he district court has broad discretion in making this decision ... and should appoint counsel only in exceptional circumstances...." Id. (citations omitted). "The

key is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court. Where the facts and issues are simple, he or she usually will not need such help." Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir.1993). The instant case is simply one of "his word against their word" and the facts and legal concepts involved are simple. Thus, this is not the exceptional case where appointment of counsel is appropriate.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.
2. The motion for summary judgment, Doc. 157, is denied, and a pretrial scheduling order will be filed by separate notice.
3. The motion for appointment of counsel, Doc. 147, is denied.

DONE AND ORDERED this 1st day of October, 2014

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge