

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CARVER THOMAS ASKEW,

Plaintiff,

v.

4:13cv566-WS/CAS

SERGEANT ERIK CROSBY,
SERGEANT DONNIE SEGREE,
SERGEANT KENNETH MALPHURS,
and CAPTAIN ROLLIN AUSTIN,

Defendants.

ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation (doc. 235) dated August 31, 2017. The magistrate judge recommends (1) that the motion for summary judgment (doc. 218) filed by Defendant Austin be denied; and (2) that the amended motion for summary judgment (doc. 217) filed by Defendants Crosby, Malphurs, and Segree be granted as to Defendant Segree but denied as to Defendants Crosby and Malphurs. The magistrate judge also recommends that Plaintiff Askew's request for punitive and compensatory

damages be dismissed pursuant to 42 U.S.C. § 1997e(e).

Plaintiff Askew has filed no objections to the report and recommendation.

Defendant Austin has filed objections (doc. 240) to the report and recommendation; Defendants Crosby and Malphurs have adopted (doc. 241) Austin's objections.

Having viewed the hand held and fixed wing videos of the relevant events and otherwise considered the record in light of Defendant Austin's objections, the court finds that the magistrate judge's report and recommendation should be adopted. Like the magistrate judge, the court finds that there is a disputed issue of material fact as to whether the force twice used on Askew was needed to restore order. Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (doc. 235) is ADOPTED and incorporated into this order by reference.
2. Defendant Austin's motion for summary judgment (doc. 218) is DENIED.
3. The amended motion for summary judgment (doc. 217) filed by Defendants Crosby, Malphurs, and Segree is GRANTED as to Defendant Segree but DENIED as to Defendants Crosby and Malphurs.
4. Defendant Segree is DISMISSED from this action.

5. Plaintiff Askew's request for punitive and compensatory damages is DISMISSED pursuant to 42 U.S.C. 1997e(e).

6. The clerk shall return the case to the magistrate judge for further proceedings prior to setting the case for trial.

DONE AND ORDERED this 2nd day of October, 2017.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE