

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

HENRY WILLIAMS,

Plaintiff,

v.

CASE NO. 5:11-cv-00378-MP-GRJ

MELVIN SIMMONS and HELEN SINCLAIR,

Defendants.

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ORDER

This cause comes on for consideration upon the Magistrate Judge's Report and Recommendation dated December 6, 2013. (Doc. 92). 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). I have made a de novo of the file, including the objections filed by plaintiff, Doc. 96, and have determined that the Report and Recommendation should be adopted.

The Court agrees with the Magistrate Judge that even under the version of the facts construed most favorably to the plaintiff, the two guards in the cafeteria had no reason to suspect the attacker would harm the plaintiff until the moment of the attack. Also, the Court agrees that Sgt. Sinclair acted reasonably and pursuant to policy in maintaining control over the other prisoners and signaling control instead of physically intervening in the attack. Finally, even if Sgt. Simmons only issued verbal commands during the attack, the Court agrees with the cases cited by the Magistrate Judge from the Sixth, Fourth and Tenth Circuits stating that, "prison guards have no constitutional duty to intervene in an armed assault by an inmate when the

intervention would place the guard in danger of physical harm " Patmon v. Parker, 3 Fed. Appx. 337, 338 (6th Cir. 2001). Even under the plaintiff's version of the events, the only way Sgt. Simmons could have intervened more extensively than he did would be to place himself in danger of physical harm.

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. Defendants' Motion for Summary Judgment, Doc. 72, is GRANTED, and the Clerk is directed to close this case.

DONE AND ORDERED this 24th day of April, 2014

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