

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

LINDBERG PRESCOTT,

Plaintiff,

vs.

WILLIE HOLLIE, et al.,

Defendant.

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5:05-cv-347 (CAR)

***ORDER ON THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE***

Before the Court is a Report and Recommendation (Doc. 34) from United States Magistrate Judge Claude W. Hicks, Jr., which recommends denying Plaintiff’s Motion for Summary Judgment (Doc. 29) and granting Defendants’ Motion for Summary Judgment (Doc. 20). Plaintiff has subsequently filed an Objection and pursuant to 28 U.S.C. § 636(b)(1), the Court has made a de novo determination of the portions of the Recommendation to which Plaintiff objects.

In his Objection, Plaintiff takes issue with the Magistrate Judge’s characterization of a medical record produced by Defendants to show that Plaintiff suffered no injury as a result of being handcuffed on the night of March 10, 2004. Plaintiff argues that because the document in question bears no signature and can not be authenticated, Defendants cannot rely on the document. Thus, according to the Plaintiff, Defendants cannot establish that he did not suffer injury from being handcuffed. Contrary to Plaintiff’s argument, Defendants are not required to affirmatively prove that Plaintiff suffered no injury to prevail on summary judgement. Rather, after Defendants have established that there are no genuine issues of material fact, it is Plaintiff who must provide evidence to support his claim. Regardless of whether Defendants can establish that Plaintiff suffered no injury, the fact remains that Plaintiff cannot establish that he suffered more than temporary

minimal injuries. Thus, because the Eleventh Circuit clearly holds that “[p]ainful handcuffing, without more, is not excessive force in cases where the resulting injuries are minimal,” Rodriguez v. Farrell, 280 F.3d 1341, 1351 (11th Cir. 2002), Plaintiff cannot show Defendants’ alleged actions amount to excessive force. Accordingly, the Recommendation (Doc. 34) is **ACCEPTED**, Plaintiff’s Motion for Summary Judgment (Doc. 29) is **DENIED**, and Defendants’ Motion for Summary Judgment (Doc. 20) is **GRANTED**.

SO ORDERED, this 9th day of September, 2008.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

SCS/ssh