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

MATTHEW ROBERT HEYN,	:	
	:	
Plaintiff,	:	**Civil Action No. 5:11-cv-203**
	:	
v.	:	**PROCEEDINGS UNDER**
	:	**42 U.S.C. § 1983**
DEPUTY HAROLD G. WILKES,	:	
	:	
Defendant.	:	

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ORDER ON UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the United States Magistrate Judge's Report and Recommendation [Doc. 17] that Defendant's Motion for Summary Judgment be granted based on Defendant's qualified immunity. Plaintiff filed an Objection to the Recommendation [Doc. 18]. Having considered Plaintiff's Objections and having investigated those matters *de novo*, this Court agrees with the findings and conclusions of the United States Magistrate Judge that Defendant is entitled to qualified immunity, and thus his Motion for Summary Judgment [Doc. 14] must be GRANTED. The Report and Recommendation [Doc. 17] of the United States Magistrate Judge is therefore **ADOPTED** and **MADE THE ORDER OF THE COURT**.

In this case, Plaintiff claims Defendant used excessive force in arresting him. On February 21, 2012, Defendant filed his Motion for Summary Judgment together with supporting affidavits and a statement of material facts. Despite the Court's Order notifying Plaintiff of his right to respond to the Motion pursuant to Rule 56 of the Federal Rules of Civil Procedure and warning him that failure to respond to and rebut the statements set forth in Defendant's affidavits may result in those statements being accepted as the truth, Plaintiff failed to respond to the Motion. Recognizing the Court cannot grant summary judgment by default, the Magistrate Judge analyzed the uncontested evidence and found it failed to raise any issue of material fact as to whether Plaintiff's constitutional rights were violated.

In his Objection, Plaintiff simply restates the allegations he set forth in his Complaint and fails to raise any issue of material fact. This Court agrees that the uncontested evidence establishes that Defendant's actions in using a taser against Plaintiff and subsequently striking Plaintiff in the face were reasonable in light of Plaintiff's behavior, who was combative, resistant to arrest, noncompliant with police instructions, and wherein he actually kicked Defendant in the face. The evidence makes clear that Plaintiff was forcefully resisting arrest, was a danger to not only to the officers but also to himself, and Defendant's use of force was a reasonable response to Plaintiff's combative behavior. Moreover, the circumstances establish that Defendant only used the amount of force necessary to subdue Plaintiff to effectuate the arrest, and such force

inflicted only minor injuries to Plaintiff. Thus, Defendant's actions did not violate Plaintiff's constitutional rights.

CONCLUSION

For the reasons set forth above, the Court agrees with the Magistrate Judge's findings and conclusion that Defendant is entitled to qualified immunity, and his Motion for Summary Judgment should be granted. Thus, the Report and Recommendation of the United States Magistrate Judge [Doc. 17] is hereby **ADOPTED** and **MADE THE ORDER OF THE COURT**.

SO ORDERED, this 17th day of July, 2012.

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

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