

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DANIEL ULYSSES BOUIE

PLAINTIFF

V.

NO. 4:09CV122-P-A

CHIP ROBINSON, et al.

DEFENDANTS

ORDER

Presently before the court is the defendants' motion to stay this matter. This matter was filed on November 10, 2009, under 42 U.S.C. § 1983. The plaintiff has stated a claim for excessive force arising out of his arrest on state charges of careless driving, possession of cocaine and resisting arrest. A grand jury ultimately issued a true bill for the possession of cocaine charge.

As for this civil matter, a hearing was held, the defendants were served with process and filed their answer, and a scheduling order was entered. The defendants filed their motion to stay relying on *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). The defendants contend that the matter should be stayed until the state court criminal charges have been resolved.

According to *Heck*, a cause of action under 42 U.S.C. § 1983 does not accrue until the plaintiff's conviction or sentence has been invalidated or called into question. *Id.* at 489-91. A plaintiff may not challenge the validity of his conviction or sentence by seeking damages under 42 U.S.C. § 1983. It is possible, however, for a plaintiff facing unresolved criminal charges to challenge the force used to procure his arrest without challenging the underlying criminal charges or running afoul of the holding in *Heck*. See *Brown v. Sudduth*, 255 Fed. Appx. 803, 805-07, 2007 WL 3283777 at **2-5 (5th Cir. Nov. 7, 2007). Therefore, the defendants' motion (docket entry 30) is DENIED.

IT IS SO ORDERED.

THIS the 3rd day of August, 2010.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE