

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ANTHONY DUANE MILLS PLAINIFF
v. CIVIL ACTION NO. 5:18-cv-15-DCB-MTP
TRAVIS PATTEN, ET AL. DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause is before the Court on Defendants Travis Patten, Lee Best, Delayne Bush, Walter Minge, and Dustin Smith's Motion for Summary Judgment [ECF No. 60], Defendants Lee Best and Delayne Bush's Motion to Withdraw Affidavits [ECF No. 70], and Magistrate Judge Michael T. Parker's Report and Recommendation [ECF No. 77], to which no objections were filed by the Plaintiff. Magistrate Judge Parker recommends that the Motion to Withdraw Affidavits [ECF No. 70] be denied, the Motion for Summary Judgment [ECF No. 60] be granted, and this action be dismissed with prejudice. Having carefully reviewed same, the Court finds the Report and Recommendation to be well taken.

The Plaintiff claims that Defendants Walter Minge ("Minge") and Dustin Smith ("Smith") used excessive force when arresting him on June 6, 2017 because they, without warning, released a police dog which bit him on the back of his leg. Defendants argue that they are entitled to qualified immunity and that the Plaintiff suffered no more than de minimis injuries

- scratches and a bite wound that required no medical treatment. Magistrate Judge Parker found, "In this case, the undersigned cannot conclude that, under the circumstances alleged, it was clearly established that Defendants' use of K9 force, without warning, was unconstitutional. Accordingly, Defendants Minge and Smith are entitled to qualified immunity for Plaintiff's excessive-force claim." [ECF No. 77] at p. 14.

Officer Minge submitted an affidavit stating that "the use of a K9 unit was appropriate because of the nature of Anthony Mills' charges and his history of firearm possession, as well as the circumstances of his arrest, as he was in a wooded area and likely to flee." [ECF No. 60-6]. Although the information provided to the court about the use of a police dog is lacking in specificity, the Court cannot find and does not find that the Magistrate Judge's recommendation regarding the qualified immunity analysis is in error. Therefore, the Court adopts the Report and Recommendation as the findings and conclusions of this Court.

Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge Michael T. Parker's Report and Recommendation [ECF No. 77] is ADOPTED as the findings and conclusions of this Court and the Defendants'

Motion to Withdraw Affidavits is DENIED and the Motion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED that the action is dismissed with prejudice.

A final judgment dismissing the action will follow in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED this the 4th day of March, 2020.

_/s/ David Bramlette_____

UNITED STATES DISTRICT JUDGE