

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARRYL L. HAWTHORNE,

Plaintiff,

1:17-CV-0716
(GTS/TWD)

v.

TYSON RUECKER, Albany Police Officer,
in His Individual and Official Capacity;
DEVIN ANDERSON, Albany Police Officer,
in His Individual and Official Capacity;
SEAN PERKINS, Albany Police Officer,
in His Individual and Official Capacity;
ALEX CHEBAN, Albany Police Officer,
in His Individual and Official Capacity;
JOHN NORRIS, Albany Police Officer,
in His Individual and Official Capacity;
SERGEANT CHRIST, Albany Police Dept.;
and CITY OF ALBANY, NY,

Defendants.

APPEARANCES:

DARRYL L. HAWTHORNE
Plaintiff, *Pro Se*
40 Anne Street
New York, New York 10038

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Darryl L. Hawthorne (“Plaintiff”) against the above-captioned police officers of the City of Albany and the City of Albany, New York (“Defendants”) under 42 U.S.C. § 1983, is United States Magistrate Judge Thérèse Wiley Dancks’ Report-Recommendation recommending that Plaintiff’s claims against the City of Albany be dismissed, and that the remainder of Plaintiff’s claims remain pending.

(Dkt. No. 13.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Dancks' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Dancks employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and Plaintiff's claims against the City of Albany are dismissed and Plaintiff's other claims remain pending.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 13) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's claims against Defendant City of Albany are **DISMISSED** **with prejudice**; and it is further

ORDERED that the following claims **REMAIN PENDING**:

- (1) Plaintiff's Fourth Amendment claim for unreasonable search and seizure asserted against Defendants Anderson and Perkins;
- (2) Plaintiff's Fourth Amendment claim for false arrest asserted against Defendants

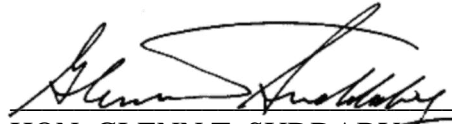
¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a "clear error" review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

Anderson, Perkins, Ruecker, Norris, Cheban and Christ;

- (3) Plaintiff's Fourth Amendment claim for excessive force asserted against Defendants Anderson and Perkins;
- (4) Plaintiff's Fourth Amendment claim for malicious prosecution asserted against Defendants Anderson, Perkins, Ruecker, Norris, and Cheban; and
- (5) Plaintiff's Fourteenth Amendment claim for violation of due process (arising from the deprivation of property) asserted against Defendants Anderson, Perkins and Christ; and it is further

ORDERED that the Clerk of Court is directed to issue Summonses and forward them, along with copies of the Amended Complaint, to the U.S. Marshal for service upon Defendants Anderson, Perkins, Ruecker, Norris, Cheban, and Christ, and Defendants are directed to respond in accordance with the Federal Rules of Civil Procedure.

Dated: December 19, 2017
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge