

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARRYL L. HAWTHORNE,

Plaintiff,

v.

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

TYSON RUECKER, Albany Police Officer,
in His Individual and Official Capacities;
DEVIN ANDERSON, Albany Police Officer,
in His Individual and Official Capacities;
SEAN PERKINS, Albany Police Officer,
in His Individual and Official Capacities;
ALEX CHEBAN, Albany Police Officer,
in His Individual and Official Capacities;
JOHN NORRIS, Albany Police Officer,
in His Individual and Official Capacities; and
THE 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”) asserting claims of unreasonable search and seizure, excessive force, and false arrest under 42 U.S.C. § 1983, is United States Magistrate Judge

Thérèse Wiley Dancks' Report-Recommendation recommending that certain of Plaintiff's claims be dismissed with leave to amend (i.e., his malicious prosecution claim against Defendants Anderson and Perkins, his conspiracy claim against Defendant Ruecker, and his claims against Defendants Cheban, Norris and the City of Albany), and that the remainder of Plaintiff's claims survive the Court's *sua sponte* review of Plaintiff's Complaint (i.e., his Fourth Amendment claims of unlawful search and seizure, excessive force, and false arrest asserted against Defendants Anderson and Perkins, his Fourteenth Amendment due process claim for deprivation of property asserted against Defendants Anderson and Perkins, and his Plaintiff's Fourth Amendment false arrest claim against Defendant Ruecker). (Dkt. No. 4.) 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 is granted leave to file an Amended Complaint in accordance with the recommendations of the Report-Recommendation.

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).

ACCORDINGLY, it is

ORDERED that Magistrate Judge Dancks' Report-Recommendation (Dkt. No. 4) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that the following claims are **DISMISSED** without prejudice and with leave to amend within **THIRTY (30) DAYS of the date of this Decision and Order**:

- (1) Plaintiff's malicious prosecution claim asserted against Defendants Anderson and Perkins;
- (2) Plaintiff's conspiracy claim asserted against Defendant Ruecker;
- (3) Plaintiff's claims against Defendants Cheban, Norris, and the City of Albany; and it is further

ORDERED that the following claims **SURVIVE** the Court's *sua sponte* review of Plaintiff's Complaint:

- (1) Plaintiff's Fourth Amendment claims of unreasonable search and seizure, excessive force and false arrest asserted against Defendants Anderson and Perkins;
- (2) Plaintiff's Fourteenth Amendment due process claim for deprivation of property asserted against Defendants Anderson and Perkins;
- (3) Plaintiff's Fourth Amendment false arrest claim asserted against Defendant Ruecker; and it is further

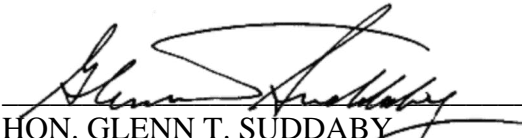
ORDERED that any Amended Complaint filed by Plaintiff must be a complete document in and of itself and must not incorporate a prior pleading by reference; any Amended Complaint must include all of Plaintiff's claims against each of the Defendants, including both those claims in the original Complaint with regard to which Defendants have been ordered to

respond by the District Court, and claims with regard to which Plaintiff has been granted leave to amend by the District Court; such as the Amended Complaint will supersede Plaintiff's original Complaint in its entirety and become the operative pleading in this case; and such an Amended Complaint must comply with the pleading requirements of Fed. R. Civ. P. 10(b) such that each claim must be set forth in separately numbered paragraphs and each paragraph must include a single set of circumstances or facts to the extent practicable; and it is further

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

ORDERED that, should Plaintiff file an Amended Complaint, that Amended Complaint be referred to Magistrate Judge Dancks for her review.

Dated: October 2, 2017
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge