

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JERMAINE FANN,

Plaintiff,

-v-

9:15-CV-1339
(DNH/CFH)

H. GRAHAM, Superintendent Auburn
Correctional Facility; LT. OUIMETTE¹,
Lieutenant, Auburn Correctional Facility; SGT.
EDERER, Sergeant, Auburn Correctional
Facility; M. CORNELL, Correctional Officer,
Auburn Correctional Facility; LOVEJOY,
Correctional Officer, Auburn Correctional
Facility; STEINBERG, Correctional Officer,
Auburn Correctional Facility, formerly known as
Stienberg; C. THOMAS, Correctional Officer,
Auburn Correctional Facility; R. F. SCHRAMM,
Correctional Officer and Certified Drug Tester,
Auburn Correctional Facility, formerly known as
R. F. Shramm; and FAGAN, Deputy
Superintendent of Security, Auburn
Correctional Facility, in his official capacity,

Defendants.

APPEARANCES:

JERMAINE FANN
Plaintiff pro se
430 Main Street - Apt. #306
Dunkirk, NY 14048

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

OF COUNSEL:

WILLIAM A. SCOTT, ESQ.
NICOLE E. HAIMSON, ESQ.
Ass't Attorneys General

¹ The Clerk is directed to amend the docket to reflect the correct spelling of Lt. Ouimette's name.

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Jermaine Fann brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 11, 2018, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part, and plaintiff's motion for summary judgment be denied in its entirety. Plaintiff and defendants filed timely objections to the Report-Recommendation, and defendants submitted an additional though untimely response to plaintiff's objections.

Based upon a careful review of the Report-Recommendation and the portions to which the parties objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

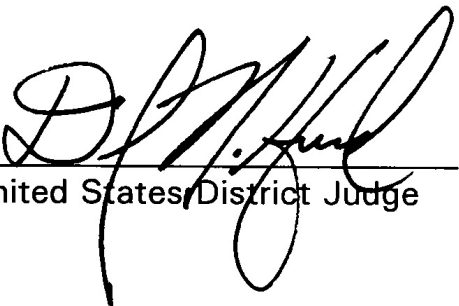
ORDERED that

1. Plaintiff's motion for summary judgment is DENIED in its entirety;
2. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
3. Plaintiff's supervisory liability claims against defendants Fagan and Graham are DISMISSED with prejudice;
4. Plaintiff's Fourteenth Amendment due process claim against defendant Ouimette is DISMISSED with prejudice;
5. Plaintiff's Fourth Amendment unreasonable search claims against defendants Cornell and Steinberg are DISMISSED with prejudice;

6. Defendants' motion for summary judgment is DENIED as to plaintiff's First Amendment retaliation claim against defendant Thomas; and

7. Defendants' motion for summary judgment is DENIED without prejudice as to plaintiff's First and Fourth Amendment claims against defendants Cornell, Lovejoy, Schramm, and Ederer for the incidents occurring on July 9, 2015, to defendants renewing this argument and requesting a hearing to assess whether plaintiff exhausted his administrative remedies.

IT IS SO ORDERED.



United States District Judge

Dated: March 19, 2018
Utica, New York.