

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MELVIN AVON WESSON,

Plaintiff,

v.

9:19-CV-609

**CORRECTIONS OFFICER LUIS OLIVENCIA and
CORRECTIONS OFFICER DWAYNE DANZY,**

Defendants.

**David N. Hurd
U.S. District Judge**

DECISION & ORDER

Plaintiff filed this 42 U.S.C. § 1983 action alleging that Defendants Luis Olivencia and Dwayne Danzy, Corrections Officers working for the New York State Department of Corrections and Community Supervision (“DOCCS”), violated his civil rights by failing to protect him while he was shackled during a transport. Plaintiff alleges that Defendants did not assist him when he became ill, felt dizzy, and fell.

The Court referred the matter to the Hon. Miroslav Lovric, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). The Report-Recommendation and Order, dated January 10, 2024, concludes that the Court should deny the Defendants’ motion for summary judgment. See dk. # 95.

Briefly stated, plaintiff alleges that at the times relevant to the case, he was a prisoner in the custody of DOCCS. On May 19, 2016, Defendants, who worked at

Coxsackie Correctional Facility, were part of a team that was transporting Plaintiff and other prisoners to medical appointments at Albany Medical Center. When Plaintiff and the other prisoners arrived at the Medical Center, he attempted to exit the vehicle. Defendant Olivencia remained in the driver's seat, while Defendant Danzy stood outside the transport vehicle. Plaintiff fell down while trying to leave the vehicle, injuring his side and face.

Judge Lovric's R&R finds that questions of fact exist as to these events which preclude granting the Defendants' summary judgment motion. While Defendants claim that they had no opportunity to prevent Plaintiff's fall, Plaintiff contends in various filings that he had informed Defendant that he was not feeling well and needed help to exit the van. He further contends that Defendants were indifferent to this danger and refused to help him. Judge Lovric finds that these are questions of credibility that must be resolved by a jury. Judge Lovric also rejects Defendants' arguments that Plaintiff's failure to respond mandates summary judgment, or that qualified immunity necessarily applies.

Defendants have filed objections to the Report-Recommendation. See dkt. # 98. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in Defendants' objections, the Court will overrule the objections and accept and adopt the recommendation of Judge Lovric for the reasons stated therein.

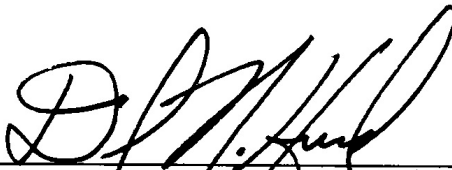
Therefore, it is

ORDERED that

1. The Report & Recommendation is ADOPTED; and
2. Defendants' motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: March 27, 2024
Utica, New York.



United States District Judge