

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RUDOLPHUS BOANS, JR.,

Plaintiff,

v.

DECISION AND ORDER
09-CV-37

TOWN OF CHEEKTOWAGA,
TOWN OF CHEEKTOWAGA POLICE
DEPARTMENT, and
POLICE OFFICERS BRIAN R. GRAY and
JAMES DAVIS,

Defendants.

The instant matter was referred to Magistrate Judge Leslie G. Foschio pursuant to 42 U.S.C. §636(b)(1) for supervision of all pre-trial proceedings. On June 29, 2012, defendants filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Dkt. No. 32) On December 4, 2013, Magistrate Judge Foschio issued a detailed and comprehensive 36-page Report and Recommendation recommending that defendants' motion for summary judgment be granted as to: (1) plaintiff's Section 1983 claims against the Town of Cheektowaga and the Town of Cheektowaga Police Department; (2) plaintiff's claims pursuant to the Seventh Amendment and Eighth Amendment; (3) plaintiff's Section 1983 and common law malicious prosecution claims; and (4) plaintiff's substantive due process claims under the Fifth Amendment and Fourteenth

Amendment. (Dkt. No. 40) Magistrate Judge Foschio recommended that summary judgment be denied as to plaintiff's Fourth Amendment and common law unlawful arrest claims. *Id.*

Plaintiff filed objections to Magistrate Judge Foschio's Report and Recommendation on December 18, 2013. (Dkt. No. 41) Defendants filed a reply on January 2, 2014. (Dkt. No. 42) Oral argument was held on February 27, 2014, at which time the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions from the parties and hearing oral argument, the Court hereby adopts Magistrate Judge Foschio's findings in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motion for summary judgment is denied as to plaintiff's Fourth Amendment and common law unlawful arrest claims, but granted as to all other claims.

The matter is referred back to Magistrate Judge Foschio for further proceedings.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: March 14, 2014