

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

JESSE J. ROBERITES,

Plaintiff,

v.

**ORDER**  
11-CV-521S

RON HUFF JR., et al.,

Defendants.

---

---

1. On June 21, 2011, Plaintiff commenced this action pursuant to 42 U.S.C. § 1983. In an order filed March 30, 2012, the Honorable Michael A. Telesca, United States District Judge, dismissed with prejudice several of Plaintiff's claims; dismissed additional claims without prejudice as premature pursuant to Heck v. Humphrey, 512 U.S. 477 (1994); and stayed the claims for false arrest, false imprisonment and illegal search and seizure pending resolution of Plaintiff's criminal proceedings. This Order permitted Plaintiff's third, sixth, twelfth, fifteenth, and sixteenth causes of action to move forward.

2. On September 26, 2012, this Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, to hear and decide all non-dispositive motions or applications, supervise discovery, and prepare and file a report and recommendation containing findings of fact, conclusions of law and a recommended disposition of any dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(A) and (B).

3. Plaintiff moved for partial summary judgment on January 24, 2013, and Defendants cross moved for summary judgment on February 7, 2013. Following his review of the parties' submissions, Judge Scott filed a Report and Recommendation

recommending that both motions be denied on the ground that there were triable issues of fact regarding the excessive force allegations underlying each of Plaintiff's remaining claims.

4. Plaintiff and Defendants have timely filed objections to the Magistrate Judge's Report and Recommendation, and this Court has reviewed *de novo* Judge Scott's recommendation in light of those objections. No legal or factual error is found upon such due consideration, and the Report and Recommendation is accepted in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 119) in its entirety;

FURTHER, that Plaintiff's motion for partial summary judgment (Docket No. 75) and his objections (Docket No. 120) are DENIED;

FURTHER, that Defendants' motion for summary judgment (Docket No. 76) and their objections (Docket No. 121) are DENIED.

SO ORDERED.

Dated: September 26, 2013  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
Chief Judge  
United States District Court