

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Richard Allen Smuda,	)	
	)	
Plaintiff,	)	<b>ORDER ADOPTING REPORT AND RECOMMENDATION</b>
	)	
vs.	)	
	)	Case No. 1:14-cv-142
Darin Ray Stewart (C.O), et.al.,	)	
	)	
Defendants.	)	

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The Plaintiff is an inmate at the North Dakota State Penitentiary (“NDSP”). He initiated this civil rights action against the Defendants on November 7, 2014. See Docket No. 6. The Plaintiff alleges the Defendants used excessive force against him while handcuffing him during an altercation at the NDSP. The Defendants filed a motion for summary judgment on August 20, 2015. See Docket No. 30. The Plaintiff filed a response in opposition to the motion on August 27, 2015. See Docket No. 32. The Defendants filed a reply on August 28, 2015. See Docket No. 33. The motion was referred to Magistrate Judge Charles S. Miller, Jr. for a Report and Recommendation.

On June 29, 2016, Judge Miller issued his Report and Recommendation wherein he recommended granting the motion for summary judgment based on a finding of qualified immunity. See Docket No. 39. The parties were given fourteen (14) days to file objections to the Report and Recommendation. No objections were filed.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Defendants are clearly entitled to qualified immunity. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 39) in its entirety. The Defendants’ motion for summary judgment

(Docket No. 30) is **GRANTED**. Let judgment be entered accordingly.

**IT IS SO ORDERED.**

Dated this 18th day of July, 2016.

*/s/ Daniel L. Hovland* \_\_\_\_\_  
Daniel L. Hovland, District Judge  
United States District Court