

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Gary D. Hammond, :
 :
Plaintiff : Civil Action 2:08-cv-01063
 :
v. : Judge Marbley
 :
Fred Wilson, : Magistrate Judge Abel
 :
Defendant :

ORDER

Plaintiff Hammond brought this civil rights under 42 U.S.C. § 1983 alleging that defendant Fred Wilson defamed him in his statement to police. This matter is before the Court on Magistrate Judge Abel's November 12, 2008 Initial Screening Report and Recommendation that the complaint be dismissed because the complaint fails to state a claim for relief. No objections were filed to the Report and Recommendation.

Fred Wilson is a private citizen who gave a statement to police during a criminal investigation about a conversation between Hammond and another person. As the Magistrate Judge held, a witness in a criminal matter is absolutely immune from suit under 42 U.S.C. §1983 based on statements to police or testimony at trial. *See, Briscoe v. LaHue*, 460 U.S. 325 (1983). Further, an essential element of a claim under §1983 is that the person acted *under color of state law* to deprive plaintiff of a constitutional right. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970). Here there is no allegation that Wilson acted under color of state law. Finally, this Court lacks subject matter

jurisdiction over plaintiff's Ohio law defamation claim because Hammond and Wilson are both Ohio residents. 28 U.S.C. § 1332.

Upon *de novo* review in accordance with the provisions of 28 U.S.C. §636(b)(1)(B), the Court **ADOPTS** the Report and Recommendation. The Clerk of Court is **DIRECTED** to enter **JUDGMENT** dismissing the complaint for failure to state a claim for relief against defendant.

s/Algenon L. Marbley
Algenon L. Marbley, Judge
United States District Court