

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Robert Fisk,

Plaintiff,

v.

Case No. 3:16-cv-118
Judge Thomas M. Rose

Dayton Police Department, et al.,

Defendant.

**DECISION AND ENTRY VACATING ORDER ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, (DOC. 4),
ADOPTING REPORT AND RECOMMENDATIONS OF UNITED STATES
CHIEF MAGISTRATE JUDGE OVINGTON (DOC. 3), AND
OVERRULING PETITIONER'S OBJECTIONS TO THE CHIEF
MAGISTRATE'S REPORT AND RECOMMENDATIONS, (DOC. 5).**

This is a *pro se* action seeking to bring claims of constitutional violations under 42 U.S.C. § 1983. (Doc. 3). The matter was referred to Chief Magistrate Judge Sharon L. Ovington, who issued a Report and Recommendation on June 24, 2016 recommending that this Court dismiss several of the claims and order service on others. (Doc. 3). Under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), a party may submit objections to the magistrate judge's report and recommendation. The objections must be made “[w]ithin 14 days after being served with a copy of the recommended disposition,” *id.*; see also 28 U.S.C. § 636(b)(1), plus an additional three days when service is made pursuant to Federal Rule of Civil Procedure 5(b)(2)(C)–(F), see Fed. R. Civ. P. 6(d), for a total of 17 days. Service is complete upon mailing to a party. Fed. R. Civ. P. 5(b)(2)(C). Objections were thus due July 11, 2016.

On July 13, 2016, having received no objections, this Court adopted the Magistrate Judge's Report and Recommendation (Doc. 4). Later the same day, Petitioner filed his objections to the Report and Recommendation (Doc. 5). The Sixth Circuit holds that a district court retains the authority to consider objections to a magistrate's report, even if filed late. *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 515 (6th Cir. 2001); see also *Hunger v. Leininger*, 15 F.3d 664, 668 (7th Cir.1994) (permitting a district court judge to decline review of late-filed objections only if the filing is "egregiously late" and causes "prejudice" to the parties). See also *Mabry v. Ameriquest Mortgage Co.*, 2010 WL 3488678, at *1 (E.D. Mich. Aug. 31, 2010)

This Court therefore **VACATES** its order adopting the Magistrate Judge's Report and Recommendation (Doc. 4) and will consider the merits of Plaintiff's objections to the Report and Recommendation.

Pending before the Court are Plaintiff Robert Fisk's Objections to the Chief Magistrate's Report and Recommendations. (Doc. 5). The Report and Recommendations of United States Chief Magistrate Judge Sharon L. Ovington, (Doc. 3), recommends that the Court dismiss Plaintiff's claims against the Dayton Police Department, the Dayton Municipal Court, and Magistrate Moorman with prejudice pursuant to 28 U.S.C. §1915(e)(2), but order that process be effected on Plaintiff's excessive force claim under the Fourth Amendment against Defendants Officers Wombold and Cartte.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court finds that Plaintiff's objections, (Doc. 5), to the Chief Magistrate Judge's Report and Recommendations, (Doc. 3), are not well taken and they are hereby **OVERRULED**. Wherefore, the Court **ADOPTS IN FULL** the Chief Magistrate Judge's Report and Recommendations. (Doc. 3). The order for the United

States Marshal's Office to effect service upon Defendants Wombold and Cartte under Fed. R. Civ.

P. 4(c)(3) remains in effect.

DONE and ORDERED this Wednesday, August 24, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE