

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOHN DAVID PALMER,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-09-824-F
)	
BOARD OF COMMISSIONERS)	
FOR PAYNE COUNTY OKLAHOMA,)	
et al.,)	
)	
Defendants.)	

ORDER

On October 29, 2010, United States Magistrate Judge Bana Roberts issued a Report and Recommendation, wherein she recommended that (1) summary judgment be granted in favor of defendant, Sheriff Noel Bagwell, in his official capacity; (2) summary judgment be granted in favor of defendant, Payne County Deputy Sheriff Mark Hall, in his official and individual capacities; (3) summary judgment be granted in favor of defendant, Payne County Jail Administrator Brandon Myers, in his official capacity; and (4) summary judgment be granted in part and denied in part as to defendant, Payne County Jail Administrator Brandon Myers, in his individual capacity. Magistrate Judge Roberts also recommended that the John Doe defendants be dismissed.

Presently before the court is defendants' timely objection to the Report and Recommendation. Defendants object to the Report and Recommendation insofar as Magistrate Judge Roberts recommends denial of summary judgment in regard to plaintiff's claim that defendant Myers was deliberately indifferent to plaintiff's serious medical needs on August 2 or August 3, 2007. Defendants contend that plaintiff has not shown that defendant Myers knew plaintiff faced a substantial risk of harm and

that defendant Myers disregarded that risk. In addition, defendants assert that plaintiff has not shown that defendant Myers' alleged conduct resulted in substantial harm to plaintiff.

In accordance with 28 U.S.C. § 636(b), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the recommendation of Magistrate Judge Roberts regarding the denial of summary judgment as to plaintiff's claim that defendant Myers was deliberately indifferent to plaintiff's serious medical needs on August 2 or August 3, 2007. Viewing the record evidence and all inferences therefrom in a light most favorable to plaintiff, the court concludes that there is sufficient evidence for a rational jury to find that defendant Myers knew plaintiff faced a substantial risk of harm and disregarded that risk. The court also finds that there is sufficient evidence for a rational jury to find in plaintiff's favor as to the substantial harm requirement. The substantial harm requirement may be satisfied if the inmate experienced considerable pain. *See, Sealock v. Colo.*, 218 F.3d 1205, 1210 n. 5 (10th Cir. 2000) (“[T]here is factual evidence from which a jury could conclude that the delay occasioned by . . . inaction unnecessarily prolonged appellant's pain and suffering.”); *Oxedine v. Kaplan*, 241 F.3d 1272, 1278 (10th Cir. 2001) (“[T]he delay . . . caused Oxedine substantial harm due to the fact that . . . Oxendine experienced considerable pain.”) Although “not every twinge of pain suffered as the result of delay in medical care is actionable,” *Sealock*, 218 F.3d at 1210, the court finds that the record evidence, viewed in a light most favorable to plaintiff, is adequate to support a finding of substantial harm. The court therefore rejects defendants' objection and accepts, adopts and affirms the recommendation of the denial of summary judgment as to plaintiff's claim that defendant Myers was deliberately indifferent to plaintiff's serious medical needs on August 2 or August 3, 2007.


As no objection has been made in regard to the other recommendations of Magistrate Judge Roberts, the court accepts, adopts and affirms those recommendations without further analysis.

Accordingly, the Report and Recommendation of United States Magistrate Judge Bana Roberts issued on October 29, 2010 (doc. no. 53) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Defendants' Motion for Summary Judgment, filed June 14, 2010 (doc. no. 42) is **GRANTED** and summary judgment is granted (1) as to plaintiff's claims against defendant, Sheriff Noel Bagwell, in his official capacity; (2) as to plaintiff's claims against defendant, Payne County Deputy Sheriff Mark Hall, in his official and individual capacities; (3) as to plaintiff's claims against defendant, Payne County Jail Administrator Brandon Myers, in his official capacity; and (4) as to plaintiff's claims against defendant, Payne County Jail Administrator Brandon Myers, in his individual capacity, save and except plaintiff's claim that defendant Myers was deliberately indifferent to plaintiff's serious medical needs on August 2 or August 3, 2007. Defendants' Motion for Summary Judgment is **DENIED** as to plaintiff's claim that defendant Myers was deliberately indifferent to plaintiff's serious medical needs on August 2 or August 3, 2007.

The John Doe defendants are **DISMISSED**.

This matter shall be set for status conference by separate order.

DATED January 18, 2011.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE