

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DOUGLAS C. BIOLCHINI,

Civ. No. 09-6216-TC

Plaintiff,

ORDER

v.

CITY OF BEND and SERGEANT
DANIEL RITCHIE,

Defendants.

Aiken, Chief Judge:

Magistrate Judge Coffin issued his Findings and Recommendation in the above-captioned action on December 28, 2010. Magistrate Judge Coffin recommends that defendants' motion for summary judgment be granted with respect to plaintiff's municipal liability claims alleged against the City of Bend under 42 U.S.C. § 1983 and his state law claims alleged against Sergeant Ritchie. Magistrate Judge Coffin further recommends that the motion be denied with

respect to plaintiff's § 1983 claims asserted against Sergeant Richie and the state law claims asserted against the City. The matter is now before me. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Defendants filed timely objections to the Findings and Recommendation. Upon de novo review of Magistrate Coffin's Findings and Recommendation, I find no error.

I agree with Magistrate Judge Coffin that genuine issues of material fact preclude summary judgment on plaintiff's § 1983 claims against Sergeant Ritchie and his state law claims against the City, in that questions of fact remain as to the reasonableness and probable cause supporting plaintiff's arrest and subsequent criminal charges. Wilkins v. City of Oakland, 350 F.3d 949, 955-56 (9th Cir. 2003) (when officer's reasonable belief "depends on disputed issues of material fact, it is not a legal inquiry, but rather a question of fact best resolved by a jury"). I further agree that plaintiff fails to establish municipal liability under § 1983 and that Sergeant Ritchie is not the proper defendant with respect to plaintiff's state law claims.

THEREFORE, IT IS HEREBY ORDERED that Magistrate Judge Coffin's Findings and Recommendation (doc. 91) filed December 28, 2010 is ADOPTED in its entirety. Defendants' Motion for Summary Judgment (doc. 28) is GRANTED with respect to plaintiff's § 1983 claims against the City and plaintiff's state law claims against Sergeant Ritchie, and the motion is DENIED in all other respects.

IT IS SO ORDERED.

Dated this 23rd day of February, 2011.



Ann Aiken

United States District Judge