

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Kendrick V. Alston,)	Civil Action No.: 8:09-cv-1130-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Winthrop University Police Department;)	
City of Rock Hill Police Department;)	
Officer Dewayne Bunch; Officer John)	
Ranier; and Officer Mike Smothers;)	
Defendants.)	
_____)	

Pending before the Court is “Defendants’ Joint Objection to Additional Submissions and, Alternatively, Request for Extension” [Docket 55].

Factual Background

The Defendants indicate that they

object to the submission of material which was available to the Plaintiff to respond to the Defendants’ Summary Judgment Motions well prior to the issuance of the Report and Recommendation. Understanding that this Court can use its discretion on whether to allow additional evidence after the Report and Recommendation, the Defendants would request an additional thirty (30) days in which to respond to Plaintiff’s Objection and exhibits should the Court decide to consider same as well as the three-volume State Court transcript and disk. Should the Court consider the Plaintiff’s additional exhibits, transcript and disk, the undersigned would ask this Court to require the Plaintiff to provide Defendants’ counsel a copy of the disk submitted to the Clerk of Court.

Accordingly, the Defendants recognize the Court’s discretion to allow additional evidence submitted with objections after a Report and Recommendation has been filed. *See, e.g., Wojcicki v. Aiken Technical College*, 360 Fed. Appx. 484 (4th Cir. 2010).

The Defendants contend that in addition to the Plaintiff's "Objections" [Docket 50] filed June 25, 2010, the Plaintiff has now "filed three (3) additional exhibits and hand-delivered a three-volume State Court transcript (front and back with tabs) and a disk." They further indicate that the transcript and disk were not served on counsel for Defendants and were submitted after the Report and Recommendation was entered by the Magistrate Judge.

In the Court's discretion, this matter is recommitted back to the Magistrate Judge for consideration of this additional evidence, which was submitted by the Plaintiff. However, the Court will not consider any future additional evidence from the Plaintiff that has not already been submitted to the Court. Additionally, the disk that was delivered to the undersigned's chambers was damaged and already broken when received by Chambers along with the three-volume State Court transcript. The Court notes that written on the disk are the names or words "Bunch Winthrop, LGC Copy, RHPD in car Video, Rainier, Cumming, Smothers, Lambert, and Burkhart." The Court is returning these items back to the Clerk's Office. The Plaintiff should immediately file another copy of the disk with the Clerk of Court and serve a copy of these new exhibits, the three-volume State Court transcript, and a copy of the disk on counsel for the Defendants.

Conclusion

Based on the foregoing, the Court **DENIES** *without prejudice* and with leave to re-file the Defendants' Motion for Summary Judgment [Docket 30] and **DENIES** *without prejudice* and with leave to re-file the Defendants' Motion for Summary Judgment [Docket 31]. Plaintiff is hereby ordered to immediately serve and file another copy of the new additional evidence as set forth above. Within ten (10) days of service of this new additional evidence, Defendants may re-file any motions for summary judgment. This matter is recommitted back to the Magistrate Judge for further pretrial handling and also consideration of the additional evidence if Defendants re-file

their motions for summary judgment. The “Defendants’ Joint Objection to Additional Submissions and, Alternatively, Request for Extension” [Docket 55] is therefore **MOOT**.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
July 9, 2010