

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Antonio Lamar Nelson, #73831,)
)
 Plaintiff,)
)
 vs.)
)
 Officer C. Marshall, Lead Investigator and)
 Officer Melron Kelly,)
)
 Defendants.)
)
 _____)

C.A. No.: 9:07-03974-RBH

ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Bristow Marchant, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

No objections were filed to the Report and Recommendation. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Marchant's Report and Recommendation and incorporates it herein. It is therefore

ORDERED that defendants' motion seeking dismissal of this action is hereby **DENIED without prejudice**. The case is **STAYED** pending conviction or dismissal of the plaintiff's criminal charges by the state trial court. In the event Plaintiff is convicted, the defendants may move to lift the stay and file a renewed motion to dismiss pursuant to Heck v. Humphrey, 512 U.S. 477 (1994). By the same token, in the event the state charges are dismissed, the parties can move to lift the stay and the case can proceed. The parties are directed to notify the Court upon disposition of the state court criminal matter.

IT IS SO ORDERED.

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

Florence, South Carolina
November 19, 2008