

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

Michael J. Ferola,)	Civil Action No.: 9:13-cv-02413-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Officer Fulton,)	
)	
Defendant.)	
_____)	

This case, filed by Plaintiff pursuant to 42 U.S.C. § 1983, is before the Court for consideration of the following matters: (1) a motion for summary judgment filed by Defendant and a Supplemental Report and Recommendation issued by the Magistrate Judge; (2) two motions in limine filed by Plaintiff; and (3) a motion for a continuance filed by Defendant. *See* ECF Nos. 118, 125, 127, 128, & 131.

Discussion

I. Motion for Summary Judgment & Supplemental Report and Recommendation

On February 5, 2016, Defendant filed a motion for summary judgment. ECF No. 118. On March 16, 2016, United States Magistrate Judge Bristow Marchant issued a Supplemental Report and Recommendation (R & R), made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina.¹ *See* R & R, ECF No. 125. The Magistrate Judge recommends that the Court deny Defendant’s motion for summary judgment. R & R at 12.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court.

¹ The R & R sets forth in detail the relevant facts and legal standards.

Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

Neither party has filed objections to the R & R. In the absence of objections to the R & R, the Court is not required to give any explanation for adopting the Magistrate Judge's recommendations. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)).

After a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Court adopts and incorporates by reference the R & R of the Magistrate Judge. The Court will deny Defendant's motion for summary judgment.

II. Plaintiff's Motions in Limine

On March 28, 2016, Plaintiff filed two motions in limine. *See* ECF Nos. 127 & 128. In his first motion in limine, Plaintiff seeks to exclude evidence of the following at trial: (1) Plaintiff's past convictions and the circumstances leading to his current imprisonment, (2) Plaintiff's disciplinary history during imprisonment, (3) Plaintiff's grievance history (except the several grievances filed against Defendant) during imprisonment, and (4) Plaintiff's litigation history. ECF No. 127. In his second motion in limine, Plaintiff seeks an order from the Court permitting him to attend trial in civilian attire and without restraints. ECF No. 128.

On April 4, 2016, Defendant filed responses to both of Plaintiff's motions in limine. ECF Nos. 132 & 133. Regarding Plaintiff's first motion, Defendant opposes Plaintiff's motion to exclude to the extent that it is overly broad. ECF No. 132 at 1. Regarding Plaintiff's second motion, Defendant has no objection to Plaintiff being allowed to wear civilian clothes in trial so long as this procedure can be safely coordinated with the South Carolina Department of Corrections (SCDC) and there is no valid security risk deemed by SCDC; however, Defendant states he cannot consent to Plaintiff not wearing restraints and that this decision should be left to SCDC's discretion and judgment.

Having carefully considered Plaintiff's motions in limine and Defendant's respective positions, the Court will reserve its ruling on both motions until closer to trial.

III. Defendant's Motion for a Continuance

On April 4, 2016, Defendant filed a motion for a continuance of the trial in this matter until June 19, 2016. ECF No. 131. Defendant states that his counsel is involved in jury selection for another case in federal court (in Columbia, South Carolina) beginning on May 4, 2016, and that counsel has protection for the week of June 6, 2016 for family vacation. *Id.* at 1.

Having carefully considered Defendant's motion, the Court will grant it and continue the trial in this case until the July 2016 term of court.

Conclusion

For the foregoing reasons, the Court (1) adopts and incorporates by reference the R & R [ECF No. 125] of the Magistrate Judge and **DENIES** Defendant's motion for summary judgment [ECF No. 118]; (2) **RESERVES** its ruling on Plaintiff's motions in limine [ECF Nos. 127 & 128]; and (3) **GRANTS** Defendant's motion for a continuance [ECF No. 131] and **CONTINUES** this case to the July 2016 term of court.

IT IS SO ORDERED.

Florence, South Carolina
April 8, 2016

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