

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

KENNETH CRAIG MILLER,

Plaintiff,

v.

CITY OF EAST MOUNTAIN ET AL,

Defendants.

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Case No. 2:17-CV-00496-JRG-RSP

**ORDER**

Magistrate Judge Roy Payne previously entered two Report and Recommendations. The first Report and Recommendation (Dkt. No. 141) recommended that Defendant’s Motion to Dismiss certain claims under Rule 12(b)(1) and Rule 12(b)(6) (Dkt. No. 94) should be granted in full. The second Report and Recommendation (Dkt. No. 142) was directed to a motion for summary judgment of certain claims against the Individual Defendants on the basis of qualified immunity (Dkt. No. 108), and that Report and Recommendation recommended that the Motion be granted in part. Specifically, the Magistrate Judge recommended the denial of summary judgment for claims of unlawful detention, unlawful arrest, unreasonable seizure of property, and denial of the right to medical care against Defendant Terry Wayne Davis. The Magistrate Judge recommended that all other claims challenged in the summary judgment motion be granted.


Now before the Court are the Plaintiff Kenneth Craig Miller’s Objections (Dkt. No. 147) to the aforementioned Report and Recommendations. Further before the Court is

Defendant Terry Wayne Davis' Objection (Dkt. No. 148) to the Report and Recommendation on Qualified Immunity (Dkt. No. 142).

After reviewing the objected to portions of Magistrate Judge Payne's Report and Recommendations *de novo*, the undersigned finds that both Report and Recommendations should be, and are hereby, ADOPTED. Accordingly, Defendants' Motion to Dismiss certain claims under Rule 12(b)(1) and 12(b)(6) is GRANTED. Further, Defendants' Motion for Summary Judgment based on Qualified Immunity is GRANTED IN PART. The Motion is DENIED for claims of unlawful detention, unlawful arrest, unreasonable seizure of property, and denial of the right to medical care against Defendant Terry Wayne Davis, but the remaining claims that are challenged in the Motion are DISMISSED.

**So Ordered this**

**Mar 27, 2019**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE