

SEP 01 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

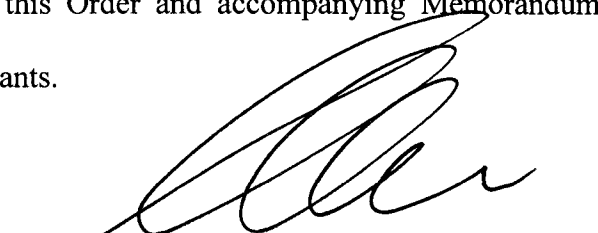
CHARLES J. SMITH, Plaintiff,)	Civil Action No. 7:10-cv-00263
)	
)	
v.)	<u>ORDER</u>
)	
W. DAVIS, <i>et al.</i> , Defendants.)	By: Samuel G. Wilson
)	United States District Judge

In accordance with the accompanying Memorandum Opinion entered this day, it is hereby **ADJUDGED** and **ORDERED** that the defendants' motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. The motion is **DENIED** as to (1) Smith's Eighth Amendment excessive force claims against Davis and (2) Smith's assault and battery claims against Davis in his individual capacities. The defendants' motion for summary judgment is **GRANTED** as to all of Smith's other claims. The Clerk is **DIRECTED** to **TERMINATE** defendants McCowan, McCoy, Tate, Large, Ingle, Ray, Garman, and Trapp as defendants to this action. Therefore, the only remaining defendant to this action is Davis.

The Clerk is **DIRECTED** to set this matter for trial in the Big Stone Gap Division before a seven-member jury.

The Clerk is directed to send copies of this Order and accompanying Memorandum Opinion to Smith and counsel of record for defendants.

ENTER: September 1, 2011


United States District Judge