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

GRIFFIN STROTHER, JR.,	)	CIVIL ACTION NO. 5:02CV00083
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION
	)	
RUSSELL. METCALF, *et al*.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

This matter comes before the court on the defendants' "Motion for Summary Judgment," filed February 10, 2003. The above-captioned civil action was referred to the presiding United States Magistrate Judge for proposed findings of fact, conclusions of law, and a recommended disposition. *See* U.S.C. § 636(b)(1)(B). In his April 16, 2003 Report and Recommendation, Magistrate Judge B. Waugh Crigler rendered to this court a report setting forth findings, conclusions, and recommendations for the disposition of the aforementioned filing. The plaintiff filed timely objections to portions of the Magistrate's Report and Recommendation on April 28, 2003.

The court has performed a *de novo* review of those portions of the Report and Recommendation to which objections were made. *See* U.S.C. § 636(b)(1)(C) (West 1993 and Supp. 2000); FED.R.CIV.P. 72(b). Having thoroughly considered the entire case, all relevant law, and for the reasons stated herein, the court shall GRANT the defendants' Motion for Summary Judgment and DISMISS the case from the docket of the court. Additionally, the court shall

ACCEPT the Report and Recommendation of the Magistrate Judge in its entirety.

I.

The court will rely on the Magistrate Judge's recitation of the facts involved in this matter. On February 9, 2002, Russell L. Metcalf and two other City of Harrisonburg police officers, Sergeant Roy and Officer Aderholz, attempted to serve a warrant on Stephanie Thompson (Thompson) at the plaintiff's residence.[1] Aware that Thompson was wanted by the police, the plaintiff permitted a search of his home, but informed the officers that she was not there. At the conclusion of the search, and without locating Thompson, the officers left the plaintiff's residence. The plaintiff then departed in a taxicab. Metcalf was informed that the taxi picked up a woman matching Thompson's description and, after following the vehicle and observing that a woman was bobbing up and down in the backseat looking out the rear window, he pulled over the taxi.

Many of the events that followed were captured on videotape. (Defs.' Brief Supp. Mot. Summ. J. at Ex. 3[2].) The footage itself is in two separate segments shot from surveillance

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[1] Thompson had been wanted since November 1, 2001, on a parole violation, and the officers had on several occasions been unsuccessful in their attempts to locate her. They approached the plaintiff's residence with the expectation that Thompson likely would flee if she were there, and, in fact, the officers had reason to believe that she had fled into the building adjacent to the plaintiff's residence upon the officers' approach.

[2] Both parties offer their own narrative characterizations of the events captured on video. However, after viewing the footage, the court is of the view that each version is slanted to the party offering it, and that both accounts leave something to be desired. Of course, the court need not rely on the characterization and recollection of events offered by either the plaintiff or Metcalf, though all inferences must be drawn in a light most favorable to the plaintiff. The video speaks for itself.

cameras in two police cruisers. The first segment of footage was filmed by a camera in Metcalf's patrol vehicle; the second segment was filmed by the camera in the back-up patrol vehicle.

The first video segment begins while Metcalf was trailing the subject taxicab, and it ends with the arrest of the plaintiff. The tape discloses that, as the taxi was pulling to a stop, both the front and rear passenger doors of the taxi were opened, and two people immediately jumped out, one of whom was Thompson. Metcalf quickly exited his patrol vehicle, approached Thompson, and led her away from the taxi and out of camera range.[3] The plaintiff then got out of the taxi and proceeded out of camera view in the direction of Metcalf and Thompson. A few seconds later, the plaintiff returned to the taxi and sat down on the back seat, from which position he was apprehended by another officer. He was removed from the vehicle, taken to the ground, and secured.[4]

The second video segment was recorded by a surveillance camera in the back-up patrol vehicle. This vehicle pulled onto the scene after Metcalf had apprehended Thompson, but before the exchange between the plaintiff and Metcalf which forms the basis of this action. Metcalf was in the process of restraining Thompson, who was kneeling on the ground. The plaintiff, who clearly is depicted in the video as head-and-shoulders taller than Metcalf, rapidly moved toward

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[3] In the parties' statement of the facts, it is evident that Thompson exited the taxi as it stopped. Metcalf pursued Thompson, and though accounts vary as to whether he forced her to the ground or whether she went to the ground as a consequence of attempting to pull free of the him, there is no dispute that Metcalf ultimately controlled Thompson with a basic two-hand grip.

[4] Besides the plaintiff and Thompson, the taxi driver and another passenger also are shown exiting the taxi. Neither of these individuals played a role in the events which form the gravamen of the plaintiff's Complaint.

Metcalf and Thompson. While standing virtually over the Officer, the plaintiff leaned closer to Metcalf, shouting and gesticulating to the him while he was in the process of executing an arrest of Thompson. The words the plaintiff spoke are not clearly discernable, but appeared to challenge the Officer's authority or at least call his conduct into question. As this was occurring, Metcalf released his two-hand grip on Thompson, turned to face the plaintiff, and then struck the plaintiff with a single blow in the vicinity of his face, neck, and right shoulder. The plaintiff recoiled only slightly, then he turned and immediately returned to the taxi, where he was arrested. The entire encounter between the plaintiff and Metcalf was very brief, lasting only a matter of seconds. The plaintiff premises his excessive force claim on the single blow thrown by Metcalf under the circumstances captured on the videotape.

II.

A party is entitled to summary judgment when the pleadings and discovery show that there are no genuine issues as to any material fact, and that the moving party is entitled to judgment as a matter of law. FED.R.CIV.P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[S]ummary judgment ... is mandated where the facts and the law will reasonably support only one conclusion." *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 279 (4th Cir. 2000) (quoting *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 356 (1991)). If the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party, then there are genuine issues of material fact. *See Anderson*, 477 U.S. at 248. All facts and inferences shall be drawn in the light most favorable to the non-moving party. *See Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*, 202 F.3d 223, 227 (4th Cir. 2000). Guided by these principles, the Magistrate

Judge recommended that this court GRANT the defendants' Motion for Summary Judgment.

III.

In his Report and Recommendation, Magistrate Judge Crigler concluded that Officer Metcalf is entitled to qualified immunity as a matter of law. Accordingly, the Magistrate Judge recommended that the court grant the defendants' Motion for Summary Judgment. Plaintiff Strother, however, argues that summary judgment should not be granted because "there are genuine issues of material fact" to be decided by the jury. Plaintiff's Objections, page 1.

First, to the extent that the plaintiff suggests that any determination of qualified immunity is for the jury, he is incorrect as a matter of law. It is well settled that qualified immunity is to be determined by the court and is "an entitlement not to stand trial or face the other burdens of litigation." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). "Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive." *Saucier v. Katz*, 533 U.S. 194, 200 (2001). To that end, the issue of qualified immunity is properly before the court.

Qualified immunity shields government officials performing discretionary functions from civil liability to the extent that their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Henderson Amusement, Inc. v. Good*, 2003 WL 932463 (4th Cir. 2003) (UP) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To assess the merits of a claim of qualified immunity, the court employs a two-step analysis. *Saucier*, 533 U.S. at 200. The first inquiry must be whether a constitutional right would have been violated on the facts alleged. *Id.* at 200. If the court determines that the plaintiff has

failed to allege a violation of an actual constitutional right, the inquiry ends. If, however, the plaintiff has properly alleged the violation of the constitutional right, the court must then determine whether the right was clearly established at the time of the alleged violation. *Wilson v. Layne*, 526 U.S. 603, 609 (1999).

Put differently, if it is undisputed that the right allegedly violated was clearly established at the time of violation, the defendant asserting a qualified immunity defense may still be immune from damages for violation of that right if, under the circumstances, a reasonable officer could have believed that his particular conduct was lawful.[5] A court must make an objective, although fact-specific, inquiry into the legal reasonableness of the conduct. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987); *see also Crawford-El v. Britton*, 523 U.S. 574, 588 (1998) ("a defense of qualified immunity may not be rebutted by evidence that the defendant's conduct was malicious or otherwise improperly motivated [because] [e]vidence concerning the defendant's subjective intent is simply irrelevant to that defense.").

Turning to the first inquiry under the *Saucier* test, the court considers the reasonableness of the force used by Officer Metcalf under the circumstances present at the time the event occurred. The second prong addresses Metcalf's perceptions or knowledge of the state of the law at the time of the incident, regardless of whether the force used is determined to be reasonable. Thus, as the Magistrate Judge explained, the court "should inquire both into the substantive

[5] In other words, qualified immunity protects a pubic official in the discharge of his duties except where a reasonable official would know that the conduct at issue violated clearly established constitutional rights. *Torchinsky v. Siwinski*, 942 F.2d 257, 261 (4th Cir. 1991).

circumstances surrounding the use of force and the legal perceptions or the evaluations of the defendant at the time force was used." Report and Recommendation, page 7.

Fortunately, the incident giving rise to plaintiff Strother's cause of action was captured on videotape. Of particular importance is the portion of the videotape that shows the plaintiff, who is much taller than Officer Metcalf, rapidly moving toward Metcalf and Thompson while wildly gesticulating. It is clear, despite defense counsel's contention to the contrary, that the plaintiff was verbally challenging Metcalf's authority. The video speaks for itself. "No reasonable police officer, or reasonable person for that matter, could have interpreted [the] plaintiff's conduct as anything but threatening." *Id*. To that end, that Officer Metcalf perceived imminent physical danger clearly is reasonable, and the single blow used to fend off the much larger plaintiff, as a matter of law, was far from excessive under the circumstances. No reasonable trier of fact could find differently. Accordingly, Metcalf is entitled to qualified immunity because the plaintiff has failed to prove that he was deprived of an actual constitutional right in the first instance.

Although such a finding renders moot any further inquiry under *Saucier*, the court, in the interest of completeness, will address the second prong of the qualified immunity test. The second prong requires the court to determine "whether [the violation of the constitutional right] was clearly established at the time of the alleged violation." *Wilson v. Layne*, 526 U.S. 603, 609 (1999)*; see also*, *Saucier*, 533 U.S. at 205. First, there is no clearly established rule or law prohibiting the officer from subduing a menacing citizen with a single blow, especially given the circumstances present here. Metcalf, therefore, could not reasonably have believed himself to

have been in violation of established law governing the use of force.

Moreover, under *Saucier*, if an officer correctly perceives all of the relevant facts but has a mistaken understanding as to whether a particular amount of force is legal in those circumstances, qualified immunity can still attach. *Saucier*, 533 U.S. at 206. Therefore, assuming, *arguendo*, that Metcalf's conduct had been sufficient for a jury to find excessive force, his actions, nonetheless, would meet the reasonableness standard under the second prong of the qualified immunity test. As a matter of law, Metcalf's actions were "not so excessive as to exceed his reasonable expectation that he was acting within the bounds of the law." Report and Recommendation, page 8. Accordingly, the defendant is entitled to qualified immunity as matter of law on both prongs of the *Saucier* analysis. The plaintiff's objections to the Report and Recommendation, therefore, shall be OVERRULED.

IV.

Because neither the plaintiff nor any of the defendants filed timely objections to the Magistrate Judge's recommended dispositions as to the other issues before the court, there is no reason for the court to address the issues. In the interest of completeness, however, the court notes that having thoroughly reviewed the entire case and all relevant law, the court is in complete agreement with the Magistrate Judge's analysis. For the reasons articulated in the Magistrate's Report and Recommendation, the court shall GRANT the City of Harrisonburg's Motion for Summary Judgment and GRANT the defendants' Motion for Summary Judgment on the plaintiff's state law assault and battery claim.

V.

For the reasons articulated herein, the court shall GRANT the defendants' February 10, 2003 Motion for Summary Judgment in its entirety and DISMISS the plaintiff's action. Additionally, the court shall OVERRULE the plaintiff's objections to the Magistrate Judge's Report and Recommendation. The court shall ADOPT the Magistrate Judge's Report and Recommendation in its entirety. The court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and argument would not aid in the decisional process.[6] An appropriate Order shall this day enter.

The Clerk of the Court hereby is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

_____
Senior United States District Judge

_____
Date

[6] Pursuant to *U.S. v. Raddatz*, 447 U.S. 667, 674 (1980), the district court is not required to rehear testimony on which the magistrate judge based his findings and recommendations in order to make an independent evaluation of credibility. Specifically, the Supreme Court found that "[w]e find nothing in the legislative history of the statute to support the contention that the judge is required to rehear the [arguments] in order to carry out the statutory command to make the required 'determination.'"

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Plaintiff,	)	
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v.	)	ORDER
	)	
RUSSELL. METCALF, *et al*.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED and DECREED

as follows:

(1) The "Plaintiff's Objections to Report and Recommendation of Magistrate Judge," filed April 28, 2003, shall be, and they hereby are, OVERRULED;

(2) The Magistrate Judge's "Report and Recommendation," filed April 16, 2003, shall be, and it hereby is, ACCEPTED and ADOPTED in its entirety;

(3) The defendants' "Motion for Summary Judgment," filed February 10, 2003, shall be, and it hereby is, GRANTED in its entirety. The case shall be, and it hereby is, DISMISSED from the docket of the court.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the

accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

_____
Senior United States District Judge

_____
Date