

*Miller v. City of East Mt.*

United States District Court for the Eastern District of Texas, Marshall Division

March 27, 2019, Decided; March 27, 2019, Filed

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

**Reporter**

2019 U.S. Dist. LEXIS 51390 \*; 2019 WL 1385303

KENNETH CRAIG MILLER, Plaintiff, v.  
CITY OF EAST MOUNTAIN ET AL,  
Defendants.

Hanger LLP - Dallas, Dallas, TX.

**Judges:** RODNEY GILSTRAP, UNITED  
STATES DISTRICT JUDGE.

**Prior History:** *Miller v. City of E. Mt.,  
2019 U.S. Dist. LEXIS 51950 (E.D. Tex.,  
Mar. 12, 2019)*

**Opinion by:** RODNEY GILSTRAP

**Opinion**

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**Counsel:** [\*1] For Kenneth Craig Miller,  
Plaintiff: David Martin Diaz, Andrew Ross  
Korn, Korn & Diaz, LLP, Dallas, TX.

For City of East Mountain, Defendant:  
Victoria White Thomas, LEAD  
ATTORNEY, Nichols Jackson Dillard  
Hagar and Smith LLP, Dallas, TX;  
Christopher A Klement, Cantey Hanger  
LLP - Dallas, Dallas, TX; Kirk Allen  
Kennedy, The Kennedy Firm, Dallas, TX.

For Betty Davis, also known as Callie  
Blake, also known as Betty Diane Davis,  
also known as Betty D. Davis, also known  
as Betty Wilcox Davis, also known as Betty  
Charlson Davis, also known as Betty  
Charlson, Defendant: Darrell G-M Noga,  
LEAD ATTORNEY, Christopher A  
Klement, Melinda Faith Louque, Cantey  
Hanger LLP - Dallas, Dallas, TX.

For Terry Wayne Davis, also known as  
Terry Davis, Defendant: Darrell G-M Noga,  
LEAD ATTORNEY, Christopher A  
Klement, Melinda Faith Louque, Cantey

**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 [\*2] (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 [\*3] 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**

/s/ Rodney Gilstrap

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE