

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOHN F. GREENE,
Plaintiff-Appellant,

v.

HOLLAWAY, Deputy,
Defendant-Appellee,

and

LOUDOUN COUNTY SHERIFF'S
DEPARTMENT; STEVE SIMPSON,
Sheriff,

Defendants.

No. 01-7221

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
David G. Lowe, Magistrate Judge.
(CA-98-629-3)

Submitted: January 31, 2002

Decided: February 28, 2002

Before WILKINS and TRAXLER, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

John F. Greene, Appellant Pro Se. Alexander Francuzenko,
O'CONNELL & O'CONNELL, Rockville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

John F. Greene appeals the magistrate judge's order granting judgment¹ for Loudoun County Sheriff's Deputy K.W. Hollaway² in Greene's civil rights action under 42 U.S.C.A. § 1983 (West Supp. 2001). Greene alleged Hollaway used excessive force by spraying Greene with oleoresin capsicum spray ("pepper spray") during a jail lock-down procedure. Initially, we conclude the magistrate judge did not plainly err in failing to secure the presence of witnesses subpoenaed by Greene. *United States v. Olano*, 507 U.S. 725, 732 (1993); *Johnson v. Hubbard*, 698 F.2d 286, 288-89 (6th Cir. 1983). Further, the magistrate judge did not err in concluding, after hearing testimony from Greene and Hollaway, that Hollaway did not violate Greene's constitutional rights or, in the alternative, that Hollaway was entitled to qualified immunity. *Anderson v. City of Bessemer City*, 470 U.S. 564, 575-74 (1985); *Brown v. Gilmore*, ___ F.3d ___, No. 01-1749, slip op. at 8 (4th Cir. Jan. 23, 2002). Accordingly, we affirm the judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

¹The parties consented to proceed before a United States magistrate judge, pursuant to 28 U.S.A. § 636(c).

²The record refers to the spelling of defendant's last name as both "Hollaway" and "Holloway." For consistency, we have adopted the spelling used by the district court on its docket report.