

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-CMA

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS (In their (sic) Individual Capacity only),

Defendants.

**DEFENDANT JASON SHUTTERS' MOTION TO STAY DISCOVERY PURSUANT TO
FED.R.CIV.P. 26(c)(1) PENDING DETERMINATION OF QUALIFIED IMMUNITY**

Defendant Jason Shutters, through his Attorneys Hall & Evans, LLC, submits the following as his Motion to Stay Discovery Pursuant to Fed.R.Civ.P. 26(c)(1) Pending Determination of Qualified Immunity, and in support states as follows:

D.C.Colo.7.1(A) Duty to Confer

Based on information and belief, Plaintiff is a *pro se* incarcerated prisoner, therefore, no duty to confer exists pursuant to the applicable Rules.

I. INTRODUCTION

Plaintiff filed the present matter generally alleging a violation of his Constitutional rights when he was arrested, tried, and subsequently convicted for sexual assault. The Court identified and dismissed most of Plaintiff's claims. The remaining allegations

against Fort Collins Police Detective Jason Shutters, attempts to set forth claims for excessive force¹ and unreasonable search and seizure².

On September 13, 2017, Detective Shutters filed a Motion to Dismiss (ECF No. 43). The Motion argues for dismissal of the remaining allegations purportedly set forth in Plaintiff's Complaint, pursuant to the doctrine of qualified immunity, and failure to follow Federal pleading standards. Pursuant to the applicable case law and to promote judicial efficiency, Detective Shutters requests that discovery in this matter be stayed pending resolution of the qualified immunity issue raised in his Motion to Dismiss.

II. ARGUMENT

The doctrine of qualified immunity was created to permit the resolution of claims against government officials before subjecting them “to either the costs of trial or to the burdens of broad-reaching discovery in cases where the legal norms the officials are alleged to have violated were not clearly established at the time.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982). The central purpose behind qualified immunity is to afford public officials immunity from suit and to “protect them from undue interference with their duties, and from potentially disabling threats of liability.” *Elder v. Holloway*, 510 U.S. 510, 514 (1994) citing *Harlow*, 457 U.S. at 806.

Qualified immunity is not only a defense to liability, but also an entitlement to immunity from suit and other demands of litigation. *Workman v. Jordan*, 958 F.2d 332,

¹ Identified as Claim 2(a)(iii).

² Identified as Claim 2(b).

336 citing **Siegert v. Gilley**, 500 U.S. 226, 230 (1991). The purpose of the qualified immunity doctrine has caused the Supreme Court to stress the “importance of resolving immunity questions at the earliest possible stage in the litigation.” **Hunter v. Bryant**, 502 U.S. 224, 227 (1991). “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, 200-201 (2001). “[W]hen a case can be dismissed on the pleadings or in an early pre-trial state, qualified immunity also provides officials with the valuable protection from ‘the burdens of broad-ranging discovery.’” **Johnson v. Fankell**, 520 U.S. 911, 915, ftnt. 2 (1997) citing **Harlow**, 457 U.S. at 818.

To overcome a claim of qualified immunity, the plaintiff first must establish “that the defendant’s actions violated a constitutional or statutory right.” **Albright v. Rodriguez**, 51 F.3d 1531, 1534 (10th Cir.1995); **Wilson v. Layne**, 526 US. 603, 609 (1999). He must come forward with specific facts establishing the violation. **Taylor v. Meacham**, 82 F.3d 1556, 1559 (10th Cir.1996).

If Plaintiff shows a violation of a constitutional or statutory right, he must demonstrate that the right was clearly established at the time of Defendants’ alleged unlawful conduct. **Albright**, 51 F.3d at 1534. “Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.” **Medina v. City and Cnty. of Denver**, 960 F.2d 1493, 1498 (10th Cir.1992), citing **Stewart v. Donges**, 915 F.2d 572, 582–83, n.14 (10th Cir. 1990). There

must also be a substantial relationship between the conduct in question and prior law that establishes that a defendant's actions were clearly prohibited. **Hilliard v. City & Cnty. of Denver**, 930 F.2d 1516, 1518 (10th Cir. 1991) citing **Hannula v. City of Lakewood**, 907 F.2d 129, 131 (10th Cir. 1990).

Clearly prohibited or “[c]learly established’ for purposes of qualified immunity mean that ‘the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing [sic] law the unlawfulness must be apparent.’” **Wilson v. Layne**, 526 U.S. 603, 614–15 (U.S. 1999) citing **Anderson v. Creighton**, 483 U.S. 635, 639–40 (1987). The plaintiff need not establish a “precise factual correlation between the then-existing law and the case at hand” **Patrick v. Miller**, 953 F.2d 1240, 1249 (10th Cir.1992) citing **Snell v. Tunnell**, 920 F.2d 673, 699 (10th Cir. 1990).

In civil rights cases, a defendant's unlawful conduct must be demonstrated with specificity, however. **Davis v. Gracey**, 111 F.3d 1472, 1478 (10th Cir. 1997). To promote judicial efficiency, “discovery should not be allowed until the court resolves the threshold question whether the law was clearly established at the time the allegedly unlawful action occurred”. **Workman**, 958 F.2d at 336 citing **Siegert**, 500 U.S. 230.

As a public officer for the City of Fort Collins, Detective Shutters is entitled to qualified immunity. The point is further established by the Motion to Dismiss filed on his behalf, wherein the remaining claims against Defendant Shutters are challenged.

Initiating a stay of the matter until resolution of this threshold question, affords Detective Shutters protection from the otherwise liberal discovery rules.

The policies behind qualified immunity will be subverted in the instant case if discovery is conducted before a determination is made by the Court. It would be inefficient to require discovery by any party before the Court determines whether Detective Shutters will be dismissed.

III. CONCLUSION

Accordingly, in the interest of judicial economy and to comply with the important policies underlying the doctrine of qualified immunity, Detective Shutters requests that the Court stay all activity pending disposition of his Motion to Dismiss, determining whether he is entitled to qualified immunity.

WHEREFORE, for all the foregoing reasons, Defendant Jason Shutters, respectfully requests entry of an order staying all activity pending resolution of Defendant's Motions to Dismiss and for entry of all other relief as this Court deems just and proper.

Dated this 18th day of September 2017.

HALL & EVANS, L.L.C.

/s/Mark S. Ratner _____

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 18th day of September 2017, I served via email the foregoing **DEFENDANT JASON SHUTTER'S FIRST MOTION FOR EXTENSION OF TIME TO SUBMIT A RESPONSE TO PLAINTIFF'S COMPLAINT (ECF No.9)** to the following:

Plaintiff:

Chayce Aaron Anderson, #175290
Arkansas Valley Correctional Facility
12790 Hwy. 96 at Lane 13
Ordway, CO. 81034

s/ Rochelle Gurule
Legal Assistant to Mark S. Ratner, Esq.
Of Hall & Evans, LLC