

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 22 2018
JEFFREY P. COLWELL
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

CARA BOXBERGER in her individual capacity,
JASON SHUTTERS in his individual capacity,

Defendants.

PLAINTIFF CHAYCE A. ANDERSON'S FORMAL OPPOSITION
MOTION TO DEFENDANT'S AMENDED MOTION TO DISMISS
THE SECOND AMENDED PRISONER COMPLAINT
(S. A. P. C (ECF No. 61)).

HERE COMES, Chayce A. Anderson, the above mentioned Plaintiff, proceeding in the form of "Pro Se" accordingly. Mr. Anderson respectfully, humbly and dutifully submits to this Honorable, Respectable and Just Court, the following enclosed timely motion. This motion is respectfully compiled by February 12th, 2018, and should be considered timely due to being filed before the Court-issued extended filing deadline of February 15th, 2018. This motion is filed as a "Formal Opposition Motion" to Defendant Shutter's amended "Motion to Dismiss" the ~~remaining~~ remaining applicable claims in the S. A. P. C.

This motion is preceded by two relevant references of text found within the S.A.P.C. The first important or significant reference lies within Claim Two, (ECF No. 61 at 24): "The Court should deny any defenses of qualified immunity, noting that no reasonable law enforcement officer would have thought it permissible to physically harm someone when they were not resisting." Since Claim Two occurred before Claim One chronologically, The Court should deny any defenses of qualified immunity, noting that no reasonable-minded law enforcement officer would of thought it permissible to cause further injuries to an individual subjected to the mercies and whims of their captor, by intentionally executing a Court-Order outside the scope of the warrant itself. Was it reasonable to perform a very invasive and intrusive examination in the physical presence of an unauthorized member of the General Public? Was it reasonable to conduct such examination publically in an Emergency Room, when Defendant's Shutter's actions led to Mr. Anderson being placed in the E.R. in the first place? Is it reasonable to violate a U.S. Citizen's constitutional rights, when those violations occurred outside the scope or grounds set forth in the Court-Order itself? Was it reasonable to not conduct the examination in the standard private room at Police Headquarters, which is specifically set aside for these exams, but rather conduct the exam publically?

Do any of the 9 Court-Orders in Defendant's Exhibit A lay any grounds or authorization for the M.S.A.K. examination to be performed in the physical presence of an unauthorized non-law enforcement member of the General Public? The Court should carefully consider these questions in regard to the qualified immunity defenses, in order to render a just ruling. Mr. Anderson believes the correct answer to all of these questions is respectively NO.

The second important or significant reference to the S.A. P.C. is the final page of the Introduction / Preface (ECF No. 61 at 14): "The Plaintiff, Chance Aaron Anderson, DOES NOT dispute the actual legality of the "Court Order For Non-Testimonial Identification" that was issued by the Honorable Judge C. Michelle Brinegar. This order was indeed issued based upon the determination of probable cause by Judge Brinegar herself. Mr. Anderson does not contest the legality of the Order itself. The Court Order was legally issued.

HOWEVER, Mr. Anderson DOES challenge the execution of the Order by the Affiant, Jason Shuttles. Defendant Shuttles conducted the application of the Order unlawfully when he executed, or allowed the execution of this Order, to be performed in the actual, physical presence of an unauthorized member of the General Public." (Please Read Rest of Page 14, ECF No. 61)...

This^{is} meant to convey to the residing Court's Judicial Oversight that the S.A.P.C. specifically addressed Judge Brinegar's Court Order, and her determination of probable cause. The core element of Defendant's qualified immunity ~~tests~~ defense rests heavily upon the above facts. The "Motion to Dismiss" does not bother to acknowledge whether or not the execution of the Order was within the bounds of the warrant, legal, or even constitutional to begin with. Rather, the argument is; Well, Judge Brinegar issued a legal Court-Order with a legal determination of probable cause, therefore Defendant Shutter's actions are protected by qualified immunity, because the Judge's actions were legal, so therefore the Defendant's choice to excessively exceed the Court is legal, it must be legal, because the Judge gave me authority to do^{so}. If the Court references Exhibit A, Judge Brinegar granted no authority to either conduct the M.S.A.K. in a public matter, nor any authority to strip Mr. Anderson naked in the presence of an unauthorized member of the public.

The "Motion to Dismiss" states, "As alleged in Plaintiff's Second Amended Complaint, the male sexual assault kit was administered on or about September 2, 2015." This is false. To quote the S.A.P.C., "This Constitutional violation occurred approximately during the grave-yard shift at P.V.H. on the late evening of August 29th, 2015, and/or the early morning of August 30th, 2015." (ECF No. 61 at 22). Opposing Counsel apparently is

unaware of the difference between the actual time and place of the constitutional violation and the time of the Return of Court Order. It also appears that ~~Opposing~~ Opposing Counsel is attempting to distract the Court's attention from the constitutional violations by submitting Exhibit B and Exhibit C. Mr. Anderson would object to the admittance of Exhibit B and Exhibit C as "irrelevant." The Original Filing had a claim temporarily barred without prejudice for Defendant Shutter's commitment of Perjury in Exhibit B. It is inappropriate and irrelevant to provide a false and perjured affidavit to this Court. Exhibit A alone contains the original scope of the Warrant.

Qualified Immunity protects all governmental officials from performing discretionary functions from civil liability as long as their conduct does not violate clearly established Constitutional rights of which a reasonable person would have known. A reasonable person would have known that Mr. Anderson's 4th Amendment Constitutional Right to be secure against Unreasonable Searches and Seizures ^{existed at the time of, during, and after his arrest.} A reasonable person (or reasonable law enforcement officer) would have known that the stripping naked of a detained person in front of any member of the General Public is unreasonable, inappropriate, and violative in nature. This analogy is heightened further when considering that the invasive and intrusive examination was performed in the visible sight and presence of a homosexual. Was it reasonable for Defendant

shutters to allow Mr. Anderson, a detained person in his custody, to have his penis touched by a man while a homosexual watched? Would a reasonable person have known that this was inappropriate? The answers lend credence to the degree of unreasonableness...

To quote the "Motion to Dismiss," "When a defendant pleads the defense of qualified immunity, a plaintiff bears a heavy two-part burden of proving (1) that the defendants' actions violated a constitutional right, and (2) that the right was clearly established at the time of the conduct at issue." To quote the S.A.P.C., "Mr. Anderson's Fourth Amendment rights existed before, during, and after issuance of this Court Order" (ECF No. 61 at 21). Defendant Shutter's actions as alleged in Claim One clearly violated Mr. Anderson's Fourth Amendment constitutional rights, and those rights were clearly established at the time of the conduct at issue. WHEREHERE, the motion to dismiss does not even mention the Fourth Amendment. Nor does the motion argue that the Court Order allows circumvention of the 4th Amendment rights, even as temporarily an excursion as that. AND the original Court Order (Exhibit A) itself does not specifically allow Mr. Anderson's 4th Amendment's rights to be violated by performing the M.S.A.K. publically, nor does the Court specifically issue Orders allowing an unauthorized member of the public to be present during the examination...

Regarding "To survive dismissal, the plaintiff must show that the right was 'clearly established' in a 'particularized' sense. For a right to be 'particularized,' there must ordinarily be a Supreme Court or Tenth Circuit decision on point, or 'clearly established weight of authority' from other courts." Opposing Counsel wants me to find the needle in a haystack. Finding another case with a M.S.A.K. exam may not exist. This case may be a first precedent... However, there are numerous applicable 4th Amendment decisions or case law that would apply to this case. Mr. Anderson would like to provide proper citations, but he is delimited in his access to even a law kiosk...

~~Opposing~~ ^{Opposing} Counsel states, "Plaintiff cannot establish that any actions taken pursuant to the Order, including the means and methods of executing the male sexual assault kit, were somehow unreasonable and in violation of any Constitution right. Defendant Shuttles is there entitled to qualified immunity for his actions." The Court should note that Shuttles' actions were not taken pursuant to the Order, as his actions violated the Order when he violated Mr. Anderson's 4th Amendment rights intentionally, in excess of the terms and conditions of the Order itself. Defendant Shuttles is not entitled to qualified immunity. His unreasonable choice to strip me naked in the presence of a member of the general public bars such a defense.

Opposing Counsel states, "Plaintiff does not allege in anything other than in a conclusory fashion, that the search incident to the Court's Order for Non-Testimonial Evidence, was somehow unreasonable." This is false. And "As argued above, the Plaintiff does not allege a Constitutional violation, as any search or seizure was conducted pursuant to a Court Order and a determination of probable cause. Merely arguing that Defendant shutters violation the scope of the Court Order is conclusory, and therefore insufficient to overcome a Motion to Dismiss." This is also false, and quite conclusory itself. Please reference Claim One and Claim Two. (ECF No. 61 at 21-24). Regarding the conclusory allegation, the following citation is used by Opposing Counsel: "To state a claim, a Federal complaint must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." The short and plain statement of Claim One from the S.A.P.C. is the first sentence, "Defendant Shutters violated Mr. Anderson's Fourth Amendment right when he authorized or executed a M.S.A.K. examination to be performed on Mr. Anderson in an emergency room (E.R.) at the Poudre Valley Hospital in affrontment of an 'unauthorized' member of the general public." The grounds upon which it rests is the

(((Grounds for Claim Two are also derived from Fourth Amendment Rights!)))

Fourth Amendment, and further grounds are mentioned throughout the rest of Claim One (ECF No. 61 at 21-22).

"To recover on an excessive ~~forth~~ force claim involving handcuffing, 'a plaintiff must show that the officers used greater force than would have been reasonably necessary to affect a lawful seizure, and some actual injury caused by the unreasonable seizure that is not de minimis, be it physical or emotional' and 'Factors to be considered when reviewing a complaint based on handcuffing and excessive force include the manner in which the Plaintiff was handcuffed.'"

Claim Two in the S.A.P.C. mentions two ways that the Defendant Shuttlers used greater force than would have been reasonably necessary to affect a lawful seizure: (1) Overcranking Handcuffes, & (2) Not properly locking the handcuffes, which prevents cuffs from self-tightening... Mr. Anderson mentions both physical and emotional injuries in detail (ECF. No. 61 at 23). The manner in which Mr. Anderson was handcuffed is detailed at the bottom of Pg. 23, where he explains how he cooperated with Srg. Kochran prior to Shuttlers arrival, and that he did not resist, run, or flee. All events that occurred prior to the overly aggressive Application of Handcuffes. For these main reasons, the motion to dismiss Claim Two should fail.

In ~~additionat~~ addition, Mr. Anderson explains in detailed plain, ^{and simple language} ~~simple and~~ sequenced events that occurred between Claim Two and Claim One that paint a picture of Shutter's unreasonable actions prior to his unreasonable choice to strip Mr. Anderson naked in front of a member of the General Public in Claim One (See ECF No. 61 at 24). These allegations connect to the excessive force claim due to Shutter's "attempt to cover up his abusive actions." They are also relevant to the extent of emotional and physical injuries. Even the Introduction/Preface of the S.A.P.C. states, "Defendant Shutter's caused further 'actual, compensable injury' by aggressively applying handcuffs to Mr. Anderson. This was an unnecessary form of excessive force that resulted in swelling and bruising in Mr. Anderson's wrists." (ECF No. 61 at 13).

This motion will not address Claim Three or section C of the "Motion to Dismiss."

Defendant Shutter's wishes to dismiss Claim Five, in accordance with the Colorado Governmental Immunity Act ("C.G.I.A."). Stating that there is no specific statutory waiver for such a claim, and that it is the Plaintiff's burden to establish such a waiver. Without access to the actual Act, or even a copy of the ("C.G.I.A."), or even reasonable access to a law kiosk, Mr. Anderson will proceed in the best of his ability to properly address this element of the "Motion to Dismiss."

The "Motion to Dismiss" states "Plaintiff makes insufficient allegations against Defendant Shuttles to ever meet his obligation regarding any attempt to assert a claim grounded in willful and wanton behavior, enough to overcome the protections of the ("C.G.I.A.")

To quote the S.A.P.C., "Boxberger's and Shuttles actions caused Mr. Anderson to re-live long-ago settled events of the past that were very traumatizing to him. Mr. Anderson contends that this was done maliciously to him by Boxberger and Shuttles intentionally to punish him for the past. Their actions caused Mr. Anderson to want to physically harm himself, or re-live the urge or desire to die. Mr. Anderson struggles to find the words to properly explain the psychological damage and mental anguish that he suffered as a result of the defendant's reckless and careless actions. This caused the plaintiff to be humiliated, ostracized, and segregated. This treatment was unconstitutional, and violated the plaintiff's privacy."

It is important that the Court knows that Defendant Shuttles was the lead detective investigator that harassed my family in 2009 CR case file. His actions in 2009 were what primarily led to Mr. Anderson's suicide attempt as a child, and his commitment to Mountain Crest Mental Hospital as a child.

Defendant Shuttars acted in actual malice, and in the actual form of willful and wanton behavior, when he intentionally punished Mr. Anderson for the past. Is a detective protected by Government Immunity when his actions are connected to a 6-year prior closed criminal case? As well, the public exposing of Mr. Anderson's victimization as a child without his consent, and at the same time depicting him as having been convicted of the same crime that he was a victim of, without ever being convicted, over 6-years after the past case was sealed was an "Intentional Infliction of Emotional Durrress/Distress." Waiver was established when Defendant Shuttars acted as an individual, and not as an agent of the Government. "C.G.I.A." should not apply due to Shuttars not actively investigating 2004CR, and the case is sealed, yet he intentionally punished Mr. Anderson in connection with a closed case file.

Regarding "Due Process", Opposing Counsel states in the introduction: "The Second Amended Complaint also appears to set forth a claim involving "Due Process", although no specifics are provided in the Amended Complaint." This is false. Due Process is mentioned multiple times in the S.A. P. L. (ECF No. 61 at 1, 2, 9, 10, 29...) I believe that Opposing Counsel is only referring to Claim Five.


Mr. Anderson in good faith in Claim Five attempted to attach the claim to "Due Process" in plain, simple, and direct language. Was Mr. Anderson afforded reasonable access to either notice or opportunity for an appropriate hearing prior to the deprivations ~~occurred~~ ^{occurring?} The root requirement of the Due Process Clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest."

Defendant Shutter's actions were connected to a closed case. Mr. Anderson was deprived of any reasonable opportunity for a hearing. Defendant Shutter personally participated in the deprivations due to any reasonable-minded detective would have known better than to intentionally inflict emotional distress on an individual in a closed case, a 6 year closed case. He personally participated in the spread of confidential information to "unauthorized persons."

WHEREFORE, Mr. Anderson would respectfully request that the Court not dismiss the S.A.P.C. Please forgive any typos, and know that this motion was filed in "rush" with no reasonable access to a Law Kiosk. As always, Mr. Anderson will defer to the wise and just judgment of this Court.

Humbly Submitted this 12th Day of February 2018.

Sincerely, 13

X  02/12/18
Chayce Aaron Anderson