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.

FORMAL OBJECTION #2 TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (Doc. #85)(Magistrate JUDGE SCOTT T. VARHOLAK'S Second Recommendation MOTION/ORDER.)

The "RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE" was filed in U.S.D.C. on April 2nd, 2018. This would toll the fourteen days rule being due by April 16th, 2018. However, Mr. Anderson was not served with service of a copy of this recommendation until Saturday, April 7th, 2018; which would toll the fourteen days rule being due by April 21st, 2018. This Formal Objection Motion #2 is composed or formulated on Friday, April 13th, 2018. In conjecture with this motion is a Motion for Appointment of Pro Bono Counsel #3, which was finished on Thursday, April 12th, 2018. Elements of that motion may respectively apply to the legal determination of this objection motion.

Therefore, this objection motion should be considered a "timely objection." Both motions will be submitted to Larimer County Jail to be mailed by Jail staff, but most likely the Jail will not process mail until Monday, April 16th, 2018. Delay in receiving and sending mail is an element out of Mr. Anderson's control. Although Mr. Anderson tries to plan accordingly by submitting motions several days before filing deadlines, Mr. Anderson needed to utilize the full fourteen days here, and the 1st Deadline ended right after a weekend, which the Jail staff does not process mail outgoing over weekends...

For purposes of preservation of elements for any applicable appellate review, Mr. Anderson offers forward "Pro Se" a formal objection motion #2 to oppose the recommendation only partially in regards to the recommendations to dismiss Claim One, and Claim Five as asserted against Defendant Shutters. Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the magistrate judge's proposed findings and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b); Griego v. Padilla (In re Griego), 64 F.3d 580, 583 (10th Cir. 1995). This motion is meant to be both timely and specific to preserve each issue for de novo review by the district court or for appellate review. See. United States v. 2121 East 30th Street, 73 F.3d 1057, 1060 (10th Cir. 1996). Also, See., Moralez-Fernandez v. INS,

418 F.3d 1116, 1122 (10th Cir. 2005)(holding that firm waiver rule does not apply when the interests of justice require review). Where the interests of justice would prevail on a claim without formal objection Mr. Anderson would respectively DEFER. The following formal objections are meant to preserve elements for an appeal, and the following legal argument is filed without access to a Law Kiosk:

The first formal objection applies to the recommendation in regard to claim One. No where in the recommendation is the fact that the nurse was a homosexual mentioned. As well, this nurse was an employee of Poudre Valley Hospital's E.R., not an employee of law enforcement. The determination of lawful "medical supervision" cannot be legally reached for these reasons. "Medical Supervision" would apply to a specially trained law enforcement officer, Detective Neil. If law enforcement would have utilized medical supervision of the M.S.A.K. in the form of a sit-in nurse (which is not allowed due to the intrusive and invasive nature of examination), then law enforcement officers would have used a nurse employed by and approved by law enforcement. That is not the case here. In accordance with Police Policy in a specific effort to protect constitutional civil rights, M.S.A.K.'s are performed exclusively in a private room set apart at the police station for this very purpose... Mr. Anderson's M.S.A.K. exam was performed publically, not privately.

Poudre Valley Hospital has an active policy that involves sit-in nurses to be present with all E.R. patients, so no individual, including law enforcement to be left alone with an E.R. patient. The purpose of the nurses presence was to prevent liability to the Hospital, and the presence of a nurse was serving P.V.H.s policies, not serving any law enforcement purpose. No member of the general public is specifically authorized to be present during a M.S.A.K. examination. As well, the Recommendation states, "Moreover, the Second Amended Complaint alleges that Plaintiff was in the emergency room because he needed medical attention." (Doc. 85 at 8). This analogy is irrelevant. Defendant Shutters' actions led to Mr. Anderson's placement in an E.R. room. An official who violated Mr. Anderson's 4th Amendment Rights, rights that were "clearly established" at the time of the challenged conduct. A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right. Allowing an unauthorized member of the General Public, a homosexual, to physically watch Mr. Anderson be stripped naked, and the applicable M.S.A.K. intrusive procedures to be performed publically, violated Mr. Anderson's 4th Amendment Rights. Qualified immunity does not protect officials who knowingly violate the law. The execution of the M.S.A.K. was done publically in violation of police policy, and hence was done knowingly.

The Recommendation states, "The Rule 41.1 Order does not prohibit the presence of medical officials during the MSAK [#63-1], and Rule 41.1 specifically authorizes "medical supervision for any test ordered pursuant to" Rule 41.1. Colo. R. Crim. P. 41.1(f)(1)." (Doc. 85 at 7-8). Although Rule 41.1 orders allow temporary suspension of 4th Amendment rights, the order itself must state specific criteria for circumventing 4th Amendment rights. It is very unfeasible to think that Honorable Judge Michelle Brinegar would specifically allow a homosexual to watch the MSAK exam. The unlawful execution of the order should merit the validity of a 4th Amendment claim, meaning Defendant Shutters would not be entitled to qualified immunity.

The second formal objection applies to the recommendation in regard to Claim Five. The Colorado Goverment Immunity Act (C.G.I.A.) provides a statutory exception to the prohibition or barment of tort claims against public employees, including law enforcement officers, when the employee's conduct was "willful and wanton." Colo. Rev. Stat. §24-10-118. The Colorado Supreme Court respectively defined willful and wanton conduct as: (1) "not only negligent, but exhibiting a conscious disregard for the safety of others," (2) "purposefully committed, which the actor must have realized as dangerous, done heedlessly and recklessly, without the regard to the consequences, or of the rights and safety of others, particularly the plaintiff," and (3) "wholly

disregardful of the rights, feelings and safety of others... at times even implying an element of evil."

This objection would like to stress that elements of Claim Five occurred behind closed doors. Defendant Shutters and Boxberger spread confidential information behind closed doors to unauthorized persons: Crystal Lynn Jamison, Dr. Kevin J. Anderson, Susan Anderson, Edmund Willis, Audrey Willis, Samantha Anne Willis, Anna Katie McQuilkin, Drew Cole, Merit Miller, etc. Plus more unknown to Mr. Anderson, to include colleagues, other witnesses, etc... This Court should note that both Shutters and Boxberger intentionally, purposefully, and in complete disregard to Mr. Anderson's substantial rights as a U.S. Citizen to knowingly degradations. This was done in a malicious manner that satisfies all 3 definitions listed above. This Court neglects to notice that the People of the State of Colorado dismissed the felony counts in the Juvenile case, and the misdemeanor is Dismissed With Prejudice. These malicious actions were done 6-7 years after this occurred. Juvenile Adjudications may be used if an individual was convicted. Mr. Anderson was not convicted, yet both defendants made a choice to depict him as having been convicted 6-7 years after he was virtually acquitted by the Court. The District Attorney was obligated to state Mr. Anderson

was charged, but never convicted. No District Attorney or Detective can depict a U.S. Citizen as having been convicted of a crime that he was never convicted of, as this violates Due Process. Defendant Shutters and Boxberger's actions were an "intentional infliction of emotional distress." Their actions were implemented in connection with a 6-7year old closed case file with the malicious intent to further injure Mr. Anderson. The residing Court in connection with the Juvenile case file determined that the encounter was quote, "virtually consensual," and the People dismissed. The defendants actions could have only been done in malicious intent due to these facts, which merits an "intentional infliction of emotional distress" tort claim.

This Objection Motion #2 is meant to preserve elements. AS ALWAYS, Mr. Anderson will respectively DEFER to the wise and just judgment of this Honorable Court.

Respectively submitted this day, April 13th, 2018.

Sincerely,

DOC# 175290

04/13/18

X

CHAYCE AARON ANDERSON
LARIMER COUNTY JAIL
2405 Midpoint Drive
Fort Collins, CO 80525