

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' RESPONSE IN OPPOSITION TO PLAINTIFF'S
OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATION ON
MOTION TO DISMISS (ECF No. 86)**

Defendant, Jason Shutters, through his Attorneys, Hall & Evans, LLC, submit the following as his Response in Opposition to Plaintiff's Objections to the Magistrate's Recommendation on Motion to Dismiss (ECF No. 86), as follows:

I. ARGUMENT

A. In Its Recommendations, The Court Correctly Concluded That Defendant Shutters is Entitled To Qualified Immunity With Respect To Claim I of Plaintiff's Complaint

Plaintiff argues the Magistrate's Recommendation is erroneous, ostensibly on the notion that application of the male sexual assault kit was observed by a "homosexual nurse". ("Allowing an unauthorized member of the General Public (sic), a homosexual, to physically watch Mr. Anderson be stripped naked...violated Mr. Anderson's 4th Amendment Rights (sic)" (ECF No. 86 at 4)); "It is very unfeasible (sic) to think that (sic)

Honorable Judge Michelle Brinegar would specifically allow a homosexual to watch the MSAK exam.” (ECF No. 86 at 5)). Plaintiff also appears to take exception to the Magistrate’s Recommendation, on the basis the nurse who observed application of the male sexual assault kit was an employee of Poudre Valley Hospital’s emergency department and not a law enforcement employee (ECF No. 86 at 3). Plaintiff provides no case law or cogent argument to support any of these contentions.

As properly recognized by the Court, to overcome the defense of qualified immunity, “the onus is on the plaintiff to demonstrate (1) that the official violated a statutory or constitutional right, *and* (2) that right was ‘clearly established at the time of the challenged conduct.’” (ECF No. 85 quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)) (emphasis in the Magistrate’s Recommendation). Here, Plaintiff fails to provide support in anything other than a conclusory fashion, that any of the actions complained of constitute a statutory or constitutional right, or that any such right was clearly established at the time of the challenged conduct. Plaintiff does not, and cannot, provide any authority whatsoever, establishing that the sexual orientation of a nurse, who is not employed as a law enforcement officer, during the execution of a male sexual assault kit, is in any way germane to a determination of his Constitutional rights, or that any such actions are considered a violation of said rights. Plaintiff’s objections with respect to Claim One should be overruled. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (Allegations require “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action....Factual allegations must be enough to raise a right to relief above the speculative level.”);

B. In Its Recommendations, The Court Correctly Concluded That Plaintiff's Allegations Fail To Establish Willful And Wanton Conduct.

The Court is also correct in recommending dismissal of Plaintiff's Fifth Claim for Relief, Intentional Infliction of Emotional Distress (ECF No. 85 at 13). In the Complaint, Plaintiff merely alleges conclusory statements in an attempt to support the notion Defendant Shutters engaged in willful and wanton conduct (see eg: "Shutter's actions caused Mr. Anderson to re-live long-ago settled events of the past that were very traumatizing to him." (ECF No. 50-1 at 29); "Mr. Anderson contends that this was done maliciously...intentionally to punish him for the past." (ECF No. 50-1 at 29)). As correctly noted by the Court, Plaintiff provides only conclusory assertions with respect to the disclosure of confidential information (ECF No. 85 at 12). Any such assertions are insufficient to overcome a Motion to dismiss. In addition, Plaintiff offers no basis whatsoever, to undermine the Court's determination that "Defendant Shutters was performing his duties as a law enforcement officer [and] not exhibiting a conscious disregard for the danger or risk to Plaintiff's safety (ECF No. 85 at 13, referring to **Tatten v. City & Cty. of Denver**, No. 16-cv-01603-RBJ-NYW, 2017 WL 5172244, at *11 (D. Colo. Feb. 3, 2017)). Plaintiff's objections should be overruled on these grounds as well.

II. CONCLUSION

WHEREFORE, Defendant, Jason Shutters, respectfully requests the Court overrule the Plaintiff's Objections to the Magistrate's Recommendations enter an order dismissing said claims, and enter an order for any other relief deemed just.

Dated this 1st day of May 2018.

s/ Mark S. Ratner

Mark S. Ratner, Esq.

HALL & EVANS, L.L.C.

1001 Seventeenth Street, Suite 300

Denver, Colorado 80202

Phone: (303) 628-3300

Fax: (303) 628-3368

Ratnerm@hallevans.com

ATTORNEYS FOR DEFENDANT
JASON SHUTTERS

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 1st day of May 2018, I served via email the foregoing **DEFENDANT JASON SHUTTERS' RESPONSE IN OPPOSITION TO PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATION ON MOTION TO DISMISS (ECF No. 86)** to the following:

Plaintiff:

Chayce Aaron Anderson, #175290
Arkansas Valley Correctional Facility
12750 Hwy. 76 at Lane 13
Ordway, CO. 81034

Chayce Aaron Anderson, #175290
Larimer County Jail
2405 Midpoint Drive
Fort Collins, CO. 80525

/s/Rochelle Gurule

Rochelle Gurule