

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-00217-REB-KLM

WILLIAM MONTGOMERY,

Plaintiff,

v.

MATTHEW CHERNAK,
MIKE HOWARD,
MATTHEW BROUGH.

Defendants.

PROPOSED SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

The Scheduling/Planning Conference pursuant to Fed.R.Civ.P. 16(b) is **July 19, 2018**, at 2:30 p.m., in Courtroom A-401, Alfred A Arraj United States Courthouse, 901 19th St., Denver, Colorado, before Magistrate Judge Kristen L. Mix. Appearing for the parties are:

Raymond K. Bryant
Civil Rights Litigation Group, PLLC
1543 Champa St., #400
Denver, CO 80202
P: 720-515-6165
F: 303-534-1949
Raymond@rightslitigation.com
Attorney for Plaintiff

Christina S. Gunn, Esq.
Hall & Evans, L.L.C.
1001 17th Street, Suite 300,
Denver, CO 80202
303-628-3300
Fax: 303-628-3368
gunnclyonst@hallevans.com
Attorneys for Defendants

2. STATEMENT OF JURISDICTION

Plaintiff has brought his claims pursuant to 42 U.S.C. § 1983, and consequently alleges jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331. Although they have not yet filed an Answer to the Complaint, Defendants do not generally contest this Court's jurisdiction. Venue is proper under 28 U.S.C. § 1391(b) because the incident complained of occurred in Fort Collins, Larimer County, Colorado

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s):

Plaintiff Montgomery asserts First and Fourth Amendment claims against the Defendant officers for wrongful and retaliatory detention, arrest, and criminal prosecution, in circumstances where Plaintiff could not have reasonably been viewed to have committed any crimes, but had only engaged in protected, First Amendment, expression.

b. Defendant(s):

Defendants filed a Motion to Dismiss all of Plaintiff's claims against them pursuant to Fed. R. Civ. P. 12(b)(6) on May 9, 2018. Defendants assert Plaintiff's Amended Complaint fails to state a cause of action on which relief can be granted and each Defendant is entitled to qualified immunity on each claim for the reason stated in Defendants' Motion to Dismiss and Reply Brief in support thereof. In the event Defendants' Motion to Dismiss is not granted, Defendants will file an Answer with additional affirmative defenses.

Generally, Defendants deny Plaintiff states any cognizable claim against them, and also deny Plaintiff is entitled to any of the relief he requests in Plaintiff's Amended Complaint. Plaintiff's actions in Defendants' presence constituted probable cause for his arrest for numerous violations, which defeats the elements of Plaintiff's claims and also demonstrates the

applicability of qualified immunity for each of the Defendants. Even if Plaintiff did describe any violation of his constitutional rights by any Defendant, the rights at issue are not clearly established and the Defendants are entitled to qualified immunity.

4. UNDISPUTED FACTS

The following facts are undisputed:

1. On January 28, 2016, Plaintiff Montgomery was arrested..
- 2.

5. COMPUTATION OF DAMAGES

a. Plaintiff:

- (1) Compensatory damages – to be determined at trial and supplemented as discovery proceeds and experts are retained – for:
 - (a) Lost liberty, detention;
 - (b) Suppression of First Amendment Expression;
 - (c) Emotional distress, humiliation and personal indignity, embarrassment, fear, anxiety and anguish;
- (2) Punitive sanctions pertaining to the federal claims; and
- (3) As otherwise articulated in the Complaint, including costs, interest, and attorneys' fees.

b. Defendants: Defendants do not seek damages at this time. Nonetheless, Defendants reserve the right to pursue attorney fees and costs of litigation, as appropriate.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting.

The Fed. R. Civ. P. 26(f) meeting was conducted on July 13, 2018.

Participants in the meetings were as follows:

(1) Raymond K. Bryant, counsel for Plaintiff;

(2) Christina S. Gunn, counsel for Defendants;

b. Defendants object to a requirement that the parties exchange disclosures pursuant to Fed. R. Civ. P. 26(a)(1) prior to receiving a ruling on their assertion of qualified immunity for each Defendant to each of Plaintiff's claims for relief. *See* Defendants' Motion to Stay Proceedings and Vacate Scheduling Conference [ECF 31].

In the event this Court orders the parties to proceed with exchange of Rule 26(a)(1) disclosures, Defendants propose they be made on August 9, 2018.

c. The parties do not propose any changes in the timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

d. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The parties agree to take all reasonable steps to reduce discovery and reduce costs, including the use of the Sedona Principles for ESI data, if applicable.

f. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The Parties do not anticipate that their claims or defenses will involve electronically stored information. To the extent that discovery or disclosures involve information or records in electronic form, the Parties will take steps to preserve that information. The Parties agree that, to

the extent feasible, the Parties will exchange information (whether in paper or electronic form) in PDF format.

g. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The Parties have discussed the possibility for a prompt settlement or resolution of the case by alternate dispute resolution. The parties will report the result of any such meeting to the magistrate judge within 14 days of the meeting.

7. CONSENT

All parties **have not** consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

Each side shall be limited to 10 depositions, in addition to experts.

Each side shall be limited to 25 Interrogatories.

b. Limitations which any party proposes on the length of depositions: seven hours.

c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

Each party shall be limited to 25 requests for production of documents.

Each party shall be limited to 25 requests for admissions.

d. Other Planning or Discovery Orders:

The production of privileged or work-product protected documents, electronically stored information ("ESI") or information, whether inadvertently or otherwise, is

not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Stipulated Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

hing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

9. CASE PLAN AND SCHEDULE

- a.** Deadline for Joinder of Parties and Amendment of Pleadings **August 27, 2018.**
- b.** Discovery Cut-off: **January 21, 2019.**
- c.** Dispositive Motion Deadline: **February 22, 2019.**
- d.** Expert Witness Disclosure

- 1. The parties shall identify anticipated fields of expert testimony, if any:

Plaintiff: Plaintiff anticipates experts in the following fields:

Police policies and practices

Defendant: Defendant may retain an expert concerning Plaintiff's economic losses or emotional distress, and an expert responsive to any expert listed by Plaintiff.

- 2. Limitations which the parties propose on the use or number of expert witnesses. Two witnesses per side. Treating physicians, medical providers or IMEs are not included in this limitation.

- 3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **November 23,, 2018.**

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **January 4, 2019**.

e. Identification of Persons to Be Deposed:

| <i>Name of Deponent</i> | <i>Expected Length of Deposition</i> |
|--|--------------------------------------|
| Plaintiff | 7 hrs |
| David Montgomery (Plaintiff's brother) | 4 hrs |
| Defendant Matthew Chernak | 6 hrs |
| Defendant Mike Howard | 6 hrs |
| Defendant Matthew Brough | 6 hrs |
| 30(b)(6) City of Ft. Collins | TBD |

The Parties reserve the right to identify additional deponents after initial disclosures and discovery have been exchanged.

f. Deadline for Interrogatories: **December 7, 2018.**

g. Deadline for Requests for Production of Documents and/or Admissions:

December 7, 2018.

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times:

_____.

b. A final pretrial conference will be held in this case on _____ at o'clock _____ m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement. Defendants have a pending Motion to Stay

Proceedings and to Vacate Scheduling Conference. [ECF 31.] The motion is not yet fully briefed, although Plaintiff opposes Defendants' request and intends to file a response in opposition to the motion. For the reasons contained in Defendants' Motion, Defendants object to any requirement they be required to undergo the burdens of litigation, including the discovery process or any pretrial proceedings, because each Defendant has asserted qualified immunity to each claim against them.

b. Anticipated length of trial and whether trial is to the court or jury.

Five-day trial, to a jury.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado 81303-3439.

None.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

This scheduling order may be altered or amended only upon a showing of good cause.

DATED: _____.

BY THE COURT:

United States Magistrate Judge

APPROVED:

s/ Raymond Bryant
Raymond K. Bryant
Civil Rights Litigation Group, PLLC
1543 Champa St., #400
Denver, CO 80202
P: 720-515-6165
F: 303-534-1949
Raymond@rightslitigation.com
Attorney for Plaintiff

s/ Christina S. Gunn
Thomas J. Lyons, Esq.
Christina S. Gunn, Esq.
Hall & Evans, L.L.C.
1001 17th Street, Suite 300,
Denver, CO 80202
303-628-3300
Fax: 303-628-3368
gunnc@hallevans.com