

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:17-CV-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS

Defendant.

~~PROPOSED~~ FINAL PRETRIAL ORDER

1. DATE AND APPEARANCES

The final pre-trial conference is set for February 11, 2020 at 9:00 AM in Courtroom A 402 before Magistrate Judge Scott T. Varholak. (Dkt. 151.) It is anticipated that Plaintiff Chayce Aaron Anderson ("Plaintiff" or "Mr. Anderson") will be represented by Christopher Casolaro and Alexandra Lakshmanan, Faegre Drinker Biddle & Reath LLP, 1144 Fifteenth Street, Suite 3400, Denver, CO 80202, and that Defendant Jason Shutters ("Defendant" or "Mr. Shutters") will be represented by Mark S. Ratner, Hall & Evans, LLC, 1001 Seventeenth Street, Suite 300, Denver, CO 80202.

2. JURISDICTION

This Court has subject matter jurisdiction over this civil action brought under 28 U.S.C. § 1983 pursuant to 28 U.S.C §§ 1331 and 1343.

3. CLAIMS AND DEFENSES

Plaintiff's version:

Plaintiff asserts an excessive force claim against Defendant. Plaintiff's summarized version of the facts is as follows. On August 28, 2015, Sergeant Kim Cochran ("Sgt. Cochran") approached Plaintiff while he was retrieving items from his vehicle. (Dkt. 133 at 2.) Sgt. Cochran discussed an unrelated incident regarding damage to Plaintiff's vehicle, but did not give Plaintiff any indication that she had a warrant for his arrest. (*Id.*) Shortly thereafter, Officer Andrew Edmonds ("Officer Edmonds"), Detective Tammy Tracy ("Det. Tracy"), and Defendant arrived on the scene. (*Id.*) Defendant initiated a conversation with Plaintiff. (*Id.*) Once Defendant informed Plaintiff that his questions did not pertain to the damage to Plaintiff's vehicle, Plaintiff invoked his right to an attorney. (*Id.*)

The only recording of Plaintiff's arrest was obtained by Defendant using an audio recording device in his pocket. (*Id.* at 3.) Defendant told Plaintiff he was under arrest and gave multiple verbal commands to Plaintiff. (*Id.*) At all times during the arrest, Plaintiff was compliant and cooperative, neither attempting to resist nor flee. (*Id.*) Defendant initially placed handcuffs on Plaintiff and then asked Plaintiff whether the handcuffs were too tight. (*Id.*) Plaintiff responded that they were not. (*Id.*) Defendant then tightened the handcuffs further before double-locking them. (*Id.* at 4.) However, Defendant did not subsequently ask Plaintiff whether, after further tightening the handcuffs, the handcuffs were too tight. The interaction between Plaintiff and Defendant ended two to three minutes after this further tightening of the handcuffs by Defendant.

(Dkt. 158 at 2-3.) Almost immediately after this further tightening, Plaintiff complained that he was suffering from wrist pain. (Dkt. 156 at 4.) Indeed, multiple officers testified that they were aware of Plaintiff's wrist pain complaints within minutes of the arrest. (*Id.* at 5-6.)

Plaintiff was transported to the Fort Collins Police Department ("FCPD") by Officer Edmonds. (Dkt. 133 at 4.) Once at FCPD, Defendant was intentionally kept away from Plaintiff. (*Id.*) Plaintiff was eventually transported to Poudre Valley Hospital ("PVH") for evaluation of his injuries, where he was seen by Erin Carnahan, a physician's assistant. (*Id.* at 4-5.) Mr. Carnahan "testified that there were no diagnostic tests capable of providing conclusive evidence of nerve damage that he could have ordered, and instead he would have had to send Plaintiff to a neurologist for a nerve conduction study." (Dkt. 158 at 4 (internal quotation marks and citation omitted).) Yet no referral was made to definitively confirm whether Plaintiff suffered nerve damage. Instead, in the years since Plaintiff's arrest, Plaintiff has experienced and continues to experience intermittent, shooting pains in his wrists. (Dkt. 133 at 5.) These shooting pains are more pronounced and frequent in Plaintiff's left wrist. (*Id.*) Because Plaintiff has had limited means to obtain treatment for his ongoing wrist pain, due to facility transfers and uninterrupted incarceration, Plaintiff has relied on over-the-counter medication to cope with his wrist pain. (*Id.* at 5-6.)

Plaintiff's legal theory is based on Defendant's use of excessive force which occurred when Defendant further tightened the handcuffs on Plaintiff. Although completely compliant at all times during the arrest, and although the initial placement of

the handcuffs on Plaintiff by Defendant was confirmed not to cause Plaintiff any pain, Defendant further tightened the handcuffs. This further tightening almost immediately caused Plaintiff wrist pain and has resulted in ongoing wrist pain for the past 4+ years. Plaintiff therefore has established both elements of his excessive force claim—that Defendant used greater force than would have been reasonably necessary to effect a lawful seizure, and that some actual injury was caused by the unreasonable seizure that is not *de minimis*. See *Fisher v. City of Las Cruces*, 584 F.3d 888, 894 (10th Cir. 2009).

Plaintiff seeks monetary damages for his ongoing wrist pain in an amount sufficient to (1) reimburse Plaintiff for his costs to obtain over-the-counter medicine as of the date of trial, and (2) cover Plaintiff's continued use of such over-the-counter medicine.

Defendant's version:

On August 28, 2015, Defendant Detective Jason Shutters ("Detective Shutters") initiated a sexual assault investigation, of Plaintiff Chayce Anderson. After gathering the facts of the matter, Detective Shutters authored a "41.1" for Plaintiff Anderson. A "41.1" is otherwise known as a collection of nontestimonial evidence, pursuant to the Colorado Rules of Criminal Procedure. The documents prepared by Detective Shutters were reviewed by Fort Collins Police Detective Tammy Tracy and Detective Shutters' Sergeant, Kim Cochran, to ensure the existence of probable cause for an arrest. Detective Shutters then met with an "on-call judge" who also reviewed the documents. A determination was made by the reviewing Judge that sufficient probable cause existed for an arrest of Plaintiff Anderson.

On the same day, Detective Shutters responded to the 600 block of South Whitcomb, in Fort Collins, Colorado, where Plaintiff was located. Detective Shutters began to speak with Plaintiff Anderson about the sexual assault he was investigating. After minimal questioning by Detective Shutters, Plaintiff Anderson indicated he did not want to speak without a lawyer being present. Detective Shutters then informed Anderson he was under arrest.

Once the Plaintiff was informed he was under arrest, Detective Shutters placed him into handcuffs. Simultaneously, Detective Shutters asked the Plaintiff if either of the cuffs were too tight, to which the Plaintiff responded, "no, they're fine." No indication was ever provided by the Plaintiff to Detective Shutter that the handcuffs were too tight. This interaction was audio recorded by Detective Shutters.

Plaintiff was transported to the Fort Collins Police Station for processing. On the way to the station, the Plaintiff complained to Officer Barnes about having wrist pain and "severe nerve damage". An ambulance was called, and Plaintiff Anderson was transported to Poudre Valley Hospital, where he was admitted and examined by Physician's Assistant, Erin Carnahan. PA Carnahan conducted a physical examination of Plaintiff Anderson. Based on this examination, PA Carnahan found no evidence of trauma, swelling or redness in Plaintiff's wrists. Furthermore, no lacerations or abrasions were observed, and PA Carnahan also noted Plaintiff's wrists had a full range of motion. The final diagnosis was "disturbance of skin sensation" which, according to PA Carnahan, is a descriptor used to identify a scratch. In addition, PA Carnahan made a differential diagnosis of "malingering." Consistent with his findings, PA Carnahan concluded that

Plaintiff Anderson did not suffer any injury to his wrists, including "severe nerve damage." No treatment was rendered.

Detective Shuttles claims that pursuant to the applicable law, his actions were reasonable under the circumstances. Furthermore, the Plaintiff, despite having an opportunity to do so, failed to tell Detective Shuttles that the handcuffs were too tight. In addition, based on the medical testimony, the Plaintiff did not suffer any injury, or at the most suffered an injury considered to be *de minimis*.

Detective Shuttles also sets forth the following affirmative defenses:

1. The Second Amended Complaint fails to state a claim on which relief may be granted.
2. To any extent, the Court concludes this Defendant acted under color of state law with respect to Plaintiff, this Defendant is entitled to absolute immunity, qualified immunity, or both such immunities, as well as common law and statutory immunities, with respect to some or all of Plaintiff's claim against him.
3. On information and belief, Plaintiff failed to mitigate his damages, if any.
4. On information and belief, some or all of Plaintiff's injuries and damages, if any, were either pre-existing or not aggravated by any action or omission of or by this Defendant, nor proximately caused by or related to any act or omission of this Defendant.
5. All or part of Plaintiff's claim never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983.
6. At all times pertinent herein, this Defendant acted in accordance with all common law, statutory and constitutional obligations, and without any intent to cause

Plaintiff harm. This Defendant also lacked the requisite intent to establish any claim against Plaintiff in this matter. The claim of the Plaintiff also fails to establish any basis for concluding that this Defendant acted or failed to act in a willful and wanton manner. This Defendant also possess or possessed a reasonable good faith belief in the lawfulness of all his conduct.

7. Plaintiff's injuries and damages, if any, in whole or in part, were proximately caused by his own acts or omissions, either in combination with one another or independent of one another.

8. Plaintiff's injuries and damages, if any, were proximately caused by the acts or omissions of third parties over whom this Defendant possessed no ability to control or right of control.

9. To any extent, any action or inaction on the part of this Defendant was in any way involved in any detention of the Plaintiff by anyone, any action or inaction by this Defendant was privileged under applicable law, including the privilege of police officers to use reasonable physical force to affect an arrest, keep a subject in custody, and defend themselves and others.

10. In all respects, this Defendant behaved in accordance with applicable legal authority in all actions or inactions associated with Plaintiff, negating any claim of liability asserted by Plaintiff against him.

11. This Defendant never breached any obligation or responsibility to anyone associated with any property or liberty interest of any party in relation to this matter.

12. Plaintiff cannot satisfy all or some of the prerequisites to a grant of injunctive relief in this matter. Any request for injunctive relief is moot.

13. This Defendant is not liable for any punitive damages pursuant to state or federal law and no Defendant could become liable for any such damages.

14. Plaintiff's claim is barred pursuant to the Colorado Governmental Immunity Act.

15. Any claim for punitive or exemplary damages against any individual Defendant in any individual capacity is barred, limited, reduced, or in the alternative, unconstitutional and in violation of the rights of such individual Defendant under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

16. Plaintiff's injuries, if any, are *de minimus* and therefore do not constitute a violation of his Constitutional rights.

4. STIPULATIONS

The parties stipulate to the following facts:

1. Defendant Jason Shutters arrested Plaintiff Chayce Anderson on August 28, 2015.

5. PENDING MOTIONS

Defendant's motion for summary judgment, filed July 5, 2019, is pending. (Dkt. 128.) Plaintiff filed his response in opposition on July 26, 2019. (Dkt. 133.) Defendant filed his reply in support on August 8, 2019. (Dkt. 136.) Plaintiff filed for leave to file a surreply in opposition to Defendant's motion for summary judgment (Dkt. 137), which was fully briefed and subsequently granted on October 4, 2019 (Dkt. 146). Plaintiff's surreply filed with his motion for leave to file a surreply was accepted (Dkt. 137-1), and Defendant was given until October 21, 2019 to file a response to the surreply, which Defendant did so file on October 21, 2019 (Dkt. 147). Defendant's motion for summary judgment was referred to Magistrate Judge Scott Varholak (Dkt. 134), who issued an amended recommendation to grant Defendant's motion for summary judgment and dismiss the case on November 19, 2019 (Dkt. 152). Plaintiff subsequently filed an objection to the recommendation on December 3, 2019 (Dkt. 156); Defendant responded in opposition on December 17, 2019 (Dkt. 157); and Plaintiff replied in support on December 31, 2019 (Dkt. 158).

6. WITNESSES

1. The parties' nonexpert witness lists are attached as **Exhibit A** (Plaintiff's Witness List) and **Exhibit B** (Defendant's Witness List). The parties do not intend to introduce any witness testimony by deposition.

2. Plaintiff does not intend to call any expert witnesses.
Defendant's non-retained expert witness list is attached as **Exhibit B**.

7. EXHIBITS

The Joint Exhibit List is attached hereto as **Exhibit C**.

Copies of listed exhibits must be provided to opposing counsel and any *pro se* party no later than 30 days before trial. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served by hand delivery or facsimile no later than 14 days after the exhibits are provided.

8. DISCOVERY

Discovery is closed.

9. SPECIAL ISSUES

Plaintiff requests that the Court permit him to testify in person or via live video feed.

10. SETTLEMENT

Undersigned counsel for the parties certify that:

1. Counsel for the parties met by telephone on multiple occasions in 2019 to discuss in good faith the settlement of the case.
2. The participants in the settlement discussions included counsel for the parties.
3. The parties were promptly informed of all offers of settlement.
4. Counsel for the parties do not intend to hold future settlement conferences.
5. It appears from the discussion by all counsel that there is no possibility of settlement.

6. Counsel for the parties considered ADR in accordance with D.C.COLO.LCivR.16.6.

11. OFFER OF JUDGMENT

Counsel and any *pro se* party acknowledge familiarity with the provision of Rule 68 (Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel have discussed it with the clients against whom claims are made in this case.

12. EFFECT OF FINAL PRETRIAL ORDER

Hereafter, this Final Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS

Trial will be to a jury. The parties estimate that the trial will last 2 days or less. Trial will be held at the Alfred A. Arraj United States Courthouse, Courtroom A602, located at 901 19th Street, Denver, CO 80294.

DATED this 11TH day of FEBRUARY, 2020.

BY THE COURT:



United States Magistrate Judge

APPROVED:

s/Alexandra Lakshmanan
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EXHIBIT A

PLAINTIFF'S WITNESS LIST
Civil Action No. 1:17-CV-00884-CMA-STV
Anderson v. Shutters

Witness Name	Description of Testimony	Time on Direct	Time on Cross
Will Call Witnesses			
1. Chayce Anderson	Testimony regarding Plaintiff's arrest by Defendant, transport to FCPD, transport to PVH, treatment, and injuries (including the duration of his injuries and the impact the injuries have on his daily life)	2.0 hours	
2. Jason Shutters	Testimony regarding Plaintiff's arrest	2.0 hours	
3. Officer Andrew Edmonds	Testimony regarding Plaintiff's arrest and transport to FCPD	0.5 hours	
4. Detective Tammy Tracy	Testimony regarding Plaintiff's arrest and documentation of the condition of Plaintiff's wrists following removal of the handcuffs	0.5 hours	
5. Sergeant Kimberly Cochran	Testimony regarding Plaintiff's arrest and call for an ambulance	0.5 hours	
6. Erin Carnahan	Testimony regarding Plaintiff's treatment at PVH	1.0 hour	
May Call Witnesses			
1. Kelsey Horkey	Testimony regarding her role as a paramedic and assessment of Plaintiff	0.5 hours	
2. Aaron Perry	Testimony regarding his role as a paramedic and assessment of Plaintiff	0.5 hours	
3. Jason K. Van Leeuwen	Testimony regarding Plaintiff's intake at PVH	0.5 hours	
4. Kimberly L. Lindeken	Testimony regarding her role as a registered nurse and assessment of Plaintiff at PVH	0.5 hours	

EXHIBIT B

DEFENDANT'S WITNESS LIST
Civil Action No. 1:17-CV-00884-CMA-STV
Anderson v. Shutters

Will Call Witness:

Name	Description of Testimony	Time on Direct	Time on Cross
1. Detective Jason Shutters	It is anticipated Detective Shutters will testify consistent with his deposition testimony, including but not necessarily limited to his investigation and arrest of the Plaintiff. In addition, Detective Shutters will offer testimony as a non-retained expert witness on proper arrest control and technique.	2.0 hours	

May Call:

Name	Description of Testimony	Time on Direct	Time on Cross
1. Erin Carnahan, PA	It is anticipated Physician Assistant Erin Carnahan will testify consistent with his deposition testimony, including but not limited to his examination of the Plaintiff upon presentation to Poudre Valley Hospital	1.0 hours	
2. Kimberly L. Lindeken	It is anticipated Ms. Lindeken will testify about her review of	.5 hours	

	medical records from Plaintiff's visit to Poudre Valley Hospital		
3. Jason K. Van Leeuwen	It is anticipated Mr. Van Leeuwen will testify about his care and treatment of Plaintiff at Poudre Valley Hospital	.5 hours	
4. Molly Taggart	It is anticipated Ms. Taggart will testify about her care and treatment of Plaintiff at Poudre Valley Hospital	.5 hours	
5. Aaron Perry	It is anticipated Mr. Perry will testify about his care and treatment of Plaintiff	.5 hours	
6. Kelsey Horkey	It is anticipated Ms. Horkey will testify about her care and treatment of Plaintiff	.5 hours	
7. Fort Collins Police Officer Andrew Edmonds	It is anticipated Officer Edmonds will testify regarding the arrest of Plaintiff	.5 hours	
8. Fort Collins Police Officer Mike Natalzia	It is anticipated Officer Natalzia will testify regarding the investigation and arrest of Plaintiff	.5 hours	
9. Fort Collins Police Sergeant Kim Cochran	It is anticipated Sergeant Cochran will testify consistent with her deposition, including but not necessarily limited to the arrest of Plaintiff	1.0 hours	
10. Fort Collins Police Department	It is anticipated Detective Tracy will testify consistent	.5 hours	

Detective Tammy Tracy	with her deposition including, but not limited to the arrest of Plaintiff		
11. Fort Collins Police Department Detective Neal Hisam	It is anticipated Detective Hisam will testify about the arrest of Plaintiff, and the photographs taken of Mr. Anderson pursuant to the "41.1"	.5 hours	
12. Records Custodian Fort Collins Police Department	To the extent necessary, a records custodian for the Fort Collins Police Department will be called to authenticate certain records	.5 hours	
13. Records Custodian, Poudre Valley Hospital	To the extent necessary, a records custodian for Poudre Valley Hospital will be called to authenticate certain records	.5 hours	

EXHIBIT C

JOINT EXHIBIT LIST

Civ. A. No. 1:17-CV-00884-CMA-STV; Anderson v. Shutters

List all Exhibits by Number and Check the Box if Stipulated as to both Authenticity and Admissibility

Exhibit	Description	Stipulated	Admitted	Excluded	Notes
1	Fort Collins Incident Reports, Bates Shutters 001 - 039				
2	Audio recording of Plaintiff's Aug. 28, 2015 arrest				
3	Photographs of Plaintiff's wrists, Bates Shutters 040 - 045				
4	Medical records obtained from PVH, Bates Anderson 0013 - 0035				
5	Records obtained from Larimer County Sheriff's Office relating to Plaintiff, Bates Anderson 0669 - 0852				
6	Medical records obtained from Colorado Department of Corrections relating to Plaintiff, Bates Anderson 0036 - 0094				
7	Mittimus for Chayce Anderson, Bates Shutters 046				
8	Shutters verdict for sexual assault, Bates Shutters 047				
9	ICD Codes, Supplemental Exhibit 1 to Plaintiff's Surreply (Doc. 137-2)				
10	Fort Collins Police Services Policy Manual (previously partially admitted as Deposition Exhibits 1-2)				
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