

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**FILED**
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 08 2025

JEFFREY P. COLWELL
CLERK

Civil Action No. 1:22-CV-01756

Kelly J. Phillips, Jr.
Plaintiff,

v.

"See Attached"
Defendant,

AMENDED PRO SE PRISONER COMPLAINT

I. JURISDICTION & VENUE

1. Jurisdiction is asserted pursuant to the U.S. Constitution and 42 U.S.C. §1983, to redress the denigration of those rights secured by the U.S. Constitution, deprived by persons acting under color of state law. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §1331, 1343.

2. The United States District Court for the District of Colorado is the appropriate venue for Bench Trial pursuant to 28 U.S.C. §1391(b)(2) and 52(a); the County of Fremont is where the events complained of occurred.

David Freeman, mental health clinician at (F.C.F.)
Fremont Correctional Facility;

Samuel Montano, Correction Officer at F.C.F.

Adam Russo, Corrections Officer at F.C.F.

Windell Bryant, Corrections Officer at F.C.F.

Jonathan Leffler, Corrections Officer at F.C.F.

Jason Robinson, Corrections Officer at F.C.F.

Defendants,

II. PLAINTIFF

3. Plaintiff Kelly J. Phillips Jr., is and was at all times mentioned herein a prisoner of the State of Colorado in the custody of the Colorado Department of Corrections. He is currently confined in the Centennial Correctional Facility, P.O. Box 600, Canon City, CO. 81215.

III. DEFENDANTS

4. Samuel Montano, at all times, relevant to this action, was/is employed as a CDCO Correctional Officer, (charged with reasonably maintaining control of dangerous situations) at all times relevant to this complaint.)

5. Adam Russo, at all times, relevant to this action, was/is employed as a

CDOC correctional officer, (charged with reasonably maintaining control of dangerous situations).

6. Windell Bryant at all times, relevant to this action, was/is employed as a CDOC correctional officer, (charged with reasonably maintaining control of dangerous situations).

7. Jason Robinson at all times relevant to this action, was/is employed as a CDOC correctional officer, (charged with reasonably maintaining control of dangerous situations).

8. Jonathan Leffler at all times relevant to this action, was/is employed as a CDOC correctional officer, (charged with reasonably maintaining control of dangerous situations).

9. David Freeman at all times, relevant to this action, was/is employed as a

CDOC mental Health clinician, (Charged with the care and well being/safety of offenders with mental disabilities).

10. Each Defendant is sued in their individual capacity and official capacity, jointly, severally, for those acts and omissions described fully below. At all times mentioned in this Complaint each defendant acted under the Color of State law.

IV. FACTS

11. This action places before the Court a lawsuit involving employees of the Fremont Correctional Facility (FCF) (a prison of the Colorado Department of Corrections), charged with the custody and control of approximately 2000 inmates.

12. The Corrections Officers and mental health clinician, work for the state to provide

FCF inmates with safety.

13. This Complaint further alleges violations of plaintiffs' Constitutional rights under the 8th and 14th Amendments of The United States Constitution.

14. On August 23, 4:40 A.M., Plaintiff while at work in the FCF Kitchen, declared a Mental Health Emergency, (meaning Plaintiff transitioned from a panicked mental state, to a suicidal mental state) due to father's death in May, 2020 and lack of prescribed psychiatric medication.

15. Within ten minutes plaintiff was taken to FCF Segregation, building 5 and placed on a Mental Health Suicide Watch.

16. Forty five minutes later, defendant

Freeman arrives on the scene at FCF segregation and finds Plaintiff in a mental health crisis, mentally unresponsive, with no verbal or eye contact or communication being observed.

17. In response to this mental health crisis and observed mental state of Plaintiff, instead of attempting to defuse the situation, Freeman chose to threaten Plaintiff and asserted, he, Freeman would clear the mental health suicide watch, which by law and policy, he was not allowed to do for a patient Freeman admittedly finds to be mentally unresponsive.

18. Defendant Freeman then acts on the threat he made to Plaintiff and indeed clears the mental health watch, without ever hearing one word from Plaintiff's mouth addressing his suicidal state.

19. This is a clear violation of state law, state guidelines CDC Policy.

21. It's a fact that the mental health staff on scene, must make a pact with the suicidal person/offender and get the client to agree that she/he will not cause harm to self or others and this must be done prior to clearing the suicide/MT watch.

22. Approximately 45 minutes after Freeman cleared the MT watch, officers Samuel Montano, Adam Russo, Windell Bryant, Jonathan Leffler and Jason Robinson entered the cell plaintiff is in, engage in the use of force, cut off plaintiff's clothing and perform a strip search.

23. One of the officers above, on video, fondles plaintiff's genitals in an inappropriate manner, which under Colorado Statute is sex assault.

24. After the "search", the officers exited the cell, leaving plaintiff's nude body laying on the bunk bed.

25. Finally, about Twenty minutes after the officers left the cell, they returned to the cell door wearing body armour.

26. The Officers then opened the Food tray portal on the cell door and sprayed Plaintiff in the face and genitals with O.C. Gas, two times, for no penological reason.

27. All defendant's failed to comply with state law and policy on this topic, and CDOC policy and procedures, violating Plaintiff's established constitutional rights under the 8th and 14th Amendments.

28. Defendants, all trained in Mental Health Emergency responses, failed to properly handle the situation, wherein a suicidal person was assaulted physically and sexually.

29. This failure to follow clear state

law, state guidelines and CDC policy and procedures, caused the later incident regarding force removal of cloths with sharp object, sex assault and O.C. spray being used.

V. LEGAL CLAIMS

30. Plaintiff realleges and incorporates by reference paragraphs 1-30.

31. Failure To Protect: David Freeman failed to act on his knowledge of a substantial risk of serious harm to Plaintiff, violated Plaintiff's 8th Amendment right to be free from deliberate indifference to Plaintiff's safety and to be free from cruel and unusual punishment.

32. As a result of Freeman's failure to protect, Plaintiff was sexually assaulted and assaulted by way of being sprayed twice with O.C. Gas, suffering physical and emotional injuries.

33. Deliberate Indifference To Mental Health Needs: the refusal of Freeman to allow Plaintiff time to calm down and process through his mental health crisis, then proceed to assist Plaintiff in a professional and appropriate manner, knowing Plaintiff's condition, constitutes deliberate indifference to Plaintiff's mental health needs in violation of Plaintiff's 8th Amendment rights of the U.S. Constitution to be free from cruel and unusual punishment.

34. Failure To Protect: Officers Montano, Russo, Bryant, Leffler and Robinson's failure to act appropriately on their knowledge that Plaintiff was suffering a mental health crisis and of the substantial risk to Plaintiff, by sexually assaulting and then assaulting Plaintiff with O.C. Gas, in violation of Plaintiff's 8th Amendment right to be free from cruel and unusual punishment and deliberate indifference to Plaintiff's safety.

35. As the result of Officers Montano,

Russo, Bryant, Leffler and Robinson's failure to act in a reasonable, professional and appropriate manner, Plaintiff suffered sexual assault and assault by way of being sprayed two times, with O.C. Gas and physical and emotional injuries.

36. Deliberate Indifference to Mental Health Needs: the sexual assault and assault causing physical and emotional injuries, constitutes deliberate indifference to Plaintiff, in violation of the 8th amendment to the U.S. Constitution, to be free from cruel and unusual punishment and Plaintiff's mental health needs and safety.

37. Negligent Failure to Protect: all of the above named Defendants owe Plaintiff a duty of reasonable care to protection from assault, by inmate and prison staff alike.

38. All of the above named Defendants breached that duty while working under color of state law, when they failed to protect Plaintiff's

mental health needs and afford him reasonable care (while charged with Plaintiff's care, by state law of Colorado) leading to the sexual assault and assault of Plaintiff.

39. The Defendant's breach of duty resulted in serious physical and emotional injuries and damages.

VI. PREVIOUS SUITS

40. Previous Lawsuit on Defendant, Renee Apodaca, Docet number: 2016-cv-36 and Court: Crowley Judicial Court Div. A. Claims raised: 8th and 14th Amendment civil rights violations. Case has been dismissed. The reason for dismissal: Procedural default. No Appeal.

VII. ADMINISTRATIVE REMEDIES

41. There is a formal grievance procedure at the institution in which I am confined. I did exhaust administrative remedies.

VIII. Request For RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court enter an order:

42. Granting Plaintiff Phillips a Bench Trial on all claims herein and give notice to all parties pursuant to 52(a);

43. Granting Plaintiff Phillips a declaration that the acts and omissions described herein violated his rights to be free from cruel and unusual punishment pursuant to the 8th amendment of the U.S. Constitution and stating the Defendant's duty's with respect to those rights;

44. Granting Plaintiff Phillips damages, compensatory and punitive, against each defendant, jointly and severally. For physical and emotional injuries and consequential pain and suffering, in an amount as yet to be deduced from the evidence.

45. Any other relief this Honorable Court may deem just and proper, and equitable.

CONCLUSION

The Honorable judge, upon careful and reasonable consideration of the evidence, could return a verdict of the non-moving party on the evidence presented. In making this determination, the evidence presented by the non-moving party is to be taken as true.

Wherefore, Plaintiff respectfully requests this Honorable Court, to allow this AMENDED COMPLAINT to proceed forward in its entirety, as it pertains to the Defendants herein, or in the alternative take any Sua Sponte action deemed necessary.

Respectfully submitted this August 30th, 2025

Signature Kelly #
Kelly J. Phillips JR.

C.C.F

P.O. BOX 600 • LG-30 / Canon City, CO 81245

CERTIFICATE OF SERVICE

This is to certify that on August 30th, 2025, I Kelly J. Phillips Jr., duly served this AMENDED PETITION/COMPLAINT upon all parties herein, by the U.S. mail postage prepaid and addressed to the following:

Office of The Clerk
United States District Court
Alfred A. Aron Courtthouse
901-19th St. Room A105
Denver, Co. 80294-3589
Abigail Leah Smith
Assistant Attorney General
Attorney for the Defendants



AnyCity PADDC XXX ZIP
FIRST CLASS PERMIT 2024

Colorado Department of Corrections
Name Kelly J. Phillips B
Register # 134783
Unit CCF
Box # 1000 v LG-301
City, State, Zip Canon City CO 81201

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Per AR 750-01, Manila and white envelopes are to be used for the sole purpose of filing legal pleadings with the court, to serve opposing parties, and to conduct attorney of record-client correspondence. Envelopes are not to be used for personal or business correspondence and doing so will result in a request for COPD charges.

Office of the clerk
United States District Court
Alfred A. Araj Courthouse
901-19th St. Room A105
Denver, Colorado 80202-3589

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