

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 01 2024

JEFFREY P. COLWELL
CLERK

Civil Action No.

1:23-CV-01452-MEH

(To be supplied by the court)

Devin A. Kearns, Plaintiff

v.

Jury Trial requested:
(please check one)

☒ Yes ☐ No

Patrick Maul

Larry Downard

_____, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Devin Hearn A0324637 2739 E. Las Vegas St.
(Name, prisoner identification number, and complete mailing address)

Colorado Springs CO, 80906
(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- ☐ Pretrial detainee
☐ Civilly committed detainee
☐ Immigration detainee
☒ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner
☐ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Patrick Maul, Parol Officer
(Name, job title, and complete mailing address)

1300 Broadway, 10th Floor Denver CO 80203

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ☐ No (check one). Briefly explain:

This is a sworn officer who was
on duty at the time of the incident

Defendant 1 is being sued in his/her ☒ individual and/or ☐ official capacity.

Defendant 2:

Larry Downard, Patrol Officer 1300
(Name, job title, and complete mailing address)~~1234~~ Broadway, 10th Floor Denver CO 80203At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ___ No (check one). Briefly explain:He is an officer of the law.Defendant 2 is being sued in his/her ☒ individual and/or ___ official capacity.

Defendant 3:

(Name, job title, and complete mailing address)

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ___ Yes ___ No (check one). Briefly explain:

Defendant 3 is being sued in his/her ___ individual and/or ___ official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

☒ State/Local Official (42 U.S.C. § 1983)

___ Federal Official

As to the federal official, are you seeking:

___ Money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

___ Declaratory/Injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, or 28 U.S.C. § 2201

___ Other: (please identify) _____

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: 8th Amendment, Excessive Force/Cruel and Unusual

Claim one is asserted against these Defendant(s):

Larry Downard, Patrick Maul

Supporting facts:

Larry Downard and Patrick Maul used excessive force against me maliciously and sadistically for the sole purpose of inflicting pain. Why else would two officers blatantly attack an inmate who's already restrained to a bed, injured.

1. These officers gave me a petty command and didn't even give me a chance to comply before blatantly attacking me.
2. Both officers attacked me to the point I was screaming for help, and did not release me until someone caught them in the act.
3. Then both officers made up blatant lies about what had really occurred.

Before this incident, I never had an issue with my sciatic nerve and the nerve damage was a direct result of these officers' actions. This incident left me with nerve damage in my back that I still suffer from to this day.

Claim#1 D. Statement of Claims
 8th Amendment, Excessive Force, Cruel and unusual
 Defendants: Larry Downard, Patrick Maul
Supporting Facts:

The choice of decisions that these officers made was a violation of my 4th Amendment because the 4th Amendment specifically prohibits officers of the United States from using excessive force. The force that these officers used against me was obviously objectively unreasonable in light of the facts and circumstances regarding this particular situation because there was no crime, or even deviant or defiant behaviour being committed on my behalf. Grabbing/using a hospital remote is not a crime and there is absolutely no reason that I should have not been allowed to use it. If these officers had a problem with me being in control of the remote they should have said that before I grabbed it. They should have given me a chance to put it back, or hand it back, or even just simply put it out of reach. Assaulting me because I grabbed a remote to call the nurses is way out of line, I had committed no crime, and was clearly of no threat to anyone around me, these officers had no right to do what they did. Not to mention they made a faulty report which is a crime and in this case, furthered my incarceration.

Claim #1

D. Statements of Claims

~~Excessive Force~~, Excessive Force

8th Amendment, Cruel and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting Facts:

After being in a serious motorcycle wreck, I was admitted to Memorial Hospital in downtown Colorado Springs on 11/10/2022. After an MRI, it was deemed that I had a herniated disc protruding out of the lower left hand side of my spine from the impact of the crash. I had sustained other injuries as well such as a severe case of whip lash, a sprained left knee, road rash up my right leg starting at my right ankle where you could see the bone, and other minor injuries as well.

By the time these two assaults had attacked me, I had already been in the hospital for approximately 3 days, with no issues at all with the previous staff. Mind you, prior to this incident none of the previous staff had any issue with me using the hospital remote either. The remote is attached to the bed with a thick cord, and is meant for patient use anyways. Also, although all my injuries put together I could barely walk with a walker, these other staff let me attempt to walk around the hospital floor I was housed

Claim #1

D. Statement of Claims

8th Amendment, Excessive Force, Cruel and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting Facts:

on with no restraints and a walker on multiple different occasions.

This incident happened on approximately 11/13/2022 sometime during the night. I was handcuffed to the bed by my right hand and left leg, and I had barely been awake for 5 minutes by the time these two officers physically assaulted me because I reached over and grabbed a hospital remote that was placed on a table right next to the bed. This was the first encounter that I ever had in my life, with these two officers.

Again, the hospital remote was on a table, placed right next to the right hand side of the bed.

Because of my injuries and me being restrained to the bed by my right hand and left leg, I remember it being incredibly difficult to reach this remote. It took me approximately 15-30 seconds to actually attain this remote which would have otherwise not been an issue if it weren't for the injuries and restraints.

Both officers watched me struggle to grab this remote the entire time I was reaching for it, while they sat around 10 feet away on a hospital couch. They had every opportunity in this moment

Claim #1 D. Statement of Claims

8th Amendment, Excessive Force, Cruel and Unusual

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Supporting Facts:

to give me an order to not grab the remote. However, these two officers waited until I had possession of the remote and laid back in the bed to give me a very aggressive, direct, verbal order to put the remote back. The only thing I did from this point on was simply ask the officers why?

After that, Officer Patrick Maul didn't even give me a chance to put the remote back or even hand it to him before he just stood up, rushed to the side of the bed, and put both of his hands on my face and head very aggressively bouncing all of his body weight on my head, simultaneously pressing a pressure point behind my ear, and bending me over to the left, pinching the herniated disc that was protruding out of the left hand side of my back.

The moment Patrick Maul bent me over I felt a pop in my back and I immediately started screaming for help. It felt like a nerve had exploded in my back and the pain went all the way down my left leg into my toes. This man used every bit of force that he could,

Claim #1 D. Statement of Claims

8th Amendment, Excessive Force, Cruel and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting Facts:

and his demeanor was to intentionally inflict pain.

The second assailant, Larry Downard then ran to the other side of the bed and put me in a wrist lock simultaneously trying to cuff my left hand to the bed. Essentially, he was helping the other assailant, Patrick Maul bend me over because of the way he was pulling on my left arm.

Between the way my body was being contorted by these two assailants, it was the most excruciating pain I've ever felt in my life.

The entire time this was going on I was screaming at the top of my lungs for help, because of how excruciating the pain was. I can't accurately gauge how long these officers had me in this position, but I was completely cuffed to the bed by the time approximately 5 nurses barged through the door. That's when both assailants jumped like they both got caught doing something they shouldn't simultaneously releasing me. That means that they both kept going even though I was restrained, and also that they knew that they were doing something wrong.

Claim #1

D. Statements of Claims

8th Amendment, Excessive Force, Cruel, and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting Facts:

I immediately let the nurses know that my left leg had gone numb and that they had made my back seriously worse.

That's also when Larry Downard started making nervous accusations to the nurses saying that I "Lunged at them".

I begged the nurses to stay and they seemed ~~nervous~~ nervous to leave me alone but they left anyways.

These officers then left me handcuffed in a starfish position by all 4 limbs while they sat there for the rest of the night harrasing me and telling me that they were going to charge me criminally for assaulting a peace officer. And that they were going to make sure that I got revoked from YOS. These officers were also extremely disrespectful by cursing at me and taunting me as well. For the professionalisam of this letter I will not mention what was said.

I was literally fearful to stay in the hospital because of these two individuals.

But after I was discharged from Memorial Hospital, Assistant Warden Larimore informed my mom that these officers wrote a

Claim #1

D. Statement of Claims

8th Amendment, Excessive Force, Cruel and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting Facts:

report alleging that I "lunged at them" that I tried to "break out of the restraints" and that I tried to "bite them". This was also when Larimore conveniently informed my Mom that YOS is pursuing criminal charges against me.

I would never do this unless I thought it was absolutely necessary to make a valid point because I love my family more than life itself, but I swear on my entire families well being, life, and liberty, from my Grandma, to my Mom, to my older sister, to my little sister, all the way to my new born nephew, right hand to God, that I never did not one of those three things they alledged. I did not lunge at them, I did not try to break out of the restraints, I did not bite the officer or even try, nor did I do anything other than grab the hospital remote that provoked this assault, and that these officers sat there and harassed and degraded me after they assaulted me.

This entire situation was completely out of hand and very serious because of all these damages I sustained from these officers absolute disregard for my life.

Claim #1 D. Statement of Claims
8th Amendment, Excessive Force, Cruel and Unusual
Defendants: Patrick Maul, Larry Downard
Supporting Facts:

Damages: As a result of these officers actions I suffer from nerve damage in my lower spine. Still to this day, my sciatica is so bad some days that I can feel it all the way into my toes. At its worst, its hard to make it through a normal day because its a challenge to even walk. At its best, its a constant pain in my back. I am predominantly a construction worker and can only imagine how this is going to effect my future.

As a result of these officers false reporting, it interfered with my programming and was a contributing factor in the facilities decision to pursue charges against me, that lead to 16 months of my incarceration.

I deal with emotional turmoil from these officers actions. Words cannot describe the type of anger I have towards these two individuals after they physically assaulted me for absolutely no reason at all, then left me restrained to a bed by all 4 limbs all night while degrading and harassing me, then proceeding to make a faulty report that ultimately lead to me losing another 16 months of my life to incarceration. These two individuals are criminals, and if it were up to me I'd put both these

Claim #1

D. Statement of Claims

8th Amendment, Excessive Force, Cruel and Unusual

Defendants: Patrick Maul, Larry Downard

Supporting facts:

in jail and make them resign from their
job.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ☐ Yes ☒ No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

☒ Yes ☐ No (check one)

Did you exhaust administrative remedies?

☒ Yes ☐ No (check one)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

For these officers absolute disregard for my life safety and well being, ~~and~~ the injury and incarceration sustained, I'm requesting no less than \$500,000 from these defendants.

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Derry Heahn
(Plaintiff's signature)

3/20/2024
(Date)

Devin A. Hearn
A0324637
CJC El Paso County
2739 E. Las Vegas St
80906



United States District Court
Alfred A. AARAJ Court House
901-10th St Room A105
Denver, CO 80294-3589

