

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO

Civil Action No. _____

Rodney Douglas Eaves, Plaintiff,

Vs.

El Paso County, Board of County Commissioners,
El Paso County Criminal Justice Center,
Bill Elders,
Rob King,
John Doe,
John Doe,
John Doe,
John Doe,
Zachary Margurite,
Canyon Parcell,
Michael Kimberlain,
John Doe,
John Doe,
Jane Doe,
Correct Care Solutions, Defendant(s).

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 10 2016

JEFFREY P. COLWELL
CLERK

PRISONER COMPLAINT

A. PARTIES

1. Rodney Douglas Eaves, #A0286648, 2739 E. Las Vegas St., Colorado Springs, Co. 80906
(Plaintiff's name, prisoner identification number, and complete mailing address)

2. El Paso County, Board of County Commissioners, 200 S. Cascade Ave., Suite 100, Colorado Springs, CO. 80903-2202
(Name, title, and address of first defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

The Board represents the County of El Paso in the state of Colorado.

3. El Paso County Criminal Justice Center, Correctional Facility, 2739 E. Las Vegas St. Colorado Springs, CO. 80906
(Name, title, and address of second defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

Is a Correctional Facility run by the El Paso County Sherriff's Department.

4. Bill Elders, Sherriff of El Paso County, 27 E. Vermijo Ave., Colorado Springs, Co. 80903
(Name, title, and address of third defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

Is a sworn Sherriff.

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

A. PARTIES

5. Rob King, Commander at CJC, 27 E. Vermijo Ave., Colorado Springs, CO. 80903
Defendant acted under color of state law because he is a sworn Deputy in the El Paso County Sherriffs Department.
6. John Doe, Lieutenant at CJC, 27 E. Vermijo Ave., Colorado Springs, CO. 80903
Defendant acted under color of state law because he is a sworn Deputy in the El Paso County Sherriffs Department.
7. John Doe, Lieutenant at CJC, 27 E. Vermijo Ave., Colorado Springs, CO. 80903
Defendant acted under color of state law because he is a sworn Deputy in the El Paso County Sherriffs Department.
8. John Doe, Sergeant at CJC, 27 E. Vermijo Ave., Colorado Springs, CO. 80903
Defendant acted under color of state law because he is a sworn Deputy in the El Paso County Sherriffs Department.
9. John Doe, Sergeant at CJC, 27 E. Vermijo Ave., Colorado Springs, CO. 80903
Defendant acted under color of state law because he is a sworn Deputy in the El Paso County Sherriffs Department.

A. PARTIES

10. Zachary Margurite, Deputy, 27 E. Vermijo Ave.,
Colorado Springs, CO. 80903

Defendant acted under color of state law because he is a
sworn Deputy in the El Paso County Sherriffs Department.

11. Canyon Parcell, Deputy, 27 E. Vermijo Ave., Colorado
Springs, CO. 80903

Defendant acted under color of state law because he is a
sworn Deputy in the El Paso County Sherriffs Department.

12. Michael Kimberlain, Deputy, 27 E. Vermijo Ave.,
Colorado Springs, CO. 80903

Defendant acted under color of state law because he is a
sworn Deputy in the El Paso County sherriffs Department.

13. John Doe, Deputy, 27 E. Vermijo Ave., Colorado Springs, CO.
80903

Defendant acted under color of state law because he is a
sworn Deputy in the El Paso County Sherriffs Department.

14. John Doe, Deputy, 27 E. Vermijo Ave., Colorado Springs, CO.
80903

Defendant acted under color of state law because he is a
sworn Deputy in the El Paso County sherriffs Department.

A. PARTIES

15. Jane Doe, Classification, 27 E. Vermijo Ave., Colorado Springs, Co. 80903

Defendant acted under color of state law because she is employed by the El Paso County Sherriffs Department.

16. Correct Care Solutions, Medical provider for CJC, 7388 S. Revere Parkway, Suite 601, Centennial, Colorado 80112

Defendant acted under color of state law because they are contracted by the El Paso County Sherriffs Department and is delegated constitutional obligations to provide medical care.

B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to: (check one if applicable)

28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional or alternative statutes (if any):

Tort for Assault and Battery.

C. NATURE OF THE CASE

BRIEFLY state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled "C. NATURE OF THE CASE."

This is a civil rights action filed by Rodney Eaves, a pretrial detainee, for damages and injunctive relief under 42 U.S.C. § 1983, alleging excessive use of force and denial of medical care, excessive confinement, and loss of privileges in violation of the Due Process Clause of the Fourteenth Amendment to the United State Constitution. The Plaintiff also alleges the torts of assault and battery and negligence. Plaintiff also alleges under 42 U.S.C. § 1983 deliberate indifference to his health and safety.

D. CAUSE OF ACTION

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, 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 cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One: Denial of Due Process

Supporting Facts:

1. On 4-13-15 inside ward E4 an incident occurred between me and another inmate. This incident occurred between 0930 hours and 1030 hours.
2. Deputy Margurite, EID #12053 (Defendant under PARTIES #10) instructed me to step into the breezeway outside the door to E4 ward to explain myself.
3. I explained that another inmate was touching me by trying to place his arm around me and I did not want to be touched.
4. Deputy Margurite wanted to know if I was going to contrive to create a disturbance in his ward. I felt I had did no wrong and did not find it appropriate to allow another inmate to touch me in such a manner. I did not want to argue with Deputy Margurite. So I chose to remain silent. He stated "oh you don't want to talk to me now huh? OK turn around and cuff up."
5. Video Surveillance inside ward E4 and outside the door of E4 will show I never instigated the confrontation with the other inmate or yelled at or resisted Deputy Margurite

D. Cause of Action, Claim One Continued pg 2

- and complied with all of Deputy Margurite's instructions.
6. I was taken to Ward C cell SD1 where I was assaulted by four other Deputies. (see claim ~~two~~^{PE} three)
 7. Deputy Margurite wrote up the false allegations in incident report #151220653 and I was served with that report on 4-15-15.
 8. On 4-22-15 I had a hearing for those false allegations.
 9. At the hearing I was denied the ability to call the witness I supposedly yelled at. The witness was never called or never gave a statement.
 10. At the hearing there was no hearing "board" present just one Lieutenant EID #99057 (Defendant under PARTIES #6)
 11. I requested LT. Doe EID #99057 to look at the video and see for ~~me~~^{PE} himself that the allegations were false. LT. Doe refused to look at the video.
 12. I told LT. Doe I wanted to submit a written statement about this incident and he refused to allow me to do that as well.
 13. I was getting upset I was not being allowed to defend myself and made the comment "wow! I get a write up that is not even true, get assaulted and now I get to go to the hole and you won't even listen to me or check the video in my defense. What kind of institution are you running here?"

D. Cause of Action, Claim One Continued pg 3

14. LT. Doe EID# 99057 responded to my comment with "Your lucky this ain't Metro and that was all you got. I use to work Metro and have seen and done worse."
15. The reviewing who approved the discipline action was Lieutenant John Doe (Defendant under PARTIES #7). The LT. approved the disciplined action taken against me even though this individual is well aware of the procedures used to enforce discipline.
16. Because of incident report #151220653, I spent 77 days in 25 hour lockdown and 77 days in 11 hour lockdown. For a total of 154 days of lockdown time.
17. During those times I was deprived of games, books, recreation, hot water for coffee or soups, television, social time with other inmates, commissary, phone calls, and access to the kiosk to send kites for needs and concerns.
18. On 6-19-15 in request #398573 I kited classification because I was curious how long I would be in Ward C2 and what my classification was. Jane Doe (Defendant under PARTIES #15) of classification refused to give details.
19. I re-kited in request #399390 and Jane Doe still refused to answer any of my concerns.

2. Claim Two: Deliberate Indifference

Supporting Facts:

1. Due to incident report #151220653 I spent approx. 120 days exposed to hazardous materials in wards C2, D1, and D2.
2. The El Paso County, Board of County Commissioners (Defendant under PARTIES #2) are aware of these conditions.
3. The El Paso County Criminal Justice Center, A.K.A. CSC (Defendant under PARTIES #3) remains open exposing employees and inmates to hazardous materials.

3. Claim Three: Excessive Use of Force

Supporting Facts:

1. On 4-13-15 I was taken to C Ward cell SD1 by Deputy Margurite EID# 12053.
2. We were met at the elevator in ward C by Deputies Canyon Parcell EID# 12055, Michael Kimberlain EID# 13090, John Doe, and John Doe.
3. Video Surveillance will reflect I entered cell SD1 while still in handcuffs and was instructed to get down on my knees and face the wall.
4. I did as instructed and never resisted.
5. I was instructed to remove my T-shirt and I made a smart comment "How the hell am I suppose to do that when I am handcuff you dumbass!"
6. Deputy Parcell EID# 12055 (Defendant under PARTIES #11) said "Oh you want to be a smartass!" At that point I was slammed on my face and repeatedly struck in the head and neck by Deputies Parcell EID# 12055 and Kimberlain EID# 13090 (Defendant under PARTIES #12).
7. Deputies Doe (Defendant under PARTIES #13) and Doe (Defendant under PARTIES #14) did not intervene to prevent the assault.
8. The Deputies realized I was on camera and moved me to the corner of the cell and continued to assault me.

D. Cause of Action, Claim Three Continued pg 2

9. Immediately after the assault video surveillance will show Sergeant John Doe (Defendant under PARTIES #8) took photographs of my injuries and helped in the cover up of the assault.
10. I was left in SD1 for approx. 1-2 hours where I vomitted several times before I was taken to medical by wheel chair.
11. An inmate named Bryan Demorris Ellison was instructed to clean up the blood and vomit ~~the~~^{PC} inside Cell SD1.
12. Mr. Ellison saw the extent of my injuries and stated he would be willing to testify on my behalf.
13. I requested the names of the Deputies involved in the assault from Sergeant John Doe (Defendant under PARTIES #8) and he stated "It will be in the report." I never seen or recieved a report.
14. Phone records will reflect I contacted my wife Katherine Eaves and asked her to contact the Colorado Springs Police Department and come see me so I could press charges.
15. The CSPD instructed her the El Paso County Sherriffs Department would conduct thier own internal investigation.

D. Cause of Action, Claim Three continued pg 3

16. My wife contacted sergeant John Doe (Defendant under PARTIES #9) with a phone call to CTC and he came and took additional photographs of my injuries. Approx. a few days after the incident. The Sergeant John Doe called my wife back and told her I was fine.
17. On 4-17-15 in request # 372848 I vented my general anger over my treatment.
18. On 4-18-15 in request # 373353 the EPCSD denied that an assault even occurred.
19. After I had been moved from Medical on 4-14-15 to Ward C2, Cell 4 top bunk an inmate named Rick Sticher saw the extent on my injuries and said he would testify in my behalf as well.
20. On 4-21-15 in request # 374353 I was denied an administrative remedy to the assault.
21. On 4-22-15 in request # 374926 I exhausted my hopes for justice in my assault case.
22. Sherriff Bill Elders (Defendant under PARTIES #4) is aware of his Deputies abusing inmates yet fails to stop the abusive conduct here.
23. Commander Rob King EID# 88010 (Defendant under PARTIES #5) is aware of the abusive Deputies and fails to stop the abusive conduct here.

D. Cause of Action, Claim Three Continued pg 4

24. Medical records reflect I suffered damage to my left ear, fractures to my left eye and face and suffered a concussion.
25. I have permanent hearing loss in my left ear and can no longer breath out the ~~rest~~²⁶ nostral of my nose.
26. For weeks after the incident I lost sleep and could not turn my head due to the extreme soreness in my neck.
27. Medical records also reflect I suffered mental anguish from depression and episodic mood disorder.

D. Cause of Action, Claim Four Deliberate Indifference

Supporting Facts:

1. Correct Care Solutions (Defendant under PARTIES #16) tried to help the El Paso County Sheriffs Department cover up my assault that happened on 4-13-15.
2. In request #380246 I requested to have my medical records reviewed by another Doctor and was subsequently denied.
3. I was not taken to have a C/T scan done until 4-22-15.
4. On 5-5-15 in request #380183 I kited medical and explained the problems I was having and that I could not possibly have no injuries.
6. Nothing was ever done for my injuries. I was simply given naproxen for pain even though the Doctor finally admitted to me that I did suffer some fractures to my face.

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 lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

1. Name(s) of defendant(s) in prior lawsuit:

2. Docket number and court name:

3. Claims raised in prior lawsuit:

4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?):

5. If the prior lawsuit was dismissed, when was it dismissed and why?

6. Result(s) of any appeal in the prior lawsuit:

F. ADMINISTRATIVE RELIEF

1. Is there a formal grievance procedure at the institution in which you are confined? Yes No (CHECK ONE).

2. Did you exhaust available administrative remedies? Yes No (CHECK ONE).

G. REQUEST FOR RELIEF

State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

WHEREFORE, Plaintiff requests that the Court grant the following relief:

A. Issue a declaratory judgment stating that:

1. The physical abuse of the Plaintiff by defendants Parcell, Kimberlain, Doe and Doe violated the Plaintiff's rights under the Fourteenth Amendment to the United States Constitution and constituted an assault and battery under state law.

DECLARATION UNDER PENALTY OF PERJURY

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.

Executed on 4-1-16
(Date)

(Prisoner's Original Signature)

G. REQUEST FOR RELIEF pg 2

2. Defendants Bill Elders and Rob King's failure to take action to curb the physical abuse of inmates violated the Plaintiff's rights under the Fourteenth Amendment to the United States Constitution and constituted an assault and battery under state law.
3. Defendant Margurite's actions of placement in SD1 and making false allegations, against the Plaintiff that lead to Defendant Lieutenant John Doe in conducting the Plaintiff's bogus disciplinary hearing, and Defendant Lieutenant John Doe actions in sustaining and approving it, violated the Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
4. Defendants Sergeant John Doe, and Sergeant John Doe's failure to take action to help report the assault to the proper authorities and curb the physical abuse of inmates violated the Plaintiff's rights under the Fourteenth Amendment to the United States Constitution and constituted an assault and battery under state law.
5. Defendant Correct Care Solutions actions in failing to provide adequate medical care and the attempt to cover up the assault on the plaintiff violated the Plaintiff's rights under the Fourteenth Amendment of the United States Constitution.

G. REQUEST FOR RELIEF pg 3

6. Defendant Jane Doe's failure to address and correct the Plaintiff's classification confinement violated the Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
7. Defendants El Paso County, Board of County Commissioners, and El Paso County Criminal Justice Centers deliberate indifference to the Plaintiff's health and safety violated, and continues to violate, the Plaintiff's rights under the Fourteenth Amendment to the United States Constitution.
- B. Issue an injunction ^{re} ~~order~~ ordering Bill Elders and his agents to:
 1. When an incident is occurring that requires an inmate to be placed into cell SD that it be recorded by hand held video camcorder so all sights and sounds of the incident are captured.
 2. That a disciplinary hearing board consist of a real board and not one hearing officer.
 3. That disciplinary hearings be tape recorded and that witnesses and defendants be allowed to submit written statements for record.
 4. That wards C1, C2, and D1 stop having more than 23 hour lockdown periods.
 5. That if individuals are not classified to be in C1 or C2 that they not be housed there.

G. REQUEST FOR RELIEF pg 4

6. That negative reports do not effect housing only write ups can effect housing and disciplinary actions.
- C. Issue an injunction ordering Correct Care Solutions to:
 1. Immediately arrange for Plaintiff's need for follow-up medical treatment to be evaluated by a medical practitioner with expertise in the treatment of eyes, ears, and nose restoration and function.
- D. Issue an injunction ordering the El Paso County Board of County Commissioners to:
 1. Under CRS 17-26-126 to examine the jail with an OSHA or HAZMAT organization to limit the exposure to the Hazardious materials in Wards A, B, C, and D.
 2. If the exposure cannot be remedied, that Wards A, B, C, and D be immediately closed and renovated.
- E. Issue an injunction ordering the El Paso County Criminal Justice Center to:
 1. Work closely with the El Paso County Board of County Commissioners to fix the exposure to hazardous materials that employees and inmates face everyday.
- F. Award compensatory damages in the following amounts:
 1. \$400,000 jointly and severally against defendants Canyon Parcell, Michael Kimberlain, Deputy John Doe, Deputy John Doe, Sergeant John Doe, Sergeant John Doe, Bill Elders,

G. REQUEST FOR RELIEF pg 5

and Rob King for the physical and emotional injuries sustained as a result of the Plaintiff's assault.

2. \$30,000 jointly and severally against Defendants Zachary Margurite, Lieutenant John Doe, Lieutenant John Doe, and Jane Doe for the punishment, including deprivation of liberty and amenity, and emotional injury resulting from their denial of Due process in connection with the Plaintiff's disciplinary and housing proceedings.
3. \$20,000 jointly and severally against Defendant Correct Care Solutions from their failure to provide adequate medical care to the Plaintiff.
4. \$500,000 jointly and severally against Defendants El Paso County, Board of County Commissioners and El Paso County Criminal Justice Center's gross negligence, and deliberate indifference for the exposure to hazardous materials inside the detention facility and injuries to the health and safety of Plaintiff.

G. Award punitive damages in the following amounts:

1. \$20,000 each against Defendants Parcell, Kimberlain, Doe, Doe, Doe, Doe, Elders, and King for assault and battery.
2. \$10,000 each against Defendants Margurite, Doe, Doe and Doe for violation of due process.

G. REQUEST FOR RELIEF pg 6

3. \$10,000 against Defendant Correct Care Solutions for failure to provide adequate medical care.

4. \$20,000 against each County Commissioner responsible for the detention facility.

5. \$100,000 against Defendant the El Paso County Criminal Justice Center.

H. Grant such other relief as it may appear that Plaintiff is entitled.