

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

Case No.

SCOTT ANTHONY GOMEZ, Jr.

Plaintiff,

v.

PUEBLO COUNTY, by and through the **PUEBLO COUNTY BOARD OF COUNTY COMMISSIONERS; KIRK M. TAYLOR**, Pueblo County Sheriff; **DAN CORSENTINO**, former Pueblo County Sheriff; **J.R. HALL; MARYANN STUART; MARK LIGHTCAP; ALLEN MEDINA; DOUGLAS SYKES; FRANK MORALES; JOHN and JANE DOES 1-10.**

Defendants.

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Scott Anthony Gomez Jr., and for a complaint against the Defendants states as follows:

PARTIES

1. At all times pertinent hereto, the Plaintiff, Scott Anthony Gomez, was and is a resident of the State of Colorado and citizen of the United States of America.

2. Pueblo County and the Pueblo County Board of Commissioners (hereinafter referred to collectively as “Pueblo County”) were at all times relevant to this Complaint a governmental entity organized under the laws of the State of Colorado and a person subject to suit pursuant to 42 U.S.C. § 1983.

3. Defendant Dan Corsentino (hereinafter “Corsentino”) was the Pueblo County Sheriff between August of 2006 and January 8, 2007, and in that capacity was responsible for implementation of policy, procedure, custom and practice and supervision of public employees

in the operation of the Pueblo County Jail. Corsentino is sued both individually and in his official capacities.

4. Defendant, Kirk M. Taylor (hereinafter “Taylor”), became the Pueblo County Sheriff on or about January 8, 2007 and, in that capacity, became responsible for implementation of policy, procedure, custom and practice and supervision of public employees in the operation of the Pueblo County Jail. Taylor is sued both individually and in his official capacity.

5. The individual Defendants, J.R. Hall, Maryann Stuart, Mark Lightcap, Allen Medina, Doug Sykes and Frank Morales, were, at all times relevant to this Complaint, duly appointed and acting officers of the Sheriff’s Department of Pueblo County, State of Colorado, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and procedures of the County of Pueblo and the State of Colorado, and acting within the course and scope of their employment at the Pueblo County Jail. Defendants J.R. Hall, Maryann Stuart and Mark Lightcap were supervisors of the other individual Defendants. All of the individual Defendants are sued individually and in their official capacity.

6. The individual Defendants referred to as John and Jane Does 1-10 represent unknown supervisors of the above named defendants and other unknown officers, employees and agents of Pueblo County and the Pueblo County Sheriff’s Department who participated in the wrongful conduct against the plaintiff as described below. They are sued herein both in their individual and official capacities.

7. At all times relevant hereto, Defendant Pueblo County was the public employer of the individual Defendants, Defendant Taylor and Defendant Corsentino.

JURISDICTION AND VENUE

8. This is an action for monetary damages brought pursuant to 42 U.S.C. §1983, the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the common law and statutes of the State of Colorado.

9. Venue properly lies in the District of Colorado under 28 U.S.C. §1391 in that the Defendants reside in this District and all of the events giving rise to the claims took place in this District.

PROCEDURAL REQUIREMENTS

10. Proper notice required by Section 24-10-109, C.R.S. was served upon the Pueblo County Board of Commissioners within the required time period. This notice set forth the general facts underlying Plaintiff's claims against Pueblo County and its agents.

STATEMENT OF FACTS

11. At all relevant times, the Plaintiff was an inmate at the Pueblo County Jail. The Pueblo County Jail is located at 909 Court Street, in Pueblo, Colorado, and will hereinafter be referred to as "the Jail".

12. Originally, Plaintiff was being held in the Jail on a parole violation that was the result of an escape. Plaintiff was housed on the fourth floor in the maximum security section ("4B") of the Jail.

13. From the time of his incarceration to the present, Plaintiff was assaulted and injured by Defendant Allen Medina (hereinafter "Medina") and other jail personnel. These incidents of assault have included being sprayed with pepper spray and/or mace, shot with a Taser gun, beaten and kicked. These assaults were without provocation and were not necessary to control the Plaintiff, or to maintain order or safety in the Jail. Additionally, threats were made against the Plaintiff's life and his physical safety. Upon information and belief, employees of the Pueblo County Sheriff's Department solicited other inmates at the Jail to assault and harm the Plaintiff.

14. On or about November 22, 2006, concerned for his life and safety, Plaintiff, along with a fellow inmate, Daniel Smith (hereinafter "Smith"), escaped from the Jail by pushing up a ceiling panel in their cells, allowing them to access the Jail's ventilation system and ultimately exit the building through a grate. From there they lowered themselves to the roof of a garage of

the Jail by tying bed sheets together and using them as a makeshift rope; they then jumped another 18 feet to the ground. The Plaintiff was captured two days later and returned to the Jail, where he was once again housed on the fourth floor in the maximum security section, 4B.

15. Both the Plaintiff and Smith were injured in the escape on November 22, 2006.

16. This was the second escape attempt in 2006. In March, two other fourth floor cellmates fashioned ropes from bed sheets and dropped to freedom, but were captured. Both were hurt in their escape attempt.

17. As a result of the March escape and then Plaintiff's escape in November, the Defendants knew or should have known that the Jail was not secure. In fact, Defendant Corsentino interviewed the Plaintiff after his capture, at which time Plaintiff told him that there were many ways to get out of the facility.

18. After Plaintiff's escape, the Defendants made little or no effort to improve the security of the Pueblo County Jail.

19. On or about January 3, 2007, Defendant Medina and other officers, without provocation, sprayed Plaintiff with pepper spray or mace and ordered him to lay on the floor of his cell, which he did. Plaintiff was then handcuffed and, while Plaintiff was thus restrained, Medina and other officers began repeatedly shooting him with a taser, beating and kicking him. Plaintiff heard Medina say to the other officers, "Let's fuck him up good." Plaintiff was injured as a result of this assault on his person.

20. After this incident, Defendant Medina falsely accused and charged the Plaintiff with inciting a riot in order to cover up his unlawful and tortious conduct.

21. As a result of the assault on January 3, 2007 and other similar prior incidents, Plaintiff did not feel safe in the Jail and was afraid for his life. Consequently, Plaintiff began to plan another escape with another inmate, Oscar Mercado (hereinafter "Mercado").

22. Over the course of the next week, Mercado worked on a ceiling tile in the shower area of the 4B wing of the Jail. He used a homemade candle to melt the material from which the tile was made and then a piece of rebar to pry the tile loose.

23. On January 9, 2007, Defendant Frank Morales, while working in the 4B wing, smelled something burning in the shower of the 4B wing. He then found a homemade candle in the shower area. However, nothing was done by Jail personnel in response to this incident.

24. Upon information and belief, the Jail personnel also knew or should have known that cell doors in the 4B wing could easily be opened by inmates and were, therefore, not secure.

25. On January 10, 2007, Defendant Douglas Sykes (hereinafter "Sykes") was assigned to the fourth floor of the Jail. However, he left the maximum security section - 4B - unattended for more than an hour.

26. During the time that 4B was unattended by any guards, the Plaintiff and other inmates were able to open their cell doors and complete the preparations for the Plaintiff and Mercado's escape. The ceiling tile in the shower was broken and bed sheets and mattress covers were collected from various cells. The Plaintiff and Mercado then climbed through the hole in the shower ceiling. From there they located a mechanical shaft which extended up to the roof. They climbed up this shaft and exited on to the roof through an access door that latched from the inside but did not lock. Once on the roof of the five story Jail, Gomez and Mercado took their makeshift rope of bed sheets and mattress covers and tied it to a gas pipe and bracket. They then attempted to scale down the northwest side of the Jail to freedom.

27. While attempting to scale down the side of the Jail, Plaintiff fell approximately forty feet, striking the pavement below, sustaining significant injuries to internal organs, damage to his buttocks, back, scrotum, urethra, head and other parts of his body. He was found by Defendant, Sergeant Mark Lightcap, who called for medical help. The Jail's in-house medical personnel responded and determined that the Plaintiff was seriously injured. They attended to the

Plaintiff while an ambulance was summoned. Plaintiff was then transported by ambulance to a hospital in Pueblo. From there Plaintiff was flown by flight-for-life to Denver General Hospital, where several surgeries were performed and he remained hospitalized until mid-February.

28. In mid-February, Plaintiff was returned to the Jail. Subsequently, he was, in certain instances, denied appropriate medical treatment and care by employees and/or agents of Pueblo County. This denial of care served to aggravate his previous injuries.

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights)

29. Plaintiff incorporates paragraphs 1-28 above as if fully set forth herein.

30. This is a cause of action brought by the Plaintiff against Defendants for deprivation of constitutional rights within the meaning of 42 U.S.C. §1983.

31. At all times relevant to the allegations of this complaint, the Defendants, acting jointly, severally, in cooperation with others and/or under the direction of known or unknown parties, acted under color of state law.

32. Each of the named Defendants is a “person” under 42 U.S.C. §1983.

33. Plaintiff has a constitutionally protected right to be secure in his person and to be free from being subjected to excessive use of force and aggressive acts of brutality exerted by individuals acting under color of state law. Plaintiff also has a constitutionally protected right to be free from cruel and unusual punishment. Defendants’ actions deprived Plaintiff of these constitutionally protected rights, in violation of 42 U.S.C. §1983.

34. Defendants’ actions as described above were objectively unreasonable in light of the facts and circumstances.

35. Defendants’ actions as referenced herein were motivated by an intent to cause

physical and emotional harm to the Plaintiff.

36. As a direct result of the Defendants' unlawful actions as referenced herein Plaintiff has suffered actual physical, mental and emotional injuries in an amount to be proven at trial.

37. The actions of the Defendants against the Plaintiff were willful and wanton, done with actual malice and deliberate indifference to the rights of the Plaintiff and Plaintiff is entitled to exemplary damages.

SECOND CLAIM FOR RELIEF
(Conspiracy to Violate Civil Rights)

38. Plaintiff incorporates paragraphs 1-37 above as if fully set forth herein.

39. Defendants Medina and John Does agreed, conspired, acted together and in concert to deprive Plaintiff of his constitutional right to the due process of law by assaulting, tasing, beating and kicking him and then by acting together to obstruct justice and prevent disclosure of evidence of their unlawful acts. They did so by:

- a. falsely and/or failing to report the facts of the assault, tasing, beating and kicking and the surrounding circumstances in their police reports, including making false allegations that the Plaintiff incited a riot in the Jail;
- b. refusing and failing to protect Plaintiff from unlawful and unjustified severe assault, beating, tasing and kicking administered against him by co-conspirators;
- c. refusing and failing to report the illegal acts of co-conspirators as expressly required by the Colorado law and their office; and
- d. falsely accusing and pursuing criminal charges against the Plaintiff.

40. Defendants conspired to violate Plaintiff's civil rights by acting in concert to ignore Plaintiff's claims of abuse and thereby creating an atmosphere of intimidation and coercion in an attempt to use such atmosphere to place an imbalance of justice upon the Plaintiff

from pending criminal court matters.

41. All such violations of Plaintiff's civil rights are described in this complaint and said conduct is in violation of 42 U.S.C. §1983. Defendants' conduct was done with malice and willful disregard for the rights of Plaintiff, entitling him to exemplary damages.

THIRD CLAIM FOR RELIEF
(Violation of Civil Rights)

42. Plaintiff incorporates paragraphs 1-41 above as if fully set forth herein.

43. Defendants, acting under color of law, caused the Plaintiff to be deprived of rights guaranteed by the United States Constitution, the Fourth, Fifth, Eighth and Fourteenth Amendments.

44. Based upon the foregoing facts as alleged, it is the policy of Pueblo County to employ officers such as Defendant Medina and to allow the use of excessive force.

45. Based upon the foregoing facts as alleged, it is the policy of Pueblo County to allow officers, including the Defendants, to conceal the improper use of physical force.

46. Based upon the foregoing facts as alleged, it is the policy of Pueblo County to authorize officers to prepare, issue or recommend charges that are improper and unjustifiable to further conceal the use of improper and excessive force.

47. Based upon the foregoing facts as alleged, the policies of Pueblo County encouraged and, in part, caused, the constitutional violations by Pueblo County's officers as described in the foregoing paragraphs.

48. At all times pertinent hereto, the individual Defendants were acting within the course and scope of their employment and pursuant to the aforementioned policies and practices of Pueblo County. These policies and practices of Pueblo County were a moving force, proximate

cause or affirmative link behind the conduct by the individual Defendants causing Plaintiff's damages and violation of his rights pursuant to 42 U.S.C. §1983.

FOURTH CLAIM FOR RELIEF
(Constitutional Failure To Train And/Or Supervise)

49. Plaintiff incorporates paragraphs 1-48 above as if fully set forth herein.

50. The Sheriff of Pueblo County is the policy maker for the Pueblo County Sheriff's Department, and in that capacity establishes policies, procedures, customs and/or practices for his deputy sheriffs. Defendant Corsentino was the Sheriff of Pueblo County between August of 2006 and January 8, 2007. Defendant Taylor was the Sheriff of Pueblo County from January 8, 2007 to the present.

51. Defendants J.R. Hall, Maryann Stuart, Mark Lightcap and John and Jane Does were supervising deputies (hereinafter "supervising and training deputies"), under the oversight of first Sheriff Corsentino and then Sheriff Taylor. They were responsible for the training and supervision of deputies, officers and employees of the Pueblo County Sheriff's Department.

52. The policies, procedures, customs and/or practices established by Sheriffs Corsentino and Taylor and imparted by the supervising and training deputies were implemented by the deputies, officers and employees of the Pueblo County Sheriff's Department.

53. Sheriffs Corsentino and Taylor developed and maintained policies, procedures, customs and/or practices exhibiting a deliberate indifference to the Constitutional rights of persons in Pueblo County which caused violation of Plaintiff's Constitutional rights as set forth above.

54. The supervising and training deputies failed to adequately train and supervise officers and employees of the Pueblo County Sheriff's Department with respect to the use of force and providing adequate medical care, which failure caused the violation of Plaintiff's Constitutional rights as set forth above.

55. The individual Defendants and Pueblo County were aware of the lack of training given deputies, officers and employees in the Sheriff's Department in dealing with the rights of members of the public to be free from Constitutional violations as described in this Complaint.

56. If any training was given to deputies, officer and employees of the Sheriff's Department regarding the civil rights of members of the public to be free from Constitutional violations described in the Complaint, the Defendants knew such training was reckless or grossly negligent and that misconduct in that area was almost inevitable.

57. Defendants had a statutorily imposed duty to protect the Constitutional rights of the members of the public of Pueblo County from violations of those rights by employees of the Sheriff's Department. By failing to properly train and/or supervise such employees, including the Defendants, Defendants Corsentino, Taylor, and the supervising and training deputies violated Plaintiff's Constitutional rights.

58. As a direct result of said Defendants' failure to train and supervise, Plaintiff has been damaged in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Assault and Battery)

59. Plaintiff incorporates paragraphs 1-58 above as if fully set forth herein.

60. The various acts by Defendants Medina and John Does, especially as outlined in paragraph 19 above, against the Plaintiff were committed without justification, were excessive and unnecessary, caused Plaintiff physical injury and a great amount of pain, were harmful and offensive, and constitute assault and battery for which the Defendants should be held personally liable insofar as:

- a. The Defendants intended to cause an offensive or harmful physical contact with the Plaintiff or intended to place the Plaintiff in apprehension of such contact;
- b. The Defendants placed the Plaintiff in apprehension of such contact;

- c. The contact was harmful and offensive; moreover,
- d. The Defendants' acts resulted in physical contact with the Plaintiff;
- e. The Defendants intended to make harmful or offensive physical contact with the Plaintiff; and
- f. The contact was harmful and offensive.

61. The actions of the Defendants against the Plaintiff were done with actual malice towards the Plaintiff, were willful and with deliberate indifference and disregard for the rights of Plaintiff, entitling him to exemplary damages.

SIXTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)

62. Plaintiff incorporates paragraphs 1-61 above as if fully set forth herein.

63. The brutal abuse of Plaintiff by Defendants Medina and John Does was extreme, outrageous, unjustified and caused Plaintiff to suffer severe physical pain and emotional distress.

64. The intentionally brutal acts inflicted upon the Plaintiff by the Defendants were unjustified and done with actual malice, wanton indifference and a deliberate disregard for the rights of the Plaintiff. Plaintiff is entitled to exemplary damages.

65. Furthermore, the failure to provide reasonable medical care and treatment to Plaintiff constituted omissions or acts of extreme and outrageous conduct. Said conduct was reckless or done with the intent to cause the Plaintiff severe emotional distress.

SEVENTH CLAIM FOR RELIEF
(Malicious Abuse of Process)

66. Plaintiff incorporates paragraphs 1-65 above as if fully set forth herein.

67. Defendants used unjustified criminal process against the Plaintiff to intimidate and dissuade him from asserting his rights against the Defendants, to conceal their own

wrongdoing and to avoid liability for their own acts that proximately caused Plaintiff damage and emotional distress.

68. Defendants filed an unjustified charge of inciting a riot against the Plaintiff.

69. Plaintiff suffered actual damages, incurred unnecessary fees and costs and suffered additional emotional distress, adding to his injuries, as a proximate and foreseeable result of the Defendant's abuse of process.

EIGHTH CLAIM FOR RELIEF
(Negligence)

70. Plaintiff incorporates paragraphs 1-69 above as if fully set forth herein.

71. Plaintiff was an inmate of the Pueblo County Jail. As such, Defendants owed him a duty of care to ensure that he was not brutalized, tortured or his life threatened by employees of Pueblo County while he was incarcerated. Furthermore, Defendants owed Plaintiff a duty to ensure that his Constitutional rights were not violated.

72. Defendants operated the Pueblo County Jail in one capacity or another.

73. Defendant J.R. Hall was, at all time relevant hereto, the Bureau Chief for the Sheriff's Department in charge of the Jail.

74. Defendants had a duty to maintain the Jail, so that it was secure and inmates could not readily escape.

75. Defendants also had a duty to see that inmates housed in the maximum security section of the Jail were regularly monitored and not left unattended for long periods of time. Upon information and belief, Defendants' own policies required that officers check on these inmates every 15 minutes.

76. Defendants knew or should have known that the Jail was not secure, that inmates could easily let themselves out of their cells and that there were many ways in which a prisoner could escape from the Jail.

77. Defendants knew that when Plaintiff came to the Jail in 2006 he was being incarcerated for a prior escape. Furthermore, Defendants knew that Plaintiff had a propensity to escape, given the opportunity, as he had escaped from their Jail in November of 2006.

78. Defendants knew or should have known that, in the event Plaintiff did attempt to escape from the Jail, in all likelihood he would be injured, and it was foreseeable that Plaintiff could be seriously injured or killed.

79. Defendants knew or should have known that, while incarcerated at their Jail, Plaintiff had been assaulted and injured repeatedly by Defendant Allen Medina (hereinafter "Medina") and other Jail personnel. These incidents of assault included being sprayed with pepper spray and/or mace, shot with a Taser gun, beaten and kicked. These assaults were without provocation and were not necessary to control the Plaintiff, or to maintain order or safety in the Jail. Additionally, threats were made against the Plaintiff's life and his physical safety, and employees of the Pueblo County Sheriff's Department solicited other inmates at the Jail to assault and harm the Plaintiff.

80. Defendants knew or should have known that on January 3, 2007, Plaintiff was again brutally attacked by Defendant Medina and other officers and repeatedly shot with a Taser gun, and that said attack was wholly unjustified.

81. Defendants knew or should have known that such conduct as described above was a violation of Plaintiff's Constitutional right.

82. Defendants knew or should have know that the conduct described above would cause the Plaintiff to fear for his safety and life and, given Plaintiff's propensity for escape, would cause him to try to escape in order to protect himself from further harm or death.

83. Despite the above and foregoing, Defendants did nothing to deter the brutal attacks on the Plaintiff and did next to nothing to ensure that the Jail was secure and that the Plaintiff could not escape.

84. Defendants failed to make sure that doors on Jail cells, and the door on Plaintiff's cell in particular, locked. A door to the outside of the building was not latched. Ceiling tiles were easily removable, providing access to the facility's ventilation and mechanical systems and a pathway to escape.

85. Defendants did not question or investigate unusual behavior or circumstances, such as the smell of something burning and finding a homemade candle in the shower area of 4B.

86. Defendants failed to perform direct observation of the Plaintiff and other inmates in the maximum security section for more than an hour, which, upon information and belief, was in violation of their own policies and procedures.

87. Defendants ignored and recklessly disregarded all of the above facts that they knew or should have known, giving Plaintiff an open invitation to escape. Defendants actions or failures to act ensured that the Plaintiff would attempt to escape.

88. As a direct and proximate result of the Defendants' negligent, reckless, willful, wanton and deliberately indifferent conduct, Plaintiff did attempt to escape, fell 40 feet during the process, and was severely and permanently injured.

NINETH CLAIM FOR RELIEF
(Liability of Pueblo County based on Respondeat Superior)

89. Plaintiff incorporates paragraphs 1-88 above as if fully set forth herein.

90. Defendant Pueblo County is legally responsible to the Plaintiff for any harm caused by its employees or agents while acting within the course and scope of their employment

or agency.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests judgment in favor of the Plaintiff and against the Defendants, jointly and severally, and for such other and further relief as requested below:

1. Appropriate declaratory and other injunctive and/or equitable relief.
2. Compensatory and consequential damages, including damages for emotional distress, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial.
3. All economic losses on all claims allowed by law.
4. Punitive damages on all claims allowed by law in an amount to be proven at trial to properly penalize Defendants for their misconduct and to deter such wrongdoing in the future.
5. Attorney's fees and the costs associated with this action as provided in 42 U.S.C. §1988.
6. Pre- and post-judgment interest at the lawful rate.
7. Any further relief as the Court may find just and proper and any other relief as allowed by law.

DEMAND FOR JURY TRIAL

Plaintiff demands the right to have a jury decide at trial all issues raised by his Complaint that are triable to a jury as a matter of right pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Respectfully submitted this 3rd day of January, 2008.

LAW OFFICES OF GEORGE C. PRICE

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