

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTH WESTERN DIVISION

TIFFANY DAMOTA,

Plaintiff,

Vs.

Case No. _____

Barton County Sheriff L. Mitchell
Shaw, in his official capacity, Antonio Azua in his
official and individual capacity and
Barton County, Missouri,

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

COMES NOW, the Plaintiff Tiffany Damota, by and through her attorney Jeremy
Beaver and for her claims against Defendants, alleges and states the following:

1. At all times L. Mitchell Shaw has been the Sheriff of Barton County, Missouri
(hereinafter referred to as “Sheriff”)
2. Barton County, Missouri is a political subdivision of the State of Missouri
(hereinafter referred to as “County”)
3. Defendant Antonio Azua was at all times a jailer employed by Barton County at
the Barton County Jail also known as the Barton County Correctional Center.
4. This Complaint arises under the Civil Rights statutes of the United States,
specifically 42 U.S.C. § 1983.
5. Pursuant to 42 U.S.C. § 1983 this Court has jurisdiction.
6. All material allegations herein occurred within the Western District of Missouri,
thereby making venue proper in this Court.

7. The Sheriff is the final policy maker for all material conduct of the Sheriff of Barton County and of the Sheriff's Office of Barton County. There is no person who has authority over the Sheriff of Barton County, acting in his capacity as sheriff. The Sheriff can and has delegated some of his responsibility to Defendant Azua and others as it relates to the operation of the jail and supervision of inmates. Both as to his own conduct and as to the conduct of his employees, because of his position as Sheriff of Barton County, the Sheriff of Barton County's acts, customs, policies, practices, failure to train and failure to supervise his employees alleged herein are attributable to the County as well as to the Sheriff in his official capacity.

8. Sheriff Shaw is sued herein in his official capacity.

9. All of the conduct alleged herein of the Sheriff of Barton County and of his identified employees including but limited to Defendant Antonio Azua was the exercise of state authority within the meaning of 42 U.S.C. § 1983. At all times Defendant Azua was jail administrator at the Barton County Jail charged by the Sheriff with supervision of the jail, administration of jail policies, scheduling of employees and other supervisory functions and administrative functions. In as much as the Sheriff may have delegated his policy making functions to Defendant Azua, Azua is sued in his official capacity. In all other respects he is sued in his individual capacity.

10. Recognizing the extraordinary vulnerability of persons who are inmates of a county jail for any reason and the extraordinary opportunities of sheriffs and of employees of sheriffs to prey upon the vulnerability of such persons, the statutes of the State of Missouri specifically protect such persons by mandating that any person who is an employee of any jail who engages in sexual conduct with any person who confined in

a jail is guilty of the crime of Sexual Conduct With a Prisoner or Offender. Just as is the case for sexual intercourse or conduct with an underage person, consent is not defense to the crime Sexual Conduct With a Prisoner or Offender. *566.145 RSMo*

11. Recognizing the extraordinary vulnerability of persons who are, due to immediate circumstances beyond their control, incapable of giving consent to sexual intercourse or who are vulnerable to being compelled to engage in sexual intercourse, such as female inmates of a county jail, and given the extraordinary opportunity of sheriffs and or employees of sheriffs to prey upon the vulnerability of such persons, the statutes of the State of Missouri specifically protect such persons by mandating that any person who has sexual intercourse with another who is incapable of giving consent or by forcible compulsion is guilty of Rape, First Degree. *566.030 RSMo*

12. Recognizing the extraordinary vulnerability of persons who are, due to immediate circumstances beyond their control, incapable of giving consent to sexual contact or who are vulnerable to being compelled to engage in sexual contact, such as female inmates of a county jail, and given the extraordinary opportunity of sheriffs and or employees of sheriffs to prey upon the vulnerability of such persons, the statutes of the State of Missouri specifically protect such persons by mandating that any person who has sexual contact with another who is incapable of giving consent or by forcible compulsion is guilty of Sexual Abuse in the First Degree. *566.100 RSMo*

13. Sheriff Shaw has established as the policy, custom, usage and practice of the (a) Sherriff of Barton County, (b) the Sheriff's Office of Barton County and (c) (by virtues of his position as Sheriff of Barton County) Barton County, Missouri that the employees of the Sheriff of Barton County are permitted to engage in rape, rape by instrumentation,

sexual deviance, sexual humiliation, outrageous sexual advances blackmail and other sexual crimes against inmate(s) within the Barton County Jail as described herein, as the policy, custom, usage and practice of the Sheriff of Barton County, the Sheriff's Office of Barton County and of Barton County, Missouri.

14. Sheriff Shaw has established as the policy, custom, usage and practice of the (a) Sherriff of Barton County, (b) the Sheriff's Office of Barton County and (c) (by virtues of his position as Sheriff of Barton County) Barton County, Missouri that the employees of the Sheriff of Barton County may as a matter of the policy, custom, usage and practice of the Sheriff of Barton County and of Barton County, Missouri and/or as a matter of Sheriff Shaw's failure to train and failure to supervise those employees, commit rape, sexual battery, sexual conduct with offenders/prisoners against inmates of the Barton County Jail as well as commit all of the outrageous sexual advances, sexual harassment and sexual humiliation described herein.

15. These acts of rape, rape by instrumentation, sexual abuse, sexual battery and blackmail described herein and committed by employee(s) of the Sheriff of Barton County deprived the Plaintiff of her rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States to be free from unreasonable searches and seizures and to be afforded due process of law, her rights under the Eighth Amendment to be free from cruel and unusual punishment, and her rights under the Fifth and Fourteenth Amendments to the Constitution to have equal protection of the law and thereby not suffer the sexual degradation and criminal behavior described herein. A reasonable person would have known that these acts of rape, sexual deviancy, sexual

battery, sexual advances, sexual conduct with offenders, blackmail and sexual humiliation and degradation deprived the Plaintiff of her Constitution rights.

16. The identified employee's (Defendant Azua) sexual crimes and other sexually degrading acts described herein were committed with deliberate indifference to the Constitutional rights of the Plaintiff and were the direct and proximate cause of Plaintiff's damages. A reasonable person would have known these Constitutional rights were being violated as a result of the alleged conduct.

17. The conditions within the Barton County Jail, suffered by the Plaintiff and others, as further described herein are of such a depraved, deplorable and inhumane nature as to shock the evolving standards of decency that mark the progress of a maturing society and are violative of the Plaintiff's Constitutional Rights under the Fifth, Eight and Fourteenth Amendments to be free from unreasonably unsafe, unsanitary and generally deplorable conditions that deprived her and others of basic human needs such as clean running water, ventilated shelter, indoor plumbing, and protection from extreme temperatures.

18. The conditions within the Barton County Jail, suffered by the Plaintiff and others, as further described herein were at all times occurring while under the direct control and supervision and with the consent and approval of the Defendant Sheriff to such a degree that they are the custom, practice, usage and policy of the Sheriff and Barton County and were the proximate cause of the Plaintiff's damages.

19. The conditions within the Barton County Jail, suffered by the Plaintiff and others, as further described herein were at all times occurring while under the direct control and supervision and with the consent and approval of the Defendant Sheriff and are the direct

result of his failure to train, supervise, properly hire and educated employees of the Sheriff's Department and were the proximate cause of the Plaintiff's damages.

20. The conditions within the Barton County were the result of the Sheriff and the County's deliberate indifference to the Constitutional Rights of the Plaintiff, and others and a reasonable person would have known that these conditions described herein deprived the Plaintiff of her Constitution rights to be free from cruel and unusual punishment and to be deprived of due process.

21. The acts of rape, rape by instrumentation, sexual abuse, sexual harassment, sexual blackmail, sexual advances and other acts of Defendant Azua against the Plaintiff violated her Constitutional Rights and were a proximate cause of her damages.

22. Plaintiff Tiffany Damota was first incarcerated in the Barton County Jail on or about September 10, 2018 on a charge of Tampering with a Motor Vehicle.

23. The conditions inside the Barton County Jail for female inmates were deplorable. It was September and the outside temperate ranged from the low 80's to the low 90's Fahrenheit.

24. Female inmates were kept locked in the basement of the Barton County Jail. The basement of the Barton County Jail has no fresh air circulation, no air conditioning and no active heat, or, if there was any air conditioning it was non-functioning. The female inmates all shared one box fan that worked sporadically.

25. There were not enough beds in the basement for all of the female detainees and routinely they slept on a mat on the concrete floor. Often Ms. Damota slept on the floor after giving up her bed so that an older inmate could have it.

26. The area of the basement of the jail where the females were locked had no running water, no running toilet and no sink. The Plaintiff and the other female inmates were told that they could only have access to a restroom with running water for one hour a day.

27. Each day Ms. Damota and the other female inmates were given ice water and tea in pitchers to drink.

28. Ms. Damota and the other inmates were then forced to use the same pitchers to urinate and defecate in throughout the day. All the inmates shared the pitchers for this purpose. Sometimes they were given plastic bags for this purpose. With no air circulation in the basement the smell became unbearable and unsanitary and dangerous to the Plaintiff's physical and mental health. This was the only breathable air available to Ms. Damota and the others.

29. The inmates were often forced to clean the pitchers. The next day they would be given the same pitchers filled with drinking water after being told by jail staff that the pitchers had been "bleached".

30. Ms. Damota and other female inmates had rare access to showers. Only female jailers were supposed to escort female inmates for showers and "Mona", the only female jailer, claimed she was too busy with other duties. The Plaintiff was allowed one shower in eleven days.

31. Toward the end of Ms. Damota's first stay in the jail she began to learn from other inmate(s) that a specific male jailer, Defendant Azua, had created a bartering system with female inmates whereby Defendant Azua would offer things such as snacks, showers and other ways to escape the deplorable conditions in the basement in exchange

for female inmates exposing their private body parts to him and/or doing other sexual favors.

32. On one occasion Ms. Damota asked Defendant Azua for a pop tart. Defendant Azua instructed Ms. Damota to ask another female inmate “how I work.”

33. Ms. Damota was then told by the inmate that if she did sexual favors for Mr. Azua such as exposing herself to Mr. Azua she would get better privileges and the more she exposed the better the privileges would be.

34. On September 21, 2018 Ms. Damota posted bond and was released from the Barton County Jail pending her return to court.

35. On October 30, 2018 Ms. Damota travelled to Barton County for her court appearance with her two young children. She was late for court and when she arrived she was advised that a warrant would be issued for her arrest. Although she was outside the courthouse for her appearance she did not want to be arrested with her children. Ms. Damota returned to Oklahoma.

36. On December 8, 2018 Ms. Damota was again incarcerated in the Barton County Jail after being arrested on the failure to appear warrant. She was incarcerated there until December 18, 2018.

37. The conditions inside the jail were much the same as they had been in September 2018. However, the weather outside was now much colder with temperatures regularly under twenty degrees Fahrenheit. Once again Ms. Damota was placed in the basement with no heat other than a single space heater. The inmates were given one blanket which was insufficient for the cold temperature of the basement. There were often not enough beds to accommodate the inmates. There was no running water and no restroom

facilities available to them most of the time. She and other female inmates were forced to defecate and urinate in their drinking pitchers throughout her stay there. Mr. Azua continued to be employed as well.

38. During her December 2018 stay in the Barton County Jail Defendant Azua began offering to let Ms. Damota and another female inmate take showers more regularly. The area where the single shower was located was near the laundry room. Defendant Azua would lead Ms. Damota and the other inmate to the shower stall.

39. The shower had only a small curtain that did not extend over the entire shower area. While Ms. Damota was showering the Defendant Azua would watch her. Ms. Damota was forced to choose between taking a shower this way or not bathing.

40. In September 2018 Ms. Damota was allowed to shower once in eleven days. Because of the unsanitary conditions of the basement described above it was important to Ms. Damota to be able to clean herself. In December her shower usage increased under Mr. Azua's supervision to approximately every other day but only as long as Defendant Azua could watch her.

41. On December 18, 2018 Ms. Damota pled guilty to the charges and was placed on probation. She was released from the Barton County jail the same day.

42. Ms. Damota was instructed that even though she was an Oklahoma resident and had no connections to Missouri and no family there, she was not allowed to leave the State of Missouri until cleared to do so by her probation officer. Ms. Damota has young children. She had nowhere to stay in Missouri and could not afford to sleep in motels. She tried to find living space in shelters but had no identification and was ultimately unable to remain in Missouri without housing and she returned to Oklahoma.

43. On January 26, 2019 Ms. Damota was again incarcerated in the Barton County Jail for an alleged probation violation, in part for leaving the State of Missouri.

Defendant Azua was still employed as a jailer. Ms. Damota was confined there until March 28, 2019.

44. The conditions of the jail for female inmates such as Ms. Damota remained deplorable and unconscionable and lacked effective heat sources. Low temperatures at night routinely were less than freezing, sometimes less than ten degrees Fahrenheit.

45. Defendant Azua became much more aggressive in bargaining with Ms. Damota for “favors” of a sexual nature in exchange for improved conditions in the jail.

46. Defendant Azua began requiring Ms. Damota and at least one other female inmate to expose their breasts in exchange for things like snacks and cigarettes.

47. Defendant Azua would regularly take Ms. Damota to get a shower although only female jailers were allowed to escort females to the shower. Routinely Ms. Damota was required to shower with Defendant Azua watching her. After the shower she would be required to get dressed in front of him.

48. On one occasion while she was showering Defendant Azua reached into the shower and began rubbing Ms. Damota’s back with a rag. Ms. Damota told him to stop but instead of stopping he pushed her against the shower wall and continued rubbing down her back to her buttocks area. Ms. Damota pushed his hand away. Defendant Azua responded, “I’m the guard, you’re the inmate. I don’t know why you won’t just bend over.”

49. On several occasions Defendant Azua would converse with Ms. Damota about his sex life with his wife. He insisted that they had an open marriage and that his wife had given him chlamydia, a sexually transmitted disease.

50. Defendant Azua told Ms. Damota that he discussed her with his wife. He stated that when Ms. Damota got out of jail she would not be able to return to Oklahoma for a while. He stated that she should come live with him and his wife and the only requirement was that they would have group sex.

51. Ms. Damota played along with Defendant Azua's statements out of fear of what would happen if he suspected that she told anyone about his actions. She felt that she had to convince him that she was open to his advances to protect herself. She believed that eventually he would try to rape her.

52. On another occasion Defendant Azua took Ms. Damota and two other female inmates to the shower area. While one inmate showered Defendant Azua took Ms. Damota to another area away from the two inmates. He began trying to kiss Ms. Damota. Ms. Damota was afraid to totally refuse him but was able to convince him that it was too risky with the other inmates so close.

53. Defendant Azua instructed the inmate taking a shower to show her genitals to the other female inmate and the inmate complied. He then instructed her to insert a finger in her vagina in front of the other inmate and she complied.

54. On another occasion Defendant Azua took Ms. Damota and another female inmate to the shower area. While the other inmate was showering, Azua took Ms. Damota to an area out of view of the shower. He turned her around and began rubbing against her and kissing the back of her neck. When she did not respond to his actions he

pushed her until her face was up against the wall. He continued rubbing and put his hands down the back of her jail uniform. Ms. Damota turned around to stop him. Defendant Azua started kissing her and put his hand down the front of her jail uniform. He inserted his finger into her vagina. Ms. Damota, in order to safely get him to stop, pulled his hand away and told him it was too risky with the other inmates around. Mr. Azua then stated, "You're right. We'll do it later. You know you like it."

55. Ms. Damota saw female inmates using a cell phone in the basement. She was told that someone slid it under the door to them. Ms. Damota and other inmates suspected Defendant Azua was responsible for the phone. The battery eventually died on the phone.

56. Ms. Damota had two young children in Oklahoma and had been unable to communicate with them while in jail. One of Ms. Damota's children's birthday had recently occurred. Ms. Damota was upset that she had not been able to be with her daughter.

57. Azua knew Ms. Damota was emotional about missing her daughter's birthday. Defendant Azua told Ms. Damota that he had a charger for the phone and she could have it if Azua could molest her breasts and other parts of her body on the outside of her clothing. Reluctantly Ms. Damota agreed so that she could talk to her daughter.

58. Later Azua demanded that Ms. Damota use the phone to record herself dancing nude and send it to him.

59. Defendant Azua had become more aggressive in his demands for sexual favors. On a morning in mid-February 2019, Defendant Azua took Ms. Damota from the

basement under the guise of her helping prepare breakfast. He shackled her at her feet and hands with her hands connected to a belly chain around her waist.

60. Azua took Ms. Damota to a dark room in another part of the basement that she was unfamiliar with. As soon as they entered the room Azua was on her and began pulling at her clothing. Azua repeated “You want this.” Azua unzipped his pants and forced Ms. Damota’s pants down while she was saying “No, please stop” repeatedly.

61. Azua did not stop despite repeated pleas from Ms. Damota. Azua vaginally raped Ms. Damota in the dark basement room while she was shackled.

62. Approximately one day later other jail staff discovered the phone in the basement and an investigation began.

63. Ms. Damota disclosed to Sheriff Shaw that she had been raped by Azua. She requested that she be taken to a doctor to have a rape exam and to be tested for sexually transmitted diseases. The Sheriff replied that a rape exam would not be useful.

64. Days later Ms. Damota began experiencing symptoms consistent with a sexually transmitted disease. After repeated requests to jail staff, including the Sheriff, to get a rape test and a physical examination Ms. Damota was finally taken to a local hospital where she tested positive for chlamydia.

65. At all times a female jailer named Raymona Wright, known as “Mona” was employed in the jail. On several occasions Ms. Damota and other female inmates told “Mona” and another jailer named “Travis” that Defendant Azua was taking them to shower.

66. In response to these complaints “Mona” replied that she wasn’t surprised, that she knew Azua was wrongfully taking certain female inmates for showers. “Mona” knew Azua should not be doing that.

67. Nothing changed and Defendant Azua continued to take Ms. Damota and other female inmates for showers.

68. Ms. Damota made written various complaints about the conditions in the jail in December 2018. She also made complaints about Azua taking female inmates to showers. No jail staff ever came to Ms. Damota to discuss the complaints and no changes in the conditions occurred.

69. Ms. Damota also made written complaints to jail staff in January or February 2019 regarding the conditions in the jail. In some of the complaints she asked to speak to the Sheriff or a supervisor for Azua. Ms. Damota eventually was told that Azua reads all the complaints and determines what to do about them and it was futile to make a written complaint.

70. Ms. Damota later learned from the Sheriff that he had received the complaints but never read them. No changes in any of the conditions or circumstances described herein ever occurred as a result of the Plaintiff’s written complaints.

71. After Ms. Damota disclosed that she had been raped by Azua she was put in an isolation cell for approximately one week with little to no contact with other inmates or jail personnel.

72. Upon her release from Barton County Jail on March 28, 2019 Ms. Damota was assessed a fee in the amount of \$1,851.56 for the “cost of incarceration” by Barton County.

73. On February 18, 2019 Defendant Azua was charged in the 28th Judicial Circuit sitting in Barton County in case number 19B4-CR00026 with one count of Sexual Contact with a Prisoner/Offender, a Class E Felony, in violation of 566.145 *RSMo* against the victim, Tiffany Damota for some of the conduct described herein.

74. On October 31, 2019 the charge against Defendant Azua was amended to Rape in the First Degree in violation of 566.030 *RSMo* alleging that he had sexual intercourse with the Ms. Damota “by the use of forcible compulsion.”

75. On December 17, 2019 a preliminary hearing was held in the case against Defendant Azua wherein Ms. Damota gave sworn testimony. The Honorable Judge James Nichols found “probable cause to believe that the Defendant committed the felony charged” and Azua was bound over for trial. A trial date has not yet been set.

76. On or about April 7, 2020 the Plaintiff, through counsel, made various written requests for public records relevant to these matters to Defendant Sheriff Shaw pursuant to the terms and procedures as found in the “Missouri Sunshine Law” 221.300 et. seq. *RSMo*. Defendant Shaw has unreasonably and wrongfully refused to produce any of the requested materials in an effort to prohibit Plaintiff from obtaining materials that would support her claims.

77. Pursuant to 221.020 *RSMO*, “the sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and all of the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible.”

78. It is the Sheriff’s duty both statutorily and under the Constitution of the United States to make sure that the Constitutional rights of those whom he imprisons are not violated. Sheriff Shaw violated this duty owed to Plaintiff Tiffany Damota with

deliberate indifference to her Constitutional rights by hiring, failing to train and failing to supervise Defendant Azua and/or other employees.

79. During all the relevant time periods described herein the Barton County Sheriff's Department had no formal written policy and procedure manual in place for employees such as Defendant Azua and others.

80. Sheriff Shaw failed to train Azua and other jailers and employees how to treat female inmates. This policy, custom and usage of the Sheriff of Barton County to fail to train the jailers and employees was deliberately indifferent to Plaintiff's Constitutional rights and was a proximate cause of the violation of Plaintiff's Constitutional rights and damages therefrom.

81. Sheriff Shaw failed to properly supervise Azua and other jailers and employees while they were in charge of female inmates. This policy, custom, and usage of the Sheriff of Barton County to fail to properly supervise and/or control the jailers and employees was deliberately indifferent to Plaintiff's Constitutional rights and was a proximate cause of the violations of Plaintiff's Constitutional rights and damages therefrom.

82. Jail Administrator Azua violated Plaintiff's Constitutional Rights by the conduct described herein and directly caused her damages.

CAUSES OF ACTION

83. Paragraph 1-82 are re-alleged.

84. Pursuant to 42 U.S.C. § 1983 the Sheriff of Barton County, in his official capacity and Barton County are liable for damages to the Plaintiff, as determined by a jury, as well

as for attorney fees, costs of this action, interest as provided by law, and other such relief as may be deemed just and proper.

85. Pursuant to 42 U.S.C. § 1983 Defendant Azua in his individual capacity is liable for damages to the Plaintiff, as determined by a jury, as well as for attorney fees, costs of this action, interest as provided by law, and other such relief as may be deemed just and proper.

86. Pursuant to 42 U.S.C. § 1983 Defendant Azua, in his official capacity while carrying out functions delegated to him by Sheriff Shaw, is liable for damages to the Plaintiff, as determined by a jury, as well as for attorney fees, costs of this action, interest as provided by law, and other such relief as may be deemed just and proper.

87. Each of the Defendants has acted in a way that justifies an award of punitive or exemplary damages awarded to Plaintiff in an amount that will serve to punish, deter and/or make an example of them as determined by a jury.

WHEREFORE, Plaintiff prays that this Court grant her judgment against the Defendants as follows:

- A. For an award of compensatory damages in an amount to be determined by a jury.
- B. For an award of punitive damages in an amount to be determined by a jury.
- C. For reasonable attorney fees, the costs of this action, interest as provided by law and for all other relief this Court deems just and proper.

Respectfully submitted,

/s/ William Fleischaker

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