

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL B. KINGSLEY,

Plaintiff,

v.

STAN HENDRICKSON and FRITZ DEGNER,

Defendants.

ORDER

10-cv-832-bbc

A trial is scheduled for October 15, 2012 on plaintiff Michael Kingsley's excessive force claims against defendants Stan Hendrickson and Fritz Degner. Now before the court is a discovery motion filed by defendants this afternoon, in which they seek a court order requiring two district attorneys to produce records related to competency reports created in state criminal proceedings involving plaintiff. Specifically, defendants seek (1) enforcement of a subpoena they served on the Monroe County District Attorney seeking production of a competency report on which the Circuit Court for Monroe County relied in finding plaintiff incompetent to stand trial in a felony forgery case; and (2) an order directing the Waushara County District Attorney to produce a separate competency report that was the basis for dismissing a battery charge against plaintiff. Both district attorneys have refused to produce the competency reports absent a court order or a release from plaintiff. Plaintiff has filed a related motion to quash the subpoena filed with the Monroe County District Attorney. Dkt. #138.

Defendants contend that the competency reports are relevant and probative of plaintiff's

ability to testify truthfully in this proceeding. However, the probative value of the reports is substantially outweighed by the potential prejudice to plaintiff and confusion of the issues. Fed. R. Evid. 403. The fact that plaintiff has been found incompetent to participate in his own defense in a state criminal case would not be particularly probative of plaintiff's credibility in this case without an exploration of the reasons why plaintiff was found incompetent. Such exploration would require an examination of the method and conclusions of the doctors who prepared the reports. If defendants were permitted to proceed with this line of inquiry, plaintiff would be entitled to cross-examine the authors of the reports or depose them before trial. Additionally, plaintiff would be entitled to an opportunity to obtain rebuttal evidence undermining the reports and suggesting that plaintiff is credible. Not only would this delay the trial significantly, but it would distract the jury from the primary issue of excessive force and would lead to a mini-trial about plaintiff's competency.

No such mini-trial is appropriate. This case is relatively straightforward, with the most relevant evidence being the videotape of the events in question. The focus of trial should be on the videotape and the parties' own testimony regarding the events, not whether plaintiff is competent to assist his counsel in unrelated state court criminal proceedings.

I will allow defendants to ask questions that are probative of plaintiff's credibility, truthfulness and ability to understand events that are taking place. For example, defendants can ask questions that are probative of plaintiff's ability to remember particular details and dates. Additionally, defendants can impeach plaintiff with any prior inconsistent statements or statements he made suggesting that he was confused about the events of May 21, 2010. These tools of cross-examination should be sufficient for defendants to explore plaintiff's credibility

and truthfulness. They are to refrain from asking any questions such as “Have you ever been found incompetent to participate in a trial?” or similar questions implying that a ruling has been made on plaintiff’s competency.

ORDER

IT IS ORDERED that

1. The motion to compel discovery and enforce a subpoena served on the Monroe County District Attorney, dkt. #135, filed by defendants Fritz Degner and Stan Hendrickson is DENIED.

2. Plaintiff Michael Kingsley’s motion to quash the subpoena, dkt. #138, is GRANTED.

Entered this 11th day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge