

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

HALIMA ABDULLAHI, as Administrator
for the Estate of JAMAL MOHAMED, deceased,

Plaintiff,

v.

CAPITOL POLICE OFFICER JAMES
BROOKS,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

03-C-631-C

A final pretrial conference was held in this case on April 13, 2006, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Jon Loevy and Jon Rosenblatt. Defendant appeared by John Glinski, Assistant Attorney General for the State of Wisconsin.

Counsel approved the proposed voir dire questions in the form distributed to them at the conference. They were advised on the procedures for jury selection. The jury will consist of eight jurors chosen from a qualified panel of fourteen, with each side exercising three peremptory challenges.

The witnesses will be sequestered.

No later than the end of the business day Friday, April 14, 2006, plaintiff's counsel is to advise defendant's counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel are aware that the trial day will run from 9:00 a.m. to 5:30 p.m. with an hour lunch break and two 15 minute breaks during the day.

The trial will be bifurcated, with damages to be tried only if liability is established.

I made the following rulings on plaintiff's motions in limine:

1. Plaintiff's motion to bar reference to facts not known by defendant at the time he decided to use force on Mohamed is GRANTED with respect to defendant Brooks. However, defendant's expert witnesses may testify about other actions of Mohamed occurring before defendant Brooks arrived on the scene to the extent that those actions are relevant to their opinions about the cause of Mohamed's death. However, defendant may not ask any questions for any purpose about Mohamed's hitting Nurse McCarty or pulling her hair.

2. Plaintiff's motion to bar reference at trial to an incident involving defendant and Officer Wixom is GRANTED.

3. Plaintiff's motion to bar reference to a rumor about Mohamed "taking a swing" at someone is GRANTED.

4. Plaintiff's motion to bar reference to defendant's heroic efforts to save a domestic violence victim is GRANTED.

5. Plaintiff's motion to bar reference to the coroner's conclusion that Mohamed's death was accidental is GRANTED with respect to the coroner's report, which cannot be admitted into evidence, but the coroner may testify about how he believes the death occurred.

6. Plaintiff's motion to prevent defendant's witnesses from speculating about injuries Mohamed might have sustained on the day he died is DENIED to the extent that it would bar the experts from giving their opinions that Mohamed died of something other than defendant Brooks's application of excessive force. However, defendant's experts cannot hypothesize, for example, that Mohamed was hit by a car before the incident in question.

I made the following rulings on the defendant's motions in limine:

1. Defendant's motion to prohibit plaintiff from suggesting that defendant has admitted applying pressure to any area other than Mohamed's right shoulder blade is DENIED. Plaintiff's counsel may question defendant Brooks about his statements at his deposition.

2. Defendant's motion to prohibit plaintiff from suggesting that a judgment against defendant will be paid by the State of Wisconsin is GRANTED.

3. Defendant's motion to prohibit plaintiff from suggesting that former defendants Patrick Grady, Herbert Mueller and Jessica Murphy have settled with plaintiff is GRANTED.

4. Defendant's motion to amend the caption is GRANTED. The words "on her own behalf and" will be deleted from the caption.

5. Defendant's motion to prohibit plaintiff from suggesting that defendant Brooks acted improperly in detaining Mohamed, taking him to the ground, placing him in a prone position or placing him in restraints is GRANTED.

6. Defendant's motion to prohibit plaintiff from asking Jennifer Koberstein about what Deputy Coroner Gary Moore or any Madison police officer or detective told her is DENIED. However, plaintiff may question Koberstein about these matters for impeachment purposes only and not to introduce hearsay.

With respect to the form of the verdict, defendant continues to believe that the jury should be asked to decide whether, if defendant Brooks used unreasonable force against

Mohamed, those actions were the cause of Mohamed's fatal neck injuries, or the cause of fatal traumatic asphyxia.

Entered this 14th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge