

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

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

Plaintiff,

v.

CAPITOL POLICE OFFICER JAMES  
BROOKS,

Defendant.

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OPINION AND ORDER

03-C-0631-C

Plaintiff Halima Abdullahi brought this civil action against defendant Capitol Police Officer James Brooks, alleging that he had caused the death of Jamal Mohamed unconstitutionally, by applying force against him that was unreasonable under the circumstances. Plaintiff joined several Madison police officers as defendants, alleging that they had either applied force to Mohamed unconstitutionally or failed to intervene to protect him. The Madison police officers settled with plaintiff before trial, leaving Brooks as the only defendant. After trial on liability, the jury found that defendant Brooks had not applied unreasonable force to Mohamed. Disappointed in the verdict, plaintiff has moved

for a new trial pursuant to Fed. R. Civ. P. 59(e). She contends that even if the evidence is construed in favor of defendant Brooks, as it must be on a motion for a new trial, it compels the conclusion that he acted improperly.

The evidence at trial showed that Mohamed suffered from serious emotional difficulties stemming from a violent childhood in Africa and was known to the Madison police as a person who might exhibit bizarre and troubling behavior. On November 20, 2002, the police received a report from a citizen that a man had come into her tailor shop and had run around the shop brandishing a fly swatter and threatening the complainant's employee. Shortly thereafter, a nurse on her way to work saw Mohamed in the middle lane of one of the busiest streets in Madison. He appeared to her to be in distress physically and also emotionally disturbed. Concerned for his safety, she stopped her car to try to help him. Mohamed passed the front of her car, stumbled and fell against the curb. He then crawled into her car. She helped him out and he continued his bizarre behavior, bouncing along her car, stepping out into the traffic, flopping himself onto the hood of her car, pounding on her windshield, pulling on the windshield wiper and eventually struggling with her when she tried to help him.

Minutes later, the police arrived; among them was defendant James Brooks, who is a member of the Capitol Police and happened to be in the neighborhood. (His duties do not confine him to the state capitol; they extend to state governmental offices around the city.)

As Madison police officer Jessica Murphy approached Mohamed, he took off his belt and started twirling it like a lasso. When she told him to put it down, he put the belt around his neck and began pulling it tight. Murphy continued to talk to him until two other officers arrived, took Mohamed to the ground on his stomach and began trying to handcuff him. (Plaintiff does not assert that the officers did anything improper in deciding to take Mohamed to the ground or in the way they performed the maneuver.) He resisted, kicking his feet, keeping his arms straight out at his sides and lifting his shoulders off the ground. As he continued to struggle, defendant placed his knee across Mohamed's right shoulder, while Madison police officers cuffed him and tried to hold his legs down. Despite the officers' restraints on his legs and shoulder, Mohamed continued to struggle and arch his back in an unsuccessful effort to break away. Defendant increased the force he was applying to Mohamed's shoulder while one officer went to get restraints for Mohamed's legs. As they came back, someone noticed that Mohamed did not seem to be breathing. The officers attempted cardiopulmonary resuscitation and called for the rescue squad, but Mohamed never regained consciousness. He was pronounced dead at the hospital. An autopsy revealed that he died of chest and neck trauma.

Earlier in the litigation, defendants moved for summary judgment, which I granted because I believed that plaintiff had produced no evidence that defendant Brooks used unreasonable force. Without such evidence, plaintiff had no basis for her claims against

Brooks or against the Madison police officers for failing to intervene to stop him. The Court of Appeals for the Seventh Circuit reversed that decision, holding that competent medical evidence could support a finding that Mohamed suffered severe injuries consistent with pressure or crushing trauma to the neck and chest area, even though no witness had offered any evidence that defendant had applied such pressure to Mohamed's neck or back. "Concluding that Brooks knelt *only* on Mohamed's right shoulder and applied only reasonable force with his knee (as did the district court) ineluctably implies crediting [defendant's] account of the incident and discounting [plaintiff's expert] Dr. Adelman's medical testimony." Abdullahi v. City of Madison, 423 F.3d 763, 773 (7th Cir. 2005).

Although the court of appeals' decision gave plaintiff an opportunity to prove at trial that defendant acted unconstitutionally, she produced no evidence that defendant Brooks applied any unreasonable force to Mohamed's back. Thus, she was unable to convince a jury to find in her favor.

#### OPINION

A court has discretion to grant a new trial in the interest of justice. Generally, it will do so only when it appears that substantial justice has not been done or that prejudicial error has occurred. In this case, plaintiff has not established any error in the admission or exclusion of evidence. She objects to the "impermissible speculation about the cause of

Mohamed's death" by defendant's medical expert, Dr. Billy Bauman, Plt.'s Post-Trial Mot., dkt. #144, at 4, but the speculation to which she objects was not impermissible. Dr. Bauman did testify that Mohamed might have suffered his fatal injuries in some way other than being restrained improperly by defendant, such as by falling down or throwing himself against a car before the officers restrained him. Although plaintiff calls this testimony "impermissible guess work, which the jury instructions forbid," *id.*, Dr. Bauman was not suggesting to the jury that it find that Mohamed had fallen or that he had injured himself throwing himself against a car. Instead, he was trying to make the point that no one could say with certainty how Mohamed sustained the injuries that caused his death.

It was not improper for Bauman to testify in this manner. It was plaintiff's burden to persuade the jury that it was more likely than not that Mohamed died because of the force applied to him by defendant. In a case in which it was difficult to know what caused Mohamed's death, it was permissible for defendant to suggest other means by which he might have died. Defendant did not have to convince the jury that his witness's suggestions were correct; he simply had to persuade the jury that plaintiff had not proven that it was more probable than not that Mohamed's death was caused by defendant.

Plaintiff believes that the evidence required the jury to find in her favor, but in fact the evidence in her favor was not strong enough to impose such a requirement. Plaintiff's expert, Dr. Adelman, believed that Mohamed suffered his fatal injuries while engaged in a

struggle with defendant and the other officers but he had no real evidence to support his belief. Among the mysteries of Mohamed's death was the evidence that he had suffered a fatal injury to the front of his neck in the form of bloody abrasions on both the right and left sides, in addition to the traumatic asphyxiation that could have come from pressure applied to his back. Dr. Adelman believed that the neck injury was the result of a chokehold applied by defendant in the course of the struggle to restrain Mohamed. This opinion was clearly without foundation. None of the eyewitnesses testified to having seen defendant touch Mohamed's neck. As for the possibility that defendant's knee might have slipped down onto Mohamed's neck, that might explain some trauma to Mohamed's neck on the right side where defendant was kneeling but it would not explain how Mohamed incurred severe abrasions on both sides of his neck.

Pathologist Robert Huntington III performed the autopsy on Mohamed. He was candid in admitting that he had no idea how or when Mohamed might have incurred the injuries that killed him. He described the extensive neck hemorrhaging he observed but he could not identify any cause for the injuries.

At trial, plaintiff did not pursue the idea that Mohamed's death was caused by a neck injury, no doubt because of the lack of any eyewitness testimony that defendant had taken any action that would have caused such an injury. Instead, plaintiff focused on the possibility that defendant had placed his weight on Mohamed's middle back rather than on

his right shoulder blade as he testified. The doctors called by plaintiff testified that placing weight on a person's back could be dangerous because it might cause suffocation, but neither of them testified that it would be dangerous to restrain someone's shoulders in the manner defendant described. No other officer present at the scene testified that defendant applied pressure improperly, that is, below the shoulder blade, despite the fact that several officers were in such close proximity to defendant that one or more of them would have noticed such an action by defendant and all of them testified that they knew the dangers of applying pressure improperly. No civilian eyewitness said he saw defendant put his weight lower on Mohamed's back than his shoulder.

Plaintiff might have hoped that the jury would conclude that the other officers were modifying their testimony to protect defendant under some sort of code of silence practiced by police officers. If this is so, she produced no evidence to support such a conclusion. She did not show, for example, why officers from a different department would have a reason to cover up for any error defendant might have made. She did not suggest any reason why the Madison officers would not have told defendant to ease up on Mohamed if he was applying force improperly, particularly when they were well aware of the dangers of applying too much weight in the wrong place. It is not surprising that she is not arguing this point. What conceivable reason could police officers have to keep silent in such a circumstance and allow a man to die? Even if one does not accept the likelihood that their own humanity would

prevent this from happening, one must consider that their jobs and reputations were on the line in an unusually public location. It was early afternoon; the incident took place beside one of the busiest streets in Madison; and the entire scene was visible to numerous people, both on foot and in parked cars.

Given the lack of evidence that plaintiff presented and the many unanswerable questions that the case raised, no impartial observer could say that the jury erred in their finding. Plaintiff did not prove that it was more probable than not that defendant applied force to Mohamed's back in a manner that caused him to stop breathing.

The result of the trial is bound to be unsatisfactory for plaintiff and the rest of Mohamed's family, not just because they lost their suit but because they still do not know how Mohamed came to die. It is unfortunate that they have to live with that uncertainty.

#### ORDER

IT IS ORDERED that plaintiff Halima Abdullahi's motion for a new trial is DENIED.

Entered this 19th day of May, 2006.

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