

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

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CANYON THIXTON,

Plaintiff,

v.

GERALD BERGE, BRAD HOMPE  
and BRIAN KOOL,

Defendants.  
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ORDER

05-C-0620-C

A final pretrial conference was held in this case on January 11, 2007, before United States District Judge Barbara B. Crabb. Plaintiff Canyon Thixton appeared by Robert Gingras and Paul Kinne. Defendants Gerald Berge, Brad Hompe and Brian Kool appeared by Francis Sullivan and John Sweeney.

Counsel predicted that the case would take 3-4 days to try. They agreed to a jury of 8. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that the witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for

some instruction on the system.

No later than noon on the Friday before trial, plaintiff's counsel will advise defendants' counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility in advance of defendants' case. Also, no later than noon on the Friday before trial, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide the court with copies of documentary evidence before the start of the first day of trial.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. Before counsel give their opening statements, the court will instruct the jury on the way in which the trial will proceed and their responsibilities during the trial.

Counsel discussed the form of the verdict and the instructions on liability. Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

1. Plaintiff's motion to wear street clothes at trial and appear without shackles is unopposed and GRANTED.
2. Plaintiff's motion to preclude references to his post-incarceration arrest is GRANTED, except that defendant may ask him about all his convictions, for credibility purposes.
3. Plaintiff's motion to preclude any references to plaintiff's dismissal of his claim for excessive force is GRANTED.
4. Plaintiff's motion to bar references to his altercation with his wife is unopposed and GRANTED.
5. Defendants' motion to bar references to any conditions at the Wisconsin Secure Program Facility other than those raised in plaintiff's fourth amended complaint is GRANTED, but plaintiff may put in evidence of the cell arrangement, single celling and interactions with guards and other prison officials.
6. Defendants' motion to bar plaintiff from presenting any evidence that he should not have been housed at the Wisconsin Secure Program Facility or the reasons for his subsequent transfer from the facility is GRANTED.

7. Defendants' motion to bar Charles Montgomery from testifying to matters that are irrelevant to the specific claims plaintiff has made is GRANTED. Montgomery may not characterize conditions as "cruel and unusual punishment," which is the determination the jury is to make.

8. Defendants' motion to bar Dr. Kenneth Robbins from testifying at the liability phase of the trial about claims not alleged in plaintiff's complaint is GRANTED. Robbins may testify about plaintiff's mental illness only if plaintiff can show that defendants knew of his mental illness, that is, if Hompe and Kool testify that it was important for them to know plaintiff's mental state, the information was in plaintiff's record and they had access to plaintiff's record. Robbins may testify about plaintiff's mental health as it was reported in plaintiff's health record.

9. Defendants' motion to bar Robbins's testimony at the damages phase of the trial is GRANTED, unless Robbins supplies a supplemental report to defendants, because his expert report is based on factual allegations that plaintiff has now withdrawn,

Entered this 12th day of January, 2007.

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