

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

WILLIE C. SIMPSON,

Plaintiff,

FINAL PRETRIAL CONFERENCE
ORDER

10-cv-153-bbc

v.

PETER ERICKSEN and
WILLIAM POLLARD,

Defendants.

A final pretrial conference was held in this case on July 25, 2011, before United States District Judge Barbara B. Crabb. Plaintiff appeared in person, without counsel. Defendants appeared by John Sweeney and Carrie Benedon.

Plaintiff and counsel for defendants predicted that the case would take 3 days to try. 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.

Plaintiff and counsel for defendants 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 give the jury introductory instructions on the way in which the trial will proceed and their responsibilities as jurors.

Plaintiff and counsel for defendants agreed that all witnesses would be sequestered.

Plaintiff and counsel for defendants should use the microphones at all times and address the bench with all objections. If they need to consult with one another, they should ask for permission to do so. Only the person 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.

Plaintiff and counsel for defendants are to provide copies of documentary evidence to the court at the first day of trial.

Plaintiff and counsel for defendants 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.

Plaintiff's Motions - dkt. #78

1. Motion to exclude hearsay, documentary and testimony evidence

This motion is premature and is DENIED. If plaintiff objects to any of defendants' evidence, he may object to it at trial. Hearsay evidence will not be allowed unless it comes within an exception to the hearsay rule.

2. Motion to allow one witness in the courtroom at a time

I interpret this motion as one for sequestration. It is GRANTED.

3. Motion to exclude evidence of plaintiff's criminal history

This motion is unopposed and is GRANTED.

4. Motion to exclude evidence of plaintiff's prison conduct report history

GRANTED. At this point, defendants have not shown that the conduct reports have any probative value. I will not allow the evidence to show plaintiff's character as an aggressor because defendants have offered no reason to believe that such evidence would be admissible under Rule 404, under Rule 406 or to show defendants' state of mind when they released plaintiff to the general population. Even if the evidence were admissible under the rules, I would find it more prejudicial than probative under Rule 403 and would deny its admission.

5. Motion to exclude the facts in conduct report no. GBCI-2193-166 as they relate to the incident that is at issue in this case

GRANTED as unopposed.

6. Motion to exclude testimony or documentation that plaintiff started fight with

other inmates or threatens inmates with HIV infection unless declarant testifies at trial

GRANTED as it relates to past events unless plaintiff testifies and evidence is to be used to impeach him; DENIED as it relates to incident at issue.

Defendants' Motion - dkt. #85

1. Motion to allow evidence of plaintiff's conduct report history

DENIED for reasons discussed in connection with plaintiff's motions.

Entered this 25th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge