2015

Plaintiff's Motions in Limine, Johnson v. Sullivan, Docket No. 1:14-cv-01216 (C.D. Ill. 2015)

John Marshall Pro Bono Clinic

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No. 1216

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Michael Johnson, #R63104 Plaintiff, v. Officer T. Sullivan, Defendants.	) No. 14 – CV – 1216 -

PLAINTIFF MICHAEL JOHNSON'S MOTIONS *IN LIMINE*

NOW COMES the Plaintiff, Michael Johnson ("Johnson"), by and through his attorneys, F. Willis Caruso, and R. Dennis Smith, and under their supervision, Illinois, 711-Licensed Senior Law Students Elizabeth Bucko, Kevin Annis, Samantha Singer, and Jaclyn Desana of The John Marshall Law School Pro Bono Program and Clinic, and files these motions in limine.

Johnson moves motions in limine to bar Defendant from mentioning, introducing and referring, or alluding to any of the following: (I) Johnson's prior convictions; (II) the prior convictions of Johnson's witnesses (III) Johnson's medical records not relevant to his excessive force claim; (IV) Disciplinary Records Outside of Hunger Strike, Human Rights Violations, and Subsequent Medical Treatment relating to Event on Feb 19, 2014; (V) Johnson's unrelated litigation; and (VI) Johnson's unrelated grievances.

In addition, Johnson moves in limine to: (VII) remain unshackled and attired in appropriate civilian clothing when before the jury; and, (VIII) allow his witnesses to dress in appropriate civilian clothing with their shackles out of the jury's view; (IX) exclude any reference to Johnson's counsel as law students, professors, staff or members of the John Marshall Law School Pro Bono Program.

I. Motion In Limine to Exclude Plaintiff's Prior Convictions

Johnson moves to exclude any of his previous criminal record pursuant to Federal Rule of Evidence 609. FRE 609(a). Johnson anticipates that the Government will attempt to introduce evidence of his prior convictions under Federal Rules of Evidence 609, and objects to the admission of these convictions should he choose to testify. Although 609 permits attacking a witness's character for truthfulness through prior felony convictions, it is subject to Federal Rules of Evidence 403 to determine if the probative value is substantially outweighed by its prejudicial effect. Johnson's prior convictions of home invasion and aggravated battery have nothing to do with truthfulness. "The reason for allowing cross-examination under Federal Rules of Evidence 609(a) is to allow a party to attempt to cast doubt on a witness's reliability for telling the truth. Acts involving fraud or deceit clearly raise such doubt, while certain acts, such as murder, assault, or battery normally do not." Varhol v. Nat'l R.R. Passenger Corp., 909 F.2d 1557, 1567 (7th Cir. 1990). The only purpose for the government to bring up his three convictions is to prejudice the jury against plaintiff. It lends no bearing to his truthfulness during testimony or even to show propensity for plaintiff's character. In this case, home invasion and aggravated battery are not evidence of truthfulness but would substantially prejudice the jury against plaintiff.

If the court does permit the government to introduce these convictions, the plaintiff requests they be referred to as "felony convictions" only and exclude any testimony, mention, innuendo or questions regarding "home invasion" and "aggravated battery." The court would need to apply the balancing test to determine if the probative value of Johnson's prior convictions is substantially outweighed by their prejudicial impact. United States v. Puckett, 405 F.3d 589, 596 (7th Cir. 2005). For the very reason that Johnson's convictions lack probity, they would prove to be highly prejudicial. Because juries tend to discriminate against convicted criminals especially from a violent crime, the court should exclude any reference to Johnson's prior record. The Seventh Circuit has explained that "…'[e]vidence is considered unfairly prejudicial, not merely because it damages the opposing party's case, but also because its admission makes it likely that the jury will be induced to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented....,' " Thompson v. City of Chicago, 472 F.3d 444, 456-57 (7th Cir. 2006) (citing United States v. Connelly, 874 F.2d 412, 418 (7th Cir. 1989)).In this case, if plaintiff's "home invasion" and "aggravated battery" convictions are brought up, there exists a substantial possibility the jury would be unduly prejudiced against Johnson and may find against him even if they feel the facts of this case prove his civil rights were violated.

II. Motion in Limine to exclude Plaintiff's Witnesses Prior Convictions

Federal Rule of Evidence 609 allows only for the introduction of convictions for crimes directly related to a witness's credibility and felony convictions that survive a Fed. R. Evid. 403 prejudicial examination. The danger of unfair prejudice must substantially outweigh the probative value of the conviction. No conviction of any potential witness in this case invokes concerns of the witness' capacity for truthfulness. Felony convictions unless they are related to truthfulness such as perjury or fraud, do not address the truthfulness of a witness while their potential for prejudice is great. Varhol v. Nat'l R.R. Passenger Corp., 909 F.2d 1557, 1567 (7th Cir. 1990). The prejudicial effect of any potential introduction of evidence regarding prior convictions in this case would far outweigh its probative value therefore all evidence of plaintiff's prior felony convictions should be excluded.

Furthermore, Fed. R. Evid. 608 (b) prohibits the use of extrinsic evidence to prove a specific instance of a witness's conduct in order to attack the witness's character for truthfulness that does not meet the test of Fed. R. Evid. 609.

Specifically, the witnesses' felony convictions would be highly prejudicial. If the trier of fact were to hear that he was convicted of a felony that does not involve truthfulness, the jury will likely focus on those convictions rather than focusing on the actual events that took place. The Plaintiff's witnesses are not on trial here but are simply here to testify as the events on Feb 19, 2014; yet, the jury would likely be distracted from the detailed account of the events that will be presented and the prejudicial nature of this information could lead to an unfounded conclusion by the jury. Additionally, the witnesses felony convictions have no probative value because the main issue in this case is not what Plaintiff is liable for, but rather whether the Defendants' actions were excessive. The only evidence the jury needs to determine the issue of Defendants' liability in this case are the events that took place at approximately 4:00 am on Feb. 19, 2014, and the actions of the parties involved. The ultimate charges are therefore of no probative value in determining if the defendants' are liable in the case at bar.

III. Motion in Limine to Exclude Medical Records Not Relevant to the Excessive Force Claim

Federal Rule of Evidence Rule 401 states that evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Sprint/United Mgmt. Co. v. Medelsohn, 552 U.S. 379, 388 (2008). Rule 402 specifically prohibits irrelevant evidence. The Advisory Committee has

stated that "relevance is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." Fed. R. Evid. 401. Here, the only facts relevant are those medical records directly related to the event at issue which is the excessive force used by the guards during the transfer of Mr. Johnson on Feb 19, 2014.

IV. Motion in Limine to exclude Disciplinary Records Outside of Hunger Strike, Human Rights Violations, and Subsequent Medical Treatment relating to Event on Sept 2, 2007

Johnson anticipates that Defendants may seek to offer evidence of other disciplinary issues that have occurred while plaintiff has been in custody. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. Fed. R. Evid. 404 (b) (1). In addition, the disciplinary records would also be inadmissible pursuant to Federal Rules of Evidence 402 as irrelevant evidence. The sole purpose of bringing in this type of evidence is to show the plaintiff's has had other discipline issues that the guards have had to address which has no relevance to the excessive force used by the guards on Sept. 2, 2007. The plaintiff is not questioning his reason for being in segregation but rather the use of excessive force by the guards as revenge for his filing other grievances.

If the court does find the evidence relevant, it should still be excluded under Rule 403 because its probative value is substantially outweighed by its prejudicial effect. It would only serve to cause the jury to focus on his character instead of the facts of the case and would result in confusing the issues at hand. "[A] Plaintiff's litigiousness may have some slight probative value, but that value is outweighed by the substantial danger of jury bias against the chronic litigant." Gastineau v. Fleet Mortgage Co., 137 F. 3d 490, 496 (7th Cir. 1998).

V. Motion in limine to Exclude Plaintiff's Unrelated Litigation

These cases would concern different defendants and different allegations, and entirely unrelated incidents. Evidence of other litigation is irrelevant to any issue in this case and therefore, is inadmissible pursuant to Federal Rules of Evidence 402. The sole purpose of bringing in this type of evidence is to show the plaintiff's propensity for litigation and under Federal Rules of Evidence 404 (b)(1) is not admissible to prove that a person acted in accordance with a specific character. "[A] Plaintiff's litigiousness may have some slight probative value, but that value is outweighed by the substantial

danger of jury bias against the chronic litigant." Gastineau v. Fleet Mortgage Co., 137 F. 3d 490, 496 (7th Cir. 1998).

In the alternative that the evidence is relevant it should still be excluded under Rule 403. The allegation central to other litigation would only serve to confuse the issues, mislead the jury and unfairly prejudice Johnson and would serve no legitimate purpose. Fed. R. Evid. 403.

VI. Motion to exclude evidence of all unrelated grievances filed by Plaintiff

The prior grievances filed by Johnson are probative only if his propensity to bring complaints against the prison itself. Fed. R. Evid. 404(b)(1) prohibits such character based inferences. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. Fed. R. Evid. 404 (b) (1). In addition, even if relevant for another purpose, the probative value of Johnson's unrelated grievance is substantially outweighed by a danger of unfair prejudice against him. Fed. R. Evid. 403. If allowed, evidence of the extraneous grievances would confuse the issues in the case and distract the jury's focus from the central issues in this case at hand (Id.). Therefore, this court should exclude the evidence.

VII. Motion to have Plaintiff be unshackled and attire in appropriate civilian clothing when before the jury.

Plaintiff Johnson requests he be unshackled and attired in appropriate civilian clothes while in the presence of the jury to minimize any prejudice his prison attire may cause. In the context of a trial a parties prison attire is a constant reminder of the persons condition, implicit in the judgment that the person in prison attire is at fault. The parties clothing is so likely to be a continuing influence through trial that "… an unacceptable risk is presented of impermissible factors coming into play." Estelle v. Williams, 425 U.S. 501,505 (1976) citing Turner v. Louisiana, 379 U.S. 466, 473 (1965). Inmates are entitled to the minimum restraints necessary to maintain safety in the courtroom. Lemons v. Skidmore, 985 F. 2d 354, 359 (7th Cir. 1993). The mere "contract between a litigant wearing prison garb and his opponent wearing law enforcement uniforms is likely to influence the jury against the prisoner, and has long been held as highly prejudicial. Maus v. Baker, 747 F. 3d 926, 927 (7th Cir. 2014). (citing Holbrook v. Flynn, 475 U.S. 560, 568-69 (1968)). The probative value of requiring Johnson to wear his prison uniform and shackles during trail is substantially outweighed by the danger of unfair prejudice his

appearance may present to the jury. The presence of court security and U.S. Marshals will be sufficient to render the restraints unnecessary.

VIII. Motion in Limine to have Plaintiff's witnesses be unshackled and in civilian clothes.

Plaintiff seeks this motion in limine to have his witnesses unshackled and in civilian clothes to minimize any prejudice that the attire may cause. Pursuant to Fed. R. Evid. 403 "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice". Having Johnson's witnesses in their prison uniform and shackled will create in the jury's mind believe that they are criminals not to be trusted and who need to be shackled because they are dangerous. While the value of having the witnesses shackled is very low as there will be U.S. Marshalls and court security present to save guard the people in court.

IX. Motion in Limine to Exclude the Fact that Plaintiffs' Counsel are Law Students, Professors, Staff or Members of the John Marshall Law School Pro Bono Program

Plaintiff seeks this motion in limine to exclude any testimony, mention, innuendo or questions regarding the fact that Johnson's counsel are law students, professors, staff or members of the John Marshall Law School Pro Bono Program. Pursuant to Fed R. Evid. 403 "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by consideration of undue delay, waste of time or needless presentation of cumulative evidence." Heft v. Moore, 351 F. 3d 278, 284 (7th Cir. 2003). The fact that law students and professors are representing Johnson has no probative value and a high risk of prejudice. The prejudice is that the jury will assume that this is an exercise for the law students and not a real trial and as such will not give true credence to the arguments made on behalf of Johnson.

X. Conclusion

WHEREFORE Plaintiff Michael Johnson respectfully requests that this Honorable Court to grant these motions in limine to: 1) exclude prior convictions for both Johnson and his witnesses 2) exclude all evidence, testimony, argument, reference, comment, innuendo regarding unrelated litigation, grievances and disciplinary records involving Johnson or his Witnesses 3) allow Johnson and his witnesses to be unchained/ uncuffed and in civilian clothing for trial 4) exclude all testimony, mention,

innuendo or questions regarding the fact that Johnson's counsel are law students, professors, staff or members of The John Marshall Law School Pro Bono Program, and such further relief as this Court deems just and proper.

Respectfully Submitted,

Michael Johnson, Plaintiff

By:

/s/ R. Dennis Smith

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

Michael Johnson,	)	
Plaintiff,	)	
v.	)	No. 12 – CV – 1216
Officer T. Sullivan,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

To: Melissa Jennings
Illinois Assistant Attorney General
500 South Second Street.
Springfield, IL, 62706

The undersigned does hereby state that a true and correct copy of the above and foregoing PLAINTIFF MICHAEL JOHNSON'S MOTIONS IN LIMINE was served upon the persons named herein, electronically and/or at the address set forth herein, by enclosing the same in an envelope, properly addressed, with postage fully prepaid, and by depositing said envelope in a U.S. Mail Box in Cook County, Illinois on the 27th day of October 2014.

Respectfully submitted,

/s/ R. Dennis Smith_____

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