

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC J. ONTIVEROS,

Plaintiff,

v.

BRYAN MATHEWS and DAVID DORN,

Defendants.

No. 09-cv-03004 CW

ORDER REGARDING
MOTIONS IN LIMINE
AND PRETRIAL
PREPARATION

The Court issues the following rulings on the parties' motions
in limine:

Plaintiff's Motions in Limine

1. Motion to exclude evidence of Plaintiff's criminal history,
including his prison record, record of arrests and criminal
convictions, pursuant to Federal Rules of Evidence 401, 403, and
404(b). **GRANTED IN PART AND DENIED IN PART.**

The following are admitted, not as proof that Plaintiff was
resisting arrest or engaged in criminal conduct, but solely to
establish Defendants' state of mind at the time of the incident.

(a) The "Be on the Lookout For" (BOLF) report indicating
that Plaintiff had reportedly committed assault with a
deadly weapon and domestic violence, and that he was
armed and dangerous, carrying a knife in a sheath on his
belt.

1 (b) The outstanding parole violation warrant describing
2 Plaintiff as armed and dangerous.

3 (c) The outstanding warrant for Plaintiff's arrest for
4 evading a police officer.

5 (d) Plaintiff's prior convictions for California Penal Code
6 Section 215 (carjacking), California Penal Code Section
7 245(a)(1) (assault with a deadly weapon), and California
8 Penal Code Section 245(b) (assault with a deadly weapon-
9 semiautomatic), and two convictions for violation of
10 California Vehicle Code Section 2800.2 (felony evasion).
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12 (e) Plaintiff's propensity to drive hazardously, including
13 the incident on May 10, 2004, when Plaintiff reportedly
14 drove the wrong way on Freeway 880 to evade law
15 enforcement.
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17 Evidence of Plaintiff's prison record is excluded. Evidence
18 that Plaintiff "was known" for violating certain California Penal
19 Code sections, as described in Defendants' offer of proof at
20 Paragraph 9, is excluded. At the April 19, 2011 hearing,
21 Defendants also indicated that they planned to introduce evidence
22 that a confidential informant had told the Hayward Police
23 Department that Plaintiff was planning to commit theft at an auto-
24 parts store. This evidence is excluded because Defendants did not
25 indicate their knowledge about it in their offers of proof, and
26 have not indicated that it was to be an armed robbery during
27 business hours.
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2. Exclude evidence of Plaintiff's membership or affiliation with a street gang. **GRANTED.**

Evidence of Plaintiff's membership in the "A Street" gang and the gang's affiliation with the Norteño gang is admissible to establish Defendants' state of mind at the time of the incident, but not as proof that Plaintiff was a gang member or was resisting arrest or engaged in criminal conduct.

Defendants' Motions in Limine

1. Motion to exclude evidence and reference to alleged prior bad acts amounting to excessive force by Defendants. **GRANTED.**

2. Motion to exclude evidence and/or references that compare the present incident at issue to other events generally well known to the public as incidents of police brutality. **GRANTED.**

Plaintiffs do plan to use such evidence or references.

3. Motion to exclude Plaintiff's testimony as to the propriety or lack thereof with respect to certain methods used by Defendants to effect his arrest. **GRANTED.**

Plaintiff may testify about the actions Defendants took against him, but may not give opinion testimony about whether those actions were reasonable.

Defendants' Objections to Plaintiff's Exhibits

1. Objection to handwritten letter from Jen A. **SUSTAINED.**

2. Objection to Plaintiff's declaration in support of opposition to Defendants' motion for summary judgment. **SUSTAINED.**

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3. Objection to Plaintiff's medical records. **SUSTAINED IN PART.**

Plaintiff's medical records may be admitted if Plaintiff's treating physician testifies.

IT IS SO ORDERED.

Dated: 4/29/2011



CLAUDIA WILKEN
United States District Judge