

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 08-cv-01661-LTB-KLM

ESTATE OF DAVID RANCE ROSSITER, by Charles Rossiter and Erin Rossiter as Co-Personal Representatives,  
CHARLES ROSSITER, as Parent and Co-Personal Representative of the Estate of David Rance Rossiter, and  
ERIN ROSSITER, as Parent and Co-Personal Representative of the Estate of David Rance Rossiter,

Plaintiffs,

v.

SHERIFF GRAYSON ROBINSON, in his individual and official capacity, and  
OFFICER DANIEL JOSEPH MONTANA, JR., in his individual and official capacity,

Defendants.

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**ORDER**

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THIS MATTER is before the Court on the following motions: Defendant Montana's Motion for Order to Determine Admissibility of Plaintiff's Proffered Expert Testimony, filed January 13, 2010 (docket # 138); Defendant Robinson's Motion in Limine and for Determination of Admissibility of Expert Testimony, filed January 15, 2010 (docket #140); and Defendant Montana's Motions for Order to Limit Opinion Testimony of Lay Witness Seth Allen Pursuant to Fed.R.Evid. 701, filed January 21, 2010 (docket #143).

On March 29 - 31, 2010, I heard arguments on the motions listed above. For the reasons stated on the record, I hereby

ORDER Defendant Montana's Motion for Order to Determine Admissibility of

Plaintiff's Proffered Expert Testimony, filed January 13, 2010 (docket # 138) and Defendant Robinson's Motion in Limine and for Determination of Admissibility of Expert Testimony, filed January 15, 2010 (docket #140) are **GRANTED IN PART AND DENIED IN PART**. Specifically, I order as follows: they are

- 1.) DENIED as to Pat Pacey, Ph.D;
- 2.) DENIED as to Max Scott;
- 3.) GRANTED IN PART AND DENIED IN PART as to Dan Montgomery
  - A) Opinion #1 - GRANTED as to the use of the term "unreasonable" and DENIED as to the remainder of Opinion #1;
  - B) Opinion #2 - DENIED CONDITIONALLY;
  - C) Opinion #3 - DENIED;
  - D) Opinion #4 - GRANTED;
  - E) Opinion #5 - DENIED;
  - F) Opinion #6 - GRANTED as to the use of the term "unreasonable" and DENIED as to the remainder of Opinion #6;
  - G) Opinion #7 - GRANTED;
  - H) Opinion #8 - GRANTED as to the use of the phrase "held to a higher standard" and DENIED as to the remainder of Opinion #8, the jury shall be given an appropriate instruction regarding this opinion at trial;
  - I) Opinion #9 - GRANTED as to the use of the phrase "demonstrated deliberate indifference" and DENIED as to the remainder of Opinion #9;
  - J) Opinion #10 - GRANTED;

K) Opinion #11 - GRANTED;  
L) Opinion #12- DENIED;  
M) The testimony of Mr. Montgomery shall be structured so that the jury understands that the facts of this case are in dispute and that it is the role of the jury to resolve issues of fact;

4.) GRANTED as to Ellis Armistead;  
5.) GRANTED as to Douglas E. Rollins, M.D., PH.D. It is  
FURTHER ORDERED that Defendant Montana's Motion for Order to Limit  
Opinion Testimony of Lay Witness Seth Allen Pursuant to Fed.R.Evid. 701, filed  
January 21, 2010 (docket #143) is **HELD IN ABEYANCE**. It is  
FURTHER ORDERED that a hearing on the Defendants' Motions for Summary  
Judgment is **SET** on **Tuesday, May 25, 2010 at 9:00 a.m.**

Dated: March 31, 2010

BY THE COURT:

s/Lewis T. Babcock  
Lewis T. Babcock, Judge