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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAO XUYEN LE, as Personal
Representative of the Estate of Tommy
Le; HOAI "SUNNY" LE; and DIEU HO,

Plaintiffs,

v.

REVEREND DR. MARTIN LUTHER
KING, JR. COUNTY, et al.,

Defendants.

C18-55 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiffs' motion in limine, docket no. 154, is GRANTED in part, DENIED in part, and DEFERRED in part, as follows:

A. Motion to exclude or limit the testimony of Kevin Hernandez, Zach Schwiethale, and Anthony Rice is DENIED.

B. Motion to preclude lay witness opinions regarding whether Deputy Molina was reasonable in using lethal force against Tommy Le is GRANTED. Lay witnesses may testify about whether they believed the officers' lives were in danger, but not whether the use of lethal force was reasonable or justified.

C. Motion to exclude testimony about knives found in Tommy Le's room is GRANTED.

D. Motion to exclude evidence concerning drugs found in Tommy Le's room is GRANTED. Motion to exclude Tommy Le's journal is DEFERRED to the Pretrial Conference. The journal might be relevant with regard to damages. No mention shall be made of the journal until further order of the Court.

E. Motion to exclude Exhibit 6 to the deposition of Zach Schwiethale is GRANTED.

1 F. Unopposed motion to exclude any criminal charges, arrests, or
2 convictions of witnesses is GRANTED subject to Federal Rule of Evidence 609.

3 (2) Defendant Reverend Dr. Martin Luther King, Jr. County's motion in
4 limine, docket no. 153, in which defendant King County Deputy Sheriff Molina joins, is
5 GRANTED in part, DENIED in part, STRICKEN in part, and DEFERRED in part, as
6 follows:

7 1. Motion to exclude reference to King County's self insurance or
8 indemnification policies is GRANTED, provided that the Court will reconsider if
9 Deputy Molina testifies about his lack of ability to pay an award.

10 2. Unopposed motion to exclude evidence regarding any past
11 complaints, prior use of force, or unrelated investigations or discipline of the
12 involved deputies is GRANTED.

13 3. Unopposed motion to exclude any argument that jurors should place
14 themselves in plaintiffs' position is GRANTED.

15 4. Motion to exclude reference to plaintiffs' motivations for bringing
16 suit is GRANTED.

17 5. Unopposed motion to exclude evidence regarding settlement
18 negotiations is GRANTED.

19 6. Unopposed motion to exclude reference to the number of attorneys
20 employed by King County is GRANTED.

21 7. Motion to exclude reference to recent police-involved shootings of
22 civilians and related protests is DEFERRED to the Pretrial Conference.

23 8. Unopposed motion to exclude reference to motions filed and argued
before the Court is GRANTED.

9. Motion to exclude evidence that alternative means or tactics should
have been used prior to the attempted arrest of Tommy Le is DENIED.

10. Unopposed motion to exclude reference to police body cameras is
GRANTED.

11. Motion to exclude reference to the policies of the King County
Sheriff's Office is DENIED.

12. Motion to exclude use of inflammatory terminology and remarks is
GRANTED in part as to the terms "murder," "illegal shooting," and "conspiracy
of silence." Except as granted, the motion is DENIED.

1 13. Motion to exclude reference to plaintiffs’ dismissed claims is
2 GRANTED. Motion to exclude evidence of alleged inadequacies in any “custom,
3 practice, or policy” of the King County Sheriff’s Office is DEFERRED to the
4 Pretrial Conference.

5 14. Motion to exclude evidence regarding any negligent investigation is
6 DENIED.

7 15. Motion to exclude the University of Florida Brechner Center for
8 Freedom of Information Report on “Transparency and Media Relations in High-
9 Profile Police Cases” is GRANTED.

10 16. Motion to exclude evidence obtained through media coverage is
11 DEFERRED to the Pretrial Conference.

12 17. Unopposed motion to exclude testimony regarding plaintiffs’
13 emotional distress from litigation is GRANTED.

14 18. Motion to exclude evidence concerning the effect of this shooting on
15 the local community is GRANTED.

16 19. Motion to exclude reference to any destruction or planting of
17 evidence is DEFERRED to the Pretrial Conference.

18 20. Motion to exclude witnesses and evidence disclosed by plaintiffs
19 after the close of discovery is DENIED in part and DEFERRED in part, as
20 follows:

- 21 a. Tam Q. Dinh, Ph.D.: DEFERRED to the Pretrial Conference;
- 22 b. Damage Witnesses (teachers, staff, classmates): DEFERRED
23 to the Pretrial Conference;
- c. Molly Ward: DENIED;
- d. William Harmening: DENIED;
- e. Ricardo Fuentes: DEFERRED to the Pretrial Conference;
- f. Dijana Coric: DENIED.

 21. Unopposed motion to exclude reference to possible Federal Bureau
of Investigation involvement in the case is GRANTED.

 22. Unopposed motion to exclude reference to the U.S. Department of
Justice’s investigation of the Seattle Police Department is GRANTED.

1 23. Motion to exclude photographs of Tommy Le taken at Harborview
2 Hospital is DEFERRED to the Pretrial Conference. Plaintiffs' counsel shall bring
3 to the Pretrial Conference the photographs plaintiffs intend to offer, pre-marked
4 with exhibit numbers.

5 24. Unopposed motion to exclude any suggestion that the election of
6 Sheriff Mitzi Johanknecht resulted from this incident is GRANTED.

7 25. Unopposed motion to exclude any suggestion that Tommy Le
8 suffered from mental illness prior to the date of this incident is GRANTED.

9 26. Motion to exclude post-incident suggestions for policy changes is
10 DEFERRED to the Pretrial Conference.

11 27. Motion to exclude evidence on hedonic damages is STRICKEN as
12 moot.

13 28. Motion to preclude survival action under RCW 4.20.046 is
14 STRICKEN as moot.

15 29. Unopposed motion to require the parties to give specific notice
16 before the close of each court day regarding all witnesses who will be called the
17 next day is GRANTED.

18 30. Unopposed motion to exclude witnesses from the courtroom until
19 they testify is GRANTED.

20 (3) Defendant Deputy Molina's motion in limine, docket no. 152, in which
21 defendant King County joins, is GRANTED in part, DENIED in part, and DEFERRED
22 in part, as follows:

23 1. Motion to exclude reference to King County providing
indemnification for Deputy Molina is GRANTED, provided that the Court will
reconsider if Deputy Molina testifies about his lack of ability to pay an award.

 2. Unopposed motion to exclude reference to the expenses of litigation
is GRANTED.

 3. Unopposed motion to exclude evidence or argument concerning any
"prior bad acts" of Deputy Molina is GRANTED.

 4. Unopposed motion to exclude evidence or argument regarding
Deputy Molina's involvement in a fatal car accident on July 17, 2017, is
GRANTED.

1 5. Motion to allow evidence from King County Medical Examiner
2 Brian Mazrim and NMS Labs forensic scientists regarding the presence of LSD in
3 Tommy Le's system at the time of his death is DEFERRED to the Pretrial
4 Conference.

5 6. Motion to allow evidence regarding Tommy Le's prior drug use for
6 the limited purposes of damages is DEFERRED to the Pretrial Conference.

7 7. Motion to exclude reference to Deputy Molina conferring with guild
8 counsel is DEFERRED to the Pretrial Conference.

9 8. Motion to exclude use of the King County Sheriff's Office logo on
10 documents created by plaintiffs or their attorneys for purposes of this litigation is
11 GRANTED.

12 9. Motion to exclude evidence of any promotion of Deputy Molina
13 following this incident is DENIED.

14 10. Motion to exclude testimony from King County Master Police
15 Officer Tanner Owens that he was not personally fearful for his own life at the
16 time Deputy Molina shot Tommy Le is DENIED.

17 11. Unopposed motion to exclude evidence or argument regarding any
18 racially-motivated conduct by Deputy Molina is GRANTED.

19 12. Motion to exclude argument concerning punitive damages is
20 DENIED.

21 (4) Counsel shall be prepared to address at the Pretrial Conference on May 30,
22 2019, at 9:00 a.m., all deferred portions of the motions in limine.

23 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

Dated this 28th day of May, 2019.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk