

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

WILLIE ELSWICK,

Plaintiff,

v.

Civil Action No. 2:19-cv-00221

ROBERT JOHNSON, individually,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is defendant's motion in limine to preclude plaintiff from introducing inadmissible Rule 404(b) evidence, filed April 15, 2020.

Rule 404(b) of the Federal Rules of Evidence provides that "[e]vidence 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). Defendant's motion seeks to preclude plaintiff from introducing any evidence regarding defendant's use of excessive force in other instances, and noting that plaintiff cannot offer any valid purpose for this evidence under Rule 404(b)(2) either. Defendant also argues that evidence of prior use of force is inadmissible under Rules 402 and 403 because it is irrelevant and it would confuse the

jury, extend the trial, and unfairly prejudice defendant. Fed. R. Evid. 402, 403. Plaintiff did not file a response and plaintiff's counsel indicated at the May 1, 2020 pretrial conference that plaintiff does not object to the motion.

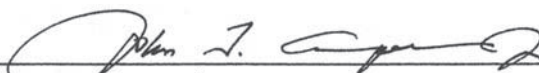
After due consideration, it is ORDERED that defendant's motion be, and it hereby is, granted.

As an additional matter, this case still awaits trial. On May 27, 2020, the court entered an order continuing the trial and final settlement conference in this matter, previously scheduled for June 1st and 2nd, respectively. In view of General Order #7, entered June 25th, under which jury trials in this district may commence again as of July 1st, it is ORDERED that the remaining schedule in this case shall proceed as follows:

Deadline	Date
Final settlement conference	11/16/2020 10:00 AM
Trial	11/17/2020 9:30 AM

The Clerk is directed to transmit copies of this order to all counsel of record and any unrepresented parties.

ENTER: July 29, 2020

  
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John T. Copenhaver, Jr.  
Senior United States District Judge