

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JUL - 7 2004

ANTHONY J. SANDOVAL,

Plaintiff,

CLERK

vs.

No: CIV- 02-170 JB/WDS

**JAMES LOPEZ, PETER KOEPPE,
PHILLIP MARES, and the NEW MEXICO
CORRECTIONS DEPARTMENT,**

Defendants.

INITIAL PRETRIAL REPORT

Counsel have conferred and submit herewith the parties' consolidated Initial Pretrial Report.

APPEARANCES

Counsel are:

For the Plaintiff:

Mark H. Donatelli, Esq.
Rothstein, Donatelli, Hughes, Dahlstrom & Schoenburg, LLP
P.O. Box 8180
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Peter M. Cubra, Esq.
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For Defendants:

Charles N. D'Angelo, Esq.
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NATURE OF THE CASE

Plaintiff has brought claims under 42 U.S.C. § 1983 with respect to the use of excessive force against him while he was in custody in the Special Controls Facility ("SCF") at the Penitentiary of New Mexico in Santa Fe.

AMENDMENTS TO PLEADINGS

Plaintiff intends to file: **an amended complaint.**

Defendants intend to file: **an objection to Plaintiff's request to file an amended complaint**

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter.

The parties are willing to further stipulate to the following facts:

Any facts unconditionally admitted by any Defendant in their Answer.

The parties further stipulate and agree that the law governing this case is federal law as to Plaintiff's claims under 42 U.S.C. § 1983.

PLAINTIFF'S CONTENTIONS:

Plaintiff was subjected to an excessive use of force while in custody in the Special Controls Facility ("SCF") at the Penitentiary of New Mexico in Santa Fe. Specifically, on October 15, 2001, he was taken into an interrogation room and questioned by Defendants James Lopez and Peter Koeppel, correctional officers at the facility, about a disturbance that had occurred the previous day. When Plaintiff said he wanted to return to his cell, Lopez and Koeppel physically assaulted Plaintiff, causing injuries that required medical treatment.

Plaintiff alleges that the use of excessive force was the direct result of a policy established by the New Mexico Department of Corrections and Defendant Philip Mares, Associate Warden. Under the Eighth Amendment, Plaintiff has a right to be free from cruel and unusual punishment, including excessive use of force. Under 42 U.S.C. § 1983, Defendants are liable for damages caused by the use of excessive force, and NMCD and Mares have supervisory liability for establishing a policy that lead directly to the use of excessive force.

DEFENDANTS' CONTENTIONS

Defendants unequivocally deny that Plaintiff was subjected to excessive force. Defendants contend that Plaintiff assaulted Defendant Lopez, or moved in an aggressive manner towards

Defendant Lopez, and that Defendants Koeppel and Lopez reasonably and justifiably took Plaintiff to the floor and restrained him.

Specifically, it will be undisputed that Plaintiff had, at the time of the incident and continues to have to do this day, some significant degree of mental illness. On October 15, 2001, Plaintiff was taken to Defendant Lopez' office to be interviewed about an inmate disturbance the previous evening. Plaintiff became upset when he was told by Defendant Lopez that he could not have his television set immediately return, due to his disruptive behavior the night before. Plaintiff angrily challenged Defendant Lopez to "regress" him a step in the privilege system and quickly stood up, knocking the chair away in the process. Plaintiff moved quickly and aggressively towards Defendant Lopez. Defendant Koeppel, who was also at the desk, wrapped his arm around Plaintiff's upper body while Defendant Lopez grabbed hold of Plaintiff's legs and they took Plaintiff to the floor.

DISCOVERY

Plaintiff intends to obtain the following discovery:

Interrogatories, requests for production of documents, requests for admission and depositions of relevant parties and witnesses on Plaintiff's theories of liability and damages, Defendants' denials and Defendants' affirmative defenses.

Defendants intend to obtain the following discovery:

Interrogatories, requests for admission and depositions of Plaintiff and any of Plaintiff's witnesses.

In accordance with the Civil Justice Expense and Delay Reduction Plan adopted in compliance with the Civil Justice Reform Act, and pursuant to Title 28 U.S.C. § 473(a)(1), this case is assigned to a "standard" track classification. Accordingly, the termination date for discovery is Dec. 29, 2004, and discovery shall not be reopened, except by an order of the Court upon a showing of good cause. This deadline shall be construed to require that discovery be completed on or before the above date. Service of interrogatories or requests for production shall be considered timely only if the responses are due prior to the deadline. A notice to take deposition shall be considered timely only if the deposition takes place prior to the deadline. The pendency of dispositive motions shall not stay discovery.

Motions relating to discovery (including, but not limited to, motions to compel and motions for protective order) shall be filed with the Court and served on opposing parties by Jan. 18, 2005; responses shall be filed with the Court and served on opposing parties by Feb. 4, 2005; the Notice of Completion and replies, if any, shall be filed with the Court and served on opposing parties by Feb. 21, 2005. See D.N.M.LR-Civ. 7. This deadline shall not be construed to extend the twenty-day time limit in D.N.M.LR-Civ. 26.6.

Plaintiff shall identify to all parties in writing any expert witness to be used by Plaintiff at trial and to provide expert reports pursuant to FED. R. CIV. P. 26(a)(2)(B) no later than Sept. 30, 2004. All other parties shall identify in writing any expert witness to

be used by such parties at trial and to provide expert reports pursuant to FED. R. CIV.

P. 26(a)(2)(B) no later than

Oct. 30, 2004

The parties shall have their experts ready to be deposed when they identify them and produce their reports.

Plaintiff's witnesses:

- (a) Anthony Sandoval

Mr. Sandoval will testify about the beating he received at the hands of Defendant James Lopez and the injuries and damages suffered as a result.

- (b) Angie Doss

Ms. Doss is an investigator employed by NMCD who conducted an investigation of the beating of Mr. Sandoval. She will testify about her investigation.

Plaintiff's Exhibits:

- (a) Investigative report prepared by Angie Doss.
- (b) Medical records.

Plaintiff's Experts:

Plaintiff may use an expert on correctional practices to testify regarding the standards for use of force in correctional facilities, the standard for promulgating policies and procedures for the use of force and the ways in which the supervisory Defendants' conduct, policies and procedures failed to meet those standards.

Defendants' witnesses:

(a) James Lopez

Mr. Lopez will testify about inmate Sandoval's actions, as well as his own and Mr. Koeppe's, on the day of the incident.

(b) Peter Koeppe

Mr. Koeppe will testify about inmate Sandoval's actions, as well as his own and Mr. Lopez', on the day of the incident.

(c) Anthony Sandoval

Mr. Sandoval will testify about his actions on the day of the incident as well as the night before.

(d) Juanita Herrera (CMS)

Ms. Herrera will testify as to her examination and treatment of the minor injury received by inmate Sandoval when he was taken to the floor on the day of the incident. She will also testify as to inmate Sandoval's appearance and actions at the time of the examination.

(e) Treating Personnel (CMS)

Other medical personnel, not yet identified by name, will testify as to their examination and treatment of inmate Sandoval's minor injuries after the incident.

(f) Robert Tenorio

Mr. Tenorio will testify regarding inmate Sandoval's statements during the disciplinary hearing.

(g) Angie Doss

Ms. Doss will testify regarding her investigation of the incident.

(h) Plaintiff's Mental Health Providers

Inmate Sandoval's mental health providers whose names are not yet identified by name, will testify as to Plaintiff's mental health condition on the day of the incident and days surrounding the incident.

Defendants' Exhibits:

(a) Incident report form submitted by Lt. James Lopez.

(b) Lt. James Lopez' memo to Operations Director dated 10/16/01.

(c) Misconduct report submitted by Lt. Lopez dated 10/16/01.

(d) Memo from Sgt. Peter Koepp to disciplinary officer dated 10/16/01.

(e) Use of force form submitted by Koepp dated 10/16/01.

(f) Use of force form submitted by Lt. Lopez dated 10/16/01.

(g) Injury To Inmate form submitted by Juanita Herrera dated 10/15/01.

(h) Plaintiff's medical records relating to the incident.

(i) Plaintiff's mental health records.

(j) Memo from Sgt John Gillespie to Lt Lopez dated 10/15/01.

(k) Disciplinary hearing summary of evidence and proceeding submitted by Robert Tenorio dated 11/01/01.

(l) Investigation report submitted by Angie Doss dated 10/30/01.

Defendants' Experts:

Defendants may use an expert regarding the justifiable use of force in a correctional setting.

OTHER PRETRIAL MOTIONS

Plaintiff intends to file:

Motion for summary judgment and motions in limine.

Defendants intend to file:

Motion for summary judgment and/or Motion to Dismiss

Pretrial motions, other than discovery motions, shall be filed with the Court and served on opposing party by Jan. 28, 2005; the response shall be filed with the Court and served on opposing party by Feb. 14, 2005; the Notice of Completion and reply, if any, shall be filed with the Court and served on opposing party by March 3, 2005. Any pretrial motions, other than discovery motions, filed after the above dates shall be considered untimely in the discretion of the Court.

PRETRIAL ORDER

Counsel are directed to file a consolidated final Pretrial Order as follows: Plaintiff to Defendant on or before March 18, 2005; Defendant to Court on or before March 29, 2005.

In jury cases, proposed jury instructions shall be filed no later than _____.

In non-jury actions, requested findings of fact and conclusions of law shall be filed no later than _____. Refer to "Other Matters."

PRETRIAL CONFERENCE AND TRIAL SETTING

This matter is set for a PRETRIAL CONFERENCE on March 30, 2005 at 9:00 a.m.

This matter is set for a NON-JURY TRIAL on a trailing calendar beginning on April 11, 2005 at 9:00 a.m.

This matter is set for a JURY TRIAL on a trailing calendar beginning on _____ at _____.m.

ESTIMATED TRIAL TIME

The parties estimate trial will require **three days**.

This is a non-jury case.

This is a jury case.

SETTLEMENT

The possibility of settlement in this case is considered: **fair**. The parties request a settlement conference **at the Court and counsels' earliest convenience**.

OTHER MATTERS

Counsel are directed that the Pretrial Order will provide that no witnesses except rebuttal witnesses whose testimony cannot be anticipated, will be permitted to testify unless the

A motion hearing has been scheduled on March 14, 2005 at 9:00 a.m.

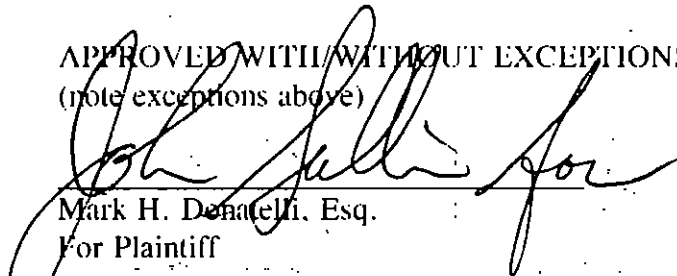
name of the witness is furnished to the Court and opposing counsel no later than thirty (30) days prior to the time set for trial. Any exceptions thereto must be upon order of the Court for good cause shown.

If documents are attached as exhibits to motions, affidavits or briefs, those parts of the exhibits that counsel want to bring to the attention of the Court must be highlighted in accordance with D.N.M.LR-Civ. 10.6.

EXCEPTIONS

(Where counsel cannot agree to any recitation herein, exceptions shall be listed.)

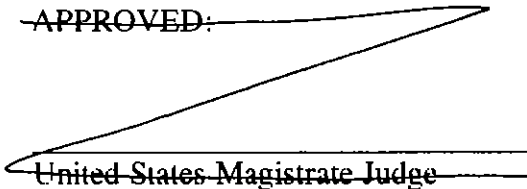
APPROVED WITH/WITHOUT EXCEPTIONS
(note exceptions above)



Mark H. Donatelli, Esq.
For Plaintiff

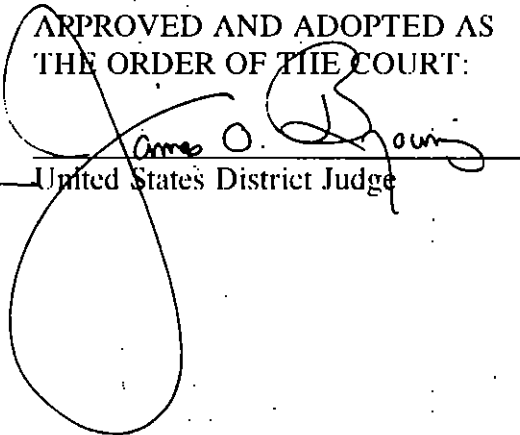
Approved telephonically 7/1/2004
Charles N. D'Angelo, Esq.
For Defendants

~~APPROVED:~~



~~United States Magistrate Judge~~

APPROVED AND ADOPTED AS
THE ORDER OF THE COURT:



United States District Judge