

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Tariq Anderson, )  
 )  
 Plaintiff )  
 ) No. 23-cv-14208  
 -vs- )  
 ) (Judge Pallmeyer)  
 Humberto Lozano, )  
 )  
 Defendant. )

## **PLAINTIFF'S MOTIONS IN LIMINE**

Plaintiff, by counsel, submits the following motions in limine. Plaintiff submitted a draft of these motions to defense counsel on September 26, 2024, and the parties arranged to confer by phone about the motions on September 27, 2024 at about 1:15 p.m. Defense counsel did not assert any objections to the motions during the phone call and has to date not asserted any objections.

## 1. To bar evidence of one conviction and sanitize evidence of one conviction

Plaintiff has two felony convictions: a 2019 conviction for Unlawful Use of a Weapon by a Felon, for which he was incarcerated at the time of the events at issue in this case, and a 2013 conviction for Second Degree Murder.

Plaintiff was released from confinement on the Second Degree Murder conviction on January 25, 2013. This conviction therefore falls outside

the ten-year limit of Federal Rule of Evidence 609(b) and should be excluded.

The 2019 conviction falls within the ten-year limit of Rule 609(b), but plaintiff shows below that it should only be admitted to demonstrate that the plaintiff was incarcerated at the time the events in this case took place, and for no other purpose.

This case arises from the alleged use of excessive and malicious force by defendant Lozano, who was then a prison guard, against plaintiff. The jury is entitled to know that plaintiff was a prisoner when these events occurred, but evidence of this conviction should not be admitted for any other purpose. Specifically, plaintiff requests that the Court limit the evidence and argument about the prior conviction to the following, which plaintiff will recite in opening argument and in plaintiff's testimony on direct examination:

The plaintiff, Tariq Anderson, was serving a prison sentence when the events at issue in this case occurred. Mr. Anderson was released from prison in 2023.

The Seventh Circuit has made plain that district courts must “be careful to ensure that a civil rights plaintiff's criminal past is not used to unfairly prejudice him or her.” *Gora v. Costa*, 971 F.2d 1325, 1331 (7th Cir. 1992.) “Presenting a § 1983 plaintiff's criminal history to the jury presents a substantial risk that the jury will render a defense verdict based not on the evidence but on emotions or other improper motives, such as a belief that bad

people should not be permitted to recover from honorable police officers.”

*Barber v. City of Chicago*, 725 F.3d 702, 714 (7th Cir. 2013.)

Plaintiff’s 2019 conviction for possession of a firearm has “little to do with truthfulness,” *Patterson v. City of Chicago*, No. 15-cv-4139, 2017 WL 770991, at \*8 (N.D. Ill. Feb. 28, 2017), and does “not speak to truthfulness or credibility.” *Sinn v. Brush*, No. 115CV01394TWPDM, 2019 WL 4688724, at \*3 (S.D. Ind. Sept. 26, 2019.) Plaintiff’s request to limit the description of the felony conviction is consistent with cases approving the use of discretion to “sanitize” evidence of a conviction by “concealing the nature or name of the crime.” *Schmude v. Tricam Inc.*, 556 F. 3d 624, 627 (7th Cir. 2009).

Because of the negligible probative value of the prior conviction, the Court should prohibit any argument that the jury may consider the conviction in assessing credibility and the Court should not instruct the jury that the evidence of plaintiff’s conviction was admitted for impeachment.

**2. To bar evidence that defendant is unable to pay compensatory or punitive damages**

In response to interrogatories about defendant’s net worth, defendant interposed the following objection:

Objection. The Defendant’s personal assets are not subject to this lawsuit as he has been indemnified by the State of Illinois pursuant to 5 ILCS 350/1, et seq. If punitive damages are sought in this case, Defendant does not intend to dispute an inability to pay or financial hardship.

(Exhibit 1, Defendant's Answers to Interrogatories ¶¶ 15-21.) The Court should take defendant at his word and refuse to permit him to argue that he is unable to pay compensatory or punitive damages.

### **3. To bar evidence of miscellaneous prejudicial matters**

Plaintiff shared the following list of miscellaneous prejudicial matters that have been urged by defendants in civil rights cases:

- a. Evidence, testimony, or argument about the circumstances under which the attorney for plaintiff is employed and the manner in which counsel may be compensated;
- b. Any involvement by plaintiff with a street gang or prison gang;
- c. Any disciplinary proceedings against plaintiff in school or while incarcerated;
- d. Juvenile adjudications of plaintiff;
- e. Use and familiarity with "street drugs" by plaintiff; and
- f. Tattoos of plaintiff;

Evidence of each of these matters should be barred under Federal Rule of Evidence 402 because the evidence has no relevance to the material issues of the case. This evidence should also be excluded under Rule 403 because any probative value is outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury.

### **4. To bar a variety of inappropriate arguments of counsel**

Plaintiff shared the following list of miscellaneous inappropriate arguments of counsel that have been made by defendants in civil rights cases:

- a. Any reference to plaintiff as a “felon,” “convict,” “offender,” “criminal” or “prisoner;
- b. Defendant Lozano will be personally liable for any award of compensatory damages;
- c. Any award of damages would be a burden on taxpayers or on the public;
- d. Plaintiff has asked for more money than he expects to be awarded;
- e. A verdict for the plaintiff would result in negative professional consequences for defendant Lozano;
- f. Plaintiff views this case as a chance to win the lottery;
- g. Anyone can file a lawsuit;
- h. Defense counsel is personally shocked by the magnitude of the damage request;
- i. Being a prison guard is a difficult job or a thankless job or an unappreciated job; and
- j. Prison guards place themselves in danger for the public good.

Each argument is an improper appeal to the sympathy of the jury or is a misstatement of fact or both. None of these arguments has any relevance to any contested issue in this case. They are the type of argument that “have no place in a court of law.” *Spicer v. Rossetti*, 150 F.3d 642, 644 (7th Cir. 1998) (reversing a defense verdict in a jail excessive force case because of improper closing argument)

Respectfully submitted,

[signature on following page]

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