

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 14-10028-CIV-MARTINEZ/GOODMAN

TREAVOR EIMERS,

Plaintiff,

v.

CITY OF KEY WEST, et al.,

Defendants.

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**ORDER RE: BRIEFING PLAINTIFF'S MOTION FOR SANCTIONS**

**AND SCHEDULING IN-PERSON HEARING**

Plaintiff has filed a motion for sanctions [ECF No. 96], which has been referred to the Undersigned under U.S. District Judge Jose Martinez's general referral order (which includes sanctions motions) [ECF No. 30].

Plaintiff's motion alleges intentional spoliation of evidence, perjury, and an overall scheme to prevent disclosure of the true facts surrounding the death of Charles Eimers. The spoliation claims include quotes from the video and audio recordings made by the TaserCam used by a Defendant, City of Key West police officer Gary Lovette, which Plaintiff contends are illustrative of the alleged bad faith of all defendants. By way of example, Plaintiff contends that Officer Lovette said "I just tased a motherfucker in custody," "I dropped like a fucking bomb on his head," "we killed him so you don't have to worry about it" and "easier for us to bury him."

Moreover, Plaintiff contends that Officer Lovette's TaserCam recorded another defendant, believed by Plaintiff to be City of Key West police officer Gabriel Garrido, saying "[w]e're all going to have to do supplements. Let's get together and work that shit out." Plaintiff claims that this language illustrates a *de facto* conspiracy by the defendant police officers to manipulate the evidence and distort the truth. In support of this theory, Plaintiff's motion notes that the reports prepared by the individual officers contain "striking verbatim similarities," including an identical paragraph "attempting to indicate that they are being forced to write the report under penalty of being terminated." Plaintiff suggests that some officers committed perjury when they gave deposition testimony that they "wrote their reports unassisted and on their own."

Plaintiff argues that "Defendants' perjury and bad faith destruction of evidence on multiple levels is flagrant" and "rises to and beyond the level of bad faith." Given these strong allegations, it is not surprising that Plaintiff seeks extreme sanctions -- including default judgment against all Defendants.

Plaintiff says the allegations show "a clear pattern of intentional misconduct." The relief requested is potentially case-dispositive. In an effort to assist the Undersigned in analyzing the serious issues raised by this motion (and likely raised by Defendants' responses, once they are filed), the Undersigned believes it helpful to flag certain issues raised by the motion and direct the parties to address them in their to-be-filed

memoranda. This assignment applies to the Defendants' response (or responses) and to Plaintiff's reply (or replies).

The parties may, of course, write and submit their memoranda in whatever way they see fit, but the memoranda should specifically address the following precise issues, with an on-point answer to each numbered issue, supported with citations to appropriate supporting authority.

Here are the issues:

1. There are several defendants in this case. Can the Court impose sanctions against all defendants based on the misconduct of one defendant or less than all defendants?

2. Does the Court need to pinpoint which defendant engaged in a particular type of misconduct before imposing sanctions? For example, does the Court need to find that Defendant A deleted information on a TaserCam recorder, that Defendant B committed perjury about whether Mr. Eimers' face was pushed into the sand, that Defendant C arranged to purge some of the videotape of the incident, or that Defendants D and E agreed to lie about whether Mr. Eimers posed a threat, before imposing sanctions?

3. Can the Court impose sanctions against the City of Key West based on the discovery misconduct of individual police officers?

4. Is “clear and convincing proof” the standard which the Court should use when determining whether the requisite bad faith exists to impose sanctions under the inherent power doctrine?

5. Can the Court enter a bad faith finding under a “clear and convincing” standard of proof if one or more witnesses provide testimony contrary to the finding?

6. Regardless of which standard of proof is used, may the Court enter a sanctions award by evaluating the credibility of different witnesses and concluding that certain witnesses are more believable?

Given the upcoming trial date and other trial-related deadlines, Defendants shall file their response (or responses) to the motion (including the answers to the questions listed above) by December 23, 2014 and Plaintiff shall file its reply (or replies) by January 6, 2015. The Court will hold an in-person hearing on **January 12, 2015 at 10:00 a.m.** Absent compelling circumstances bordering on a genuine emergency, the Undersigned will not extend the deadlines for the briefing or reschedule the hearing.

**DONE AND ORDERED**, in Chambers, Miami, Florida, December 15, 2014.



Jonathan Goodman  
UNITED STATES MAGISTRATE JUDGE

**Copies furnished to:**  
Honorable Jose E. Martinez  
All Counsel of Record