

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Jason Silva De Sosa,
Plaintiff,

v.

Kate Head,
Defendant.

Civil Action
File No.: 12AB345678

PLAINTIFF’S BRIEF IN SUPPORT OF HIS MOTION *IN LIMINE* TO EXCLUDE
PLAINTIFF’S SOCIAL MEDIA MESSAGES

COMES NOW, Jason Silva De Sosa (Plaintiff) and moves *in limine* for an order excluding evidence related to Plaintiff’s social media posts as inadmissible hearsay under O.C.G.A. § 24-8-801 as well irrelevant and prejudicial under O.C.G.A. §§ 24-4-401, 402 and 403.

I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS

It is undisputed that on February 4, 2016, Defendant hit Plaintiff with her car while Plaintiff was crossing the street within a designated crosswalk. Plaintiff was thrown into the air and crashed into Defendant’s windshield with such impact that his head shattered the glass. In addition to suffering severe physical injuries, Plaintiff and his friends and family have noticed negative changes to Plaintiff’s emotional and mental health in the years following the collision. At his counsel’s behest, Plaintiff consulted with Dr. Ashley Booker-Cooper (hereinafter, “Dr. Booker”), a cognitive neurologist specializing in mild traumatic brain injuries, to determine the cause of these changes. After examining Plaintiff and reviewing his medical records, Dr. Booker diagnosed Plaintiff with a mild traumatic brain injury called post-concussion syndrome. (Deposition of Dr. Ashley Booker-Cooper, hereinafter “Dr. Booker Depo” 12:14-13:22). Post-concussion syndrome affects people who

have sustained a concussion and continue to experience symptoms – or clinical complaints – for longer than a month. (Dr. Booker Depo. 13:21-14:5). Some of the symptoms that Plaintiff has complained of include anger, anxiety, appetite issues, avoidance, concentration issues, confusion, depression, guilty feelings, headaches, impatience, irritability, libido changes, loss of interest or pleasure, memory issues, mood swings, nervousness, pain, panic attacks, sensitivity to light and sound, sleep change, and thoughts of hurting yourself or others. Dr. Booker Depo. 129: 2-13. The symptom relevant to the instant discussion is anger.

Since the collision, Plaintiff has noticed a change in his ability to regulate his emotional response to frustrating situations and control his anger. Specifically, Plaintiff complained to Dr. Booker that, since the accident, he hadn't been his usual self – a sentiment that his mother supported, noting that Plaintiff now becomes angered very easily, which is uncharacteristic of him. Dr. Booker Depo. 62:24-63:10. After conducting physical and cognitive testing as well as reviewing his past medical records, Dr. Booker concluded that Plaintiff's changes in mood – specifically his increased feelings of anger – were symptomatic of post-concussion syndrome caused by the collision at the heart of this case.

Defendant seeks to admit social media messages between Plaintiff and his then-girlfriend, Ariana Ivan, in which Plaintiff expresses feelings of anger to challenge Dr. Booker's diagnosis that the kind of anger that Plaintiff is currently experiencing is symptomatic of post-concussion syndrome. Defendant claims that these social media messages – which were exchanged years before the collision – show that, because Plaintiff has been angry in the past, his anger cannot also be symptomatic of post-concussion syndrome. To support their argument, Defendant relies on three specific message exchanges:

- (1) In December 2015, in response to discovering that theatre tickets for the recently released *Star Wars* movie were sold out, Plaintiff commented to Ariana, "I'm like so fucking mad." Ariana responded, "What did u expect lol? Everyone waited for that." (Facebook Messages between Ariana Ivan, Attached as Defendant's Trial Exhibit 7; December 19, 2015).

- (2) When mulling over whether he should get a tattoo, he expressed his doubt over the quality of tattooing done by American tattoo artists.¹ To which Ariana replied, “A hah god im laughing. So funny how u getting mad so fast.” (Facebook Messages between Ariana Ivan, Attached as Defendant’s Trial Exhibit 7; January 12, 2016).
- (3) While telling Ariana about an argument he had with his mother and stepfather about Jason’s financial contributions to the household, he said, “I’m so fucking angry now.” After Ariana tries to console him, Jason thanks her and says, “But I fucking still angry with them.” (Facebook Messages between Ariana Ivan, Attached as Defendant’s Trial Exhibit 7; January 27, 2016).

II. ARGUMENT AND CITATION TO AUTHORITY

A. The messages are inadmissible hearsay and are not subject to any exception.

An out of court statement offered into evidence to prove the truth of the matter asserted is inadmissible hearsay. O.C.G.A. § 24-8-801. The messages that Defendant seeks to admit are all out of court statements that Defendant seeks to admit into evidence as proof that Defendant was angry on the dates in question. Not only are the messages themselves hearsay, but because there is no indication that Jason and Ariana actually spoke to each other in person or saw each other during these exchanges, Ariana is not even the position to offer testimonial evidence about Jason’s tone, demeanor, or actions at the time of these messages. These messages also fall completely outside any hearsay exception and are therefore inadmissible under O.C.G.A. § 24-8-801.

B. These messages are entirely irrelevant to Plaintiff’s diagnosis of post-concussion syndrome and cannot be offered to disprove his symptoms.

Relevant evidence means any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. O.C.G.A. § 24-4-401. Irrelevant evidence is inadmissible. O.C.G.A. § 24-4-402. Defendant offers the above social media messages as evidence to rebut the existence and severity of Plaintiff’s post-concussion syndrome symptom of extreme anger and the causal link between Plaintiff’s symptoms and the collision. Below, Plaintiff will outline the numerous flaws in Defendant’s argument and how these messages are irrelevant

¹ In its entirety, the message reads: “Americans suck doing tatoos all my Friends tell me that u r the only one who is against everything and all the people that i know that have a tatoo said to do with someone that i trust and is good doing tatoos aaah and guess what they also said that americans suck toooo and yeahh these people r americans so...”

to determine whether the type of anger that Plaintiff currently experiences is symptomatic of post-concussion syndrome.

1. *The type of anger expressed in these messages is normal and incongruous with the type of anger symptomatic of post-concussion syndrome.*

Anger is normal. All people experience anger. However, not all kinds of anger are normal, and not all reasons for anger are rational. As the experts in this case will testify, the type of anger symptomatic of post-concussion syndrome is chronic. The experts will explain that someone who suffers from a traumatic brain injury might experience anger that has no logical antecedent or for which there is such a weak causal antecedent that the anger is considered irrational. The experts will also explain that while most people express their anger in socially and situationally acceptable ways, those who suffer from traumatic brain injuries may express themselves in atypical, irrational, and excessive ways. Such instances of anger associated with traumatic brain injuries are clinically diagnosed by a professional based on clinical evaluation, neurological or neuropsychological testing, physical exam, and diagnostic brain imaging such as MRI or DTI – all of which were employed by Dr. Booker to make her clinical diagnosis. In contrast, the instances of Plaintiff's pre-injury anger that Defendant highlights are age-appropriate normal expressions of anger, provoked by common triggers, and expressed in contextually and socially appropriate ways.

The most passionate expressions of anger in the above messages occurred during a fight that Plaintiff had with his parents. In the conversation with Ariana, the then 18-year-old Jason vents about how his parents want him to contribute more money to the household. He is upset with his parents because he feels as though he already contributes a significant amount of his income to support the household. He also expresses frustration because he is not physically capable of working more than he already does and he feels as though his parents are prioritizing money over his health. He goes on to say that instead of listening to

his reasoning, his parents have locked themselves in their room. While Plaintiff does express anger many times during this conversation, as the experts will testify, it is a normal expression of anger – it is neither irrational nor inappropriate. It is logical within the context: Plaintiff was a teenage boy having a heated argument with his parents about a sensitive topic. And it was not expressed in a way that was extreme, unusual, or inappropriate: there is nothing in the messages to indicate that there were any physical or dangerous manifestations of Plaintiff's anger. Add to this that Plaintiff and his parents are in a very precarious situation – they are new immigrants to the United States struggling to establish themselves financially – and Plaintiff's frustration and anger are even more understandable. As this Court can glean from reading the text messages and putting them into an appropriate context, Plaintiff's expression of anger was absolutely normal and ordinary.

The first and second comments that Defendant highlights don't even appear to be expressions of authentic anger but seem to fall somewhere between frustration and a joke. In the first comment, Plaintiff says that he's "so fucking mad" that *Star Wars* tickets are sold out. Again, at the time of these comments, Jason was a teenage boy hoping to get tickets to see a new movie in a very popular Hollywood franchise. While he was likely only frustrated and disappointed to not be able to see the movie in the theatre, saying that he was "so fucking mad" is simply a hyperbolic way to express those otherwise anodyne feelings – and typical of the way a teenager speaks. Defendant also points to Jason's conversation with Ariana about getting a tattoo as an expression of anger. Again, whether or not Jason was actually expressing anger in this exchange is questionable. The message is borderline incoherent, but its gist seems to be that Jason has been told that Americans "suck" at tattooing. This isn't anger; it's an expression of opinion. Also, Jason never says that he's upset – Ariana is the person who says that Jason is "getting mad so fast." These messages would be irrelevant even if they did express genuine anger, which they arguably do not.

2. *Defendant has offered no expert testimony to support her position that these instances of anger rebut Dr. Booker's clinical diagnosis.*

In addition to relying entirely on contextually appropriate expressions of acute anger, Defendant offers no medical foundation to support her argument that these moments of anger indicate that Jason suffered from anger issues before the collision. As discussed above, the kind of anger symptomatic of post-concussion syndrome is chronic, irrational, atypical, and diagnosed by a medical professional. In this case, Dr. Booker points to a slew of medical evidence to support her clinical diagnosis that the kind of anger that Plaintiff currently experiences is not normal, run-of-the-mill anger, but symptomatic of post-concussion syndrome. In addition to interviewing Jason, Dr. Ashely reviewed his records from North Fulton Hospital and Barbour Orthopaedics; reviewed an MRI scan of his brain with DTI imaging; and reviewed his counseling records and other diagnostic tests. Booker Depo. 16:9-22. Dr. Booker also performed a battery of physical and cognitive examinations. Booker Depo. 57:14-58:3. Booker Depo. 16:9-22. Dr. Booker then combined this information with her twenty years of experience as a neurologist specializing in post-concussion syndrome and mild traumatic brain injuries to make her clinical diagnosis.

In contrast to Dr. Booker's highly informed and scientifically sound diagnosis, Defendant has offered no medical evidence or expert testimony to support her position that, before she hit Plaintiff with her car, he suffered from atypical expressions of anger. Defendant has not had Plaintiff examined by a neurologist, and defendant has not offered any expert medical witness to rebut Dr. Booker's diagnosis of post-concussion syndrome. Defendant has merely cherry-picked a few of Plaintiff's social media exchanges from over 15,000 pages where Plaintiff has communicated anger with his friends in a private context. The messages that Defendant highlights are completely unremarkable. Since none of the three messages that Defendant has selected illustrate an atypical expression of anger, these

messages are entirely irrelevant to Plaintiff's diagnosis of post-concussion syndrome and whether or not his current feelings of anger are symptomatic of his mild traumatic brain injury.

C. Even if these messages are relevant, which Plaintiff maintains that they are not, their probative value is substantially outweighed by their potential prejudicial effect.

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. O.C.G.A. § 24-4-403. "In excluding evidence for unfair prejudice, the evidence must have an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. Aycock v. R.J. Reynolds Tobacco Co., 769 F.3d 1063, 1068-69, 25 Fla. L. Weekly Fed. C 533 (11th Cir. 2014) (internal citation and punctuation omitted).

1. The social media messages at issue will confuse the issues of the case.

By presenting these social media messages, Defendant attempts to confound typical and normal expressions of anger with those that are symptomatic of a traumatic brain injury. In the instant case, the jury will not have to decide whether or not Plaintiff has ever experienced anger in his life – which is all these messages show – but rather, whether the kind of anger that he currently experiences is symptomatic of post-concussion syndrome. To make that determination, the jury will have to rely on the testimony of experts and the testimony of friends and family members who can attest to the change in Plaintiff's demeanor since the collision. It is confusing to pit that testimonial evidence against social media messages that (1) arguably don't even depict anger and (2) lack some of the most recognizable ways people express anger – tone, body language, facial expression, etc. Written words on a screen cannot adequately communicate levels of anger and conflating

these messages with clinical diagnoses and observed behavior gives them undue weight and influence in resolving the issue at hand.

2. *The danger of unfair prejudice substantially outweighs the messages' probative value.*

Any probative value that these messages have is undoubtedly outweighed by the danger that they might unfairly prejudice Plaintiff's case. Taken out of context of the 15,000 pages of messages from which they were drawn, these messages simply make Jason look like an angry and irrational person. The messages about the American tattoo artists could even be misconstrued as anti-American – a sentiment that will be incredibly difficult for a recent immigrant to overcome in today's political climate. Any probative value these messages offer is substantially outweighed as they will only work to attack Jason's character and sour the jury against him as an individual and his case in general.

III. CONCLUSION

For the reasons stated above, Plaintiff respectfully submits this motion and its memorandum in support and asks this Court to enter an order excluding the above referenced messages from evidence.