

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY



DEPUTY

NATHANIEL SANDERS, SR., Individually and as
Heir to the Estate of Nathaniel Sanders II, and
YULONDA SANDERS, Individually and as Heir to
the Estate of Nathaniel Sanders II,
Plaintiffs,

-vs-

Case No. A-09-CA-426-SS

LEONARDO QUINTANA and THE CITY OF
AUSTIN,
Defendants.

ORDER

BE IT REMEMBERED the above-styled and numbered cause was filed on June 2, 2009. Pursuant to the scheduling order entered on August 31, 2009, the case was set for trial for the month of July 2010. On February 11, 2010, the parties, through counsel, entered into an agreed protective order whereby information supplied in discovery and pleadings on file could be sealed by any party with the other party having the right to protest the confidentiality and file a pleading requesting the information be made public and not protected by the protective order.

Because of the publicity surrounding the events which were the basis of this lawsuit and the scheduling of witnesses and expert witnesses, the Court, on May 27, 2010, specially set this case for jury selection and trial for July 19, 2010. The undersigned then cleared his civil and criminal docket for that week. The Court also instructed the Clerk's Office to prepare a large jury pool for jury selection to draw from the sixteen counties comprising the Austin Division of the Western District of Texas. Subsequent to May 27, 2010, a continuance was requested and the request was denied.

On July 9, 2010, the media publically released an announcement the City and the Sanders family had tentatively settled this case for \$750,000.00. On July 10, 2010, the Austin American-Statesman's front page headline and lead story elaborated on the settlement. Subsequently, through telephone conversations with counsel and the undersigned's staff, it was learned the lawyers had agreed to settle the case, but the formal settlement was necessarily conditioned on an affirmative vote by the Austin City Council. The undersigned advised the parties to continue to prepare for trial if there was no settlement by July 19. Counsel for the City advised the City Council would not "move on" the settlement until July 29, 2010, even though it could have decided this issue with 24 hours notice. The undersigned then instructed counsel this case would proceed to trial on July 19, and they should continue to prepare for trial. However, on July 12, 2010, the plaintiffs' counsel filed their advisory that counsel had agreed on the settlement and requested the case to be removed from the trial docket. By this time, council members, radio talk shows, television news shows, and other media were involved with public discussions regarding the settlement, facts regarding the shooting, and opinions relating thereto. Again, the undersigned advised that the trial would proceed as there was no impediment for the City Council to either authorize or reject the settlement before trial. However, late in the day on July 12, 2010, counsel for the parties entered an advisory that represented preparation and trial of the case would be of enormous expense under the circumstances. In fact, this case has been a substantial expense to the American taxpayer because of not only the management of this controversial case by the Court's staff, but also the preparation for hundreds of potential jurors, a special setting of the case to the exclusion of all other civil and criminal cases during that week, multiple pre-trial hearings, and the review of hundreds and hundreds of pages of pleadings, motions, and proposed instructions and legal memoranda.

However, the undersigned decided under these circumstances there could be no fair trial in Austin on July 19, 2010. Therefore, the Court accepted the lawyers at their word and removed the case from the July 19, 2010 trial, a mistake the undersigned will not make again.

It is not clear if the parties will ever be able to obtain a constitutionally fair trial in Austin because of the pretrial publicity and public statements made by counsel and public officials to the media.

The next available trial setting on this docket for this unique case is in November of 2011, and therefore, the Court enters the following orders:

IT IS ORDERED the above-styled and numbered cause is SET FOR DOCKET CALL on October 28, 2011, at 11:00 a.m. in the United States Courthouse, Courtroom 2, 200 West Eighth Street, Austin, Texas 78701, and TRIAL in the month of November 2011. Any further settlement negotiations between the parties must include all members of the City Council.

IT IS FURTHER ORDERED this order is without prejudice to any party filing a motion for change of venue of the trial on the basis of the constitutional protection of a fair trial with unbiased and objective jurors.

And since the federal judges in the Austin Division of the Western District of Texas cannot rely on the City of Austin to support the recommendations of its lawyers, the judges will no longer accept settlement announcements and cancel trial settings in cases involving the City of Austin within twenty-five days prior to any trial date.

SIGNED this the 2nd day of August 2010.


UNITED STATES DISTRICT JUDGE