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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Martice Deshawn Wallace,

10 Plaintiff,

11 v.

12 Timothy A Jones, et al.,

13 Defendants.  
14

No. CV-17-04126-PHX-DJH (JZB)

**ORDER**

15 *Pro se* Plaintiff Martice Deshawn Wallace (“Plaintiff”) has filed three Motions in  
16 Limine (Docs. 178, 182, 183).<sup>1</sup> Plaintiff seeks to exclude (1) all evidence related to his  
17 criminal history and sentencing (Doc. 178); (2) “irrelevant portions of the police body cam  
18 video” (Doc. 182); and (3) all information in his medical report that is “not pertinent to his  
19 diagnosis and treatment in reference to the injuries he sustained as a result of being attacked  
20 by the Defendants on the night in question” (Doc. 183). Defendants Timothy Jones,  
21 Michael Thomas, Keith Wagner, and Scott Alfred (collectively, “Defendants”) object to  
22 the exclusion of Plaintiff’s prior criminal convictions, which they intend to introduce as  
23 evidence. (Doc. 188). Defendants have also filed two untimely responses to Plaintiff’s  
24 requests to exclude portions of body camera video (Doc. 192) and his medical records

25 <sup>1</sup> Plaintiff also filed a “Motion in Limine #2 Seeking Designation of Named Defendants as  
26 Adverse Witnesses” (Doc. 179), which does not seek to exclude any evidence, but instead  
27 asks this Court to “permit Plaintiff to call Defendants as adverse witnesses” and “permit  
28 leading questions where necessary to develop the witnesses [sic] testimony.” (*Id.* at 2). No  
response has been filed. This motion did not need to be filed as a motion in limine. The  
Federal Rules of Civil Procedure allow for Plaintiff to call Defendants as witnesses, and  
where the witnesses are adverse, permits Plaintiff to ask leading questions. Accordingly,  
**IT IS ORDERED** this Motion (Doc. 179) is **granted**.

1 (Doc. 191).<sup>2</sup>

2 **I. LEGAL STANDARD**

3 “Although the Federal Rules of Evidence do not explicitly authorize in limine  
4 rulings, the practice has developed pursuant to the district court’s inherent authority to  
5 manage the course of trials.” *Luce v. United States*, 469 U.S. 38, 40 n.4 (1984). The Ninth  
6 Circuit has explained that motions in limine “allow parties to resolve evidentiary disputes  
7 ahead of trial, without first having to present potentially prejudicial evidence in front of a  
8 jury.” *Brodit v. Cambra*, 350 F.3d 985, 1004–05 (9th Cir. 2003) (citations omitted).  
9 Generally, motions in limine that seek exclusion of broad and unspecific categories of  
10 evidence are disfavored. *See Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712  
11 (6th Cir. 1975). Motions in limine are “entirely within the discretion of the Court.” *Jaynes*  
12 *Corp. v. American Safety Indem. Co.*, 2014 WL 1154180, at \*1 (D. Nev. March 20, 2014)  
13 (citing *Luce*, 469 U.S. at 41–42). Moreover, “[a] motion in limine is not the proper vehicle  
14 for seeking a dispositive ruling on a claim, particularly after the deadline for filing such  
15 motions has passed.” *Hana Fin., Inc. v. Hana Bank*, 735 F.3d 1158, 1162 n.4 (9th Cir.  
16 2013) (citing *Dubner v. City & Cnty. of S.F.*, 266 F.3d 959, 968 (9th Cir. 2001), *aff’d*, 574  
17 U.S. 418 (2015)).

18 Motions in limine are “provisional” in nature. *Goodman v. Las Vegas Metro. Police*  
19 *Dep’t*, 963 F. Supp. 2d 1036, 1047 (D. Nev. 2013), *aff’d in part, rev’d in part, and*  
20 *dismissed in part on other grounds*, 613 F. App’x 610 (9th Cir. 2015). The Court issues  
21 its rulings on motions in limine based on the record currently before it. Therefore, rulings  
22 on such motions “are not binding on the trial judge [who] may always change his [or her]  
23 mind during the course of a trial.” *Id.* (quoting *Ohler v. United States*, 529 U.S. 753, 758  
24 n.3 (2000) (noting that in limine rulings are always subject to change, especially if the

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25 <sup>2</sup> Contrary to this Court’s Order setting the Final Pretrial Conference, Plaintiff makes no  
26 certification in any of his motions that he conferred with Defendants in an attempt to  
27 resolve the evidentiary issues he raises. (*See* Doc. 174 at 3 “No opposed motion in limine  
28 will be considered or decided unless moving counsel certifies therein that the movant has  
in good faith conferred or attempted to confer with the opposing party or counsel in an  
effort to resolve disputed evidentiary issues that are the subject of the motion”). The parties  
are on notice that future failures to certify that they have met and conferred regarding  
disputed evidence will be grounds for summary denial.

1 evidence unfolds in an unanticipated manner)). “Denial of a motion in limine does not  
2 necessarily mean that all evidence contemplated by the motion will be admitted to trial.  
3 Denial merely means that without the context of trial, the court is unable to determine  
4 whether the evidence in question should be excluded.” *Id.* (quoting *Ind. Ins. Co. v. Gen.*  
5 *Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004)).

## 6 **II. BACKGROUND**

7 On the evening of June 15, 2017, a Phoenix Fire Department (“PFD”) fire truck  
8 found Plaintiff bleeding from a head wound in a metro light rail train compartment.  
9 Defendants, who were the crew of the fire truck, recommended that Plaintiff go to the  
10 hospital in the ambulance. Plaintiff says that although he declined transport and treatment,  
11 Defendants dispatched a PFD ambulance to the scene. Former Defendant Todd Riggs  
12 (“Riggs”), a firefighter and paramedic, and former Defendant Daniel Warren (“Warren”),  
13 a firefighter and EMT,<sup>3</sup> arrived with the ambulance. Plaintiff entered the ambulance and  
14 sat at a bench in the rear bay of the vehicle. Plaintiff refused requests from Riggs and  
15 Warren to move to the gurney. Plaintiff contends that when he continued to refuse, Riggs  
16 punched him in the head, causing injury to his left eyebrow. Defendants say Plaintiff  
17 became verbally abusive and assaulted Riggs and Warren with trauma shears. Plaintiff  
18 says he was pulled out of the ambulance, and once outside, was pushed and punched by  
19 Defendants even though he had released his hold on the shears.<sup>4</sup> Defendant Phoenix police  
20 officers arrived and took Plaintiff into custody. Plaintiff was subsequently convicted of  
21 two counts of aggravated assault on Riggs and Warren by a Maricopa County jury in Case  
22 No. CR-2017-127900.

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23 <sup>3</sup> On July 27, 2020, the Court granted summary judgment in favor of Defendants Riggs and  
24 Warren and dismissed Plaintiffs’ claims against them as barred by *Heck v. Humphrey*, 512  
25 U.S. 477 (1994) (Doc. 137). They were subsequently dismissed from this action.  
26 Defendants Thomas, Wagner, and Alfred did not seek summary judgment on the claims  
27 brought against them and informed the Court they wished to proceed to trial. Defendant  
28 Jones did not appear until after the dispositive motion deadline passed, and was provided  
the opportunity to file a motion for summary judgment after the deadline, which he did  
(Doc. 151). On March 1, 2021, the Court granted summary judgment to Defendant Jones  
as to Plaintiff’s unlawful seizure claim and denied it as to Plaintiff’s excessive force claim.  
(Doc. 167).

<sup>4</sup> These facts form the basis of Plaintiff’s excessive force claim.

1     **III.   DISCUSSION**

2             **A.    Exclusion of Criminal History and Sentencing (Doc. 178)**

3             Plaintiff seeks to exclude his three felony convictions from admission at trial.  
4     Plaintiff has a 2013 conviction for unlawful delivery of a controlled substance and 2017  
5     and 2018 convictions for aggravated assault, the latter of which arose out of the incident  
6     that is the subject of Plaintiff’s complaint. Plaintiff says admission of these convictions  
7     would be “irrelevant and unfairly prejudicial.” (Doc. 178 at 1). Specifically, Plaintiff says  
8     these felony convictions are “inadmissible character evidence under Rule 404 and 403, and  
9     unduly prejudicial under Rules 609(a) and 403.” (*Id.*) He says his “prior convictions for  
10    assault and drug possession say nothing about his honesty. Such acts stem from causes  
11    other than dishonesty, and their probative value is nil.” (*Id.*) In response, Defendants argue  
12    that “Plaintiff’s credibility will be the central issue during trial.” (Doc. 188 at 3). As such,  
13    they argue introduction of the convictions for purposes of impeachment would be proper  
14    because they “meet the requirements for admissibility under Rule 609(a)(1)” and are  
15    “proper under Rule 403.”

16            Although Rule 609 permits attacking a witness’s character for truthfulness through  
17    prior felony convictions, it is subject to Federal Rules of Evidence 403 to determine if the  
18    probative value is substantially outweighed by its prejudicial effect. *See* Fed. R. Evid. 403  
19    (allowing the district court to “exclude relevant evidence if its probative value is  
20    substantially outweighed by a danger of...unfair prejudice, confusing the issues,  
21    misleading the jury, undue delay, wasting time, or needlessly presenting cumulative  
22    evidence”). Petitioner’s prior convictions of unlawful delivery of a controlled substance  
23    and his 2017 conviction for aggravated battery have little, if anything, to do with  
24    Petitioner’s tendency to tell the truth. The reason for allowing cross-examination under  
25    Federal Rules of Evidence 609(a) is to allow a party to attempt to cast doubt on a witness’s  
26    reliability for telling the truth. “Acts involving fraud or deceit clearly raise such doubt,  
27    while certain acts, such as murder, assault, or battery normally do not.” *Varhol v. Nat’l R.R.*  
28    *Passenger Corp.*, 909 F.2d 1557, 1567 (7th Cir. 1990). These convictions are unlikely to

1 have any bearing on his truthfulness during testimony or even to show propensity for his  
2 character; they do, however, run the risk of substantially prejudicing the jury against  
3 Plaintiff. Evidence of these convictions will be excluded.

4 The Court, however, finds that exclusion of the facts underlying the Plaintiff's 2018  
5 conviction would confuse the jury. As noted, this conviction arose directly out of the  
6 events alleged in Plaintiff's Complaint. Therefore, the facts from which his 2018  
7 conviction derive are probative of his excessive force claim and to exclude his testimony  
8 as to what occurred just prior to his allegations of being pushed and punched by the  
9 remaining Defendants would lead to jury confusion. The Defendants may therefore  
10 introduce the facts that form the basis of the conviction, subject to the Court's limiting  
11 instruction.

12 Regarding the conviction itself, there remains a possibility that evidence of the  
13 conviction may be properly used to impeach Plaintiff's testimony regarding how events  
14 unfolded. Moreover, the facts underlying the 2018 aggravated assault conviction may also  
15 be admissible for other purposes, such as to show Plaintiff's "proof of motive, opportunity,  
16 intent, preparation, plan, knowledge, identify, or absence of mistake or accident." Fed. R.  
17 Evid. 404(b)(2). A ruling on the admissibility of Plaintiff's 2018 conviction for aggravated  
18 assault would therefore be premature, and thus is denied at this juncture.

19 Accordingly,

20 **IT IS ORDERED** that Plaintiff's Motion (Doc. 178) is **granted** with regard to his  
21 2013 and 2017 convictions; it is **denied** with regard to his 2018 conviction.

22 **B. Exclusion of "Irrelevant Portions" of Police Body Cam (Doc. 182)**

23 Plaintiff also seeks to admit "only the first 5 minutes of the [body cam] video,"  
24 which he says contain "the excited utterances that will be used at trial in this case."  
25 (Doc. 182 at 2). He argues that the rest of the video is "irrelevant and will unduly prejudice  
26 the jury." (*Id.*) He does not explain why the remainder of the video will unduly prejudice  
27 him, and indeed, does not provide a copy of the body camera footage with his Motion, or  
28 describe the footage to the Court. The Court declines to issue a provisional ruling regarding

1 the admissibility of police body camera footage at this juncture.

2 Accordingly,

3 **IT IS ORDERED** that Plaintiff's Motion (Doc. 182) is **denied**.


4 **C. Exclusion of "All Information in Medical Report Not Pertinent to**  
5 **Plaintiff's Diagnosis and Treatment" (Doc. 183)**

6 Plaintiff makes a similarly broad and unsupported request for the Court to exclude  
7 all information that is not relevant to his diagnosis and treatment "in reference to the  
8 injuries he sustained as a result of being attacked by the Defendants on the night in  
9 question." (Doc. 183 at 1). Without context or detail, the Court declines to exclude such  
10 a potentially broad category of evidence. (*See also* Doc. 174 at 2 (stating "[e]ach motion  
11 in limine shall include proposed language for the order in limine being sought from the  
12 Court, and the proposed language shall state *with precision* the evidence that is subject to  
13 the proposed order and the limitation or exclusion sought to be placed on the evidence)  
14 (emphasis added)). Plaintiff may raise his objections at trial, when the Court has the benefit  
15 of assessing the relevance of the proffered evidence.

16 Accordingly,

17 **IT IS ORDERED** that Plaintiff's Motion (Doc. 183) is **denied**.

18 Dated this 28th day of July, 2021.

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21   
22 Honorable Diane J. Humetewa  
23 United States District Judge  
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