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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Danny Lee Monts,

10 Plaintiff,

11 v.

12 Adam Z. Griffiths,

13 Defendant.
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No. CV-18-00754-PHX-DJH

ORDER

15 Before the Court are Plaintiff's Motions in Limine (Docs. 123-128), to which
16 Defendant has filed Responses.¹ (Docs.129-134). The Court issues its preliminary rulings
17 on Plaintiff's Motions.

18 **I. Legal Standards**

19 **A. Motions in Limine**

20 "Although the Federal Rules of Evidence do not explicitly authorize in limine
21 rulings, the practice has developed pursuant to the district court's inherent authority to
22 manage the course of trials." *Luce v. United States*, 469 U.S. 38, 40 n.4 (1984). Motions
23 in limine "allow parties to resolve evidentiary disputes ahead of trial, without first having
24 to present potentially prejudicial evidence in front of a jury." *Brodit v. Cabra*, 350 F.3d

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¹ The Court notes that Plaintiff did not adhere to its Order (Doc. 105 at 2-3), which requires
27 he certify an attempt to confer with Defendant to resolve his Motions in Limine prior to
28 filing them. The Court will expect Plaintiff to explain why no such certification was made.
The Court notes that several of Plaintiff's Motions need not have been filed if counsel
engaged in the meet and confer process.

1 985, 1004–05 (9th Cir. 2003) (citations omitted). Generally, motions that seek exclusion
2 of broad and unspecific categories of evidence are disfavored. *See Sperberg v. Goodyear*
3 *Tire and Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975). Also, motions in limine are
4 “entirely within the discretion of the Court.” *Jaynes Corp. v. American Safety Indem. Co.*,
5 2014 WL 1154180, at *1 (D. Nev. March 20, 2014) (citing *Luce*, 469 U.S. at 41–42).

6 Motions in limine are “provisional.” *Goodman v. Las Vegas Metro. Police Dep’t*,
7 963 F.Supp.2d 1036 (D. Nev. 2013), *aff’d in part, rev’d in part, and dismissed in part on*
8 *other grounds*, 613 F. App’x 610 (9th Cir. 2015). The Court issues its rulings on these
9 motions based on the record currently before it. Therefore, rulings on such motions “are
10 not binding on the trial judge [who] may always change his [or her] mind during the course
11 of a trial.” *Id.* (quoting *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000) (citing *Luce*,
12 469 U.S. at 41 (noting that in limine rulings are always subject to change, especially if the
13 evidence unfolds in an unanticipated manner))). “Denial of a motion in limine does not
14 necessarily mean that all evidence contemplated by the motion will be admitted to trial.
15 Denial merely means that without the context of trial, the court is unable to determine
16 whether the evidence in question should be excluded.” *Id.* (citations omitted).

17 **B. Relevance**

18 Motions in Limine generally argue certain evidence should be excluded as irrelevant
19 or unfairly prejudicial. Rule 401² provides that “[e]vidence is relevant if it has any
20 tendency to make a fact more or less probable than it would be without the evidence and
21 the fact is of consequence in determining the action.” Fed. R. Evid. 401. Under Rule 402,
22 relevant evidence is admissible unless otherwise provided. Fed. R. Evid. 402. However,
23 all relevant evidence is subject to the balancing test set forth by Rule 403. That is, a court
24 “may exclude relevant evidence if its probative value is substantially outweighed by a
25 danger of one or more of the following: unfair prejudice, confusing the issues, misleading
26 the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”
27 Fed. R. Evid. 403. The Court adheres to these principles in ruling on these motions.

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² Except where otherwise noted, all Rule references are to the Federal Rules of Evidence.

1 **C. Plaintiff's Motions in Limine**

2 **Plaintiff's Motion in Limine No. 1 (Doc. 123)**

3 Plaintiff seeks to exclude any reference to Plaintiff's status as a sexually violent
4 predator/person (SVP) pursuant to Rules 401 and 403 of the Federal Rules of Civil
5 Procedure. Plaintiff asserts that to the extent Plaintiff's commitment needs to be
6 mentioned, it "may be satisfied through mere references to Plaintiff or his witnesses having
7 been civilly committed at [the Arizona Community Protection and Treatment Center]
8 (ACPTC)." Defendant responds that Plaintiff's status as a SVP must be mentioned for the
9 jury to determine whether Defendant was "acting under color of state law" such that a §
10 1983 claim can be brought against him. Defendant provides no other argument for why
11 Plaintiff's SVP status may be relevant.³

12 This case involves a credibility dispute about whether Defendant used excessive
13 force upon Plaintiff. Introducing evidence or referring to Plaintiff as a sexually violent
14 person/predator is not probative of any fact to be determined. Moreover, referring to
15 Plaintiff as a sexually violent person/predator is highly prejudicial. Therefore, the Court
16 will bar Defendant from referring to Plaintiff as a sexually violent person/predator.
17 Defendant may refer to Plaintiff as having been "civilly committed." See *Cranford v.*
18 *Baclagon*, No. 1:11-CV-00736-BAM, 2016 WL 6574160, at *3 (E.D. Cal. Jan. 22, 2016)
19 (On § 1983 excessive force claim, "[t]he Court, on its own motion, is also precluding any
20 evidence, testimony, arguments, or references to the terms 'sexually violent predator' or
21 'SVP,' or the fact that SVPs, prior offenders, and or prior convicted prisoners are housed
22 at Plaintiff's facility, or that Plaintiff has or had any of these status. This evidence is not
23 relevant to Plaintiff's Fourteenth Amendment excessive force claim, Fed. R. Evid. 401,
24 and even if such information were relevant, it should be excluded because its probative

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26 ³ This is the first time that Defendant has contested that he is a state actor. He claims that
27 the jury must determine whether he was acting under color of state law, which is a legal
28 question for the Court, not a jury. The Court has sought further briefing on this issue.
Accordingly, the Court will resolve Plaintiff's Motion on the existing record.

1 value is substantially outweighed by a danger of unfair prejudice, Fed. R. Evid. 403. As
2 discussed at the January 21, 2016 hearing, Plaintiff and the other patients at Coalinga shall
3 be referred to as a ‘patient’ or ‘detainee’ anytime it is necessary to discuss his status or the
4 status of other detainees at Coalinga State Hospital.”).

5 **IT IS ORDERED granting** Plaintiff’s Motion in Limine No. 1 (Doc. 123).

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7 **Plaintiff’s Motion in Limine No. 2 (Doc. 124)**

8 Plaintiff seeks to limit Defendant’s reference to a May 29, 2017 incident wherein
9 he picked up a cart and repeatedly threw it at the window to the administrative area, broke
10 both the cart and the window, and threw pieces of the cart at people, and fought staff who
11 were trying to restrain him. Defendant was one of the staff members that responded to that
12 incident. Plaintiff urges that the Court should limit Defendant’s use of the May 29th
13 incident to Defendant’s knowledge of Plaintiff’s state of mind or actions, and to provide a
14 limiting instruction on how the jury should view this evidence. (Doc. 124 at 2). Defendant
15 argues that this is an improper motion because it seeks a jury instruction, rather than an
16 evidentiary ruling. (Doc. 130 at 1). Because Plaintiff’s Motion seeks to limit the use of
17 evidence, the Court will address it as an in limine motion and withhold determining
18 whether a limiting instruction is warranted.

19 As discussed further below, Plaintiff places his May 29, 2017 conduct at issue.
20 Moreover, he concedes that the May 29th incident may have some probative value under
21 Rule 404(b)(2).⁴ (Doc. 125 at 4). Because the incident may provide context for the case
22 at bar, including Plaintiff’s state of mind and Defendant’s knowledge, the May 29th incident
23 is probative and relevant to Plaintiff’s alleged excessive force claim. The Court will,
24 however, reserve ruling on its admissibility upon Defendant’s laying proper foundation.

25 **IT IS ORDERED DENYING** Plaintiff’s Motion in Limine No. 2 (Doc. 124).

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28 ⁴ 404(b)(2) provides “[E]vidence may be admissible for another purpose, such as proving
motive, opportunity, intent, preparation, plan, knowledge, identify, absence of mistake, or
lack of accident.” Fed. R. Evid. 404(b)(2).

1 **Plaintiff’s Motion in Limine No. 3 (Doc. 125)**

2 Plaintiff seeks to preclude video evidence from the May 29, 2017 incident discussed
3 above. Plaintiff argues that testimony and documentation are available on the May 29,
4 2017 incident, and Plaintiff does not dispute that the incident occurred or that Defendant
5 responded to it. Plaintiff argues that under Rule 403, the video should be excluded as far
6 more prejudicial than probative because it simply shows the jury Plaintiff engaging in bad
7 acts during an entirely separate incident.

8 Defendant responds that Plaintiff made the May 29th footage relevant because he
9 claims he is entitled to punitive damages because: “Defendant intended to harm Plaintiff
10 on May 30, 2017, in retaliation for Plaintiff’s episode on May 29, 2017” in the Proposed
11 Joint Pretrial Order. The Court agrees.

12 Defendant also argues that the best evidence of the May 29, 2017 incident,
13 regardless of its purpose of submission, is the surveillance video and not the memories of
14 witnesses and documentation, which does not show every aspect of the event. Defendant
15 further argues that the video needs to be submitted to the jury because it depicts the
16 beginning of the story that ends with the May 30, 2017 incident and establishes Plaintiff’s
17 motive for attacking Defendant on May 30, 2017.

18 Though it is the best evidence of what occurred, the prejudice of this video likely
19 outweighs its probative value. Defendant’s concerns about the witness memories can be
20 addressed by having the witness view the video, outside the presence of the jury,⁵ to refresh
21 their recollection. Accordingly, the May 29th incident may be introduced through witness
22 testimony but the video may not be introduced.⁶

23 **IT IS ORDERED granting** Plaintiff’s Motion in Limine No. 3 (Doc. 125).
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26 ⁵ See *U.S. v. Summers*, 422 Fed. Appx. 838, 840 (11th Cir. 2011) (finding witness was
27 competent to testify to what he independently remembered after having his recollection
refreshed using audio and video recordings outside the presence of the jury).

28 ⁶ The Court may change its ruling if Plaintiff misrepresents what occurred on May 29th,
2017.

1 **Plaintiff’s Motion in Limine No. 4 (Doc. 126)**

2 Pursuant to Rule 609(a)(1), Plaintiff seeks to exclude, as impeachment evidence, his
3 conviction arising out of the May 29th incident. (Doc. 126 at 2). Plaintiff was convicted
4 of Criminal Damage, a Class A Felony and Assault, a Class 1 Misdemeanor. (*Id.* at 2-3).
5 Plaintiff also asserts that these convictions should be excluded under Rule 403. Defendant
6 states that he never intended to use Plaintiff’s misdemeanor conviction, but asserts that
7 Plaintiff’s felony conviction is admissible for impeachment purposes. The Court agrees.

8 The Court observes that admitting any felony conviction is prejudicial. However,
9 Rule 609 sets the contours of admissibility for felony convictions. The Rule states:
10 “attacking a witness’s character for truthfulness by evidence of a criminal conviction . . .
11 for a crime that . . . was punishable . . . by imprisonment for more than one year . . . *must*
12 be admitted, subject to Rule 403, in a civil case . . . in which the witness is not a
13 defendant[.]” (emphasis added). Thus, Plaintiff’s felony conviction arising from the May
14 29th incident is presumed admissible unless its probative value is outweighed by undue
15 prejudice. Yet, here, as has been previously discussed, Plaintiff argues that the May 29th
16 issue is relevant to his claim because Defendant allegedly used excessive force on May
17 30th, in retaliation for that incident. The felony conviction establishes the fact of Plaintiff’s
18 conduct on May 29th and is therefore probative of Plaintiff’s character for truthfulness
19 should he propound differing versions of the May 29th incident. Accordingly, the Court
20 finds that Rules 401 and 609 permit Defendant to attack Plaintiff’s credibility with the
21 felony conviction.

22 **IT IS ORDERED denying** Plaintiff’s Motion in Limine No. 4 (Doc. 126).

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24 **Plaintiff’s Motion in Limine No. 5 (Doc. 127)**

25 Plaintiff’s Motion seeks to preclude Defendant from introducing into evidence
26 Plaintiff’s prior sex offense felony convictions because “evidence related to the nature and
27 circumstances of his prior sex offense convictions is so prejudicial that it risks entirely
28 overshadowing all the substantive evidence in the case.” (Doc. 127 at 3). He further asserts

1 that the prior convictions have no bearing on his truthfulness. (*Id.*). Plaintiff states that
2 should the Court permit Defendant to reference the convictions it should only permit
3 reference to “felony convictions.” (*Id.*). Defendant states that the Court should permit it
4 to impeach Plaintiff with all his felony convictions that meet the Rule 609 criteria. (Doc.
5 133).⁷

6 Plaintiff’s prior felony convictions for acts of a sexually violent nature have limited,
7 probative value to the case. The jury’s determination is whether Defendant used excessive
8 force upon him on May 30, 2017. So, there is some probative value as to the circumstances
9 of his civil commitment which led him to be in the facility in which the alleged excessive
10 force occurred. Accordingly, the Court will permit Defendant to impeach Plaintiff by
11 referring to a “prior felony conviction,” and his civil commitment to the ACPTC, without
12 mentioning the factual details of his sex crimes.

13 **IT IS ORDERED denying** Plaintiff’s Motion in Limine No. 5 (Doc. 127).

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15 **Plaintiff’s Motion in Limine No. 6. (Doc. 128).**

16 Plaintiff seeks to prohibit Defendant from impeaching his witnesses, ACPTC
17 residents Campbell, Walker and Staats, with their prior sex offense convictions. (Doc. 128
18 at 2). Defendant states he “does not intend to elicit the nature of Plaintiff’s witnesses
19 underlying felony convictions,” only that they have “felony convictions,” if they meet the
20 Rule 609 criteria. (Doc. 134). Accordingly, the Court will order Defendant not to refer to
21 the subject matter of the witness’s conviction, only that they have a “felony conviction.”

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27 ⁷ Here, too, Defendant asserts that “plaintiff’s prior sexually violent felony offenses are a
28 central issue to the applicability of § 1983” and whether Defendant acted under color of
state law, so Defendant should be permitted to inquire into the predicate felonies. (Doc.
133 at 2). The Court will not consider this assertion for purposes of ruling on the Motion.

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IT IS ORDERED denying Plaintiff's Motion in Limine No. 6 (Doc. 128) as moot.
Dated this 8th day of January, 2024.



Honorable Diane J. Humetewa
United States District Judge