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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

5 Ray Taylor,

6 Plaintiff,

7 v.

8 Ron Lee, et al.,

9 Defendants.

No. CV-17-00022-TUC-JAS

ORDER

10
11 Pending before the Court are several motions in limine filed by both Plaintiff and
12 Defendants. While there are a total of seven motions in limine that were filed (three by
13 Plaintiff and four by Defendant), a review of those filings reflect that they boil down to
14 three overlapping issues; as such, the Court will discuss those issues in tandem in three
15 grouped categories below.¹

16 **DISCUSSION AS TO THE MOTIONS IN LIMINE**

17 **General Standards for Admissibility**

18 Fed. R. Evid. 402 provides: "Relevant evidence is admissible unless any of the
19 following provides otherwise: • the United States Constitution; • a federal statute; • these
20 rules; or • other rules prescribed by the Supreme Court. Irrelevant evidence is not
21 admissible." Fed. R. Evid. 401 defines relevant evidence as follows: "Evidence is relevant
22 if: (a) it has any tendency to make a fact more or less probable than it would be without
23 the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid.
24 403 provides that: "The court may exclude relevant evidence if its probative value is
25 substantially outweighed by a danger of one or more of the following: unfair prejudice,
26 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly

27
28 ¹ The parties are well aware of the facts and the Court discussed the factual background in
detail in its 34-page Order denying summary judgment. *See* Doc. 88. The Court need not
rehash that background information in this Order. The Court will discuss factual issues as
pertinent to the specific motions in limine.

1 presenting cumulative evidence.”

2 **Motions in Limine at Docs. 122, 124, and 127 (Plaintiff’s Criminal Convictions,**
3 **Custody Levels, and Disciplinary History While Imprisoned)**

4 The parties filed opposing motions primarily pertaining to relevance and Rule 403
5 considerations as to Plaintiff’s criminal convictions leading to his imprisonment within the
6 Arizona Department of Corrections (“ADC”), and Plaintiff’s related ADC custody levels
7 and ADC discipline.

8 Plaintiff argues that none of this information is relevant and any relevance is
9 outweighed by Rule 403 considerations; the Court disagrees. As correctly argued by
10 Defendants, this information is highly relevant, is intimately intermingled with the claims
11 asserted by Plaintiff, it would be impossible to offer the jury a cogent picture of this case
12 without this information, and any potential prejudice is outweighed by the relevance of this
13 information.

14 This case involves Plaintiff’s claims that Defendants subjected Plaintiff to cruel and
15 unusual punishment in violation of the Eighth Amendment as they failed to properly protect
16 him while in the custody of the ADC. Plaintiff entered ADC custody in September of
17 2012; from October of 2013 to March of 2018, Plaintiff requested protective custody
18 (“PC”) eleven times. Plaintiff alleged that prior to imprisonment, he shot a member of the
19 Westside City Crips (“Crips”); as such, Plaintiff informed ADC personnel that the Crips
20 were seeking revenge, that he was in danger of being assaulted or killed in prison, and that
21 he needed to be placed in PC. In response to Plaintiff’s numerous PC requests, ADC
22 personnel continuously conducted their own investigations. These investigations
23 necessarily included intermingled issues relating to Plaintiff’s criminal convictions (i.e.,
24 discharging a firearm at a structure and misconduct involving weapons) and related police
25 reports leading to his imprisonment, Plaintiff’s custody levels, and Plaintiff’s interactions
26 with other prisoners and personnel which implicated Plaintiff’s ADC discipline, custody
27 levels, and assessment of threats. Based on their investigations, ADC personnel found that
28 no statewide risk throughout all ADC facilities was present, and therefore PC was

1 unwarranted for Plaintiff. Rather, the ADC continuously transferred Plaintiff to other ADC
2 facilities as Plaintiff continuously raised new potential threats to his safety at his ever-
3 changing ADC locations; in addition, the ADC added “do not house with” orders
4 (“DNHW”) to Plaintiff’s file to ensure protection from specific threats identified by
5 Plaintiff. Nevertheless, Plaintiff alleges that he was attacked and injured by Crips while in
6 ADC custody in 2014 in retaliation for previously shooting a Crip; in contrast, the ADC
7 argues that it took reasonable steps to protect Plaintiff based on the information available
8 related to each PC request, that Plaintiff offered inconsistent and contradictory information
9 throughout his PC requests, and Plaintiff often failed to specifically identify purported
10 threats. In light of the foregoing, the Court finds that the information at issue is highly
11 relevant, it is intertwined with the claims and defenses, is necessary to give the jury a cogent
12 understanding of the case, and any potential prejudice is outweighed by the highly relevant
13 nature of this information. As such, Defendants’ motions (Docs. 122, 124) to allow this
14 evidence at trial is granted², and Plaintiff’s motion (Doc. 127) to exclude it is denied.

15 **Motions in Limine at Docs. 125 and 129: Direct and Cross Examination of**
16 **Defendants Smith, Lee and Coffey**

17 The three remaining Defendants in this case are Smith, Lee and Coffey. All three
18 defendants were high ranking ADC supervisors who were ultimately responsible for ADC
19 decisions regarding PC placements for prisoners. As to Coffey, she was personally
20 involved in several of the ADC decisions as to Plaintiff’s PC requests, but was not
21 personally involved in all of them. As to Smith and Lee, according to Defendants, they
22 were not personally involved in making any PC decisions regarding Plaintiff as they
23 apparently delegated all of their PC decisions regarding Plaintiff to subordinates who
24 signed off on PC decisions on their behalf. This issue was discussed in the Court’s previous
25 summary judgment Order whereby the Court stated in part: “Defendants argue that Taylor
26 can provide no evidence that either Smith or Lee were affirmatively involved in any of his

27 _____
28 ² As Defendants correctly argue, Plaintiff’s felony convictions are also admissible pursuant
to Fed. R. Evid. 609(a)(1)(A) for impeachment purposes, and any Rule 403 considerations
are outweighed by its relevance.

1 PC requests, reviews, decisions or appeals . . . Defendants contend that as Security
2 Operations Administrators, both Lee and Smith had a policy of delegating PC appeals to
3 high-level staff for review and decision making and neither Defendant read or considered
4 correspondence from Taylor relating to his PC requests or appeals because they forwarded
5 such correspondence to their designees immediately . . . If Smith and Lee had a policy or
6 practice of delegating their duties to subordinates, and that policy or practice resulted in a
7 violation of Taylor’s constitutional rights, a jury could find that Smith and Lee were
8 deliberately indifferent to Taylor’s safety by delegating their duties to another individual
9 who ultimately violated Taylor’s constitutional rights.” *See* Doc. 88 at p. 27 (internal
10 quotes and citations omitted). Defendants contend that there should be no direct or cross
11 examination of them as to issues where they purportedly lack personal knowledge, and
12 such examination would be prejudicial. The Court disagrees; Plaintiff must be allowed to
13 examine all of the Defendants as to the specifics of the PC process as this is necessary to
14 allow the jury to properly assess whether Defendants’ decisions to delegate their authority
15 to subordinates in light of the specific circumstances at bar reflected deliberate indifference
16 to Plaintiff’s safety while in ADC custody. The relevant nature of this examination of
17 Defendants outweighs any Rule 403 considerations. Accordingly, Defendants’ motion in
18 limine (Doc. 125) is denied and Plaintiff’s motion in limine (Doc. 129) is granted.

19 **Motions in Limine at Docs. 123 and 128: Medical Information**

20 Plaintiff’s motion in limine (Doc. 123) seeks admission of medical and mental
21 health documents that may substantiate his claims of physical and mental health injuries
22 stemming from the 2014 assault and Defendant’s continuous failure to place him in PC.
23 However, as Defendants correctly argue in their related motion (Doc. 128) and response to
24 Plaintiff’s motion (Doc. 131), Defendants served discovery requests on Plaintiff
25 specifically asking him to identify any documents that could support his claims; Plaintiff,
26 however, never identified any medical or mental health records in support of his claims,
27 and otherwise never disclosed, listed, or identified any medical or mental health records as
28 relevant to this case. Likewise, Defendants served discovery requests on Plaintiff directing

1 him to identify any individuals with relevant information that could provide support for his
2 claims, but Plaintiff never identified any medical personnel that had information relevant
3 to such claims. The time to identify such information expired more than two years ago
4 when discovery closed; no specialized legal training was necessary on Plaintiff's part (who
5 was pro se at the time) to identify (while discovery was still open) potentially relevant
6 health information in support of his claims. Allowing such health records at this point in
7 time would be prejudicial as discovery has closed, the Court is not going re-open discovery,
8 and Defendants would not have an opportunity to conduct responsive discovery to refute
9 the medical and mental health claims, theories, and damages Plaintiff seeks to advance via
10 the untimely identification of these specialized medical documents. As such, Defendant's
11 motion in limine (Doc. 123) to exclude these documents is granted, and Plaintiff's related
12 motion in limine (Doc. 128) as to these documents is denied.

13 On a closely related note, Plaintiff's motion (Doc. 128) argues that he should be
14 allowed to offer testimony as to the medical and mental health issues he experienced arising
15 from the 2014 assault and denials of PC; Defendants' motion (Doc. 123) argues that
16 Plaintiff does not have the medical training and expertise to offer testimony on such issues.
17 At this point in time, it is premature for the Court to rule on these portions of the motions
18 as the Court does not have sufficient information. The Court does not know exactly what
19 Plaintiff will say, how it will be said, in what context it will be said, and what other
20 testimony and evidence is implicated related to Plaintiff's testimony as to these issues. As
21 a general matter, Plaintiff is free to offer testimony as to issues which he personally
22 experienced (i.e., issues such as his own pain, fear, despair arising out of his experiences
23 at the ADC related to the denial of PC), but Plaintiff can not offer testimony outside of his
24 lay experience (i.e., issues such as medical causation). The parties' motions (Docs 123,
25 128) are denied as premature as to Plaintiff's potential testimony as to these issues; the
26 parties may raise these issues as they actually come up in the midst of trial.

27 **Conclusion**

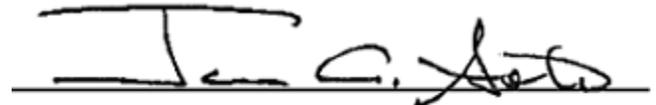
28 Accordingly, in light of the foregoing discussion, the parties' motions in limine

1 (Docs. 122, 123, 124, 125, 127, 128, 129) are granted and denied as specifically discussed
2 above.

3 **POTENTIAL TRIAL DATES**

4 The parties have indicated that the trial in this case may last up to five days. The
5 Court has reviewed its calendar and could accommodate a five day trial during the weeks
6 of: 1/11/22, 1/17/22, or 2/21/22. If these dates do not work for the parties' schedules, they
7 may consult and give the Court three mutually agreeable trial dates subsequent to the dates
8 given by the Court. By no later than **9/17/21**, the parties shall consult and file a notice with
9 the Court indicating what trial dates work for the parties. After the Court receives the
10 parties' notice, the Court will issue an Order setting a trial date. Typically, the Court holds
11 a pretrial conference approximately 14 days before trial, and the Court directs the parties
12 to submit jury instructions, proposed voir dire, and verdict forms 30 days prior to trial. The
13 Court has attached a standard Pretrial Order it issues pertaining to these trial issues so the
14 parties will have a better idea of looming matters to better assess mutually agreeable dates
15 for trial.³

16 Dated this 9th day of September, 2021.

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20 Honorable James A. Soto
21 United States District Judge
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25 ³ The Court notes that its standard practice is to address civil motions in limine in
26 conjunction with setting a mutually agreeable civil trial date with the parties. However,
27 due to the continuing COVID-19 pandemic, civil trials were substantially restricted due to
28 health and safety concerns. As such, the Court has been holding its decision as to the
motions in limine in abeyance. While the Court had hoped that the pandemic would have
largely waned by now in light of safe and effective vaccines, that has not come to fruition
in light of vaccine hesitancy and the Delta variant. As it appears that COVID-19 may be
an issue the Court, litigants and jurors will be facing for an extended period of time, the
Court finds it prudent to now issue the Order at bar.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

***,
Plaintiff,
vs.
***,
Defendants.

No. CV ***-TUC-JAS
ORDER

IT IS HEREBY ORDERED as follows:

- (1) By no later than *** the parties shall file:
 - (a) One joint set of stipulated preliminary jury instructions that both parties agree are appropriate for trial. These jury instructions will be read at the beginning of the case. The parties shall submit the stipulated preliminary jury instructions in the exact order they want them read to the jury; the parties shall provide the full text of their requested instructions. As to citing authority, a citation to the model jury instruction number or other authority is all that is required in relation to stipulated preliminary jury instructions.
 - (b) One joint set of stipulated final jury instructions that both parties agree are appropriate for trial. These jury instructions will be read at the end of the case. The parties shall submit the stipulated final jury instructions in the exact order they want them read to the jury; the parties shall provide the full text of their requested instructions. As to citing authority, a

1 citation to the model jury instruction number or other authority is all that is required in
2 relation to stipulated final jury instructions.¹

3 (c) One joint set of stipulated mid-trial jury instructions (if any) that both parties agree are
4 appropriate for trial. These jury instructions will be read in the midst of the case. The parties
5 shall submit the stipulated mid-trial jury instructions in the exact order they want them read
6 to the jury; the parties shall provide the full text of their requested instructions. As to citing
7 authority, a citation to the model jury instruction number or other authority is all that is
8 required in relation to stipulated mid-trial jury instructions.

9 (d) One joint set of jury instructions that the parties can not agree on. The party advancing
10 a disputed jury instruction shall briefly explain why that instruction is appropriate and cite
11 authority to support the proposed jury instruction. Immediately after the explanation
12 supporting the disputed jury instruction, the opposing party shall briefly explain why that
13 instruction is inappropriate and cite authority to support the opposition. Where applicable,
14 the objecting party shall submit an alternative proposed instruction covering the subject or
15 issue of law.

16 (e) One joint set of stipulated voir questions. As to stipulated voir dire questions, the parties
17 do not need to cite authority or give a justification for stipulated voir dire questions.
18 Generally, the Court will be inclined to read stipulated voir dire questions to the jury.

19 (f) One joint set of proposed voir dire that the parties can not agree on. The party advancing
20 a disputed voir dire question shall briefly explain why that question is appropriate and cite
21 authority to support the proposed question. Immediately after the explanation supporting the
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23 ¹The Court notes that it likely will not read any additional instructions other than those
24 specifically submitted by the parties pursuant to the deadline in this Order; as such, the parties
25 should submit all jury instructions they feel are necessary for the jury in this case. After the Court
26 receives the jury instructions from the parties, the Court will either discuss the instructions at the
27 final pretrial conference, or issue an Order informing the parties what instructions were accepted and
28 rejected prior to trial such that they will know the substance of all the preliminary and final jury
instructions prior to trial. Likewise, prior to trial, the Court will either discuss verdict forms at the
final pretrial conference, or issue an Order informing the parties what verdict forms will be used at
trial.

1 disputed question, the opposing party shall briefly explain why that question is inappropriate
2 and cite authority to support the opposition. Where applicable, the objecting party shall
3 submit an alternative proposed question covering the subject or issue of law. Generally, the
4 Court will be disinclined to read disputed voir dire questions to the jury.²

5 (g) Proposed jury verdict forms (the parties shall indicate if the verdict forms are stipulated
6 forms). In addition, copies of all of these documents shall be mailed to chambers (to the
7 extent there are any exhibits, tabs must be included) and **Word Perfect or Word versions**
8 **of all of these documents shall be emailed to chambers**
9 (soto_chambers@azd.uscourts.gov).

10 As model instructions are constantly updated, the parties shall refer to the Ninth Circuit
11 website for the most recent versions of the Ninth Circuit Civil Model Jury Instructions.
12 Model instructions from this website are searchable and jury instructions can be cut and
13 pasted from this website into Word Perfect or Word documents. The parties should proceed
14 in the same manner as to the most recent versions of the applicable Revised Arizona Jury
15 Instructions (Civil) (“RAJI”). Ninth Circuit Civil Model Jury Instructions and the RAJI are
16 likely to be adopted by the Court assuming such instructions are applicable under the
17 circumstances whereas non-Ninth Circuit Civil Model Jury Instructions (unless stipulated)
18 and non-RAJI instructions (unless stipulated) are less likely to be adopted unless a specific
19 explanation and citation of authority supports the proposed instruction.

20 (2) The Pretrial Conference shall be held on *** at *** in Courtroom 6A. Counsel for the
21 parties shall personally appear in Court at the Pretrial Conference. After reviewing the
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25 ²To aid the parties in formulating their own voir dire and to help the parties avoid covering
26 issues the Court will have already covered in its voir dire, the Court has attached a sample voir dire
27 script the Court has used in a previous civil case which reflects the typical questions the Court asks
28 of the jury in civil cases. *See* Attachment (Sample Civil Voir Dire Script). Typically, the Court asks
the general voir dire questions reflected in the attachment, and then if necessary, gives each side a
maximum of 30 minutes each to ask any additional questions of the jury that were not adequately
covered by the Court’s voir dire. *See generally* Fed. R. Civ. P. 47.

1 parties' pretrial filings, the Court may find that the *** pretrial conference is unnecessary;
2 if this occurs, the Court will issue an Order vacating the pretrial conference.

3 (3) The Jury Trial shall begin on *** at *** in Courtroom 6A. Typically, trial days begin at
4 9:30 a.m. and end at 5:00 p.m. There is one morning recess, lunch, and one afternoon recess.
5 The trial will continue each consecutive weekday until the trial concludes. The parties have
6 indicated that trial will last *** days.

7 (4) The parties shall prepare at least four exhibit binders for trial that contain all the exhibits
8 that are stipulated for admission by the parties (i.e., one for the Court, one for witnesses, one
9 for counsel representing each opposing party or group of parties, and one for themselves).

10 The parties shall prepare at least four exhibit binders for trial that contain all the exhibits that
11 are unstipulated. The parties shall have these exhibit notebooks completed and give them
12 to the Courtroom Deputy in the morning on the first day of trial. *See* Attachment
13 (Instructions for marking and submitting exhibits, exhibit lists, and witness lists for trial).

14 The parties shall contact the Court's Courtroom Deputy (Tiffany Dame-#520-205-4682) if
15 they have additional questions regarding organizing exhibits, or if they would like to
16 schedule a time to view the Courtroom and to test the Courtroom's equipment prior to trial.

17 Likewise, to the extent the parties may use depositions at trial, the parties shall prepare at
18 least four stipulated deposition binders for trial and four unstipulated deposition binders for
19 trial. *See id.* All of the binders must be accompanied by a Table of Contents; any exhibits

20 or depositions must be indexed with tabs that protrude from the documents and shall
21 correspond to the Table of Contents. The parties are strongly encouraged to thoroughly
22 consult with each other such that as many exhibits and depositions as possible are stipulated

23 to be admitted at trial. The parties' failure to specifically seek, obtain, and be willing to
24 stipulate to the admission of evidence at trial may result in sanctions especially in light of the
25 fact that consistent objections to evidence at trial drastically expands the time that the jury,

26 the Court, and the parties must expend on the trial. To the extent the parties are unable to
27 stipulate to admission after exhausting all reasonable efforts to obtain stipulations, the parties
28 should be prepared to thoroughly explain why they could not stipulate to admission, and each

1 side should be able to thoroughly explain why a particular piece of evidence should or should
2 not be admitted in the midst of trial. The Court notes that to the extent certain issues could
3 have and should have been specifically raised in timely motions in limine, such issues may
4 be deemed untimely or otherwise waived if they are raised by the parties at trial.

5 (5) Unless otherwise stipulated and approved by the Court, the jury in this case shall consist
6 of 8 jurors; any verdict must be unanimous. *See generally* Fed. R. Civ. P. 48(a) and (b) (a
7 jury must consist of at least six, and any verdict must be unanimous and returned by at least
8 6 jurors). The respective parties shall be entitled to 3 peremptory strikes (3 for Plaintiff, 3
9 for Defendant) each for a total of 6 peremptory strikes in this trial. *See* Fed. R. Civ. P. 47(b);
10 28 U.S.C. §1870. The civil rules do not provide for alternate jurors in civil trials. Prior to
11 the parties exercising their peremptory strikes, some jurors will likely be struck for cause.
12 As to peremptory strikes, LRCiv 47.1 states: "Each side shall exercise its peremptory
13 challenges simultaneously and in secret. The Court shall then designate as the jury the
14 persons whose names appear first on the list." Near the beginning of voir dire, the parties
15 shall be prepared to give a five minute mini-opening which gives the jury pool a general
16 overview of the case; this mini-opening is not a time for extended arguments to the jury, but
17 only a chance to give the jury a preview of the case.

18 (6) Counsel for the parties shall communicate with any individuals that may appear in court
19 throughout the trial to ensure that they are apprised of proper court decorum. This includes
20 wearing proper attire, silencing cell phones, remaining quiet, and refraining from recording
21 photo or video from the court. Information regarding decorum shall be relayed to any
22 parties, witnesses, and family and friends of parties or witnesses that may appear in court at
23 any time throughout the proceedings in this case.

24 (7) The parties' proposed joint pretrial order is adopted as the final pretrial order of the Court
25 (hereinafter, the "PTO") to the extent consistent with this Order, previous Orders, and any
26 future Orders impacting the jury trial in this case. To the extent the parties have summarily
27 listed objections (i.e., foundation, hearsay, Rule 403, etc.) to evidence listed in the PTO that
28 were not included in timely motions in limine, or have briefly raised issues that were not

1 included in timely motions in limine, any such objections or issues will be ruled on as
2 deemed necessary as they arise in the midst of trial. The parties are warned that to the extent
3 such issues could have and should have been specifically raised in timely motions in limine,
4 such issues may be deemed untimely or otherwise waived if they are raised by the parties at
5 trial. NO WITNESS OR EXHIBIT, OTHER THAN THOSE SPECIFICALLY LISTED IN
6 THE PTO AS ADOPTED AND AMENDED BY THE COURT, MAY BE CALLED AT
7 TRIAL UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS
8 ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R.
9 Civ. P. 16(e). FAILURE TO COMPLY WITH ALL PROVISIONS OF THIS ORDER MAY
10 BE GROUNDS FOR THE IMPOSITION OF SANCTIONS, INCLUDING POSSIBLE
11 DISMISSAL OF THIS ACTION WITH PREJUDICE OR ENTRY OF DEFAULT, ON
12 ANY AND ALL COUNSEL AS WELL AS ON ANY PARTY WHO CAUSES
13 NON-COMPLIANCE WITH THIS ORDER.

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