

1 Plaintiff filed a motion in limine on March 31, 2014, seeking to (1) exclude Defendants'
2 statements in Rules Violation Report ("RVR") #3A-05-10-012; and (2) prohibit Defendants from
3 offering evidence of the prior convictions of Plaintiff and his inmate witnesses. Defendants did
4 not oppose the motion.

5 A. Defendants' Motion in Limine

6 Defendants seek to preclude Plaintiff from (1) offering opinions about the cause of his
7 past and current medical conditions; and (2) from introducing his medical records without
8 explanation by a medical expert.

9 "If a witness is not testifying as an expert, testimony in the form of an opinion is limited
10 to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly
11 understanding the witness's testimony or determining a fact in issue; and (c) not based on
12 scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R.
13 Evid. 701.

14 Defendants' motion is GRANTED. As to Plaintiff's medical conditions, he may not
15 testify as to any medical matter which requires scientific, technical, or other specialized
16 knowledge, which generally includes any ultimate diagnosis, a cause and effect relationship,
17 internal injuries, and/or interpretation of x-ray films or other medical records. Fed. R. Evid. 702.
18 However, Plaintiff may testify as to what he saw or felt relating to his medical needs or
19 condition.
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21 As to Plaintiff's medical records, the records may not be introduced because they are
22 hearsay and require expert testimony and foundational testimony.
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1 B. Plaintiff's Motion in Limine

2 1. *Defendants' Statements in the RVR*

3 Plaintiff moves to preclude Defendants from introducing their statements in RVR #3A-
4 05-10-012 because the statements are inadmissible hearsay. Plaintiff also contends that the
5 statements are self-serving and lack trustworthiness.

6 Plaintiff's motion is GRANTED and Defendants may not introduce statements made in
7 the RVR by declarants who do not testify. However, the statements may be used to refresh
8 recollection for Defendants who testify, and for impeachment purposes, if necessary.

9 2. *Prior Convictions*

10 Plaintiff moves to exclude evidence of his prior conviction, as well as the prior
11 convictions of his two inmate witnesses.

12 Federal Rule of Evidence 609(a)(1)(A) provides that evidence of a conviction for a crime
13 punishable for more than one year is admissible, subject to Rule 403, in a civil case to attack a
14 witness's character for truthfulness. Fed. R. Evid. 609(a)(1)(A). Evidence of a conviction under
15 this rule is not admissible if a period of more than ten years has elapsed since the date of the
16 conviction or release from confinement for it, whichever is later. Fed. R. Evid. 609(b).

17 Plaintiff's motion is DENIED. Plaintiff's commitment offense is a qualifying offense
18 under Rule 609(a)(1)(A) and must be admitted for impeachment purposes subject to Rule 403.
19 However, the Court will only permit Defendants to refer to the fact that Plaintiff is incarcerated
20 for life without the possibility of parole. Defendants will not be permitted to discuss Plaintiff's
21 commitment offense (murder). The same analysis applies to the prior convictions of Plaintiff's
22 witnesses. Defendants may only refer to the fact that the inmate witnesses are incarcerated for a
23 felony.

24 Insofar as Plaintiff's sentence may be independently admissible for purposes of damages,
25 the Court will reserve ruling on the issue.
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1 C. Plaintiff's Request for a Medical Expert

2 In opposing Defendants' motion in limine regarding Plaintiff's medical records, Plaintiff
3 requests that this Court appoint a medical expert.

4 The Court has the discretion to appoint an expert and to apportion costs, including the
5 apportionment of costs to one side. Fed. R. Evid. 706; Ford ex rel. Ford v. Long Beach Unified
6 School Dist., 291 F.3d 1086, 1090 (9th Cir. 2002); Walker v. American Home Shield Long Term
7 Disability Plan, 180 F.3d 1065, 1071 (9th Cir. 1999).

8 Plaintiff does not explain why he believes that a medical expert is necessary. In any
9 event, the Court does not require special assistance in deciding the issues. Ford ex rel. Ford, 291
10 F.3d at 1090; Walker, 180 F.3d at 1071. Further, where, as here, the cost would likely be
11 apportioned to the government, the Court should exercise caution. The Court has a burgeoning
12 docket of civil rights cases filed by prisoners proceeding pro se and in forma pauperis. The facts
13 of this case are no more extraordinary and the legal issues involved no more complex than those
14 found in the majority of the cases now pending before the Court.

15 Moreover, Rule 706 is not a means to avoid the in forma pauperis statute and its
16 prohibition against using public funds to pay for the expenses of witnesses, Manriquez v.
17 Huchins, 2012 WL 5880431, *12 (E.D.Cal. 2012) (quotation marks and citations omitted), nor
18 does Rule 706 contemplate court appointment and compensation of an expert witness as an
19 advocate for Plaintiff, Faletogo v. Moya, 2013 WL 524037, *2 (S.D.Cal. 2013) (quotation marks
20 omitted).

21 Accordingly, Plaintiff's request for the appointment of an expert witness is DENIED.

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24 IT IS SO ORDERED.

25 Dated: August 26, 2014

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27 SENIOR DISTRICT JUDGE