

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD F. MARTINEZ,

Plaintiff,

vs.

KATHLEEN ALLISON, Warden, *et al.*,

Defendants.

Case No. 1:11-cv-001749-RRB

ORDER DENYING
MOTION AT DOCKET 144

At **Docket 144** Plaintiff Ronald F. Martinez has moved the Court to modify its prior Order to produce for trial¹ to include a 5-gallon bucket similar to that Plaintiff alleges he was required to defecate in. Martinez contends that the use of this evidence is relevant to establish that Defendant Davis: (1) was agitated and angry at Martinez; and (2) Davis's state of mind.

The Court again reminds Martinez that this case is proceeding to trial solely on the theory that Defendant J. Davis used excessive force in taking Plaintiff down.² Irrespective of what may be Plaintiff's "theory of the case," the only evidence relevant to that issue is evidence that the degree of force used was excessive. Specifically, evidence that Davis used excessive and unnecessary force in taking Martinez to the ground and/or grinding his foot into Martinez's groin after Martinez was on the ground. A demonstration involving the

¹ Docket 104.

² Screening Order, Docket 11, pp. 13–14; Order Regarding Motion at Docket 66, Docket 89, pp. 4–5.

use of a 5-gallon bucket is irrelevant to the issue to be submitted to the jury. To the extent that Davis' state-of-mind may be relevant to the matters to be submitted to the jury, that evidence may be introduced by testimony. A demonstration using a 5-gallon bucket is at best remote and tangential. In short, such a demonstration would add nothing to Plaintiff's case.³

Accordingly, Plaintiff's Motion Requesting the Court to Modify Its Order to Produce for Trial at Docket 104 at **Docket 144** is hereby **DENIED**.

IT IS SO ORDERED this 9th day of March, 2016.

S/ RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

³ See Fed. R. Evid. 401, 403.