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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 AARON STRIBLING,

12 Plaintiff,

13 v.

14 BORTOLEMEDI,

15 Defendant.
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No. 2:10-cv-3247 CKD P

ORDER

17 Plaintiff is a California prisoner pro se. A jury trial was recently held in this 42 U.S.C. §
18 1983 action, the result of which was a finding in favor of defendant. On November 12, 2014,
19 plaintiff filed a motion for retrial and for a certificate of appealability.

20 With respect to the motion for a new trial, plaintiff argues that a video of him detailing the
21 events at issue was entered into evidence in violation of plaintiff's Fifth Amendment right not to
22 incriminate himself. However, because these civil proceedings are not proceedings in which
23 plaintiff can incriminate himself, plaintiff's Fifth Amendment rights were not violated. Also,
24 plaintiff's assertion that his counsel rendered ineffective assistance in violation of the Sixth
25 Amendment by not objecting to the video also has no merit because the Sixth Amendment right
26 to effective assistance of counsel does not apply in civil proceedings.

27 As for the request for a certificate of appealability, it is not necessary to obtain a certificate
28 of appealability in a 42 U.S.C. § 1983 case (as it is in a 28 U.S.C. § 2254 habeas corpus case) in

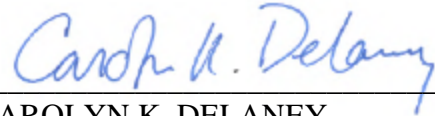
1 order to appeal. Therefore, plaintiff's request for a certificate of appealability will be denied as
2 unnecessary.¹

3 Accordingly IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for retrial (ECF No. 175) is denied; and

5 2. Plaintiff's motion for a certificate of appealability is denied.

6 Dated: November 18, 2014



7 CAROLYN K. DELANEY
8 UNITED STATES MAGISTRATE JUDGE
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28 ¹ See 28 U.S.C. § 2253.