

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 ISAAH N. WILLIAMS,
5 Plaintiff,

No. C 07-4464 CW

ORDER RESOLVING
MOTIONS IN LIMINE

6 v.

7 DEBRA WILLIAMS,
8 Defendant.

9
10 Plaintiff Isaiah Williams, an inmate at Pelican Bay State
11 Prison (PBSP), brings this 42 U.S.C. § 1983 action against
12 Defendant Debra Williams. The Court held a pretrial conference
13 and heard arguments regarding the parties' motions in limine on
14 June 26, 2013. After considering the parties' oral argument and
15 submissions, the Court now issues the following rulings:

16 I. Plaintiff's Motions in Limine

17 A. MIL No. 1: Motion to Exclude References to Plaintiff's
18 Past Criminal Convictions and Rule Violations

19 This motion is GRANTED. Defendant may not present evidence
20 or argument that identifies the specific nature or circumstances
21 of Plaintiff's conviction or any evidence relating to Plaintiff's
22 past rule violations. Defendant may, however, present evidence
23 and argument that (1) Plaintiff was convicted of a violent felony
24 and (2) the unit where Plaintiff currently resides is used to
25 house violent prisoners. Defendant may also present evidence or
26 argument pertaining to the rules violation report arising from the
27 August 16, 2006 incident which is the subject of this action.
28

1 B. MIL No. 2: Motion to Exclude References to Plaintiff's
2 Alleged Gang Affiliation

3 This motion is DENIED. Plaintiff's membership in a white
4 supremacist gang is a key issue in this case, as Plaintiff's own
5 expert asserts in his report. See Pl.'s Ex. 20, R. Subia Report,
6 at ¶ 30 ("In the present case, the risk of harm was heightened due
7 to the specific types of inmates, Nazi Low Rider (white supremacy)
8 and Black Guerilla Family (Black)."). Concealing this fact from
9 the jury would deny them access to relevant information while
10 creating administrative difficulties for both parties. Cf. United
11 States v. Price, 13 F.3d 711, 720 (3d Cir. 1994) (upholding a
12 district court's decision to admit conversations in which a party
13 used racial epithets because "it would have been virtually
14 impossible to redact this or the other conversations without
15 altering their substance").

16 C. MIL No. 3: Motion to Exclude References to Plaintiff's
17 Alleged Nickname, "Sinner"

18 This motion is GRANTED. Plaintiff's nickname is prejudicial
19 and serves no probative value here. All references to Plaintiff's
20 nickname should be redacted from any otherwise admissible
21 exhibits.

22 D. MIL No. 4: Motion to Exclude References to and Evidence
23 of Plaintiff's Tattoos

24 This motion is DENIED. The two photographs Plaintiff seeks
25 to exclude do not reveal the tattoo of his nickname and include
26 mostly blurry images of his other tattoos. To the extent any of
27 his tattoos are visible in these photographs, they are no less
28 relevant and no more prejudicial than any other evidence of
Plaintiff's alleged membership in a white supremacist gang.

1 E. MIL No. 5: Procedure for Exchange of Evidence Relating
to MILs No. 1-4

2 This motion is DENIED as unnecessary.

3 F. MIL No. 6: Motion to Exclude Evidence or Argument
4 Relating to Prior Decisions by Other Tribunals or
Agencies

5 This motion is GRANTED.

6 G. MIL No. 7: Motion to Exclude Statements About State
7 Finances and the Use of Taxpayer Funds to Satisfy Any
Judgments in this Case

8 This motion is GRANTED as unopposed.

9 H. MIL No. 8: Motion to Exclude Undisclosed or Improper
10 Expert Testimony

11 This motion is GRANTED in part. Defendant may not present
12 any undisclosed expert testimony. Furthermore, Defendant may not
13 refer to herself as an "expert." Allowing Defendant to offer
14 "expert" testimony at trial would be unduly prejudicial because
15 her judgment is directly at issue in this case. While Defendant
16 may testify about her experience as a correctional officer with
17 the California Department of Corrections and Rehabilitation (CDCR)
18 or her subjective belief that she used appropriate force, she may
19 not characterize her views as expert opinion.

20 I. MIL No. 9: Motion to Exclude Expert Testimony of Curtis
Cope

21 This motion is GRANTED in part. A "trial court has 'broad
22 discretion' in assessing the relevance and reliability of expert
23 testimony." United States v. Finley, 301 F.3d 1000, 1007 (9th
24 Cir. 2002) (quoting United States v. Murillo, 255 F.3d 1169, 1178
25 (9th Cir. 2001)). To qualify as an expert, a witness must have a
26 sufficient level of "scientific, technical, or other specialized
27 knowledge" to "help the trier of fact to understand the evidence
28 or to determine a fact in issue." Fed. R. Evid. 702(a).

1 Here, Defendant has not established that her expert, Curtis
2 Cope, satisfies this requirement. Cope has no training or
3 experience as a correctional officer nor any specialized knowledge
4 of CDCR facilities and procedures. Although he served as a police
5 officer for several decades, this experience does not make him an
6 expert in correctional policy. Here, especially, Cope's police
7 experience is unlikely to aid the jury in determining whether
8 Defendant used appropriate force because Defendant made her use-
9 of-force decision while stationed at a control booth in a maximum
10 security prison that Cope has never visited. Cope's police
11 training therefore does not qualify him to offer expert testimony
12 about the propriety of Defendant's conduct in this situation,
13 which is unique to the correctional context.¹

14 Cope's police experience does, however, qualify him to offer
15 expert testimony about the specific weapon Defendant used to
16 subdue Plaintiff. Specifically, Cope may testify about the range
17 and force of the "40mm less lethal weapon," about the range and
18 effectiveness of pepper spray, and about whether Defendant's
19 decision to use the 40mm less lethal weapon on August 16, 2006 was
20 appropriate.

21 J. MIL No. 10: Motion Regarding Plaintiff's Shackles and
22 Garments During Trial

23 This motion is DENIED.

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25
26 ¹ None of Defendant's cited cases suggests otherwise. Each of the
27 cases she cites features police officers testifying as experts on
28 "police procedures and policies" -- not prison procedures and policies.
See, e.g., Larez v. City of Los Angeles, 946 F.2d 630, 635 (9th Cir.
1991) ("Fyfe was formerly a New York City police officer, and was
qualified as an expert on proper police procedures and policies.").

1 K. MIL No. 11: Motion to Permit Telephone Communications
Between Plaintiff and His Counsel During Trial

2 This motion is resolved as set forth in the Court's July 2,
3 2013 order regarding telephone access. See Docket No. 192.

4 L. MIL No. 12: Motion Regarding Evidence Preservation and
5 Alleged Discovery Abuses

6 Plaintiff incorporates by reference his previous motion
7 regarding Defendant's alleged discovery abuses. However, he fails
8 to offer any new argument or evidence in support of the motion.
9 Magistrate Judge Beeler denied his previous motion on June 20,
10 2013, Docket No. 179, and this Court denied Plaintiff's subsequent
11 request for relief from Judge Beeler's decision. Accordingly,
12 this motion is DENIED.

13 As stated in the Court's order denying Plaintiff's request
14 for relief from Judge Beeler's order, if Plaintiff has admissible
15 evidence showing that any witness, including Defendant,
16 misrepresented the availability of certain CDCR photographs or
17 training records, he may use that evidence to impeach that
18 specific witness.

19 II. Defendant's Motions in Limine

20 A. MIL No. 1: Motion to Exclude Expert Testimony of Richard
Subia on Liability

21 This motion is DENIED. Plaintiff's expert, Richard Subia,
22 may testify that Defendant's actions were negligent, grossly
23 negligent, or undertaken with reckless disregard for Plaintiff's
24 safety. Subia may not, however, testify that any of these
25 descriptions of Defendant's conduct represents the proper legal
26 standard to be applied in this case.

1 B. MIL No. 2: Motion to Exclude Expert Testimony on Witness
Credibility

2 This motion is GRANTED in part. Subia may testify about any
3 specific record-keeping policies or procedures that cast doubt on
4 any of Defendant's representations that certain CDCR records are
5 unavailable or do not exist. Subia may also opine that
6 Defendant's failure to check for Inmate Powell in the corridor
7 before opening Plaintiff's cell was wrongful and led to of
8 Plaintiff's injuries. He may base that testimony on his lay
9 person's conclusion that Defendant could have seen Powell from the
10 control booth, based on the photographs. Subia may not, however,
11 offer expert opinion regarding the view from the control booth of
12 the corridor. Subia has never visited the control booth and, as
13 such, any testimony he offers on this particular subject would be
14 based on photographs of the control booth that the jurors may view
15 for themselves.

16 Subia is also barred from testifying that Defendant's
17 "inability to recall the search of the cell and subsequent
18 conversation" with Plaintiff is somehow "disingenuous" or an
19 "attempt to mislead this court about what actually occurred." R.
20 Subia Report ¶ 23.

21 C. MIL No. 3: Motion to Exclude Reference to Alleged
22 Failures of CDCR to Produce Evidence

23 This motion is GRANTED in part. As noted above, Plaintiff
24 may present evidence of CDCR's alleged failure to produce evidence
25 only if it is relevant for impeachment purposes.

26 D. MIL No. 4: Motion for an Order That Plaintiff Be
Shackled for Trial

27 This motion is GRANTED as unopposed.
28

1 E. MIL No. 5: Motion to Exclude Undisclosed Expert
2 Testimony

3 This motion is GRANTED in part. Subia may testify that
4 Defendant "acted with disregard for Post Orders and her own
5 personal practice, and was highly trained to avoid this very
6 circumstance." Docket No. 162, Pl.'s Witness List, at 1. This
7 opinion was plainly disclosed in Subia's expert report. See R.
8 Subia Rep. ¶¶ 25-30.

9 Subia may not testify, however, that CDCR "staff members have
10 at times taken retaliatory action against inmates for filing
11 formal complaints and that the facts and circumstances of this
12 case suggest that is what happened here." Pl.'s Witness List, at
13 1. Although this opinion was disclosed in Subia's expert report,
14 its probative value is substantially outweighed by its prejudicial
15 effect. This testimony is therefore inadmissible under Rule 403.

16 CONCLUSION

17 The parties' motions in limine (Docket Nos. 173, 176) are
18 resolved as set forth above.

19 IT IS SO ORDERED.

20 Dated: July 8, 2013

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22 _____
23 CLAUDIA WILKEN
24 United States District Judge
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