

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 11 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEVE KASSAB,

Plaintiff-Appellant,

v.

S SKINNER, Officer, I.D. 5019, an
individual; RUBEN HERNANDEZ,
Officer, I.D. 5056, an individual,

Defendants-Appellees.

No. 15-55553

D.C. No.

3:07-cv-01071-BAS-JLB
Southern District of California,
San Diego

ORDER

Before: Trott, Silverman, and Tallman, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing
and recommend denying the petition for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and
no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are
DENIED.

- APPENDIX 'A'

FILED

NOT FOR PUBLICATION

APR 25 2018

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MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted April 20, 2018**

Before: Trott, Silverman, and Tallman, Circuit Judges.

Steve Kassab appeals pro se from the district court's denial of his post-judgment motion for a new trial in his 42 U.S.C. § 1983 action alleging excessive

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX "B"

force following a jury verdict for defendants. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court did not abuse its discretion by denying Kassab's motion for a new trial. Kassab failed to set forth any basis for relief. *See Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (grounds for a new trial under Fed. R. Civ. P. 59(a)).

The district court's finding that there was sufficient evidence to support the jury's verdict was correct. *See Harper v. City of Los Angeles*, 533 F.3d 1010, 1021 (9th Cir. 2008) ("A jury's verdict must be upheld if it is supported by substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion." (citation omitted)).

The district court did not err by denying the motion for a new trial based on its evidentiary rulings, all of which were well within the court's discretion. *See Wagner v. Cty. of Maricopa*, 747 F.3d 1048, 1052 (9th Cir. 2013) (setting forth standard of review).

First, because motive is irrelevant to an inquiry into whether any use of force was excessive, the district court did not abuse its discretion by excluding evidence concerning defendants' alleged motive behind Kassab's arrest. *See Fed. R. Evid. 402* ("Irrelevant evidence is not admissible."); *Graham v. Connor*, 490 U.S. 386,

397 (1989) (“[T]he question [in an excessive force inquiry] is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (citation omitted)).

Second, because Kassab provided inaccurate and misleading testimony regarding his prior conviction, the district court did not abuse its discretion by permitting defendants to introduce clarifying evidence regarding it. *See United States v. Osazuwa*, 564 F.3d 1169, 1175-76 (9th Cir. 2009) (if a party “opens the door by introducing potentially misleading testimony,” the opposing party “may introduce evidence on the same issue to rebut any *false* impression that might have resulted from the earlier admission” (emphasis in original; citations and internal quotation marks omitted)).

Third, the district court did not abuse its discretion by excluding Kassab’s questions to defense witnesses regarding specific acts of alleged misconduct. Kassab’s questions would not have led to testimony probative of these witnesses’ character for truthfulness and thus were irrelevant to Kassab’s excessive force claim. *See United States v. Olsen*, 704 F.3d 1172, 1184 n.4 (9th Cir. 2013) (Federal Rule of Evidence 608(b) permits inquiry during cross-examination into specific acts of conduct “if they are probative of the character for untruthfulness of

1258 (9th Cir. 1998) (affirming the exclusion of plaintiff's expert because plaintiff designated the expert and disclosed the report in an untimely manner).

The district court did not abuse its discretion by denying the motion for a new trial based on its denial of Kassab's request to re-open discovery because Kassab failed to show that the denial of requested discovery caused him actual and substantial prejudice. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir.2002) (providing standard of review for district court's discovery rulings, and explaining that the district court's discretion to deny discovery "will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by denying the motion for a new trial based on its denial of Kassab's request for a trial continuance. *See United States v. Flynt*, 756 F.2d 1352, 1358-59 (9th Cir. 1985) (setting forth standard of review and factors courts consider when reviewing a denial of a request for a continuance).

The district court did not abuse its discretion by denying the motion for a new trial based on its decision to allot ten hours for trial. Kassab failed to demonstrate that this time limit was unreasonable. *See Amarel v. Connell*, 102 F.3d 1494, 1513 (9th Cir. 1996), as amended (Jan. 15, 1997) (setting forth standard

of review and explaining that “[a] district court is generally free to impose reasonable time limits on a trial.”).

Appellee’s motion (Docket #8) to take judicial notice of documents in support of Appellees’ opposition to Appellant’s motion to exceed the page limit for his opening brief is hereby **DENIED**.

AFFIRMED.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVE KASSAB,

Plaintiff.

Case No. 07-cv-01071-BAS(JLB)

V.

SAN DIEGO POLICE
DEPARTMENT, *et al.*,

Defendants.

20 On March 6, 2015, a regularly impaneled jury returned a verdict in favor of
21 Defendants Steven Skinner and Ruben Hernandez as to Plaintiff Steve Kassab's fifth
22 cause of action for excessive force in violation of his rights under 42 U.S.C. § 1983.
23 The jury determined that Plaintiff Steve Kassab did not prove by a preponderance of
24 the evidence that Defendants Steven Skinner and Ruben Hernandez used
25 unreasonable or excessive force while arresting Plaintiff Steve Kassab on July 13,
26 2006.

27 Thus, the Court **ORDERS** Judgment for Defendants Steven Skinner and
28 Ruben Hernandez as follows:

1 The verdict is in favor of Defendants Steven Skinner and Ruben Hernandez on
2 Plaintiff Steve Kassab's fifth cause of action for excessive force under 42 U.S.C. §
3 1983.

4 **IT IS SO ORDERED.**

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6 **DATED: March 12, 2015**


7 **Hon. Cynthia Bashant**
8 **United States District Judge**

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**Additional material
from this filing is
available in the
Clerk's Office.**