

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Raymond Richard Whittall v. J. Caballero, et al.

Whittall v. Caballero · No. 18-cv-01376-CRB · Decided August 11, 2025

OPINION

Whittall v. Gutierrez

PER CURIAM.

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5 IN THE UNITED STATES DISTRICT COURT

6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 8 RAYMOND RICHARD WHITTALL, Case No. 18-cv-01376-CRB 9 Plaintiff,

ORDER DENYING MOTION FOR

10 v.

NEW TRIAL

11 J. CABALLERO, et al., 12 Defendants. 13 In June 2025 the Court held a jury trial in this
excessive-force case. The jury found 14 all Defendants not liable on all counts, Jury Verdict (dkt.
322), and the Court subsequently 15 entered judgment for Defendants and against Plaintiff,
Judgment (dkt. 330). Plaintiff now 16 moves for a new trial, arguing that the Court’s exclusion of
evidence from Lieutenant 17 Mireles and of certain deposition testimony from J. Caballero caused
Plaintiff substantial 18 prejudice. Mot. (dkt. 333). The Court disagrees and DENIES Plaintiff’s
motion. 19 Federal Rule of Civil Procedure 59(a)(1)(A) authorizes the Court to grant a new 20
trial “for any reason for which a new trial has heretofore been granted in an action at law in 21
federal court.” This includes erroneous evidentiary rulings if, and only if, the ruling 22 caused
substantial prejudice to the moving party. *Ruvalcaba v. City of Los Angeles*, 64 23 F.3d 1323,
1328 (9th Cir. 1995). 24 Plaintiff first challenges the Court’s exclusion of evidence from
Lieutenant Mireles, 25 who conducted an initial review of Plaintiff’s excessive-force allegations
and 26 recommended that they be investigated further by the Office of Internal Affairs. 27
Defendants moved in limine to exclude Lieutenant Mireles’s report and testimony as 1 knowledge,
and based on hearsay. Defs.’ MIL 2 (dkt. 249). The Court granted 2 Defendants’ motion and
sustained Plaintiff’s related objection to evidence from Chief 3 McFadyen, who oversaw the OIA
investigation. May 29, 2025 Trial Tr. (dkt. 324) at 4 94:20–22. Such evidence would have had
such limited probative weight and such a high 5 likelihood of distracting the jury from the actual
issues—whether Defendants used 6 excessive force on Plaintiff on February 28, 2017—that the
Court properly excluded it 7 under Federal Rule of Evidence 403. Any evidence from Lieutenant
Mireles would have 8 led to an unnecessary trial within a trial as to whether there was sufficient

evidence of 9 excessive force to pass the complaint along to OIA, a different question than whether 10 Defendants actually used excessive force. See *In re Ford Motor Co. DPS6 Powershift* 11 *Transmission Prods. Liab. Litig.*, No. ML 18-2814-AB, 2019 WL 7185548, at *3 (C.D. 12 Cal. Dec. 9, 2019) (trial within a trial that would “likely cause confusion and waste time” 13 inadmissible under Rule 403); *Duran v. City of Maywood*, 221 F.3d 1127, 1133 (9th Cir. 14 2000) (exclusion under Rule 403 is proper where “the marginal value of the evidence is 15 ‘substantially outweighed by the danger of confusion of the issues, or misleading the jury, 16 or by consideration of undue delay, and waste of time’” (cleaned up)). And such a 17 distraction would have risked confusing the jury as to the appropriate burden and legal 18 standard. Accordingly, the exclusion of Lieutenant Mireles’s report and testimony was not 19 in error and does not warrant a new trial. 20 Plaintiff next challenges the Court’s refusal to allow Plaintiff to attempt to impeach 21 Caballero during his trial testimony with what Plaintiff believes to be a prior inconsistent 22 statement. Caballero’s statement at trial was as follows: 23 Q: And before submitting a crime incident report, everyone who was involved in the incident meets first to go over who was 24 involved and what occurred; is that right? 25 A: There’s after-action. 26 Q: And what does the after-action consist of? 27 A: Details of who the person was, whether—their number, where they’re housed, what type of force was used, and that’s 1 Q: You don’t talk about what happened during the incident? 2 A: No.

3 June 3, 2025 Trial Tr. (dkt. 326) at 340:16–25. And his deposition testimony was as 4 follows: 5 Q: So you are able to discuss the incident before submitting the report? 6 ... 7 A: There’s a—there’s a meeting where we just—I don’t get—I 8 don’t get what you’re trying—like we talk about, okay, who was involved and to get people—to get who was reported in there. 9 So yes, we do talk about it to get a head count, who was involved, what occurred, and that’s—and for reporting 10 purposes, yes. 11 ... 12 Q: And in this meeting, you discuss who was involved and what occurred; is that correct? 13 A: Just yeah. Just to see who was involved and what—what 14 was—what occurred, yeah. What was the crime and incident— ... —injuries reported. 15 Q: And do you discuss, during this meeting, what you will put 16 in your incident report? 17 A: No. 18 Caballero Dep. Tr. (dkt. 336-1, Ex. A) at 61:1–. Plaintiff contends that this deposition 19 testimony, where Caballero says that officers would discuss “what occurred,” is different 20 than his trial testimony that they “don’t talk about what happened during the incident.”

21 Mot. at 5–6. But this parses Caballero’s testimony too finely. Both in his deposition and 22 at trial, he testified that officers would talk about certain things, such as who was involved, 23 what type of force was used, and what the alleged injuries were. And both in his 24 deposition and at trial, he testified that officers would not talk about other things, like what 25 they would put in their incident report. Thus, “one could reasonably maintain that both the 26 witness’[s] testimony and the witness’[s] prior statement were equally truthful when 27 uttered,” *United States v. Shuemaker*, 124 F.4th 1174, 1177 (9th Cir. 2024) (citation 1 || between Caballero’s trial testimony and his deposition testimony, any prejudice to Plaintiff 2 || from excluding his deposition

testimony as impeachment evidence would be minimal, not 3 substantial (as is required for a new trial motion). Ruvalcaba, 64 F.3d at 1328. 4 For the foregoing reasons, the Court DENIES Plaintiff's motion for a new trial. 5 IT IS SO ORDERED. 6 Dated: August 11, 2025 oc & Yo CHARLES R. BREYER

7 United States District Judge 8 9 10 11 12 13 15 (16 © 17 19 20 21 22 23 24 25 26 27 28