

Tentative Minute Order re Motions *in Limine*

Defendants County of Orange *et al.* (collectively “County Defendants”) move the Court for relief by way of Motions *in Limine*. Plaintiff James Kilroy (“Kilroy”) has filed oppositions. The Court now enters its rulings.

I. County Defendants’ Motions *in Limine*. No. 1: Certain Events.

County Defendants seek an order to exclude evidence of certain events, including other searches, claims, law suits and jury verdicts. (Docket No. 46.) Kilroy has filed an opposition. (Docket No. 51.)

In response, Kilroy only points to a sexual assault by “the same deputy” who assaulted Kilroy on inmate Dorantes at the same time and a separate assault by a different deputy, on a different inmate, Matthew Rendon (“Rendon”) at a different time.

Particularly with the Monell claim out of the case (Docket No. 43, p. 17-18.), evidence of the assault on Rendon is irrelevant and more prejudicial than probative. (Fed. R. Evid. 401, 403.) The assault on inmate Anthony Powell is similarly irrelevant and more prejudicial than probative.

The Court finds that the assault on Dorantes is other “bad acts” evidence under Rule 404(b). Rule 404(b)(1) bars “[e]vidence of a crime, wrong, or other act . . . to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.” However, the same evidence may be admissible to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” (Fed. R. Evid. 404(b)(2).) There is a further gloss to the exception: “(1) the other act evidence must tend to prove a material point; (2) the other act must not be too remote in time; (3) the evidence must be sufficient to support a finding that the defendant committed the other act; and (4) in some cases, the other act must be similar to the offense charged.” United States v. Bibo-Rodriguez, 922 F.2d 1398, 1400 (9<sup>th</sup> Cir. 1991). Evidence of a similar contemporaneous assault may be offered to show

intent, motive, and lack of mistake. Such evidence is relevant and is not more prejudicial than probative.

Except as noted, the Motion is granted.

II County Defendants Motions in Limine. No. 2: Damages.

The County Defendants seek to exclude evidence of Kilroy's damages. (Docket No. 47.) Kilroy has filed an opposition. (Docket No. 51.)

The only damages Kilroy seeks are general damages and punitive. (Joint Proposed Pretrial Conference Order, p. 5.) For the reasons set forth in Powell v. County of Orange, SACV 801 JVS (DFMx), Opposition, pp. 4-5 & Ex. A, B, the Court denies the Motion. Rule 26(a)(1)(A)(iii) does not require disclosure of damages which are not calculable.

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**Counsel are ordered to advise the parties and all witnesses of the Court's rulings so that there are no inadvertent violations of this Order.**