

JUL 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN THOMAS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>R. COX,</p> <p>Defendant - Appellee.</p>
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No. 11-16693

D.C. No. 1:07-cv-01165-GSA

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Gary S. Austin, Magistrate Judge, Presiding\*\*

Submitted July 17, 2012\*\*\*

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

California state prisoner John Thomas appeals pro se from the district court's judgment following a jury trial in his 42 U.S.C. § 1983 action alleging that

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

defendant used excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's decisions related to trial management. *Pierce v. County of Orange*, 526 F.3d 1190, 1200 (9th Cir. 2008). We affirm.

The district court did not abuse its discretion in denying Thomas' pretrial motion for the attendance of an incarcerated witness because Thomas filed the motion more than two months after the court's deadline and did not identify the witness or indicate how the witness' testimony was relevant to the alleged incident at issue. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) ("Trial courts have broad authority to impose reasonable time limits." (citation and internal quotation marks omitted)); *see also* Fed. R. Evid. 402 ("Irrelevant evidence is not admissible.").

Because Thomas failed to provide a transcript of the trial, we are unable to review his contentions challenging the district court's evidentiary rulings. *See* Fed. R. App. P. 10(b)(2); *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991) (per curiam) (dismissing appeal of pro se appellant for failure to provide a trial transcript). Accordingly, we decline to consider Thomas' appeal to the extent he contends that the district court made erroneous rulings during the trial.

Thomas' remaining contentions are unpersuasive.

**AFFIRMED.**