

OCT 25 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DERRICK LEE BILLUPS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LOMELI,</p> <p>Defendant - Appellee.</p>

No. 12-17016

D.C. No. 1:06-cv-01014-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted October 15, 2013**

Before: FISHER, GOULD, and BYBEE, Circuit Judges.

California state prisoner Derrick Lee Billups appeals pro se from the district court’s judgment following a jury trial in his 42 U.S.C. § 1983 action alleging that defendant violated his Eighth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion evidentiary rulings and will

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

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

reverse only if an erroneous ruling was prejudicial. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1110 (9th Cir. 2011). We affirm.

Billups's contention that his trial exhibits were improperly excluded by the district court is unavailing as Billups has not shown that the exclusions "more probably than not" caused his trial to result in a tainted verdict. *McEuin v. Crown Equip. Corp.*, 328 F.3d 1028, 1032 (9th Cir. 2003).

Billups's contention that the district court did not allow him to subpoena witnesses is unsupported by the record.

AFFIRMED.