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United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 28, 2026

Christopher M. Wolpert
Clerk of Court

SASHA CRONICK,

Plaintiff - Appellant,

v.

No. 25-1235

THE CITY OF COLORADO
SPRINGS; CHRISTOPHER PRYOR;
ROBERT MCCAFFERTY; MICHAEL
INAZU,

Defendants - Appellees.

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:20-CV-00457-CMA-MDB)

David Lane (Reid Allison with him on the briefs) of Killmer Lane, LLP,
Denver, Colorado, for Plaintiff-Appellant.

Ryan D. Doherty, Senior Attorney (Marc Smith, Acting City Attorney, with him
on the brief), Colorado Springs, Colorado, for Defendants-Appellees.

Before **PHILLIPS**, **McHUGH**, and **ROSSMAN**, Circuit Judges.

PHILLIPS, Circuit Judge.

Sasha Cronick sued two Colorado Springs police officers under 42 U.S.C. § 1983 for unlawfully arresting and searching her in a motel parking lot. A jury found against her at trial.

But a specter haunts the jury's verdict: the specter of character evidence. That specter, and its troublesome sidekick, propensity reasoning, warped Sasha Cronick's trial. The issue was meant to be, "Did the officers illegally arrest and search Cronick under § 1983?" It became, "Is Sasha Cronick a bad person?"

It all started with social media. After Cronick's allegedly unlawful arrest, she posted videos, messages, and comments about the incident. In the years after, she posted and deleted several unrelated videos of her encounters with the police. During this lawsuit, she deleted financial records, as well as messages and comments about the arrest. The district court ruled that Cronick disobeyed its discovery order, and it sanctioned Cronick with a fine and adverse-inference jury instructions.

Before trial, the officers found some of Cronick's deleted videos. They show Cronick berating police officers and security guards, threatening to sue them, and asking viewers for money. All were from encounters unrelated to the arrest at issue.

At trial, over Cronick's objection, the district court let the officers play more than twenty clips from the videos. Later, the court gave an adverse-inference instruction that implied that Cronick regularly disrupts police officers. The jury returned a verdict for the officers.

On appeal, Cronick first points to errors during her trial. To her, the court's admitting the video clips and giving the adverse-inference instructions require vacating the verdict. Cronick next argues that we should vacate the monetary sanction issued against her and her lawyers for discovery violations.

We agree with her first argument, but we disagree with the second. Exercising jurisdiction under 28 U.S.C. § 1291, we vacate the district court's judgment for the officers and remand for retrial. We affirm the monetary sanction.

BACKGROUND

In December 2018, at Colorado Springs' Sun Springs Motel, Sasha Cronick was smoking outside of her room when a neighbor shouted that someone had overdosed. Cronick saw the overdosing man lying in a doorway, not breathing. Cronick took out her phone, and she took control of the situation. While recording video, she relayed instructions from a 911 operator to her neighbor, coaching the neighbor on how to perform CPR. The man started breathing again. The operator told Cronick: "Sasha, you did a great job today, thank you." Cronick Cell Phone Video, at 4:32–4:36.

When paramedics and the Colorado Springs Police Department arrived, Cronick was courteous and cooperative. She explained what she had seen to the paramedics and to Officer Robert McCafferty—the first on the scene. When Officer McCafferty entered the overdosing man's motel room, Cronick told him that she had seen someone in the bathroom. An officer told her, "you can turn

off your recording,” but she declined, and after stepping back a bit, she kept filming.

Another CSPD Officer, Christopher Pryor, started questioning her. Still filming, she told him her name, that she had called 911, and that her neighbor had done CPR on the overdosing man. She also told him that she lived in the motel.

Officer Pryor asked for her room number. Cronick said, “I’m not answering questions like that.” Pryor Body Camera 2, at 7:47–7:51. She said, “I’m just, you know, police harassment.” *Id.* Surprised, Officer Pryor emphasized that she had just said that she had called 911 and witnessed the incident. Cronick said, “I didn’t witness anything.” *Id.* at 7:56–7:57.

Officer Pryor responded, “Why don’t you leave—”

“I don’t need to, I live here,” Cronick said,

“—you leave the immediate area,” Officer Pryor finished. *Id.* at 7:58–8:03. As they spoke, Cronick took a step back and looked down at her phone.

Briefly, the participants’ accounts diverge. Cronick testified that after she complied with Officer Pryor’s order by backing away, he grabbed her shoulder. Officer Pryor testified that he’d interpreted Cronick’s body language to mean that she wasn’t leaving—meaning that she was disobeying his order. So he touched her elbow while gesturing for her to leave.

Both versions of the story then reunite. When Officer Pryor touched Cronick, she screamed at him. She yelled for her husband, cursed Officer Pryor,

and walked toward the motel parking lot. Officer Pryor followed, and said, “lighten up, lady.” *Id.* at 8:06–8:09. More yelling ensued, and Officer McCafferty joined Officer Pryor. The officers grabbed Cronick, handcuffed her, and told her she was under arrest. Cronick fell to the ground while they handcuffed her. The officers later testified that she buckled to the ground as an act of “passive resistance.” App. vol. 5, at 1249; App. vol. 6, at 1452. But Cronick had recently had a Caesarian section, and she planned to testify that she buckled because of that recent surgery. (The district court excluded Cronick’s testimony for its risk of unfair prejudice to the officers.)

After spending about forty minutes in the squad car, the officers let Cronick leave with a court summons and a complaint. That complaint charged her with failure to desist or disperse.

Later, after a bench trial in Colorado Springs’ municipal court, Cronick was acquitted of the charge. The judge found that Officer Pryor had never issued an order.

Cronick then sued Officers Pryor and McCafferty—and other now-dismissed defendants—under 42 U.S.C. § 1983, alleging unlawful arrest and unlawful search. *Cronick v. Pryor*, 99 F.4th 1262, 1267 (10th Cir. 2024). She sought punitive and compensatory damages, including damages for emotional distress.

I. Pretrial Litigation

After suing the officers, Cronick started livestreaming other citizen encounters with Colorado Springs’ police. She called these videos audits or “cop watching.” *See* App. vol. 5, at 1309, 1317; *see generally* Jocelyn Simonson, *Copwatching*, 104 Cal. L. Rev. 391 (2016); Anna Thérèse Beavers, *First Amendment Audits: A Socio-Political Movement*, 93 Miss. L.J. 527 (2023). Her followers on social media commented on these videos, and Cronick sometimes communicated with them.

During discovery, the officers requested Cronick’s videos of other police encounters, social-media messages and comments about her 2018 arrest, and records of Cronick’s income from the videos.

Cronick didn’t comply. In her discovery responses, she said she had already deleted most of the material, which (as we understand it) probably happened before the discovery requests had been made. She argued that the material was irrelevant and that she couldn’t access these materials because her husband—or no one—controlled the relevant accounts.

The officers asked the district court to sanction Cronick for withholding relevant evidence. Over a year later, it did. The court levied a fine of \$18,680.25 against Cronick and her lawyers. And at trial, while instructing the jury, it declared several facts “established for purposes of the action” under Federal Rule of Civil Procedure 37(b)(2)(A)(1)—what it called “adverse inferences.” *See* App. vol. 3, at 668; App. vol. 6, at 1586. Cronick appeals both

these instructions and the fine, and we more fully sketch their backgrounds later in the opinion.

Before trial, the officers unearthed some of Cronick’s deleted copwatch videos. Cronick moved twice to exclude them from the trial, arguing that the videos were irrelevant, unfairly prejudicial character evidence.

The district court denied these motions. It ruled that Cronick’s “demeanor” and “conduct in the videos” were relevant to her “claim of emotional distress damages and to her credibility.” App. vol. 4, at 995. And it issued only one limiting instruction for the videos: at trial, the officers could play “no more than half an hour of clips.” *Id.* at 996.

II. The Trial

The trial took less than three days. Four witnesses testified: Cronick, Officer Pryor, Officer McCafferty, and Austin Pugh—a firefighter and paramedic who responded to the overdose.

Officer Pryor went first, explaining that he had issued a clear order and “placed [his] hand behind [Cronick’s] . . . elbow” to “escort[.]” her from the scene. App. vol. 5, at 1223. Next, Pugh testified that Cronick had disrupted the first responders because her confrontation with Officer Pryor “made it difficult for [the medical] team to communicate.” *Id.* at 1272–73. But he acknowledged that neither he nor any other medical responder had asked Cronick to leave or engaged with her. Officer McCafferty testified last. He mentioned that he

hadn't witnessed the start of Officer Pryor and Cronick's encounter and didn't know what had happened.

After Pugh, but before Officer McCafferty, Cronick testified. On direct examination, she said that when Officer Pryor touched her, she was already complying with his request to "leave the immediate area." *Id.* at 1312. She said she reacted strongly because she didn't "like men touching" her. *Id.* On cross-examination, the officers' lawyer briefly asked Cronick about the incident before turning to the copwatch videos.

That afternoon and the next morning, the officers' lawyer played more than twenty clips from six of Cronick's post-arrest streams. The following examples reflect how he used them:

In one series of clips, separate from the Sun Springs Motel incident, Cronick films from across the street as police respond to an overdose. In one clip, she extends her middle finger to a police car arriving at the scene. At trial, the lawyer asked Cronick if, in this video, she had "found content of someone dying of a drug overdose" and "stopped to film his death." App. vol. 6, at 1384.

In the next clip, Cronick again raises her middle finger and says that she's "pretty sure" the police will "be freaking pissed off here when I cross the street." *Id.* at 1386; Dear God Save His Life, at 18:00–18:20. A police officer then walks toward her. Dear God Save His Life, at 25:53–55. She implores him to "get the fuck away" and refuses to answer questions. *Id.* at 26:05–26:30. He turns around and mutters "crazy bitch." *Id.* at 26:33–37. She keeps yelling,

eventually warning him, “you’ll know my name real fucking soon.” *Id.* at 26:37–27:29. At trial, the lawyer asked if that meant that Cronick planned to formally complain about him.

In the next clips, Cronick crosses the street. At trial, the lawyer confirmed that Cronick had just said in the video “they’re going to get mad if I cross the street” yet “made the decision to cross the street.” App. vol. 6, at 1390. Cronick told the lawyer that she decided to cross after the officer “called [her] the B word.” *Id.* The lawyer asked whether she “incited the reaction [she] wanted for [her] content.” *Id.*

In the next clips, Cronick says that a police officer just tried to attack her. At trial, the lawyer asked whether anyone had actually touched her. Cronick admitted that no one had. In the next clips, Cronick calls the office of the lawyers who represent her in this case. She tells a receptionist that “one officer just tried to slam me on the ground and tried to arrest me just now.” Hubbard Just walked 100 ft, at 16:39–17:15. At trial, the lawyer confirmed with Cronick that this was her “version of the events.” App. vol. 6, at 1392.

In another series of clips, Cronick records the police responding to her own 911 call about domestic violence. In one clip, Cronick berates a police officer who has asked her if she is okay, telling him, “I’m sure you beat your fucking wife.” Crazy Night 1, at 5:59–7:01. In another, she tells the officers, “If I go to jail for freedom of speech, David Lane [Cronick’s lawyer at trial] will fucking take this case.” *Id.* at 11:02–11:15. At trial, the officers’ lawyer

asked Cronick: “So, the police showed up to help you. You reacted the way you did, and you defended it by saying that your attorney would take the case; right?” App. vol. 6, at 1396.

Much more could be said about the clips, but we note only three other details. First, Cronick uses rude language. In one clip, she calls CSPD officers responding to an overdose “assholes,” “pig,” “retard,” and “dumbfuck.” Dear God Save His Life, at 6:43–7:14, 26:07–09. Second, she regularly asks her viewers for money to investigate alleged—and seemingly dubious—police misconduct. Third, she threatens lawsuits and complaints unrelated to this case. For instance, after a scuffle with a security guard and a fellow customer at the retailer Target, Cronick tells viewers, “you don’t even fucking know what I’m about to do to Target.” Drama Target Trip Video, at 11:40–11:50. At trial, the officers’ lawyer confirmed that Cronick meant she would sue Target, and he told the jury that she settled that lawsuit for over \$25,000.

After evidence, the court instructed the jury. The instructions included adverse inferences from Cronick’s earlier refusal to turn over the videos and related records. Relevant here, one adverse-inference instruction told the jury to “presume” that Cronick “regularly records police officers, and those recordings demonstrate Ms. Cronick engages in behavior that is disruptive to police business.” App. vol. 6, at 1586.

The parties then made closing arguments. The officers’ lawyer emphasized the videos. Referring to the Target clips and Cronick’s later

encounters with police, he argued that if Cronick “was so damaged by what these reasonable officers” (Officers Pryor and McCafferty) had done, then she wouldn’t have continued to “put herself in the middle of” altercations. *Id.* at 1544. Referencing Cronick’s video “Harassing People,” he said that “she continued to harass people. That was the title of her own video . . . I let it play for you.” *Id.* at 1545. He told the jury to “consider that,” along with other evidence and the legal standard, “when you consider these claims against my clients.” *Id.* “[W]hen you do that,” he said, “you will have no choice but to find in their favor.” *Id.*

The jury deliberated for less than an hour and a half before returning a verdict for the officers. The district court entered judgment for the officers, and Cronick timely appealed.

DISCUSSION

Cronick seeks a new trial based on the district court’s evidentiary and instructional errors. She also asks us to vacate the district court’s monetary sanction against her and her lawyers. We first address the errors during trial: the videos and the adverse inferences. We then address the monetary sanction.

I. Post-Incident Videos

Cronick argues that the unrelated video clips were inadmissible under Federal Rule of Evidence 403 because “any tiny probative value was indisputably substantially outweighed by unfair prejudice and confusion of the issues.” *Op. Br.* at 22.

The officers respond that the district court properly admitted the videos under Federal Rule of Evidence 404(b). But the district court didn't admit the videos under Rule 404(b); it admitted them under Rule 403. And anyway, to be admissible under Rule 404(b), evidence must be admissible under Rule 403, so we need only consider Rule 403. *See Culp v. Remington of Montrose Golf Club, LLC*, 133 F.4th 968, 997–98 (10th Cir. 2025).

Federal Rule of Evidence 403 gives district courts discretion to “exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury,” or otherwise “wasting time.” In reviewing a Rule 403 ruling, we ask whether the court abused its discretion. *Bond v. Sheriff of Ottawa Cnty.*, 173 F.4th 1265, 1300 (10th Cir. 2026). In so doing, we recognize that the district court is in a “superior position” for Rule 403 balancing. *Eisenhour v. Weber County*, 897 F.3d 1272, 1277 (10th Cir. 2018) (citation omitted). So we afford it “broad” discretion. *Id.* But we won't defer to a “clear abuse of discretion.” *See Bond*, 173 F.4th at 1300 (citation omitted).

We have considered the clips' probative value, risk of unfair prejudice, and the district court's balancing the two, and we agree with Cronick. Admitting the clips was a clear abuse of discretion.

A. Probative Value

To have probative value, evidence must first be relevant, meaning it must have “any tendency to make a fact” “that is of consequence in determining the

action” “more or less probable.” *See Lakey v. Bryant*, 181 F.4th 1013, 1033 (10th Cir. 2026) (quoting Fed. R. Evid. 401); *see also Old Chief v. United States*, 519 U.S. 172, 184 (1997) (describing probative value’s other attributes).

As the party seeking to admit objected-to evidence, the officers bore the burden of showing that it was admissible at trial. *See U.S. Aviation Underwriters, Inc. v. Pilatus Bus. Aircraft, Ltd.*, 582 F.3d 1131, 1149 (10th Cir. 2009). On appeal, they offer four theories of the videos’ probative value: The videos (1) “potentially” contradicted Cronick’s testimony about “control over social media accounts,” (2) demonstrated her “consistent pattern of behavior,” (3) impeached her credibility as a witness, and (4) informed her claims that she suffered emotional damages. Resp. Br. at 14–15. The district court admitted the evidence based on the latter two theories.

The first three theories don’t work. To impeach by contradiction, the officers would have needed to “lay an adequate foundation” by showing “prior statements” that were “inconsistent with [Cronick’s] trial testimony.” *See United States v. Flaming*, 133 F.4th 1011, 1028 (10th Cir. 2025). But the officers don’t identify any trial testimony that the videos contradict. So we reject this theory.

The officers’ second theory is that the videos showed Cronick’s “consistent pattern of behavior.” Resp. Br. at 15. But Federal Rule of Evidence 404(a)(1) prohibits “inferring character from an act,” then inferring “a different act from that character”—also known as propensity reasoning. *McCue v. Kan.*

Dep't of Hum. Res., 165 F.3d 784, 790 (10th Cir. 1999). Whether the officers call this “character,” “propensity,” or “pattern-of-behavior” evidence, they can’t admit it to show that because Cronick disrupted police one time, she disrupted them another time.

The officers’ third theory is that the videos impeached Cronick’s credibility. If the officers mean that the videos attacked Cronick’s “character for truthfulness,” that theory fails because Federal Rule of Evidence 608(b) bars “extrinsic evidence . . . to prove specific instances of a witness’s conduct” to impeach character for truthfulness. *See United States v. Craig*, 953 F.3d 898, 903 (6th Cir. 2020) (“Rule 608(b) did not authorize playing [a] video to the jury.”). That said, extrinsic evidence is permitted for “other grounds of impeachment” like bias, mental capacity, or prior inconsistent statements. *See* Fed. R. Evid. 608 advisory committee’s note to 2003 amendment. But besides the contradiction theory mentioned above, the officers haven’t used those grounds to develop an argument. We won’t trawl the record to guess one.

This leaves us with the officers’ fourth theory of probative value: relevance to Cronick’s emotional damages. There’s some probative value here, but not much. To see why, consider other cases in which district courts have admitted evidence of a § 1983 plaintiff’s other police encounters.

Start with *Barber v. City of Chicago*, 725 F.3d 702 (7th Cir. 2013). The then-fourteen-year-old plaintiff sued two police officers for arresting him without probable cause and beating him up at the station. *Id.* at 704–05. Years

later, but before trial, he was convicted of possessing a stolen car. *Id.* at 711. At the jury trial on his unlawful-arrest and excessive-force claims, the district court let the officers admit evidence of his later conviction. It reasoned that the conviction could be “a supervening cause of any emotional distress he was suffering.” *Id.* at 711. The jury found for the officers. *Id.* at 707.

On appeal, the Seventh Circuit vacated judgment and remanded for a new trial. *Id.* at 718. It held that the district court abused its discretion by admitting evidence of the stolen-car conviction, in part because the conviction yielded little probative value about the plaintiff’s emotional damages in the § 1983 case. *Id.* at 711–15. The plaintiff “did not try to establish that everything rotten in his life stem[med] from the emotional trauma” underlying his § 1983 claims. *Id.* at 713. And he had “disavowed any fear of police generally.” *Id.* Instead, he had “testified that he was afraid of the two defendants” and “that he had felt embarrassed walking around with a battered face.” *Id.*

Since *Barber*, other courts have held evidence of § 1983 plaintiffs’ unrelated police encounters to be of “miniscule” probative value or “irrelevant to damages.” *Nelson v. City of Chicago*, 810 F.3d 1061, 1069 (7th Cir. 2016) (citation omitted) (first quote); *Smith v. Balt. City Police Dept.*, 840 F.3d 193, 203 (4th Cir. 2016) (second quote).

We join them. Cronick’s later police encounters had little probative value to her emotional damages underlying her § 1983 claims. Her lawyer “did not harp on emotional distress in either his opening statement or his closing

argument.” *See Barber*, 725 F.3d at 714. Nor did Cronick testify extensively on the subject. Instead, at trial, Cronick answered questions like “while you were in handcuffs, what were you thinking was going to happen to you?” and “[w]as this stressful for you?” App. vol. 5, at 1314, 1316. And though Cronick stated in an early interrogatory that she was “claiming emotional damages which began and are ongoing as a result of this incident,” App. vol. 2, at 496, nothing from the trial transcript indicates that this incident left her with “a generally disabling long-term trauma,” *Barber*, 725 F.3d at 713. Nor did she claim that because of this incident, she was “now more fearful of police generally.” *Smith*, 840 F.3d at 203.

At bottom, the officers’ theories of probative value don’t hold up. The first three are impermissible, and we see little value in the fourth.

B. Risk of Unfair Prejudice

On the other side of the scale, the videos risked tremendous unfair prejudice. They presented to the jury three improper temptations: (1) using propensity reasoning, (2) issuing a verdict notwithstanding liability, and (3) letting salacious details overshadow the case.

First, character evidence invites propensity reasoning. *Michelson v. United States*, 335 U.S. 469, 475–76 (1948). As the officers explain in their briefing, they presented the clips to show the jury a pattern:

1. Cronick records some kind of high-stress incident, like police responding to an overdose (“they’re going to be [] pissed . . . when I cross the street”).
2. She harasses the officers or security personnel until they react (“pig!”; “I’m sure you beat your [] wife”).
3. She describes the interaction in hyperbolic, if not false, terms (“one officer just tried to slam me on the ground”).
4. She prepares to sue (“you’ll know my name real [] soon”; “David Lane will [] take this case”; “Target is about to [] be my bitch”).

Dear God Save His Life, at 18:00–18:20, 25:55–27:29; Hubbard Just walked 100 ft, at 16:39–17:15; Crazy Night 1, at 6:52–6:54, 11:02–11:15; Drama Target Trip, at 11:40–50. We see the pattern the officers wanted the jury to accept: *She did this in the videos, so she did it here too*. That’s propensity reasoning, and it’s not allowed.

Second, character evidence can tempt juries to rule for a litigant “irrespective of [liability] of the present charge.” *See People v. Zackowitz*, 172 N.E. 466, 468 (N.Y. 1930) (citation omitted) (Cardozo, C.J.); *accord* Fed. R. Evid. 404 advisory committee’s note to 1972 proposed rules, subdivision (a). This risk looms large in civil-rights cases, which “often pit unsympathetic plaintiffs” against “guardians of the community’s safety.” *Barber*, 725 F.3d at 714 (citation omitted). Put another way, few juries want to rule for a “general

troublemaker” or a “perpetual litigant.” *Nelson*, 810 F.3d at 1069 (first quote); *Outley v. City of New York*, 837 F.2d 587, 592 (2d Cir. 1988) (second quote).

On this point, consider what a jury might think while watching Cronick berate police officers and security guards, call them rude names, and threaten to sue them. Perhaps: Cronick is “a litigious person” with “a vendetta against the [Colorado Springs] Police Department,” “gaming the system to make an easy buck.” *Nelson*, 810 F.3d at 1072. Or: “bad people should not be permitted to recover from honorable police officers.” *Barber*, 725 F.3d at 714. Or: she’s harassed so many people so many other times, why should it matter that she was unjustifiably arrested *this* time? The clips prompt these provocative questions, which is why they’re unfairly prejudicial. They distract from the jury’s *actual* assignment: whether the officers violated Cronick’s rights by unlawfully arresting and searching her at the Sun Springs Motel.

Third, and finally, the acts that reveal a person’s character are often “colorful and memorable.” George Fisher, *Evidence* 173 (4th ed. 2022). In the clips, Cronick, among other things, (1) solicits donations; (2) shares the work address of the officers’ lawyer; (3) calls that lawyer “Cryin’ Ryan” and “Cryin’ Doherty”; (4) suggests that she will share the address of a bar where CSPD officers relax; and (5) implies that Officers Pryor, McCafferty, and other CSPD members are “motherfuckers” who violate people’s rights. *Harassing People*, at 2:30–3:07. These details are colorful, memorable, and humming with unfair prejudice.

C. Balancing

Finally, we weigh probative value against unfair prejudice, affording the evidence “its maximum reasonable probative force” and its “minimum reasonable risk of unfair prejudice.” *Bond*, 173 F.4th at 1300 (citation omitted). That’s because excluding otherwise admissible evidence under Rule 403 “is an extraordinary remedy and should be used sparingly.” *Eisenhour*, 897 F.3d at 1277 (citation omitted).

Normally, we would also consider a district court’s limiting instruction against making the propensity inference. That’s because, when deciding whether to exclude evidence under Rule 403, courts “must” consider the “availability and effectiveness” of limiting instructions. Fed. R. Evid. 105 advisory committee’s notes to 1972 proposed rules. But a party may waive this rule. *See Rios v. Bigler*, 67 F.3d 1543, 1550 (10th Cir. 1995). And Cronick “never asked” for such an instruction. *See Bond*, 173 F.4th at 1304.

That said, even when a party waives a limiting instruction, district courts may abuse their discretion through blatant failures to satisfy Rule 403. *See, e.g., Nelson*, 810 F.3d at 1070 & n.5 (reversing defense verdict for admitting evidence of unrelated arrest without limiting instruction, despite plaintiff not requesting one); *Outley*, 837 F.2d at 595 n.6 (same); *Smith*, 840 F.3d at 204 (reversing verdict for officers despite limiting instruction on plaintiff’s unrelated arrests).

As explained, the officers have argued only one permissible theory of the videos' probative value: the clips speak to Cronick's emotional damages. But even when we give that theory its maximum reasonable probative weight, it's insubstantial. And even when we assign the video clips their minimum reasonable risk of unfair prejudice, it's intolerable. So the videos were inadmissible under Rule 403.

True, at least one other circuit court has gone the other way in a similar case. In *Udemba v. Nicoli*, after balancing unfair prejudice and probative value under Rule 403, the district court permitted the defendants' lawyer to ask the § 1983 plaintiff about an arrest unrelated to his claim. *See* 237 F.3d 8, 15–16 (1st Cir. 2001). The court ruled that the arrest was relevant to the plaintiff's alleged emotional damages. *Id.* at 14.

The First Circuit affirmed. It acknowledged that the evidence “plainly carried a risk of extraneous prejudice.” *Id.* at 15. But it then deferred to the trial court's “on-the-spot judgment” in Rule 403 balancing. *See id.* at 16 (citation omitted).

Udemba is distinguishable, in part because we have less reason to defer to the district court. To start, there was no “on-the-spot judgment” in this case. Weeks before trial, Cronick had asked to exclude evidence of her other police encounters, including videos. Days after the court rejected her first pre-trial motion, she filed another, which the court also rejected. Plus, seemingly unlike the district court in *Udemba*, *see id.* at 14, the district court here permitted

extrinsic evidence. And it did so by admitting a barrage of visceral videos showing Cronick’s bad behavior, which dominated the trial.

In sum, this case presents one of the “rare and extraordinarily compelling circumstances” in which we must reverse a district court’s decision to admit evidence under Rule 403. *See United States v. Villa-Guillen*, 102 F.4th 508, 517 (1st Cir. 2024) (citation modified). By admitting Cronick’s post-incident copwatching videos, the court abused its discretion.

II. Adverse-Inference Instructions

Under Federal Rule of Civil Procedure 37, courts may issue “just orders” to remedy discovery violations, including “directing that . . . designated facts” “be taken as established for purposes of the action.” Fed. R. Civ. P. 37(b)(2)(A)(i). Applying this rule, the magistrate judge recommended four adverse-inference instructions for Cronick’s discovery violation. The district judge adopted this recommendation, and at trial, she gave the magistrate judge’s instructions. *See Cronick v. Pryor*, No. 20-CV-00457, 2024 WL 50194, at *4 (D. Colo. Jan. 4, 2024). The instructions told the jury to presume the following:

1. Ms. Cronick regularly records police officers, and those recordings demonstrate Ms. Cronick engages in behavior that is disruptive to police business.
2. Ms. Cronick profits from these recordings by posting them on social media and engaging with others about those posts.

3. Ms. Cronick willfully deleted video evidence of the incident at issue in this litigation, with an intent to deprive Officer Pryor and Officer McCafferty of that evidence.
4. Ms. Cronick willfully deleted comments and messages about the incident at issue in this litigation, with an intent to deprive Officer Pryor and Officer McCafferty of that evidence.

App. vol. 6, at 1586.

On appeal, Cronick argues that the first two instructions were “erroneously overbroad.” Op. Br. at 23. We need only address the first, which instructs the jury that Cronick “regularly records police officers, and those recordings demonstrate Ms. Cronick engages in behavior that is disruptive to police business.” App. vol. 6, at 1586. She argues that this instruction commanded the jury to find that she “routinely committed essentially the crime she was wrongly accused of committing.” Op. Br. at 25.

We review for abuse of discretion the “choice to adopt an adverse inference” instruction. *Vitamins Online, Inc. v. Heartwise, Inc.*, 71 F.4th 1222, 1245 (10th Cir. 2023). But we review de novo whether jury instructions “as a whole . . . accurately state the governing law and provide the jury with an accurate understanding of the relevant legal standards and factual issues in the case.” *Packard v. City & County of Denver*, 173 F.4th 1247, 1253 (10th Cir. 2026) (citations omitted).

Applying those standards, we agree with Cronick. To show why, we break Cronick’s argument into two pieces: (1) “the crime” and (2) whether Cronick “routinely committed” it. Op. Br. at 25.

We start with the crime. The court instructed the jury that the “ultimate issue” was whether the officers had “probable cause at the time of Ms. Cronick’s arrest to believe that Ms. Cronick committed any criminal offense.” App. vol. 6, at 1585. That probable cause would have to come from a statute. Among others, the court presented “obstructing a peace officer,” which has the elements of “knowingly obstruct[ing], impair[ing], or hinder[ing] . . . the preservation of the peace” “by using or threatening to use . . . physical interference.” Colo. Rev. Stat. § 18-8-104(1)(a). It told the jury that “physical interference” requires more than “mere[] verbal opposition,” but “a combination of statements and acts . . . can form the crime.” App. vol. 6, at 1592.

We next turn to “routinely committed.” Being “disruptive to police business”—the core of the adverse-inference instruction—resembles obstructing, impairing, or hindering the peace through “a combination of statements and acts.” App. vol. 6, at 1586, 1592. So it’s fair to read the court’s adverse-inference and obstruction instructions together like this: Cronick regularly records police officers, and those recordings demonstrate that Cronick obstructs, impairs, or hinders the peace through her statements and acts.

Understood that way, this instruction invites forbidden propensity reasoning: *Cronick disrupts the police at other times, so she did it this time too.* Cf. *Garceau v. Woodford*, 275 F.3d 769, 775 (9th Cir. 2001) (finding jury instruction improper for inviting propensity reasoning), *rev’d on other grounds*,

538 U.S. 202 (2003). And by emphasizing Cronick’s other bad acts, the instruction interfered with an “accurate understanding of the relevant . . . factual issues in the case.” *Packard*, 173 F.4th at 1253 (citation omitted). So by issuing it, the court abused its discretion.

We reject the officers’ contrary arguments. They say that the adverse-inference instruction “provided important background information” that was “particularly relevant given that the case centered on a police interaction that Cronick had recorded.” Resp. Br. at 21. But we prohibit character evidence not “because character is irrelevant” but because it “overpersuade[s]” juries. *Michelson*, 335 U.S. at 475–76. To argue its relevance is to bark up the wrong tree.

Next, the officers argue that the adverse-inference instruction “simply provided factual context.” Resp. Br. at 21. But it did far more than that. Cronick’s trial was supposed to concern her arrest at the Sun Springs Motel, not her later police encounters. The instruction emphasized the latter at the expense of the former. By giving it, the district court abused its discretion.

III. Harmlessness

In a civil case, even when a district court has abused its discretion, we will vacate a jury’s verdict only when error has affected the appealing party’s “substantial rights.” Fed. R. Civ. P. 61; 28 U.S.C. § 2111; *Lahey*, 181 F.4th at 1034. We consider the case “holistically,” “exercise common sense,” and gauge whether the outcome “would have been different” without the error. *Colo.*

Mont. Wyo. State Area Conf. of NAACP v. Smith, 180 F.4th 1266, 1282 (10th Cir. 2026) (citation modified). To affect a party’s substantial rights, an error must have had “a substantial influence” on the trial’s outcome or leave us “in grave doubt” about whether it did. *Id.* (citations omitted).

Consider our doubt grave. To start, when a trial is short, repeated references to unfairly prejudicial evidence are especially likely to affect the verdict. *See Outley*, 837 F.2d at 592 (reversing verdict for police officers after their lawyer emphasized unfairly prejudicial evidence multiple times in a trial that lasted “a little over two days”). Cronick’s trial lasted less than three days.

The officers argue that they only used “15 minutes and 57 seconds of clips.” Resp. Br. at 10 n.8. But playing the clips took up much of the afternoon on the trial’s second day and the morning on the third. Plus, in the minutes between clips, the officers’ lawyer asked Cronick “multiple and inflammatory” questions. *Nelson*, 810 F.3d at 1072. On redirect, Cronick’s lawyer understandably tried to contextualize the clips by playing parts from the same videos and asking Cronick to explain her behavior. In sum, the clips weren’t forgettable backdrop; they were marquee moments.

That’s probably why the clips “capped off” the officers’ closing argument. *See Outley*, 837 F.2d at 592. The officers’ lawyer reminded the jury of Cronick’s video “Harassing People”—“[t]hat was the title of her own video, and you heard it.” App. vol. 6, at 1545. He implored them to “remember” Cronick’s videos “when you consider these claims against my clients.” *Id.*

“[W]hen you do that,” he said, “you will have no choice but to find in their favor.” *Id.*

The adverse-inference instruction only worsens the clips’ unfairness. What came to the jury’s minds after being told that Cronick “regularly records” encounters in which she “disrupt[s]” the police? App. vol. 6, at 1586. Were we the betting type, we’d put money on “the clips.” Meaning the adverse-inference instruction further distracted the jury from its assigned task: deciding whether the officers unlawfully arrested and searched Cronick at the Sun Springs Motel.

The officers doubt the clips’ importance. They argue that even if the district court hadn’t admitted the clips and given the instructions, the jury would have still ruled against Cronick. The officers point to their own testimony and that of Austin Pugh—a paramedic on the scene.

That other testimony didn’t dwarf the clips. To win at trial, Cronick needed the jury to believe her over the officers. The officers’ highlight reel of Cronick’s worst behavior made that nearly impossible.

The paramedic was the only other witness to testify, and his account of the arrest was hardly definitive. While it happened, he was administering medical care to a man who had overdosed. At key moments, he could see Cronick only “out of the corner of [his] eye.” *See* App. vol. 5, at 1278. His testimony bolstered the officers’ case. It didn’t seal it.

At bottom, this was a close case. Cronick’s version of what happened wasn’t blatantly contradicted by the video. *Cronick*, 99 F.4th at 1269 n.3. A

reasonable jury could have found (1) that Pryor’s statement wasn’t an order, or (2) even if it was, Cronick was complying with it despite her verbal protests, meaning the officers lacked probable cause to arrest her. *See id.* at 1271–72. Those questions required the jury’s attention. That attention was unfortunately swept away by tidal waves of character evidence and propensity reasoning.

* * *

In sum, admitting the unrelated videos and issuing the instruction that Cronick disrupts police business ensured that she didn’t receive a fair trial. We reverse and remand for a new one.

IV. Monetary Sanctions

Finally, Cronick appeals the district court’s monetary sanction for disobeying the court’s discovery order.

A. Background

During discovery, Cronick didn’t disclose most of her copwatch videos; at least one video of the incident; social media comments and messages, including comments about the arrest at issue; and associated financial records. From the beginning, Cronick explained that she had deleted most of this material because that was her regular practice. She told the magistrate judge overseeing discovery that this deleted material was irrelevant. Later, she told

the judge that she could not produce the material because only her husband could access the relevant accounts.¹

The officers asked the magistrate judge to recommend discovery sanctions. The judge agreed. She explained that Cronick’s account didn’t add up: Cronick said that her husband was the only person with the account password, but she acknowledged that they were still married and in communication. The judge also noted that Cronick hadn’t explained why she couldn’t have asked her husband for the password or had him reset it. Nor had Cronick squared her claim with her statement that she had deleted some videos, implying that she could access the account.

In a series of orders, the district judge affirmed the magistrate judge’s recommendation, holding that Cronick’s “inexplicable failure to produce the relevant social media content amounts to a willful violation of Rule 37(b).” *Cronick*, 2024 WL 50194, at *4. The district judge ruled that Cronick’s lawyers had facilitated Cronick’s “ongoing disobedience of a lawful discovery order by giving life to an obvious lie.” *Cronick v. Pryor*, No. 20-CV-00457, 2024 WL 4008221, at *4 (D. Colo. Aug. 30, 2024).

Later, at a hearing to apportion fault between Cronick and her lawyers, Cronick’s lawyer David Lane expressed consternation at the sanction. The

¹ Cronick’s opening brief on appeal says that “the actual reason” why she couldn’t go to her husband “is that Ms. Cronick has over years been horrifically abused by” him. Op. Br. at 7 n.1. She did not explain this to the magistrate judge.

district judge replied, “I didn’t accuse you of wrongdoing. I’m just saying this was a violation of the rules of discovery.” App. vol. 3, at 830. The court then imposed a sanction of about \$18,000 on Cronick and her lawyers, jointly and severally. *Cronick v. City of Colorado Springs*, No. 20-CV-00457, 2024 WL 4519188, at *3 (D. Colo. Oct. 17, 2024). After trial, the court entered judgment on this sanction.

B. Analysis

Federal Rule of Civil Procedure 37(b)(2)(C) requires district courts to order a “party, the attorney advising that party, or both to pay reasonable expenses, including attorney’s fees,” caused by disobeying a discovery order, “unless the failure was substantially justified or other circumstances make an award of expenses unjust.” We review for abuse of discretion “the imposition of an attorney-fee sanction, whether rooted in statute, rule, or a court’s inherent authority.” *Farmer v. Banco Popular*, 791 F.3d 1246, 1256 (10th Cir. 2015). “A district court abuses its discretion when it (1) fails to exercise meaningful discretion . . . (2) commits an error of law . . . or (3) relies on clearly erroneous factual findings.” *Id.*

On appeal, Cronick asks us to apply the factors from *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992), but courts consider those factors when deciding whether to “issue a dismissal sanction,” see *Lee v. Max Int’l, LLC*, 638 F.3d 1318, 1323 (10th Cir. 2011), not monetary sanctions. Cronick also argues that (1) even if she disobeyed the discovery order, her disobedience

didn't prejudice the officers; (2) the discovery violations weren't her or her lawyers' fault; (3) the district court endangered her attorney-client relationship; (4) the court didn't provide due process; and (5) the court didn't consider her indigency. We reject these arguments.

Cronick first argues that the post-incident videos were irrelevant. As in, not producing the videos didn't prejudice the officers. But she neglects to mention deleted materials other than the post-incident videos. Those materials included Cronick's statements about the arrest at issue—statements that could have been relevant to material facts at trial. And that's enough to reject this argument.

Cronick next argues that it wasn't her fault for not producing material. After all, her husband controlled the relevant accounts. But the district court twice found otherwise. *Cronick*, 2024 WL 50194, at *4; *Cronick*, 2024 WL 4008221, at *1, *3–4. And its orders weren't clearly erroneous. Cronick's lawyer confirmed to the magistrate judge that Cronick remained married and in communication with her husband, that Cronick had herself deleted material, and that Cronick never contacted the social-media companies that possessed the relevant records. And Cronick's deposition transcript itself shows her nonchalance toward deleting the material.

And to the extent Cronick's lawyers argue that the court didn't find that *they* did anything wrong, we disagree. The district court explained its basis for imposing joint-and-several liability. It found that Cronick had control of the

discoverable material, that Cronick herself had refused the court's order to disclose that material, and that her lawyers were "enabling and facilitating" her refusal. *Id.* at *4.

But Cronick says the district court walked back this last finding. At the apportionment hearing, the district judge told Cronick's lawyer, "I didn't accuse you of wrongdoing. I'm just saying this was a violation of the rules of discovery." App. vol. 3, at 830. To Cronick, the judge's saying "I didn't accuse you of wrongdoing" obviated any other finding of wrongdoing.

We disagree. "[A] court's written decision generally controls over any apparent inconsistency with an earlier oral ruling." *Marcantel v. Michael & Sonja Saltman Fam. Tr.*, 993 F.3d 1212, 1239 n.23 (10th Cir. 2021). And after the apportionment hearing, the court issued a written decision. *Cronick*, 2024 WL 4519188. That decision incorporated the court's earlier findings. *Id.* at *1 n.1. Those earlier findings summarized the dispute and concluded that Cronick's lawyers were "enabling and facilitating Ms. Cronick's ongoing disobedience of a lawful discovery order by giving life to an obvious lie." *Cronick*, 2024 WL 4008221, at *4. That's a finding of wrongdoing.

Next, Cronick argues that the district court's orders forced Cronick and her lawyers to forfeit their attorney-client relationship. As in, by asking Cronick's lawyers who was responsible for disobeying the discovery order, the court trapped the lawyers between a monetary sanction and an ethics violation.

This is a false dichotomy. *Cf. Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 528 (2d Cir. 1990) (“emphatically” rejecting lawyers’ contention that ethical duties required “vexatious and dilatory tactics”). When a lawyer knows that his client has given false testimony, his “proper course is to remonstrate with the client confidentially, advise the client of the lawyer’s duty of candor to the tribunal and seek the client’s cooperation with respect to the withdrawal or correction of the false statements.” Colo. R. Pro. Conduct 3.3, cmt. 10 (2025). “If that fails,” the rules recommend withdrawal, and if withdrawal is not permitted, the lawyer “must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal” otherwise privileged information. *Id.*

So if disobeying the discovery order was only Cronick’s fault, and Cronick refused to correct her false statements, then her lawyers had options. They could have withdrawn, and if withdrawal wasn’t feasible, they could have made a limited disclosure as was “reasonably necessary to remedy the situation.” *See id.* They weren’t forced to choose between a sanction and an ethics violation.

Cronick next argues that she and her lawyers received neither adequate “notice of the charges needing to be defended,” nor a hearing to assess Cronick’s credibility, so the sanctions violated due process. Op. Br. at 37.

Again, we disagree. Courts provide adequate due process for monetary sanctions by giving notice and “the opportunity to fully brief the issue.” *See*

Sun River Energy, Inc. v. Nelson, 800 F.3d 1219, 1230 (10th Cir. 2015).

Cronick received both. After Cronick refused to produce the material at issue, the magistrate judge allowed the officers to move for sanctions. Cronick briefed a response to the officers' motion. The magistrate judge rejected Cronick's arguments and recommended a monetary sanction. Again, Cronick briefed an objection to the recommendation. There wasn't a due process violation.

Relatedly, Cronick argues that the district court needed to hold a hearing to assess Cronick's credibility. Her brief explains that "had the court seen Ms. Cronick testify in person, the diffuse nature of her personality and her significant cognitive limitations would have been very apparent to the court." Op. Br. at 29. Cronick and her lawyers don't explain how these limitations release Cronick from the district court's findings, and we won't make an argument on their behalf.

And finally, Cronick argues that the district court never made "any finding about Ms. Cronick's ability to pay." Reply Br. at 10. But it did—sort of. It noted that Cronick's objection had presented "no evidence besides . . . a bout of homelessness . . . experienced almost four years ago." *See Cronick*, 2024 WL 50194, at *4. It then ruled that Cronick's "objection, is, at best, premature," and that it would "consider her indigency" when evaluating the officers' fee application. *Id.* But it never did. *See Cronick*, 2024 WL 4008221; *Cronick*, 2024 WL 4519188.

“The sanctioned party bears the burden to prove [her] inability to pay an otherwise-appropriate sanction.” *See King v. Fleming*, 899 F.3d 1140, 1156 (10th Cir. 2018) (reviewing Rule 11 sanctions). By calling Cronick’s objection “premature,” the court practically invited Cronick to prove her inability to pay. *See Cronick*, 2024 WL 50194, at *4. But she didn’t mention ability to pay, let alone submit proof, in her responses to the officers’ fee application. Nor did she raise it at the following apportionment hearing. *See Cronick*, 2024 WL 4519188, at *1. So because Cronick didn’t even try to prove her indigency, the court was within its discretion to not consider it.

In sum, we have no reason to reject the district court’s monetary sanction against Cronick and her lawyers.

CONCLUSION

We vacate the district court’s judgment for the officers, and we remand for retrial. We affirm the court’s monetary sanction against Cronick and her lawyers.