

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EUGENE CHERRY,

Plaintiff,

ORDER

v.

03-C-129-C

THOMAS BELZ and
HENRY BRAY,

Defendants.

Plaintiff is requesting writs of habeas corpus ad testificandum for three inmate witnesses incarcerated at the Wisconsin Secure Program Facility, Donald White, Jonathan Cole and A’Kinbo Hashim-Tiggs. In an order dated December 22, 2003, I denied plaintiff’s request because he had not sufficiently explained how these inmates’ testimony would be relevant to his claim; he stated only that they would testify about defendants tampering with inmates’ food. I allowed plaintiff additional time to supplement his request with information regarding “what these inmates believe is being done with their food (are other inmates finding sharp objects in their food?), whose food is being tampered with (does their testimony relate to plaintiff’s food, their own food or another inmate’s?) and how the

inmates know that defendant Belz and Bray are doing this (do they have personal knowledge of the facts they will testify about?).”

Plaintiff has submitted a response in which he writes that each of the witnesses will testify that they found “foreign objects” in their food after defendants delivered their meals. This is insufficient. “Foreign objects” could be many things, only some of which would have any bearing on this case. If the inmates were finding needles, staples or other *dangerous* objects in their meals when defendants were delivering them, this could be relevant to showing defendants’ intent. Wilson v. City of Chicago, 6 F.3d 1233, 1238 (7th Cir. 1993) (evidence that defendants had previously subjected others to same mistreatment that plaintiff complained of was relevant to show intent when plaintiff’s claim was that defendant tortured him in violation of due process). However, if the inmates found a piece of hair or part of the food’s packaging, this would not support an inference of intentional harm. I find it highly unlikely that plaintiff would omit the relevant detail of what kind of “foreign objects” the inmates found in their meals if they were the sort of objects that would suggest intentional mistreatment. Given plaintiff’s ambiguous description of the inmates’ testimony, I cannot conclude that his interest in having them testify about food tampering outweighs the risk and expense of transporting them to the court. In re Warden of Wisconsin State Prison, 541 F.2d 177, 179 (7th Cir. 1976).

Plaintiff states that the inmates will also testify that they observed plaintiff being

“harassed” by defendants “for complaining about their misconduct during meals.” I note first that plaintiff did not identify this ground for issuing the writs in his first request. Furthermore, the relevance of this testimony is questionable because I granted defendants’ motion for summary judgment on plaintiff’s claim that defendants retaliated against him for complaining about his mistreatment. The only arguable relevance of the testimony would be to show that defendants disliked plaintiff, but again, I cannot conclude that such testimony is necessary for a fair and full hearing of plaintiff’s claim when he fails to identify the precise nature of the harassment. The only example of “harassment” plaintiff gives is his statement that defendants would laugh when inmates complained about their food and tell the inmates to file a lawsuit. This is not significantly probative of plaintiff’s claim. I cannot conclude that whatever limited value this testimony might have outweighs the difficulty of bringing these inmates to the court. Plaintiff’s request for writs of habeas corpus ad testificandum will be denied.

If plaintiff’s past behavior is any indication, I anticipate that he may attempt to submit further documentation showing that he is entitled to the writs. Plaintiff is advised to instead focus on preparing for trial. He has had two chances to explain why these inmates

are necessary for his claim; he will not be given another.

ORDER

IT IS ORDERED that plaintiff Eugene Cherry's request for writs of habeas corpus ad testificandum is DENIED with respect to inmates Donald White, A'Kinbo Hashim-Tiggs and Jonathan Cole.

Entered this 2nd day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge