

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

EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGHTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

MEMORANDUM

03-C-129-C

Plaintiff has filed a document in which he requests that prior to trial on January 12, 2004, this court make available to him copies of certain exhibits he filed in connection with his motion for summary judgment. Plaintiff contends that his copies of the exhibits were taken from his cell on or around October 28, 2003. In addition, plaintiff asks the court to make available to him prior to trial the sharp objects he sent to the court earlier in this case, and a copy of the portion of the transcript of the preliminary injunction hearing revealing witness Craig Sussek's testimony. Plaintiff's request will be granted in part and denied in part.

The court has searched the record for the exhibits plaintiff has identified in his request and has found all but one. Despite plaintiff's contention that he submitted exhibits A, B, D, E, F, H, I, K, P, Q and R with his motion for summary judgment, there are no exhibits attached to any of the papers filed with plaintiff's motion for summary judgment. There are exhibits marked A, B, D, E, F, H, I, and K that fit plaintiff's description of them attached to plaintiff's March 16, 2003 motion for preliminary injunction (Dkt. #9). In addition, there are exhibits marked Q and R fitting plaintiff's description of them attached to the June 22, 2003 proposed findings of fact plaintiff filed in support of his motion for a temporary restraining order (Dkt. #47). I will make copies of these exhibits available to plaintiff prior to the start of trial on January 12.

Plaintiff describes Exhibit P as a "note written by Ken Lange, R.N. dated 1-7-03." It was not submitted with plaintiff's motion for summary judgment as he contends it was, and I have been unable to locate it anywhere else in the court's file. However, I will make the file available to plaintiff in the courtroom prior to the start of the final pretrial conference on January 12. If plaintiff can locate the exhibit quickly, I will arrange for a copy of it to be made for him.

Plaintiff asks that the court make available to him the sharp objects he submitted in this case to show that defendants were tampering with his food. Specifically, he asks for "needles and staples attached to [his] preliminary injunction motion dated 1-03" and "sharp

objects attached to [his] motion for TRO dated 10-28-03.”

This case was not opened until March of 2003. Plaintiff’s first motion for preliminary injunction was filed on March 18, 2003, and did not include needles or staples. However, on April 14, 2003, Thomas M. Bartell, Jr., a lawyer to whom plaintiff wrote in March, submitted a letter to the court dated April 14, 2003, in which he states, “Mr. Cherry’s most recent correspondence . . . requested that we send to you the letter Mr. Cherry wrote to us on March 25, 2003, in which he attached two needles he claims he found in his food. The original letter is enclosed.” Attached to Mr. Bartell’s letter is plaintiff’s March 25 letter, to which two needles are taped.

Dkt. #132 is plaintiff’s “Brief in Support of Plaintiff’s Motion for Temporary Restraining Order and/or Injunction.” It has attached to it an Exhibit Z, to which three nails or parts of nails have been taped. Plaintiff may request that these documents be marked as exhibits prior to trial. However, even if defendants do not object to the introduction of these exhibits, I will keep them at the bench rather than turn them over to plaintiff. If plaintiff is successful in introducing the exhibits into evidence, I will request the clerk to show them to the jurors.

Finally, plaintiff has requested that the court provide him with a copy of the transcript of the testimony of Craig Sussek at the preliminary injunction hearing on July 17, 2003. If plaintiff wants a portion of the transcript of the preliminary injunction hearing, he

will have to arrange to purchase the copy directly from the court reporters office at the going copy rate.

Entered this 29th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge