

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.

ORDER

03-C-129-C

In an order dated January 26, 2004, United States Magistrate Judge Stephen Crocker granted plaintiff's request for leave to proceed in forma pauperis on appeal from the judgment of dismissal of this case. Now plaintiff has written to ask how much a copy of the trial transcript will cost. Because I am aware from the trust fund account statement plaintiff Cherry submitted in connection with the appeal that plaintiff does not have the means to pay for the costs of a transcript, I construe his communication as a motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. §753(f).

28 U.S.C. §753(f) provides in relevant part:

Each reporter may charge and collect fees for transcripts requested by the parties . . . Fees for transcripts furnished in [actions such as actions brought pursuant to 42 U.S.C. § 1983] to persons permitted to appeal in forma pauperis shall . . . be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

Although plaintiff did not specify precisely what issues he intends to raise on appeal, I am aware from having conducted the trial in this matter that he may be seeking to object to certain rulings that I made during the course of trial. I cannot certify that an appeal from these decisions would be taken in bad faith.

Accordingly, IT IS ORDERED that a transcript of the proceedings in the trial of this case be prepared and furnished to the plaintiff, with the fees therefor to be paid by the

United States, pursuant to 28 U.S.C. §753(f).¹

Entered this 29th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge

¹Opening and closing statements, and the jury selection process are not ordinarily included as a part of the trial transcript unless the appellant makes a showing that these aspects of the trial are subject to legally meritorious attack on appeal. Plaintiff has made no such showing in this case. Nor will the trial transcript include jury instructions, since a printed copy of the instructions already exist in the court's record.