

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

GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY
TODD JOHNSON,

Defendant.

ORDER

04-C-661-C

In an order dated June 24, 2005, I granted defendant Todd Johnson's motion for summary judgment on plaintiff Gary Campbell's claim of excessive force with respect to the force applied by defendant before plaintiff was handcuffed. The case is proceeding to trial during the week of September 19, 2005, on the question whether defendant violated plaintiff's Fourth Amendment rights by using excessive force during and after the time plaintiff was handcuffed on March 31, 2004. Now plaintiff has filed documents titled "Notice of Appeal to the United States Court of Appeals for the Seventh Circuit" and "Motion for Emergency Injunction." In these documents, plaintiff indicates that he wishes to appeal Magistrate Judge Stephen Crocker's order of June 28, 2005, granting in part

defendant's motion for disclosure of recordings of telephone conversations between plaintiff and one of plaintiff's event witnesses, Ashley Pittman, that were taped while plaintiff was incarcerated in the Milwaukee County jail. In particular, the magistrate judge ordered that defendants may hire an independent investigator to review the tapes to determine whether in fact there are discoverable portions of the tape and to maintain in the strictest confidence all other conversations on the tapes. To provide additional protection to plaintiff, the magistrate judge ordered that before an investigator may disclose any portions of tape recordings to defendant, the investigator first must present transcripts of the tape recorded conversations he or she believes demonstrate a potential fraud upon the court for in camera review. In his motion for emergency injunction, plaintiff asks that the investigator not be allowed to review the recordings until the court of appeals rules on the constitutional issues raised in his appeal.

The magistrate judge's June 28, 2005 order is not a final and appealable order under 28 U.S.C. § 1291 but is an interlocutory order not subject to appeal. "The general and very salutary rule is that discovery orders are not appealable until the end of the case." Union Carbide Corp. v. U.S. Cutting Service, Inc., 782 F.2d 710, 712 (7th Cir. 1986). The only vehicle plaintiff can use to obtain reconsideration of a discovery order entered by the magistrate judge is a motion brought pursuant to 28 U.S.C. § 636(b)(1)(A). Section 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter under this

subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.")

The exact nature of plaintiffs' objection to the magistrate judge's order is not clear. Plaintiff states simply that he intends to raise "constitutional issues." However, plaintiff was advised in the magistrate judge's order that he cannot claim to have a reasonable expectation of privacy in his telephone conversations because he had actual knowledge that the jail was recording his conversations. Moreover, plaintiff was advised that his conversations with Pittman are not protected by an attorney-client privilege because neither he nor Pittman is a lawyer. Under these circumstances, the magistrate judge was well within his discretion to enter the order permitting defendant to hire an independent investigator to screen his conversations for impeachment material against him and Pittman.

Because I cannot find that Magistrate Judge Crocker's June 28, 2005 order is clearly erroneous or contrary to law, I will deny plaintiff's appeal from the magistrate judge's order. With the denial of the appeal, I will also deny as moot plaintiff's motion for an emergency injunction prohibiting the independent investigator from reviewing the recordings at issue until the court of appeals rules on his appeal.

ORDER

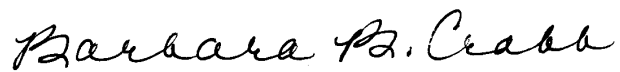
IT IS ORDERED that plaintiff's notice of appeal is construed as a motion pursuant

to 28 U.S.C. § 636(b)(1)(A) for reconsideration of Magistrate Judge Stephen Crocker's June 28, 2005 order and is DENIED on the ground that the magistrate judge's order is not clearly erroneous or contrary to law.

Further, IT IS ORDERED that plaintiff's "Motion for Emergency Injunction" is DENIED as moot.

Entered this 14th day of July, 2005.

BY THE COURT:

A handwritten signature in black ink, reading "Barbara B. Crabb". The signature is written in a cursive, flowing style.

BARBARA B. CRABB
District Judge