

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

ROBERT R. OLESON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

05-C-33-C

Plaintiff Robert Oleson has written the court to request that the United States Marshal serve three subpoenas on three inmates so that they may appear as witnesses at the trial of this case on June 19, 2006. In addition, plaintiff states that he did not receive this court's Procedures for Calling Witnesses to Trial, a copy of which was to have been enclosed to him with this court's May 3, 2006 order. Finally, plaintiff asks this court to order that he be allowed to travel to the court with "all legal documents pertinent to the case at bar and his cane." I will address his last motion first.

In support of his motion, plaintiff states that normally, federal prisoners are not allowed to be transported with their personal belongings, except for eye glasses, medical devices, canes, crutches and wheelchairs. Nevertheless, on some occasions, his cane "has

been ripped from his hands while . . . waiting to be transported, only to have the corrections officer say that he can't find it when it comes time to be transported." In addition, plaintiff has been "forewarned by other prisoners who have had their legal papers misplaced or lost while being transported to court." For this reason, plaintiff asks the court to issue an order directing prison officials to allow plaintiff to be transported to court with his cane and legal documents in his possession. This request will be denied.

Plaintiff's general assertions that legal documents or medical items have been lost while inmates are being transported to court are not sufficient to warrant an order directing unknown prison officials to insure that plaintiff be allowed to keep his cane and legal papers at his side while he is being transported to court. If plaintiff requires assistance to move from the transportation van to the holding cell and courtroom, I expect that he will either be given his cane or a wheelchair upon his arrival at the courthouse or that he will be assisted from one point to another by the prison officials accompanying him. Similarly, I expect plaintiff's legal materials to be transported to the courthouse so that plaintiff has the papers he needs to present his case. The precise manner in which those papers are transported is left to the discretion of the prison officials.

I turn then to plaintiff's request that the United States Marshal serve subpoenas on three potential witnesses. Unfortunately, because plaintiff did not receive this court's Procedures for Bringing Witnesses to Trial, he has not supported his request with the

necessary documentation. I am enclosing a copy of the procedures with this order. In addition, I will set out below what plaintiff must do before this court will ask the marshal to serve his subpoenas.

First, plaintiff has prepared subpoena forms for Andrew Varga, an inmate at the Federal Prison Camp in Oxford, Wisconsin, James Ray Howard, an inmate at the United States Penitentiary in Florence, Colorado, and Christopher Covey, a former inmate who is currently residing in an apartment in Haverhill, Massachusetts.

Before I will ask the marshal to serve inmate Varga with a subpoena, plaintiff will have to submit an affidavit in which he declares under penalty of perjury that

- 1) Vargas refuses to testify voluntarily;
- 2) Vargas has relevant information about plaintiff's claim; and
- 3) Plaintiff has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to this action and, therefore, he requires the assistance of the marshal.

In order to satisfy the court that Vargas has relevant information about plaintiff's claim, plaintiff will have to aver in his affidavit that he knows first-hand that Vargas saw or heard something that will help him prove his case. He must aver what happened, when and where the incident occurred, who was present, and how Vargas was in a position to see or to hear what occurred.

If I conclude that Vargas has relevant information about plaintiff's claim, I will issue a writ of habeas corpus ad testificandum so that the warden of the Oxford Prison Camp will allow Vargas to come to court on June 19. However, assuming plaintiff has convinced me that Vargas is unwilling to be a voluntary witness for plaintiff, I will not order the marshal to serve a subpoena on Vargas unless plaintiff tells me that he could not find another person 18 years or older at Oxford who is willing to serve the subpoena on Vargas.

It is unlikely that I will ask the marshal to serve a subpoena on inmate Howard or Christopher Covey for two reasons. First, plaintiff has not submitted the necessary affidavit showing that Howard and Covey have relevant information pertaining to his claim and that these two individuals are unwilling to testify voluntarily. More important, Covey and Howard are located outside the subpoena power of this court. Therefore, I cannot consider plaintiff's request to have those potential witnesses served with subpoenas unless plaintiff can show a "substantial need for the testimony . . . that cannot be otherwise met without undue hardship," that the marshal will be reasonably compensated for the costs of transporting Howard to this court from Colorado and that plaintiff he is prepared to tender to Christopher Covey at the time the subpoena is served an amount sufficient to cover the costs of Covey's round trip travel, his room and meals, and a daily witness fee in the amount of \$40. Fed. R. Civ. P. 45(c)((2)(B)(iii).

In sum, I will deny plaintiff's request for service of subpoenas without prejudice to

his refiling the motion promptly with the necessary supporting affidavit.

ORDER

IT IS ORDERED that plaintiff's motion order that he be allowed to travel to the court with "all legal documents pertinent to the case at bar and his cane" is DENIED;

Further, IT IS ORDERED that plaintiff's request that the marshal serve subpoenas on Andrew Varga, James Ray Howard and Christopher Covey is DENIED without prejudice.

The clerk is requested to send plaintiff a copy of this court's Procedures for Calling Witnesses to Trial with a copy of this order.

Entered this 24th day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge