

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDRE G. SIMMONS,

Defendant.

ORDER

09-cr-122-bbc

In this order I address defendant Andre Simmons's new set of motions regarding trial preparation. As explained below, I am denying most of the motions because Simmons is not entitled to special treatment and consideration by the jail; more importantly, it is critical that Simmons quickly pare down his witness list and provide the information required by Rule 17(b), a matter I have addressed more fully in another ex parte order that discusses Simmons's motion docketed as 202.

Also not addressed in this order are Simmons's motion to reconsider the denial of his motion for release (**dk. 205**) and his renewed motion for DNA and fingerprint experts (dk. 203). The court denied the original motions on these topics (**dkts. 176, 179 and 190**) at an October 27, 2010 hearing and commemorated its rulings in a November 1, 2010 order (**dk. 199**). Technically, these issues are before the district judge for her review of my rulings.

This leaves what I will characterize as Simmons's motions for special treatment as a pro se defendant. One of these motions is easily GRANTED: in **dk. 201**, Simmons asks for a tutorial on the court's ELMO system. The clerk's office, in consultation with the marshals service, is directed to arrange a tutorial for Simmons on the ELMO in Courtroom 260 on

November 19, 2010, the day that Simmons will be in the courthouse for a final pretrial conference in Courtroom 460.

The rest are GRANTED IN PART and DENIED PART. In **dk. 200**, Simons has moved the court to order the Dane County Jail to provide Simmons with many accommodations: (1) To allow him to keep all of his legal materials in his cell at the same time rather than store some of it in the jail's property room, where it takes three days to access. (2) For a second storage locker to store materials, apparently in or near his cell; (3) To allow him to question his trial witnesses in person, in one of the jail's lawyer/client booths; (4) To allow his stand-by attorney to deliver, and for Simmons to possess, pencils, stamped envelopes, highlighters, paper, and other similar materials to research his case and write to the court. As an aside, Simmons floats his suspicion that a named jail officer is deviating from the jail's standard operating procedures in order to punish Simmons for going over her head in his quest for accommodation. In **dk. 207**, filed on November 9, 2010, Simmons asks the court to send him a laptop computer or pay his stand-by attorney to buy one, so that Simmons can watch the rest of the videos that are recorded on disks. Simmons also needs money to pay the jail for photocopies, which they will not make for free; Simmons suggests that the court send \$100 to the jail for his account.

As a starting point, Simmons has no constitutional right to any of the accommodations he is requesting. This court appointed two different attorneys to represent Simmons under the CJA; he claimed he could not work with the first, and he parted ways with the second when that attorney would not support Simmons's defense strategy at trial. The court offered to obtain a third attorney to represent Simmons but he declined, preferring instead to command his own defense, with his second attorney (now in a stand-by role) and a CJA-funded investigator

providing extraordinary assistance. By thrice rejecting direct assistance of counsel, Simmons has surrendered any entitlement to a law library, a typewriter, or other special accommodations by the jail. *United States v. Sykes*, 614 F.3d 303, 311-12 (7th Cir. 2010); *United States v. Byrd*, 208 F.3d 592-93 (7th Cir. 2000); *United States ex rel. George v. Lane*, 718 F.2d 226, 228, 231-33 (7th Cir. 1983).

This does not mean that Simmons will be left to drift unaided. His stand-by attorney and his investigator are doing everything they can for Simmons, and the Dane County Jail appears to be accommodating him within the limits of its standard procedures. Simmons is entitled to have the same access to paper and writing instruments as everyone else in the jail. He has shown no specific need to treat him otherwise. Similarly, Simmons is not entitled to keep more boxes of legal materials in his cell than anyone else. If this means he has to plan ahead to change out what he has for what's in the property room, that's not an unfair or illogical procedure by the jail. To the extent that Simmons claims that a deputy is intentionally interfering with his use of the jail's standard procedures, this court can order that this not occur, but the court is not going to order the jail to change its procedures for Simmons's benefit.

The court is not going to give Simmons money to pay for photocopies. Simmons has made no showing that photocopies are necessary to his defense, as opposed to simply a convenience.

The court is not going to order the jail to allow Simmons to pre-try civilian witnesses in an attorney-client booth. If jail procedures would allow this to occur, then that is up to the jail to permit. Simmons, however, has no right to such face-to-face sessions and he has not provided

any persuasive reason to allow any such sessions in this case. Neither will the court order the U.S. Marshals Service to accommodate such interviews in its lockup.

The court is not going to give Simmons a computer or reimburse his stand-by attorney for buying one. However, if Simmons can provide more specificity to the court about what disks he wishes to view—that is what they show, how long they are, how many there are—then the court will contact the Marshals Service to determine if a viewing can be arranged in this court’s lockup before trial. The sooner Simmons provides details, the sooner the court can follow through with the marshals service. If there are a lot of recordings or if the recordings are lengthy, then Simmons had better prioritize them so that *if* a viewing session can be arranged—the court is not promising that it will—then Simmons can view the most important recordings before his time runs.

Simmons had access to two excellent attorneys and the offer of access to a third, and he said no despite the court’s warnings about the hardships he would face. The court gave Simmons a stand-by attorney, an investigator and more time, and it has met his numerous demands with quick rulings and clear directions about how Simmons should follow through. As often as not, Simmons has not followed the court’s directions but has proceeded stubbornly down his own path. Even so, the court will continue to work with Simmons as best it can to assure that he receives a constitutionally sufficient trial on December 6, 2010. It is past time for Simmons to start listening to what the court is telling him and to start providing the information the court needs from him in order to provide the assistance he claims to need.

ORDER

It is ORDERED that:

(1) Simmons's stand-by counsel is directed to arrange an ELMO tutorial for Simmons on November 19, 2010;

(2) The Dane County Jail shall provide Simmons with any and all accommodations to which other jail detainees and prisoners ordinarily are entitled when they are representing themselves in criminal cases, and the jail must give fair consideration to any other requests by Simmons that do not compromise security, order or discipline in the jail;

(3) Simmons shall provide the additional information outlined above regarding the recordings on disk if he wishes the court to consider allowing a viewing session in the marshals service lockup.

Entered this 12th day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge