

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

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LAMONT D. WALKER,

Plaintiff,

v.

RYAN ARMSON and JAMES KOTTKA,

Defendants.

ORDER

10-cv-313-slc

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On August 16, 2011, this court issued an order distributing trial-related documents and advising the parties that evidence regarding Walker's cell extraction was not admissible at trial because it was irrelevant and unfairly prejudicial. Dkt. 129. The state immediately moved for reconsideration, *see* dkt. 130, arguing that the fact of the cell extraction and the resulting conduct report is relevant to their defense theory, that Walker fabricated his claims against defendants Armson and Kottka as a defense against the conduct report. The state backs up its theory with citations to documentary evidence. The state also asks permission to show the first 17 minutes and 46 seconds of the video of the cell extraction, up to the point of Walker's extraction, to impeach Walker's claim that he was experiencing breathing problems at that time. The state also claims that this portion of the video contains statements by Walker that he denied making during his deposition, thus providing the jury with evidence that Walker is not credible.

At this point, the state is entitled to at least part of what it now seeks, the rest depends on how Walker argues his case and presents his evidence. The state is entitled to put into evidence the unadorned fact that a cell extraction occurred on July 7 and that a conduct report was issued against Walker. This evidence is relevant to the state's theory of defense and the basic facts are unfairly prejudicial to Walker. I will stay a decision on whether the state may play

the first 17:46 of the video until after Walker has testified on direct and been cross-examined by the state. If Walker admits without equivocation the salient facts that the state wishes to prove up with the video, then showing the video to the jury would be cumulative and its limited value (because it shows only 18 minutes of a longer relevant time span) might be outweighed by the basically irrelevant and probably prejudicial effect of Walker's actual words and demeanor during his interaction with staff. I will provide a final decision at the appropriate time during trial.

To the same effect, if Walker admits during cross examination that his words and conduct as captured on the video contradict his sworn testimony at his deposition, then it would be cumulative and unfairly prejudicial to reinforce this impeachment by establishing the point a second time by actually showing the video to the jury. Again, I will provide a final decision at the appropriate time during trial.

In sum, IT IS ORDERED the state's motion for reconsideration is GRANTED IN PART and STAYED IN PART in the manner and for the reasons stated.

Entered this 18<sup>th</sup> day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge