

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

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MUSTAFA-EL K.A. AJALA  
formerly known as Dennis E. Jones-El,

Plaintiff,

v.

WILLIAM SWIEKATOWSKI,

Defendant.

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ORDER

13-cv-638-bbc

Trial is scheduled for August 24, 2015 in this case in which prisoner Mustafa-El Ajala is alleging that defendant William Swiekatowski discriminated against him because he is an African-American and a Muslim by giving him a false conduct report for conspiring to start a riot in the Green Bay Correctional Institution. (Plaintiff is now at the Wisconsin Secure Program Facility.) Now before the court is plaintiff's petition for a writ of habeas corpus ad testificandum for prisoners Gesa Kalati (also known as Stanley Felton) and Tony Gray. Dkt. #108.

In his petition, plaintiff says that both of these prisoners are black and Muslim and that they received conduct reports on the same charges that he did. He says that both of them are qualified to testify about the following two issues: (1) the ethnicity and religion of other prisoners accused of engaging in conduct similar to plaintiff, some of whom received conduct reports and some of whom did not; (2) the fact that plaintiff and the other prisoners

who received a conduct report “were called ‘Black Muslims’” at the Green Bay prison. In addition, plaintiff says that Gray can testify that defendant “had no corroborated [confidential informant] statements against [Gray], and certainly none to compare to those against prisoners . . . who were not charged.” Dkt. #108 at 3. I am not persuaded that the probative value of any of this testimony is sufficient to outweigh “the costs and inconvenience of transporting a prisoner from his place of incarceration to the courtroom” and “any potential danger or security risk which the presence of a particular inmate would pose to the court.” Stone v. Morris, 546 F.2d 730, 735-36 (7th Cir. 1976) (setting forth standard for bringing prisoner witnesses to trial).

In the parties’ summary judgment materials, the parties did not dispute the ethnicity or religion of any prisoners, so it seems unlikely to be an issue at trial. Even if it is, plaintiff has stated in his summary judgment declaration that *he* has personal knowledge of that information, dkt. ##68 at ¶¶ 6-8, so testimony on that issue from other prisoners would be cumulative.

With respect to plaintiff and other prisoners being called “Black Muslims,” plaintiff does not explain why he believes that is relevant. Presumably, plaintiff believes that the term is evidence of racial or religious animus, but it is not clear why. After all, plaintiff is black and he is a Muslim. Plaintiff says that only one white prisoner was charged with the same conduct report and that he was “designated” a “Black Muslim” as well, id. at ¶ 7, so perhaps plaintiff believes that the term had a negative connotation. However, even if it did, plaintiff does not allege that the other prisoners heard *defendant* using that term, so the testimony

could not be used as evidence of defendant's intent.

Finally, the amount or type of evidence that defendant had against Gray has limited probative value. The question is whether defendant discriminated against *plaintiff*, not another black or Muslim prisoner. Thus, it is much more helpful for plaintiff to show that defendant treated *him* (plaintiff) less favorably than similarly situated prisoners of *other* races or religions. To the extent that defendant's treatment of Gray has any relevance, plaintiff can prove that issue with documentary evidence that was presented at Gray's disciplinary hearing or by cross-examining defendant.

#### ORDER

IT IS ORDERED that the petition for a writ of habeas corpus ad testificandum filed by plaintiff Mustafa-El Ajala (formerly known as Dennis Jones-El), dkt. #107, is DENIED.

Entered this 3d day of August, 2015.

BY THE COURT:

/s/

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BARBARA B. CRABB

District Judge