IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

STEVEN HOUSER; WILLIAM SCHULTZ; and JEFFREY FRIDAY,

Defendants.

ORDER

02-C-0459-C

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Plaintiff Nathaniel Allen Lindell has filed a motion pursuant to Fed. R. Civ. P. 59(e) for alteration of the judgment entered on March 9, 2004, after a jury found in favor of defendants Houser and Friday on plaintiff's claims of retaliation. Plaintiff contends that he was denied a fair trial by defendants' objections to plaintiff's attempts to introduce evidence and by the court's granting of many of the objections. The motion will be denied.

It is irrelevant whether defendants made many objections or few. The only relevant question is whether the objections were valid or whether the court erred in sustaining them. I am convinced that it was proper to reject plaintiff's effort to introduce evidence of the state court's reversal of the allegedly retaliatory discipline, Linda Alsum-O'Donovan's warning

plaintiff at his disciplinary hearing that he should not blame staff and defendant Houser's knowledge that plaintiff had to exhaust his administrative remedies before suing about prison conditions. This evidence was excluded as irrelevant.

I continue to believe that the rulings were correct. Plaintiff says he should have been allowed to put in evidence about Alsum-O'Donovan's warning to show that defendant Houser was known to be retaliatory in his rulings and that he should have been allowed to explore her reasons for believing this. In my view, this was too long a stretch. It is merely good advice for a lay advocate to tell an inmate not to blame the guards when contesting a disciplinary conduct report. Moreover, plaintiff had not shown that Alsum-O'Donovan was in a position to know whether defendant Houser retaliated against inmates when he made his disciplinary rulings. Plaintiff says that he should have been allowed to put in evidence about defendant Houser's knowledge of the administrative exhaustion procedures. In his view, this would show that Houser knew that plaintiff's complaints were precursors to a legal attack on the double-celling practices that Houser supported. Again, this is too long a stretch. The jury had evidence before it of plaintiff's proclivity for suing and Houser's knowledge of this proclivity. It was not necessary or even helpful to take the time to put in the evidence plaintiff wanted to adduce. In any event, plaintiff persuaded the jury that Houser knew about plaintiff's complaints about double-celling and about his filing and threatening to file inmate complaints and lawsuits. The jury found in his favor on this

question.

Plaintiff wanted to put in evidence of the state trial court's decision on the validity of his disciplinary hearing. The state court found in his favor, holding that the disciplinary committee had erred in finding him guilty of attempted battery. I granted defendants' motion to exclude this evidence on the ground that the state court's decision did not establish retaliation by the committee. It merely determined that the committee had committed a legal error. It was the jury's job to determine why the committee reached the decision it did; the state court's view of the matter was not binding on this court or on the jury and it fell far short of supplying the missing evidence of retaliation.

The number of objections that defendants made is not evidence of impropriety. Lawyers make objections when they believe inadmissible evidence is about to be introduced or improper questions asked. It is not unusual for lawyers to make extensive objections when their opponent is proceeding pro se and is not familiar with the rules of evidence and courtroom procedures.

ORDER

IT IS ORDERED that plaintiff Nathaniel Lindell's motion for a new trial, pursuant to Fed. R. Civ. P. 59(e) is DENIED for plaintiff's failure to show that the trial of his case was unfair in any respect.

Entered this 16th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge