

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

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EUGENE CHERRY,

Plaintiff,

ORDER

v.

03-C-129-C

THOMAS BELZ and  
HENRY BRAY,

Defendants.

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This case is scheduled for trial beginning on January 12, 2004. In his list of trial witnesses, plaintiff has included four inmates: Craig Sussek, Donald White, A'Kinbo Hashim-Tiggs and Jonathan Cole. He asks the court to issue writs of habeas corpus ad testificandum so that these witnesses may appear at his trial.

A court may issue a writ of habeas corpus commanding the presence of an incarcerated person at court proceedings where the prisoner's presence is necessary for a full and fair hearing of the claim. Ford v. Carballo, 577 F.2d 404 (7th Cir. 1978); Stone v. Morris, 546 F.2d 730 (7th Cir. 1976). In determining whether a prisoner's presence is necessary, the court must weigh the interests in having the prisoner in court against the

state's interest in avoiding the risk and expense of transporting the prisoner. In re Warden of Wisconsin State Prison, 541 F. 2d 177, 179 (7th Cir. 1976).

The only issue remaining for trial is whether defendants violated plaintiff's Eighth Amendment rights by putting sharp objects in his food. With respect to this issue, plaintiff avers that Sussek has agreed to be a voluntary witness and that he will testify that he observed defendants harassing plaintiff after they delivered plaintiff's meal and that they asked him, "How was your meal?" while laughing at him. This is sufficient to show that Sussek's presence is necessary for a full and fair hearing of plaintiff's claim. I will grant plaintiff's request to issue a writ of habeas corpus ad testificandum for Sussek.

Although plaintiff avers that the other three inmates will testify voluntarily, he does not explain how their testimony is relevant to his claim. He states only that they will testify about defendants tampering with inmates' food. This vague assertion does not provide the court with a sufficient basis to determine whether the inmates will have relevant and noncumulative testimony. Therefore, plaintiff's request for writs of habeas corpus ad testificandum will be denied without prejudice with respect to inmates White, Hashim-Tiggs and Cole. Plaintiff may have until December 30, 2003, to explain in greater detail how these inmates' testimony will be relevant to his claim. Plaintiff should explain what these inmates believe is being done with the food (are other inmates finding sharp objects in their food?), whose food is being tampered with (does their testimony relate to plaintiff's food, their own

food or another inmate's?) and how the inmates know that defendants Belz and Bray are doing this (do they have personal knowledge of the facts they will testify about?). If plaintiff does not respond by that date, I will decline to issue writs of habeas corpus ad testificandum for inmates White, Hashim-Tiggs and Cole.

#### ORDER

IT IS ORDERED that

1. Plaintiff Eugene Cherry's request for writs of habeas corpus ad testificandum is GRANTED with respect to inmate Craig Sussek. The clerk of court is directed to issue a writ of habeas corpus ad testificandum for inmate Sussek at the address provided by plaintiff in his letter dated December 17, 2003: Waupun Correctional Institution, P.O. Box 351, Waupun, Wisconsin 53963.

2. Plaintiff's request for writs of habeas corpus ad testificandum is DENIED WITHOUT PREJUDICE with respect to inmates Donald White, A'Kinbo Hashim-Tiggs and Jonathan Cole. Plaintiff may have until December 30, 2003, in which to explain in greater

detail how these inmates will provide testimony in support of his claim.

Entered this 22nd day of December, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge