

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

EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGHTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

ORDER

03-C-129-C

Plaintiff Eugene Cherry has moved to strike Vincent Escandell as a witness for defendants at the evidentiary hearing scheduled to be held in this case on July 17, 2003. According to plaintiff, witness Escandell is a psychologist supervisor at the Wisconsin Secure Program Facility who was not employed at the facility when plaintiff found staples and needles in his food. Plaintiff suggests that for this reason, witness Escandell will be unable to provide relevant testimony. I disagree. The internal investigation of plaintiff's complaints about dangerous objects in his food puts plaintiff's credibility squarely at the heart of the issue to be decided at the hearing. Defendants are entitled to introduce witnesses who are

able to testify on this point.

Also, plaintiff Cherry has moved for issuance of a writ of habeas corpus ad testificandum for a “disabled witness,” inmate Ervie Gray, to testify at the evidentiary hearing on his behalf. Separately, inmate Gray has written to confirm his willingness to testify voluntarily.

The deadline for naming witnesses was June 27, 2003. Plaintiff’s request for Mr. Gray’s attendance is dated July 1, 2003. It was not received in chambers until July 7, 2003. Therefore, the request is untimely. Even if the request were timely, however, I would not grant it, because I am not convinced that inmate Gray’s testimony is cumulative.

Plaintiff describes the testimony that inmate Gray would give as follows:

Mr. Gray’s testimony . . . will be about his finding objects in his food while on Alpha Unit and his observing defendants Bray and Belz harass me on numerous occasions, calling me “Queer Boy” and asking “How was your food?” Mr. Gray is housed down the hall from plaintiff’s cell and was able to hear everything defendants Belz and Bray said to plaintiff on different occasions.

Inmate Gray states in his confirmation letter that

I have volunteered to testify in the schedule hearing, summer, testify to the foreign substance laced within food served by staff, testify to the systematic harassment I witness plaintiff Eugene Cherry have experienced over a modicum of time. I am presently housed across the hall from plaintiff Cherry.

Earlier, this court granted plaintiff’s request for writs of habeas corpus ad testificandum for inmates Craig Sussek and Stephen Jones, whose intended testimony

plaintiff describes as follows:

Mr. Sussek in January and part of February 2003 was directly across the hall from plaintiff's cell and observed on numerous occasions defendants Bray and Belz harassing plaintiff, asking "How was your meal" and laughing and that these defendants closed his window once, so he couldn't observe or witness their harassing plaintiff

Mr. Jones was in control status in a cell down the hall from plaintiff's cell on two different occasions in April or May 2003 and overheard defendants Belz and Bray harass plaintiff, asking plaintiff "How was your meal queer boy?" and laughing and how he had problems with these two officers on Alpha Unit, tampering with his meals on second shift. . . .

Because this court has issued writs of habeas corpus ad testificandum for two witnesses who will testify about what they heard defendants Belz and Bray say and one of whom will testify about meals he received that had been "tampered" with, there is no justification for requiring defendants to bear the expense of bringing another inmate witness whose testimony would simply be cumulative.

ORDER

IT IS ORDERED that plaintiff's motions to strike witness Vincent Escandell from defendants' witness list and for a writ of habeas corpus ad testificandum for inmate Ervie

Gray's appearance at the evidentiary hearing scheduled in this case are DENIED.

Entered this 9th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge