

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

DOUGLAS K. UHDE,
Plaintiff,

MEMORANDUM

03-C-323-C

v.

MARK K. BITSKY, Deputy Sheriff;
GARY A. SILKA, Deputy Sheriff and Detective;
TAMMY L. KROETZ, Deputy Sheriff;
MATTHEW SHERD, Police Officer,

Defendants.

This case is scheduled for a hearing on defendants' motion for imposition of sanctions against Douglas Uhde pursuant to Fed. R. Civ. P. 11, to take place on April 29, 2004 at 11:00 a.m. Now plaintiff has submitted a letter in which he asks that the court 1) issue four subpoenas for unincarcerated individuals to appear at the hearing; 2) allow him to bring as witnesses "all other inmates who provided affidavits who can testify as to who took the plaintiff's legal materials, how these legal materials were taken, when these legal materials were returned to plaintiff, etc."; 3) order defendants' lawyer to bring to the hearing his phone records for January, February and March 2004; 4) waive all fees and costs that relate to this request for appearance of witnesses; 5) subpoena for in camera review the

institutional file for Edward Blau, an inmate witness for defendants; and 6) appoint an expert examiner to review the documents plaintiff is alleged to have fabricated. Defendants have responded to plaintiff's letter with a letter of their own, asking that the court decline to issue subpoenas or allow plaintiff to bring witnesses on the ground that the witnesses' testimony will be irrelevant to the question whether plaintiff fabricated documents he submitted in this case.

If plaintiff wishes to subpoena persons who have personal knowledge relating to the question whether he produced fabricated documents for submission in this case, he is free to do so. However, he is responsible for arranging for service of the subpoenas on the witnesses and for tendering to each witness the fees for one day's attendance and the mileage allowed by law. See Fed. R. Civ. P. 45(b)(1). Even though he is proceeding in forma pauperis, Congress has appropriated no money to cover the costs of subpoenaing witnesses for indigent litigants. If plaintiff serves a subpoena on any witness without tendering the necessary fees, or if any subpoenaed witness does not have personal knowledge of information relevant to the question whether plaintiff fabricated documents he submitted to the court, the witness may move to quash the subpoena and I will rule on the motion promptly.

I construe plaintiff's request for the attendance at the April 29 hearing of all inmates who submitted affidavits in this case on plaintiff's behalf, as a motion for the issuance of

writs of habeas corpus ad testificandum for these inmates. The motion will be denied. In an order dated April 12, 2004, I took note of the content of the affidavits of plaintiff's inmate witnesses. I concluded that the statements were intended to prove that plaintiff's legal papers were confiscated from his cell on March 9, 2004, but that there was no need for plaintiff to prove this point. I advised plaintiff that it is already a matter of record in this case that his cell was searched and that his legal papers were temporarily confiscated. Plaintiff's appearance on April 29, 2004, is for the purpose of defending against defendants' assertion that he has fabricated documents. None of the inmates who submitted affidavits on plaintiff's behalf appear to have personal knowledge relating to that issue. Therefore, there is no basis for issuing writs of habeas corpus ad testificandum for their attendance at the April 29 hearing.

Also, plaintiff's motion for an order that defense counsel bring to the hearing his phone records for January, February and March 2004 will be denied. I have no reason to doubt that defense counsel was in contact with corrections officials about the question of document fabrication in this case and that counsel's communications occurred during January, February and March. These communications are irrelevant to the question whether plaintiff actually fabricated documents.

Plaintiff's request that I subpoena for in camera review the institutional file for Edward Blau, defendants' inmate witness, will be denied. Plaintiff suggests that inmate

Blau's institutional file may reveal that "he will do just about anything to secure a reduction of his sentence." I am unconvinced that there would be any information in inmate Blau's institutional file to show that anyone offered him a reduced sentence if he would accuse plaintiff of fabricating documents in this civil lawsuit. Plaintiff will have the opportunity to cross-examine Blau at the hearing. He is free to raise the question whether Blau has been offered a reduced sentence in exchange for his testimony in this case.

Finally, plaintiff requests that I appoint an expert examiner to review the documents plaintiff is alleged to have fabricated. That request will be denied. It will be my job at the April 29 hearing to determine the credibility of the witnesses who testify and to review the documentary evidence submitted. If I am not satisfied that defendants have met their burden of proving that plaintiff fabricated evidence in this case, I will deny their Rule 11 motion.

ORDER

IT IS ORDERED that the clerk of court issue four subpoena forms to plaintiff for his use in connection with the hearing scheduled in this action for April 29, 2004.

Further, IT IS ORDERED that

1. Plaintiff's motion is DENIED for the issuance of writs of habeas corpus ad testificandum for all inmates who submitted affidavits on his behalf.
2. Plaintiff's motion is DENIED for an order directing defendants' lawyer to bring

to the hearing his phone records for January, February and March 2004.

3. Plaintiff's motion to have Edward Blau produce his institutional file for in camera inspection is DENIED.

4. Plaintiff's motion for appointment of an expert examiner to review the documents plaintiff is alleged to have fabricated is DENIED.

Entered this 21st day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge