

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

GARY CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF
DEPUTY TODD JOHNSON,

Defendant.

ORDER

04-C-0661-C

In a motion filed on December 15, 2005, Milwaukee County sought rescission of the writ of habeas corpus issued for plaintiff's appearance in this court on January 9, 2006. Although the county is not a party to the case, it is plaintiff's custodian while plaintiff is awaiting trial for first degree homicide. (At defendant's request, I continued plaintiff's trial from September 19, 2005 to January 9, 2006, on the assumption that the state court trial would have been completed by then. As of today, no date has been set for the murder trial.)

In the motion, Milwaukee County suggested that the court could conduct plaintiff's trial by videoconference, noting that the Court of Appeals for the Seventh Circuit had recently upheld a procedure in which an inmate participated in his civil trial by

videoconferencing. Thornton v. Snyder, 428 F.3d 690 (7th Cir. 2005). In Thornton, the court held that the decision to hold trial by videoconference was one within the district court's discretion but was "not one that should taken lightly." Id. at 698. The court found that the plaintiff's high risk for escape, the need for a two-officer escort, the distance from the courthouse and the scattered locations of the witnesses were factors militating in favor of conducting the trial by videoconference. The court noted that the video arrangements for the trial included a four-way screen that showed the judge, the plaintiff, the witness and the defendants' counsel and that the jury and the plaintiff were able to see and hear everyone at the same time throughout the trial.

In an affidavit accompanying the county's motion, Sgt. Kerri McKenzie avers that two squad cars (one to serve as a "chase" vehicle) and at least three officers will be needed if plaintiff is brought to trial from the Milwaukee County jail and that the costs of the vehicles, the officers and overnight housing will be expensive. The need for this level of security shows that the first prong of Thornton has been met. However, neither McKenzie nor corporation counsel say anything about the jail's ability to provide plaintiff with the videoconference equipment he would need to participate in the trial.

Milwaukee County's situation is a sympathetic one. Like most of the counties in this state, it does not have excess funds for providing county services, such as public protection. However, I have rescheduled the trial in this case once to accommodate the county's concern

over paying for plaintiff's transportation to the federal courthouse in Madison. It would not be fair to the parties to put off the trial indefinitely until such time as plaintiff's murder trial has been completed and he is either acquitted or moved to state custody. (And, of course, having the state pay plaintiff's transportation costs does not mean that taxpayers will not be paying the cost; it means only that different taxpayers will be paying.)

In an effort to accommodate the county, I asked the Clerk of Court to investigate the possibility of conducting the trial by use of a system similar to that used by Judge Baker in the Thornton case. Unfortunately, corporation counsel was not aware of any equipment that would be available in the jail for plaintiff's use. He believed that the Eastern District court had used such equipment in the past. However, the clerk's inquiries showed that the court had used equipment for videoconferencing but had never used equipment capable of providing the split screens necessary for trial. Our courthouse does not have the necessary equipment.

Without the equipment necessary to provide plaintiff a fair trial (and keeping in mind that defendant has never joined in the motion to rescind the writ), I will deny Milwaukee County's motion. To try to mitigate the cost, I will make every effort to complete the trial in one day or two at the most.

ORDER

IT IS ORDERED that Milwaukee County's motion to rescind the writ of habeas corpus issued to it to bring plaintiff Gary Campbell to trial at the federal courthouse on Monday, January 9, 2006, is DENIED.

Entered this 30th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge