

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

JAMES M. UPTHEGROVE,

Plaintiff,

v.

SGT. KUKA and C.O. MUHE,

Defendants.

ORDER

05-C-153-C

Before the court is plaintiff James M. Upthegrove's motion to produce for his inspection the original of a medication log attached to the affidavit of Mark Muhe. *See* dkt. # 22. Although I am denying the motion as framed, I am ordering the defendants to submit the original of the challenged document to the court for inspection.

Plaintiff's claim in this lawsuit is that the defendants intentionally withheld his methadone on November 21, 2004. The defendants deny this, claiming instead that plaintiff left the medicine line and did not return after Officer Muhe replaced Sergeant Duane Kuka as the medicine dispenser that day.

In support of defendants' motion for summary judgment, Muhe has submitted an affidavit (dkt. 16) stating that when he arrived to relieve Kuka, Upthegrove still was waiting to receive his medicine; when the line re-formed, Upthegrove did not join it, nor did he subsequently request his methadone from Muhe. Muhe contends that if plaintiff had remained in line, then plaintiff's "inventory controlled substance log" would show that he received his methadone on November 21 at approximately 1:00 p.m. Plaintiff's log, however, has no entry on that date at that time. By way of counterexample Muhe has attached to his affidavit the log

of a different inmate, Terrance Browning, reflecting that Muhe dispensed medicine to that inmate at 1:00 on November 21, 2004.

Plaintiff has riposted by submitting Browning's affidavit (dkt. 24) in which Browning claims that Kuka, not Muhe, dispensed his medicine that day. Browning also claims to have witnessed Kuka decline to provide plaintiff with his methadone. These averments lead plaintiff to believe that the defendants have altered Browning's log to prove their point. Plaintiff wants the opportunity to inspect the original to prove this alteration.

In deciding a summary judgment motion, the court cannot make credibility determinations, so the presence or absence of alterations to Browning's log is not currently relevant. Muhe's and Browning's affidavits speak for themselves.

Even so, this dispute might resurface again, so rather than let it fester, I am directing the defendants to submit the original of Browning's log to the court for inspection.

ORDER

It is ORDERED that:

(1) Plaintiff's motion to produce is DENIED.

(2) Defendants forthwith shall submit to the court the original of Exhibit A to defendant Muhe's affidavit.

Entered this 9th day of December, 2005.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge