

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

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JAN JOSEPH CRAMER,

Plaintiff,

v.

MEMORANDUM and ORDER

J. PETERSON, JAMES SCHROEDER,  
SABRINA SIMS, C. VASERAL, JILL  
BUZICK, NURSE JOYCE and PATRICK  
KIRCHENWITZ,

05-C-311-S

Defendants.

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Plaintiff Jan Cramer was allowed leave to proceed on his Eighth Amendment claim against defendants J. Peterson, James Schroeder, Sabrina Sims, C. Vaseral, Jill Buzick, Nurse Joyce and Patrick Kirchenwitz. In his complaint he alleges that they were deliberately indifferent to his serious medical need. The United States Marshal was unable to serve defendants J. Peterson, C. Vaseral and Nurse Joyce at the addresses plaintiff provided.

On July 25, 2005 defendant Dane County deputies Schroeder, Buzick and Sims moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Plaintiff's response to this motion was to be filed not later than September 14, 2005 and has not been filed to date.

On August 29, 2005 defendant Patrick Kirchenwitz filed a motion to dismiss or, in the alternative, a motion for summary judgment. Plaintiff's response was to be filed not later than September 19, 2005 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure. This motion has been fully briefed and is ready for decision.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

#### FACTS

For purposes of deciding defendants' motions for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Jan Cramer was at times material to this action housed in the Dane County Jail as a federal inmate in the custody of the United States Marshal. Defendants James Schroeder, Sabrina Sims and Jill Buzick were Dane County Sheriff's deputies assigned to the jail during April 2002 when plaintiff was housed there. Defendant Patrick Kirchenwitz is a deputy United States Marshal.

On April 23, 2002 plaintiff had a scheduled ophthalmology appointment which was not an emergency appointment. This appointment was canceled because plaintiff also had a court appearance that same day. On April 23, 2002 defendant Kirchenwitz escorted plaintiff from the Marshal's Office to the district court for his scheduled appearance.

On April 27, 2002 plaintiff submitted a written request for medical attention to defendant Buzick complaining of vision problems. Buzick spoke to the nursing staff who informed her that plaintiff had seen the jail physician and the United States Marshal's office had been notified.

Later that same day plaintiff informed defendant Schroeder that he was having difficulty seeing and had a headache. Schroeder called a nurse who told him plaintiff had a doctor's appointment the next week. Schroeder advised plaintiff of this appointment.

On April 29, 2002 plaintiff asked defendant Sims if he could see a nurse because he felt faint and nauseous. Sims called a jail nurse who said that she would check on him that night. About an

hour later the jail nurse examined plaintiff. She told defendant Sims that plaintiff had a temperature and gave him some Tylenol.

On April 30, 2005 plaintiff was transported by the United States Marshal Service to an ophthalmology appointment at St. Mary's Hospital.

#### MEMORANDUM

Defendants James Schroeder, Sabrina Sims, Jill A. Buzick and Patrick Kirchenwitz move for summary judgment on plaintiff's Eighth Amendment claim. In opposing defendants' motions for summary judgment plaintiff cannot rest on the mere allegations of the pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has submitted no affidavits or evidence that contradict the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Deliberate indifference of a serious medical need violates an inmate's Eighth Amendment rights. Estelle v. Gamble, 429 U.S. 97 (1976). Defendants Schroeder, Sims and Buzick called a nurse each time plaintiff had a medical complaint. They relied on the expertise of the medical staff. Defendant deputies did not ignore plaintiff's requests for medical attention but relayed them immediately to medical staff. The undisputed facts indicate that the deputies were not deliberately indifferent to any of plaintiff's medical needs. Accordingly, defendants Schroeder, Sims

and Buzick are entitled to judgment in their favor as a matter of law. Since their motion for summary judgment will be granted, their third party complaint against Midwest Health Systems, Inc. and Society Insurance for indemnification will be dismissed as moot.

The undisputed facts reflect that defendant Kirchenwitz was not aware of any known serious risk to plaintiff's health. He had been advised that plaintiff's cancelled ophthalmology appointment was not an emergency. Further, there is no evidence that defendant Kirchenwitz was deliberately indifferent to any medical need of plaintiff. Accordingly, defendant Kirchenwitz is entitled to judgment in his favor as a matter of law.

Defendants Nurse Joyce, C. Vaseral and J. Peterson will be dismissed without prejudice because they could not be served with the summons and complaint at the address provided by plaintiff.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that the motions for summary judgment of defendants James Schroeder, Sabrina Sims, Jill Buzick and Patrick Kirchenwitz are GRANTED.

Cramer v. Schroeder, et al., 05-C-311-S

IT IS FURTHER ORDERED that the third party complaint of defendants Schroeder, Sims and Buzick is DISMISSED as moot.

IT IS FURTHER ORDERED that defendants nurse Joyce, J. Peterson and C. Vaseral are DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants James Schroeder, Sabrina Sims, Jill Buzick and Patrick Kirchenwitz against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 20<sup>th</sup> day of September, 2005.

BY THE COURT:

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JOHN C. SHABAZ  
District Judge