

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

GERARD M. MOCNIK,

Plaintiff,

v.

DR. WILLIAMS,

Defendant.

ORDER

06-C-191-C

In this civil action for monetary relief under 42 U.S.C. § 1983, plaintiff Gerard M. Mocnik, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, contends that defendant Dr. Williams, a former prison doctor, sexually assaulted him on September 10, 2004, in violation of his rights under the Eighth Amendment. Trial is scheduled for April 2, 2007.

Now before the court is plaintiff's request for a writ of habeas corpus ad testificandum for proposed witness Mickey Crotton, one of plaintiff's fellow inmates at the Stanley Correctional Institution. In his affidavit, Crotton avers that on September 10, 2004, at approximately 12:45 p.m., he approached plaintiff, who was sitting in the prison dayroom looking "upset and distressed, almost to the point of being disoriented." When Crotton

asked plaintiff what was wrong, plaintiff stated the doctor had “d[one] something to him.” A moment later, unprompted, plaintiff stated, “The dude put his fingers in my ass!” According to Crotton, plaintiff then left, stating that he needed to find Ms. Webster, the manager of his prison unit.

In a case that is all about credibility, Crotton’s testimony is relevant. His observations regarding plaintiff’s demeanor on the afternoon of September 10, 2004 will be admissible because they are based on his personal knowledge. Although Judge Crabb will have to decide whether Crotton will be allowed to testify regarding the statements plaintiff made to him, I note that those statements may well be admissible as “excited utterances” under Fed. R. Evid. 803(2). Therefore, plaintiff’s request for a writ of habeas corpus for Crotton will be granted.

ORDER

IT IS ORDERED that plaintiff’s request for a writ of habeas corpus ad testificandum for inmate Mickey Crotton is GRANTED. The clerk of court shall issue a writ of habeas

corpus ad testificandum for Crotton to appear at the trial beginning April 2, 2007.

Entered this 6th day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge