

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

LUIS VASQUEZ,

Plaintiff,

v.

DEBRA GEMPELER, WAYNE BAUER,
JEFF MEYER; SCOTT ROSS,
JASON ROSENTHAL, JOSEPH KEYS,
BILLY PONTOW, BRETT MIERZEWSKI
and JEFFREY ROLLINS,

Defendants.

ORDER

06-cv-743-bbc

In an order dated October 7, 2008, I denied plaintiff's request for subpoenas (for two unincarcerated witnesses) and writs of habeas corpus ad testificandum (for two incarcerated witnesses) for his November 3, 2008 trial regarding defendants' alleged use of excessive force against him. I gave him until October 15, 2008, to submit new requests that corrected the deficiencies identified in the October 7 order. Plaintiff has responded to the order with a new request that is pared down to one incarcerated witness and one unincarcerated witness.

With respect to the incarcerated witness, I told plaintiff in the October 7 order that I could not determine from plaintiff's description whether Jones would provide testimony that is relevant to the case. In his new request, plaintiff says that Jones will testify that he overheard comments made by defendants when they used a taser gun on him in November 2006.

Specifically, he will testify that he overheard comments such as, “Dude, did you hear him scream like a girl?” and “Hey, when we shot him, it looked like his eyes were about to pop out of his eye sockets.” This is relevant testimony because it supports a finding that defendants used the taser for the purpose of harming plaintiff rather than to restore order. I will direct the clerk of court to issue a writ of habeas corpus ad testificandum for Jason Jones at Waupun Correctional Institution.

The unincarcerated witness is defendant Wayne Bauer. In the October 7 order, I told plaintiff that he should first determine whether Bauer would agree to appear at trial voluntarily. Plaintiff says that he sent defense counsel a letter regarding this issue on September 19, asking for a response by September 29, but that counsel has failed to respond.

Plaintiff is entitled to a subpoena but there is no reason to issue one if defendant Bauer intends to appear at trial without one. Accordingly, counsel for defendant Bauer may have until October 20, 2008, to inform plaintiff and the court whether he will attend trial voluntarily.

ORDER

IT IS ORDERED that

1. Plaintiff’s petition for a writ of habeas corpus ad testificandum for prisoner Jason A. Jones at Waupun Correctional Institution is GRANTED. The clerk of court is directed to issue the writ for Jones to be brought to the courthouse Monday, November 3, to arrive no later than 9:00 am.

2. Counsel for defendant Bauer is directed to inform plaintiff and this court by October

20, 2008, whether Bauer will attend trial voluntarily. If defendant Bauer will not attend trial without a subpoena, he must inform plaintiff of the number of miles he will be driving to the court so that plaintiff may tender the appropriate mileage fee when submitting the subpoena to the marshals.

Entered this 16th day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge