

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

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LUIS A. RAMIREZ,

Plaintiff,

v.

CURTIS DELONG, MARK ISAACSON
and VICTOR TRIMBLE,

Defendants.

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ORDER

09-cv-314-bbc

This prisoner civil rights case is scheduled for trial on August 23, 2010. The question for trial is whether defendants Curtis Delong, Mark Isaacson and Victor Trimble, correctional officers at plaintiff's prison, violated plaintiff's rights under the Eighth Amendment by repeatedly ignoring his requests for medical assistance with respect to methadone withdrawal symptoms and foot pain. Plaintiff has filed a total of three petitions in which he seeks writs of habeas corpus ad testificandum for incarcerated witnesses Albert Schlueter, Randall Weber, Nathan Gillis, Shaun Matz, Damien Green, Julian Andersen, LaMont Walker, Benjamin Biese, William McDougal, Darrin Gruenberg, Arturo Melendez, Eric Check, Damond Cox, Marx David, Dewayne Cox, Victor Jackson, Daniel Scheeler,

Daniel Schleicher and Henry Hosch. Dkt. ##102, 120 and 128. In support of his petitions, plaintiff has executed and filed 20 separate affidavits. Dkt. ##103-16, 121-24 and 129-30. Defendants have opposed all three petitions on the ground that none of the witnesses have personal knowledge of the events at issue in this case. Dkt. ##118 and 133. I agree and will deny plaintiff's petitions for writs of habeas corpus ad testificandum for the incarcerated witnesses.

DISCUSSION

Plaintiff avers that witnesses McDougal, David and Damond Cox attempted to get defendants to help plaintiff when he was going through withdrawal but defendants ignored the pleas of these witnesses and plaintiff for medical assistance. However, defendants have submitted evidence that these three witnesses were not housed with plaintiff in the DS-1 unit of Columbia Correctional Institution at any point between the relevant time period of February 7 and 14, 2007. Plaintiff did not refute this evidence in his reply. Therefore, McDougal, David and Damond Cox would not be able to testify about their personal observations.

Plaintiff avers that witnesses Schlueter and Weber can testify about their personal experiences with methadone withdrawal at the Columbia Correctional Institution. However, their experiences are irrelevant to the withdrawal that plaintiff allegedly experienced in

February 2007. To the extent that plaintiff wants these witnesses to describe “typical” methadone withdrawal symptoms, such testimony would constitute improper expert opinion testimony under Fed. R. Evid. 701 and 702.

Plaintiff avers that Dewayne Cox worked as a “swamper” (cleaning rooms, showers and hallways) in DS-1 in February 2007 and observed plaintiff suffering from withdrawal symptoms. Specifically, plaintiff avers that Cox “has damaging testimony on the withdrawals I went through and the fact that all 3 defendants knew of the situation, and did nothing.” Dkt. #124. However, defendants have produced evidence that Dewayne Cox stopped working on DS-1 on February 8, 2007, the day before defendants allegedly began ignoring plaintiff’s requests for medical care. Therefore, defendants are correct that any testimony by Cox about defendants’ lack of response to plaintiff’s condition between February 9 and 14, 2007 would be inadmissible hearsay.

I note that it is still possible that Dewayne Cox may have observed plaintiff suffering from withdrawal on February 7 or 8, 2007, just after plaintiff arrived at the Columbia Correctional Institution. However, as stated in the trial preparation order in this case, dkt. #95, the court will not grant a writ of habeas corpus ad testificandum unless plaintiff tells the court what happened, when and where the incident occurred, who was present and how the witness was in a position to see or to hear what occurred. Although plaintiff has explained how Cox was in a position to observe certain events, plaintiff has failed to provide

the court sufficient details concerning the exact date, location, context and description of the events that Cox allegedly witnessed. Therefore, a writ will not be granted for incarcerated witness Dewayne Cox.

Plaintiff seeks to call several witnesses to testify about the lack of response inmates generally get from correctional officers when they ask for medical assistance. He avers that Gillis, Matz, Jackson and Hosch can testify that correctional officers ignore inmate requests to see a doctor and make jokes or merely tell inmates to complete a health services request form. Dkt. ##105-06. As defendants contend, evidence of their other acts or wrongs is not admissible to show their propensity to commit similar conduct. Fed. R. Civ. P. 404(b). Such evidence, however, may be admissible for other purposes, such as to prove motive or absence of mistake or accident. A four-part test is used to determine the admissibility of other bad acts: 1) the other act must establish a matter in issue other than defendants' propensity to commit like conduct; 2) it must be of recent vintage and sufficiently similar to be relevant; 3) there must be a sufficient amount of evidence for the factfinder to conclude that the similar act was committed; and 4) the probative value of the evidence must not be outweighed by the danger of unfair prejudice. Okai v. Verfuth, 275 F.3d 606, 610-11 (7th Cir. 2001).

I agree with plaintiff that the witnesses' testimony is relevant for a purpose other than to show character. Because plaintiff will have to show that defendants were deliberately

indifferent to his serious medical needs and intended to do him harm, evidence that defendants mistreated others similarly shows that it is more likely that the defendants had the same intent toward plaintiff. Davis v. Lofthouse, 2002 WL 32345372, *2 (W.D. Wis. Sep. 5, 2002) (citing Wilson v. City of Chicago, 6 F.3d 1233, 1238 (7th Cir. 1993) (evidence that defendants had previously subjected others to same mistreatment that plaintiff complained of was relevant to show intent when plaintiff's claim was that defendant tortured him in violation of due process); Molnar v. Booth, 229 F.3d 593, 603-04 (7th Cir. 2000) (in discrimination case, evidence that defendant sexually harassed others previously was relevant to show discriminatory motive)). However, plaintiff has failed to provide sufficient information from which the court could conclude that the similar acts were committed or whether defendants' other acts were of recent vintage and sufficiently similar to the events in February 2007. He avers only that these witnesses "have seen [defendants] refuse medical treatment to many inmates." Dkt. #125 at 2. Plaintiff fails to explain specifically what each witness observed, when and where the incidents occurred, who was present and how the witnesses were in a position to see or to hear what occurred.

Plaintiff avers more specifically that witnesses Andersen, Walker, Biese, Gruenberg, Melendez, Check, Schleicher and Scheeler can testify that one or more of the named defendants have ignored medical requests that either they or other inmates made for their own medical conditions. He avers that Green has been asking for medical assistance for five

and a half months but has not received any help. Dkt. #107. Again, plaintiff has failed to identify specifically what happened with each witness, when and where the incident occurred, who was present and how the witness was in a position to see or to hear what occurred. In a reply brief, plaintiff attempts to explain the medical conditions that some of the witnesses suffer from. Dkt. #125. However, he still has not identified the details of the specific incidents in which defendants allegedly ignored the witnesses' requests for medical assistance. Without this information, the court cannot determine whether issuing a writ is appropriate. Accordingly, plaintiff's petitions for a writ of habeas corpus testificandum will be denied with respect to these witnesses as well.

ORDER

IT IS ORDERED that plaintiff Luis Ramirez's petitions for writs of habeas corpus ad testificandum, dkt. ##102, 120 and 128, are DENIED.

Entered this 28th day of July, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge