

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

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LAMONT D. WALKER,

Plaintiff,

v.

RYAN ARMSON, JAMES KOTTKA,  
LIEUTENANT KELLER, DYLAN RADTKE,  
and DALIA SULIENE,

Defendants.

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ORDER

10-cv-313-slc

*Pro se* plaintiff Lamont Walker is proceeding to trial on August 22, 2011 on his Eighth Amendment claim that defendants Armson and Kottka denied him his asthma inhaler when he was having breathing problems sometime prior to July 7, 2009. On July 21, 2011, the court received Walker's list of trial witnesses for whom he seeks subpoenas: incarcerated witnesses Luis Ramirez and William McDougal and Correctional Officer C. Alan Pulver. Dkt. 96. Walker avers that he does not know where Ramirez and McDougal currently are incarcerated. Dkt. 97. He avers that Pulver is responsible for distributing property in the segregation unit at the Columbia Correctional Institution. *Id.*

In support of his motion, plaintiff has submitted affidavits from Ramirez and McDougal, who both aver that they observed at least one of the defendants deny Walker his inhaler on one or more occasions. Ramirez avers that he observed this behavior on July 7, 2009 (after the incident in question in this case), and McDougal avers that he made such observations on multiple occasions. Because it appears that inmates Ramirez and McDougal may have relevant testimony to offer at trial, even if only as rebuttal or impeachment witnesses, I will grant Walker's requests for writs of habeas corpus ad testificandum for them. However, I want to make it clear to defendant that the court's issuance of the subpoenas does not mean that

Ramirez and McDougal automatically will be allowed to testify at trial. That determination will depend on a variety of factors that will become clearer at trial and the determination will be governed by the Federal Rules of Evidence.

Walker does not explain in his motion or affidavit whether unincarcerated witness Pulver would testify voluntarily, what testimony Pulver would give or the personal knowledge that Pulver has concerning defendants' alleged denial of Walker's inhaler. Further, none of this information is clear from the court record in this case.

In this court's June 30, 2011 trial preparation order, Walker was provided the procedure for calling unincarcerated witnesses. Dkt. 86, at 15-16. The procedure provides that for a witness who refuses to testify voluntarily, Walker must include in his affidavit information that he has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness or that he needs assistance from the United States Marshal to serve the subpoena and is prepared to give the marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage. I cannot waive the fee for a subpoena. *McNeil v. Lowney*, 831 F.2d 1368, 1373 (7<sup>th</sup> Cir. 1987). Because Walker has not provided the necessary information, his request for the issuance of a subpoena for Pulver will be denied.

## ORDER

IT IS ORDERED that:

(1) Plaintiff Lamont Walker's requests for writs of habeas corpus ad testificandum for inmates Luis A. Ramirez (#244212) and William L. McDougal (#462547), dkt. 96, are

GRANTED. The Clerk of Court is directed to issue a writ of habeas corpus ad testificandum for the attendance of Ramirez and McDougal at trial beginning on August 22, 2011. They should arrive at the courthouse no later than 8:00 a.m.

(2) Walker's motion for issuance of a subpoena for non-incarcerated witness C. Alan Pulver, dkt. 96, is DENIED.

Entered this 26<sup>th</sup> day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge