

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

GLENN T. TURNER,

Plaintiff,

v.

WILLIAM SWIEKATOWSKI,

Defendant.

ORDER

11-cv-708-bbc

Trial is scheduled for November 17, 2014, on pro se prisoner Glenn Turner's claim that defendant William Swiekatowski violated his Eighth Amendment rights by attempting to incite other prisoners to assault plaintiff. Now before the court is plaintiff's petition for writs of habeas corpus ad testificandum for four potential prisoner witnesses. Dkt. #161. (Plaintiff submitted numerous motions in limine as well, even though his deadline for those motions is October 10, 2014. Dkt. ##141-60. I will address the motions after defendants' deadline for responding, which is October 24, 2014.)

I am granting the petition with respect to prisoners De'Carlos Young and Benny Choice because both of them submitted affidavits in which they agreed to testify for plaintiff and averred that defendant attempted to incite them to commit acts of violence against plaintiff. Dkt. ##162 and 163. However, I am denying the petition with respect to prisoners Michael Johnson and Anthony Smith because they do not have any personal

knowledge of statements that defendant made. Rather, Johnson and Smith aver that *other prisoners* told them about conversations those other prisoners had with defendant. Therefore, Johnson's and Smith's statements are hearsay under Fed. R. Evid. 801 and are not admissible at trial. United States v. Boyce, 742 F.3d 792, 800 (7th Cir. 2014) ("One reason that hearsay normally is inadmissible . . . is that it often is no better than rumor or gossip, and another, which is closely related, is that it can't be tested by cross-examination of its author.").

ORDER

IT IS ORDERED that

1. Plaintiff Glenn Turner's petition for writs of habeas corpus ad testificandum, dkt. #161, is GRANTED with respect to De'Carlos Young and Benny Choice and DENIED with respect to Michael Johnson and Anthony Smith.

2. The clerk of court is directed to issue writs of habeas corpus ad testificandum for Young and Choice for November 17, 2014, at 8:00 a.m. Plaintiff says that Young is housed at the Wisconsin Secure Program Facility and that Choice is housed at the Waupun

Correctional Institution.

Entered this 26th day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge