

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| TIMOTHY PRICE, AIS # 172825, | ) |                                 |
|                              | ) |                                 |
| Plaintiff,                   | ) |                                 |
|                              | ) |                                 |
| v.                           | ) | CIVIL ACTION NO.: 2:12cv567-WHA |
|                              | ) | [WO]                            |
| SGT. CEDRIC SMITH,           | ) |                                 |
|                              | ) |                                 |
| Defendant.                   | ) |                                 |

**ORDER SETTING EVIDENTIARY HEARING**

In this 42 U.S.C. § 1983 action, Plaintiff Timothy Price (“Price”), a state inmate, alleges that defendant Sergeant Cedric Smith physically assaulted him when he was incarcerated at the Bullock Correctional Facility, in Union Springs, Alabama.<sup>1</sup> According to Price, defendant “Smith used profane, abusive and threatening language in communication with Plaintiff Price and assaulted him on April 17, 2011, and refused to allow him to see a nurse to have a body chart perform (sic) and told Plaintiff Price to sign up for a sick call. Plaintiff (sic) Price signed up for sick call and saw the doctor for an injury to his ear that was caused by Defendant C. Smith.” (Doc. # 1, Compl. at 3). Defendant Smith denies that he used any force at all against Smith. (Doc. # 17 at Ex. A). Suffice it to say, the defendant’s denial of Smith’s assertions creates genuine disputes of fact necessitating an evidentiary hearing on this claim of excessive force. None of the parties demanded a jury trial. Accordingly, upon consideration of the pleadings in this case, and for good cause, it is

ORDERED that

1. An evidentiary hearing be and is hereby set for April 27, 2015, at 10:00 a.m. in Courtroom 4B in the United States Courthouse Complex, One Church Street,

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<sup>1</sup> Price is currently incarcerated at Donaldson Correctional Facility.

Montgomery, Alabama.

2. WITNESSES.

(a) All parties shall file a witness list at least **20 days** before the evidentiary hearing. Witnesses not on the list will not be heard.

(b) Cases Proceeding In Forma Pauperis. If the plaintiff desires to procure attendance of witnesses by writ or subpoena, he shall file and serve – not later than 20 days before the evidentiary hearing – a witness list containing the names, AIS number where applicable and addresses of all witnesses – whether a subpoena is sought or not – (inmate or civilian status) and a brief statement of the expected testimony of each witness, whether a subpoena is sought or not. M.D. ALA. LR 45.1(b). The plaintiff should be specific in stating the witnesses' expected testimony, because if their testimony is not material or is simply repetitive the court may in its discretion decline to order the subpoena of the witness. *See Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975).

Whether the witness is subpoenaed by a pauper or not, Rule 45(c) requires that your subpoena must be accompanied by an attendance fee (\$40.00 per day), a lodging fee (\$83.00 per day) and meal allowance (\$46.00) if overnight stay is required, and actual expenses of a common carrier or mileage (57.5¢ per mile each way), or it need not be obeyed. The witness will be so informed by the subpoena. It is the responsibility of the party requesting the subpoena to provide that money to the clerk's office for tender with the subpoena.

(c) Subpoena by Non-Paupers. Subpoenas may be served in accordance with FED.R.CIV.P. 45(b). If service by the United States Marshal is requested, the subpoena must be filed not less than 14 calendar days prior to the date of the evidentiary hearing and must contain the complete name and address of the witness. M.D. ALA. LR(a)(1).

3. Production of Plaintiff. The persons having custody of the plaintiff shall produce the plaintiff at the evidentiary hearing.

Done this 17th day of March, 2015.

/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE