

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

CORNELIUS MARQUEL SMITH

PLAINTIFF

V.

No. 3:08CV00153 - BD

MIKE ETTER

DEFENDANT

ORDER

This matter is scheduled for a Bench Trial on Tuesday, September 15, 2009, at 9:30 a.m. in Courtroom 324, United States Courthouse, 615 South Main Street, Jonesboro, Arkansas. Plaintiff Cornelius Marquel Smith is currently incarcerated at the Craighead County Detention Facility in the custody of the Sheriff. Defendant Mike Etter is a correctional officer at the Craighead County Detention Facility. Defendant is represented by JaNan Arnold Davis and Jason E. Owens, Rainwater, Holt & Sexton.

The Craighead County Sheriff is directed to ensure Mr. Smith's appearance at trial on September 15, 2009. In that regard, counsel for Defendant shall provide timely notice of this Order to the Sheriff.

Plaintiff has moved for the issuance of subpoenas for witnesses Johnny James, Kitaka Lauderdale, and Willis Hendrix. (Docket entry #62) He also seeks an order requiring the Defendant to produce a video tape from the date of the incident giving rise to this lawsuit. (#62) Plaintiff's motion (#62) is GRANTED IN PART, and DENIED IN PART.

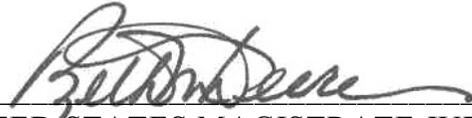
In his motion, Plaintiff states that Johnny James, Kitaka Lauderdale, and Willis

Hendrix witnessed the incident at issue in the lawsuit and requests that they be subpoenaed to attend the trial. These individuals are listed on Plaintiff's witness list that he filed with the Court (#61). Plaintiff's request for witness appearances is GRANTED IN PART. The Arkansas Department of Correction is hereby directed to ensure the appearances of Willis Hendrix, ADC # 143598, and Kitaka Lauderdale, ADC # 143067, currently housed at the Pine Bluff Unit of the ADC, as witnesses for trial on September 15, 2009, in Jonesboro, Arkansas. A copy of this Order has been forwarded to Ms. Lyn Bennett at the ADC. Plaintiff also proposes to call as witnesses at trial Catherine Rena Smith and Johnny James. These proposed witnesses are disallowed as it appears their testimony will be either unnecessary or redundant to expected testimony of other witnesses.

Plaintiff also lists Jeremy Sparks, an employee of the Craighead County Detention Center, as a proposed witness. Counsel for Defendant is directed to ensure the appearance of Mr. Sparks as a witness for trial.

With regard to Plaintiff's requests for production of a video tape, Defendant Etter responded to Plaintiff's motion and advised that any such video was lost during a system-wide crash and cannot be retrieved (#65). Accordingly, Defendant Etter will be unable to provide the requested material. The Court cannot order the Defendant to produce something that no longer exists. Accordingly, this request is DENIED.

IT IS SO ORDERED this 9th day of September, 2009.

A handwritten signature in black ink, appearing to read "B. J. [unclear]", written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE