

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

JESSE LEE GARRETT,  
ADC #656385

PLAINTIFF

v.

4:12CV00230-JLH-JTK

SGT. ANDREWS, et al.

DEFENDANTS

**ORDER**

In anticipation of the Evidentiary Hearing scheduled on August 21, 2013, in Little Rock, Arkansas, Plaintiff has submitted a Witness List (Doc. No. 119) requesting eleven witnesses. In response, Defendant states that four of the witnesses (Johnny Johnson, James Britt, Eric Kennedy, and Chris Smith) are no longer incarcerated at the Faulkner County Detention Center (Jail), and therefore, Defendant cannot ensure their presence (Doc. No. 127). In addition, the presence of requested witness Dr. Garry Stewart cannot be confirmed, because of hospital rounds and scheduled patient appointments, and the presence of David Hall cannot be ensured because he is no longer employed at the Jail. Id. Defendants state that requested witnesses Andrews, Randall, Winters and Flowers will be present at the hearing. Id.

Having performed a careful review of Plaintiff's proposed witness list, the Court makes the following findings:

**A. Witnesses Permitted**

The following witnesses are permitted:

- 1) Johnny Johnson,
- 2) Gary Andrews
- 3) Darrell Flowers
- 4) Patricia Winter

5) John Randall

The Clerk of the Court shall issue a subpoena directing the appearance of the following witness at the August 21, 2013, hearing at 9:30 a.m., United States District Court, 600 W. Capitol Avenue, Courtroom 4C, Little Rock, Arkansas 72201: Johnny Johnson, 74 W.Chrysal Hill Road, Greenbrier, AR 72058 (primary address); or 475 E. Robinson St., Lot #159, Conway, AR 72034 (secondary address). The United States Marshal is directed to serve these subpoenas without payment of costs or fees therefore. Pursuant to 28 U.S.C. § 1915, the Court will issue subpoenas for Plaintiff's witness, but the Court cannot guarantee the appearance of a witness. Rule 45(b) of the Federal Rules of Civil Procedure requires service to be accomplished by "tendering the fees for 1 day's attendance and the mileage allowed by law." Fed.R.Civ.P. 45(b)(1). 28 U.S.C. § 1915(a) allows for the waiver of prepayment of "fees or costs," but it does not authorize federal courts to waive or order payment of witness fees for a civil litigant proceeding in forma pauperis. United States Marshals Service v. Means, 741 F.2d 1053, 1056-57 (8th Cir. 1984). Accordingly, the Court does not provide any payment of witness fees and Plaintiff is forewarned that, unless he tenders the \$40 witness fee and payment for mileage, the law does not permit the Court to compel a witness to testify.

Defendant shall ensure the presence of requested witnesses Gary Andrews, Darrell Flowers, Patricia Winter, and John Randall.

**B. Witnesses Excluded**

The following witnesses are excluded at this time:

- 1) James Britt,
- 2) Eric Kennedy
- 3) Chris Smith

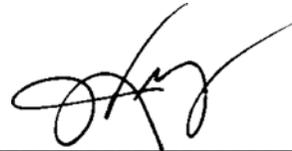
- 4) Kervin Hinton
- 5) Dr. Garry Stewart
- 6) Detective David Hall

James Britt, Eric Kennedy, and Chris Smith are presently incarcerated at three different units of the ADC, and their proposed testimony does not relate to the March 12, 2012 incident at issue in Plaintiff's Complaint. Kervin Hinton is no longer incarcerated at the Jail (Doc. No. 127), and Plaintiff does not provide an additional address for him. The proposed testimony of Dr. Garry Stewart appears to be the same as that of witness Patricia Winter, and therefore, he will not be required to attend. Finally, Detective Hall is no longer employed at the Jail, and Plaintiff does not provide an additional address for him.

The Arkansas Department of Correction shall ensure the attendance of Plaintiff Jesse Lee Garrett, together with his medical and institutional files, at the August 21, 2013 Evidentiary Hearing.

The Clerk of the Court shall forward a copy of this Order to the Arkansas Department of Correction Central Transportation/Medical Services, 6814 Princeton Pike, Pine Bluff, AR 71602.

IT IS SO ORDERED this 17<sup>th</sup> day of July, 2013.



---

JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE