

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**JAMES CHARLES FUDGE**

**PLAINTIFF**

**VS.**

**CASE NO. 5:03CV000461 JMM**

**J. T. BANKS, ET AL.**

**DEFENDANTS**

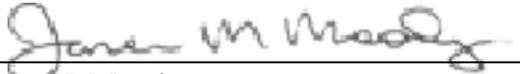
**ORDER**

In defendants' response to plaintiff's January 6, 2009 Amended Witness List defendants objected to plaintiff's use of inmate Bobby Green as a witness because Green was identified as a witness only a week before trial and defendants objected to plaintiff calling inmate Antonio Ellis due to Ellis's previous testimony which resulted in a mistrial.

It is the Court's practice to allow any witness to testify at trial who has been identified, upon request, during discovery. Here, even though the defendants did not specifically make a discovery request for plaintiff's witnesses, Federal Rule of Civil Procedure 26's requirements regarding witnesses and the Court's multiple Scheduling Orders dating back to 2005 will suffice, in this case, to satisfy the Court's practice regarding witnesses and discovery.

The Court holds that inmate Green will not be allowed to testify and that a decision on whether inmate Ellis should be allowed to testify will be made on the day of trial.

IT IS SO ORDERED THIS 8 day of January, 2009.

  
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James M. Moody  
United States District Judge