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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COLIN M. RANDOLPH,
Plaintiff,
v.
B. NIX, et al.,
Defendants.

CASE NO. 1:12-cv-00392-LJO-MJS (PC)
**ORDER GRANTING MOTION FOR THE
ATTENDANCE OF INCARCERATED
WITNESS AT TRIAL**
(ECF No. 112)

I. PROCEDURAL HISTORY

Plaintiff Colin M. Randolph, a state prisoner proceeding in forma pauperis, filed this this civil rights action pursuant to 42 U.S.C. § 1983 on March 15, 2012. On February 17, 2016, counsel was appointed to represent Plaintiff. (ECF No. 99.) The action proceeds on Plaintiff's second amended complaint against Defendant J. Akanno for violating Plaintiff's right to adequate medical care under the Eighth Amendment of the United States Constitution. The events at issue occurred at Kern Valley State Prison in Delano, California, and arise out of Defendant Akanno's alleged delay in providing Plaintiff with a lower bunk as an accommodation for his vision and mobility impairments. Trial is set for August 23, 2016 before U.S. District Judge Lawrence J. O'Neill.

Before the Court is Plaintiff's motion for the attendance of an incarcerated witness at trial. (ECF No. 112.) Defendant filed a response (ECF No. 116), and Plaintiff filed a reply (ECF No. 119). The matter is submitted.

1 **II. ARGUMENTS**

2 Plaintiff seeks to secure the attendance of Dupriest Jermaine Green, CDCR
3 Number T-12804. Green allegedly was Plaintiff's cell mate during the time Plaintiff was
4 under Defendant's care. He witnessed Plaintiff's fall from an upper bunk, injuries
5 stemming therefrom, and the effect of those injuries on Plaintiff's life. Green previously
6 provided a declaration regarding Plaintiff's fall and injuries; however, he has not been
7 contacted regarding his willingness to provide testimony at trial. He is the only
8 eyewitness to Plaintiff's injury.

9 Defendant does not object to Green's testimony but asks that Green testify
10 through videoconference from Kern Valley State Prison. Defendant points out that Green
11 is serving a sentence of life with the possibility of parole for the offenses of robbery and
12 assault with a semi-automatic weapon. He has incurred eight disciplinary violations in
13 the past five years resulting in loss of credits. Furthermore, permitting Green to testify
14 through videoconference would alleviate the costs of transporting him to trial.

15 Plaintiff responds that Green should be permitted to testify in-person at trial, and
16 the benefits of doing so greatly outweigh security risks and costs. He points out that
17 Defendant has not shown that Green's disciplinary proceedings involved acts of
18 violence. Moreover, Green's convictions are more than fifteen years old and the costs of
19 transporting him to Fresno for trial are relatively low.

20 **III. LEGAL STANDARD**

21 The Court considers the following factors in determining whether an inmate
22 should be permitted to attend trial in person:

- 23 (1) whether the prisoner's presence will substantially further
24 the resolution of the case; (2) security risks presented by the
25 prisoner's presence; (3) the expense of the prisoner's
26 transportation and safekeeping; and (4) whether the suit can
 be stayed until the prisoner is released without prejudice to
 the cause asserted.^[1]

27 Wiggins v. Alameda Cnty., 717 F.2d 466, 468 n.1 (9th Cir.1983) (citation omitted).

28 ¹ The Court has no information regarding Mr. Green's release date and thus this factor is not considered.

1 **IV. DISCUSSION**

2 Here, as to the first factor, there is no dispute that Green’s testimony is relevant to
3 this case.

4 As to the second factor, security risks are inherent in the presence of any
5 prisoner in Court. The Court notes that violent offenders present in Court on a regular
6 basis, and regularly do so without incident. The question, then, is whether Mr. Green
7 presents a heightened security risk beyond the mere fact that he is a prisoner. Foster v.
8 Enemoh, No. 1:08-cv-01849-LJO-SKO-PC, 2013 WL 6799177 at *2 (E.D. Cal.
9 December 20, 2013). Mr. Green’s conviction is more than fifteen years old and the
10 nature of his disciplinary offenses is unknown. The Court does not find sufficient basis to
11 conclude that Mr. Green presents such an excessive risk as to require deviation from the
12 norm of in-person testimony. See id.

13 Finally, Mr. Green is incarcerated at a prison “close enough to the courthouse that
14 [his] transportation would present no exceptional issues from a cost standpoint.” Id.

15 In-person witness testimony is the rule and creating an exception to that rule may
16 only be permitted (1) for good cause, (2) in compelling circumstances, and (3) with
17 appropriate safeguards. Fed. R. Civ. P. 43(a). For the reasons stated above, the Court
18 does not find compelling circumstances weigh in favor of deviating from Rule 43

19 **V. CONCLUSION AND ORDER**

20 Plaintiff’s motion for the attendance of incarcerated witness is HEREBY
21 GRANTED. At the appropriate time, the Court will issue a writ of habeas corpus ad
22 testificandum directing the production of Dupriest Jermaine Green, # T-12804, for trial.

23
24 IT IS SO ORDERED.

25 Dated: June 6, 2016

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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