IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES JERMAINE DAVIS,

Plaintiff,

v.

ORDER

15-cv-268-slc

MICHAEL MEISNER, *et al.*,

Defendants.

This matter is proceeding with the final pretrial conference on October 16, 2017, at 8:30 a.m., and jury selection and trial on October 16, 2017, at 9:00 a.m. However, because another jury selection is taking place in this court on October 16, I need to push back the schedule so that the final pretrial conference and jury selection and trial will begin in the afternoon. Also, defendants have filed a Motion for the Incarcerated Witnesses to Appear by Video Conference (dkt. 137). Beyond resetting the trial, this order grants defendants' motion in part and modifies the writs for the testimony of Davis's incarcerated witnesses.

First, the final pretrial conference is reset for **October 16, 2017, at 12:30 p.m.**, and the jury selection and trial is reset for **October 16 at 1:00 p.m.**

As to defendants' motion, I previously granted Davis's petitions for writs for five incarcerated witnesses, four appearing in person and one appearing via video conference. (Dkt. 131.) Specifically, I ordered the appearances of: Robert Gant and Curtis Daniels, to be transported from Waupun Correctional Institution, where Davis is incarcerated; Quenton Thompson to be transported from Wisconsin Secure Program Facility (WSPF); Hipolito Claudio Jr. to be transported from Columbia; and Nikko Krohn to appear via video conference. However, defendants now ask that Gant, Daniels, Thompson, and Claudio Jr. appear via video conference

because the transport of these inmates is too costly and cause staffing issues at both Waupun and WSPF.

As to Gant and Daniels, defendants explain that on October 16, Waupun needs to have two additional staff available for medical visits, and transporting Davis himself requires two transport officers and a van. The transport of Gant and Daniels in addition will require a second transport van and two additional transport officers. This will result in the facility having to either hire additional officers on an overtime basis or remove other officers from their assigned posts that day. While transporting these additional witnesses certainly poses an inconvenience, defendants have not represented that inmates at Waupun actually have medical needs on October 16. Nor do defendant represent that Davis has to be transported alone in a van. Therefore, it appears that Davis could travel in the same van with one other inmate in the van as well. With that in mind, I still am going to require Gant and Daniels to appear in person, just on different days. Given that this trial will last at least two days, I will maintain the writ for Gant's appearance on October 16, and I will modify Daniel's writ to order his appearance on October 17.

As to Thompson, defendants explain that Thompson is a high risk inmate whose security status requires three officers to transport him to court. They also explain that Thompson would need to wear an electronic control device during the transport and in court. Defendants ask that he appear via video conference because his in-person appearance would require WSPF to pay three transport officers overtime, and to backfill the positions of the officers that are transporting Thompson. I agree that these costs are quite burdensome. Moreover, Thompson's appearance via video conference appears to serve Davis better: whatever benefit Davis stands

to gain from Thompson's in-person testimony could be counterbalanced by a three-officer security squad shadowing his court appearance. Accordingly, I am granting defendants' motion as to Thompson.

As to Claudio Jr., defendants have not provided any specific reason why I should cause him to appear via video conference, so I am denying their motion as to him but I am modifying his writ to order his appearance on October 17.

For planning purposes, here is how the court will arrange for the appearances of the incarcerated witnesses: Jury selection will take up 60 to 90 minutes of the afternoon on October 16. After the parties' opening statements, Davis will begin putting on his case, beginning with his own direct testimony and cross examination. This should leave time for Davis to present testimony from one more witness on October 16. Based on my reasoning above, and because Gant's testimony appears limited, I will keep his writ for appearance at October 16, and will end the jury's trial day after Gant testifies. On October 17, I will begin the day with Krohn's and Thompson's testimony via video conference so that the court can arrange for a specific start time with each institution. Then Davis can elicit testimony from Daniels and Hipolito Claudio Jr., who each will appear in person. At that point, Davis can present his witnesses as he sees fit.

Davis has a longer list of witnesses and may have a different order in mind, but for trial management purposes, we shall proceed as set forth above. The court and several DOC institutions are devoting a significant amount of time and resources to this lawsuit, and scheduling the incarcerated witnesses in this order prior to trial is necessary for the court and the institutions to ensure that these witnesses can appear on his behalf.

3

ORDER

IT IS ORDERED that:

(1) Defendants' Motion for Incarcerated Witnesses to Appear by Video Conference

(dkt. #137) is GRANTED in part and DENIED in part.

(2) The trial schedule is modified as follows:

      Final Pretrial Conference: October 16, 2017, at 12:30 p.m.

      Jury Selection and Trial: October 16, 2017, at 1:00 p.m.

(3) Davis and his incarcerated witnesses will appear to testify in the following order:

      October 16: Davis (in person), Robert Gant (in person)

      October 17: Nikko Krohn (via video conference), Quenton Thompson (via video conference), Curtis Daniels, Hipolito Claudio Jr.

(4) The clerk of court is directed to amend the writs of Daniels and Claudio Jr. to order

their appearances on October 17, 2017.

      Date: October 6, 2017

                            BY THE COURT:

                            /s/

                            STEPHEN L. CROCKER
                            Magistrate Judge