

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

SAM EDWARD THURMOND, SR.

PLAINTIFFS

V.

No. 4:08CV01792-BD

KARL BYRD, *et al.*

DEFENDANTS

ORDER

Plaintiff has filed a motion for order (docket entry #77) and two motions to compel (#83 and #87). For the following reasons, Plaintiff's motion for order (#77) and his first motion to compel (#83) are DENIED. Plaintiff's second motion to compel (#87) will be GRANTED.

In the motion for order (#77) and the January 7, 2009 motion to compel (#83), Plaintiff requests that Defendants provide him with copies of video surveillance tapes from certain cells within the Faulkner County Detention Facility ("FCDF") from August 11, 2008, until August 18, 2008. Plaintiff states that he attempted to obtain the surveillance videos from Defendants through discovery, but Defendants informed him that the videos were no longer available.

Defendants have responded to Plaintiff's motions. In their response, Defendants explain why the surveillance videos are no longer available for the dates Plaintiff requested. Based upon Defendants' explanation, it appears that the video footage was not erased or deleted in bad faith or in response to the filing of this lawsuit. Rather, the recording systems used by the FCDF regularly "rolls over," recording over previously

recorded footage, based on the limited storage capacity of the hard drive of the system. Because Defendants cannot produce evidence that no longer exists, Plaintiff's motion for order (#77) and his motion to compel (#83) are DENIED.

In his motion to compel filed January 13, 2009 (#87), Plaintiff requests that Defendants respond to outstanding discovery requests, including interrogatories and requests for admissions. Based upon Defendants' response, it appears that Defendants have responded to Plaintiff's requests for production. However, Defendants do not state whether they have responded to Plaintiff's interrogatories and requests for admissions. Defendants are ordered to respond to any outstanding discovery within ten days of the date of this order and to file their responses with the Court. If Defendants have previously responded to all pending discovery, they should so notify the Court within ten days of this order.

Plaintiff's motion to compel (#87) is granted, this 20th day of January, 2009.


UNITED STATES MAGISTRATE JUDGE