

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

BRIAN JUDAH MICHALEK

PLAINTIFF

V.

4:11CV00685-JMM-JTR

PATRICK LUNSFORD, et al.

DEFENDANT

ORDER

Pending before the Court is Plaintiff’s “Motion for Discovery” (docket entry #21) in which he requests the Court to “petition” the videotape of the incident involving the alleged use of excessive force against him in February or March 2011, while he was incarcerated at the Saline County Detention Facility (SCDF).¹

In their Response (docket entry #30), Defendants state that it is not known whether the alleged incident was captured on videotape because the video taken during February and March 2011 was subsequently “overwritten” prior to Plaintiff’s initiating this lawsuit in September 2011, in accordance with the SCDF’s standard practice for eliminating videos after approximately 60 days. In support of their Response, Defendants have filed an affidavit from Sgt. Michael Richards (docket entry #30-1). Sgt. Richards states that, because SCDF records do not show that

¹By previous Order (docket entry #28), the Court directed Defendants: to advise whether the alleged incident was recorded; to advise whether any recording had been preserved; and, if a recording was made but not preserved, to explain in detail what happened to the recording and provide names and job titles of all persons having any knowledge of how the recording was lost or destroyed.

Plaintiff filed a grievance about the alleged incident or requested medical attention, the first time Defendants were made aware of his allegations was upon service of this 42 U.S.C. § 1983 Complaint in September 2011. (*Id.* ¶¶ 4-8.) Sgt. Richards states that: (1) SCDF maintains approximately 78 video cameras in the jail area, which are motion-activated; (2) the recording system has “limited memory availability” and, once the memory availability is used, the system “overrides and records over itself”; and (3) in the pod area where the alleged incident occurred, “the memory capacity [of the video cameras] is approximately 60 days.” Because Plaintiff’s September 2011 Complaint was the first notice of an incident that allegedly occurred in February or March 2011, Sgt. Richards states that “[t]he memory capacity of the video camera had long since been overwritten and the time period was no longer available.” (*Id.* ¶ 9.) Thus, no videotapes from the time period are now available.

Sgt. Richards’ affidavit establishes that any videotapes from the period in question were overwritten pursuant to the normal procedures at the SCDF. Because no videotape or other recording of the alleged incident exists, Plaintiff’s Motion for Discovery (docket entry #21) is DENIED.

DATED THIS 23rd DAY OF January, 2012.


UNITED STATES MAGISTRATE JUDGE