

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

JAMIE SHAWN MCCALL,
ADC #610019

PLAINTIFF

V.

4:14CV00212 SWW/JTR

MATTHEW TUCKER, Patrol Officer,
Conway Police Department, et al.

DEFENDANTS

ORDER

Plaintiff is a prisoner proceeding *pro se* in this § 1983 action. He has recently filed two Motions to Compel, which the Court will address separately.

I. Plaintiff's First Motion to Compel

Plaintiff alleges that, on August 9, 2013, Defendants used excessive force during his arrest and denied him adequate medical care for his injuries. On August 18, 2014, the Court ordered Defendants to preserve, and file under seal, any video recordings of that incident and any photographs that may have been taken of Plaintiff's injuries. *Doc. 22*. The Court also explained that:

If any such video recordings or photographs have been lost, destroyed, or are no longer available (for any reason), Defendants must notify the Court within thirty days and provide a detailed explanation of why that evidence is no longer available and the names of all city employees who had any involvement in the destruction or loss of that evidence. The Court will then promptly schedule a hearing to take testimony from the named city employees concerning how and why the video recordings and photographs were lost or destroyed.

Id. at 1.

On October 2, 2014, Defendants filed a sealed exhibit containing two *photographs* of Plaintiff's injuries, and they provided copies of those photographs to Plaintiff. *Docs. 28 & 33*. However, Defendants did not explain whether any *video recordings* of the August 9, 2013 incident were made, and if so, what became of those recordings.

Since that time, Plaintiff has filed a Motion to Compel requesting copies of any video recordings made of August 9, 2013 incident. *Doc. 31*. Defendants have filed a Response explaining that they have provided Plaintiff with the *photographs* taken of his injuries. *Doc. 33*. However, Defendants still have not explained whether any *video recordings* of the August 9, 2013 incident were made, and if so, what became of those records.

Thus, the Motion to Compel is granted. Defendants must, **within fourteen days of the entry of this Order**, file a Supplemental Response explaining whether any video recordings of Plaintiff's August 9, 2013 arrest and use of force were made. If so, Defendants must file a sealed copy of any such video recordings or explain, as specified in the August 18, 2014 Order, why those video recordings were not preserved for trial.

II. Plaintiff's Second Motion to Compel

On October 20, 2014, Plaintiff filed a Second Motion to Compel asking Defendants to produce: (1) any audio recordings or transcripts of his parole revocation hearing that was conducted at the Conway parole office; (2) information about excessive force and inadequate medical care cases that may have been previously filed by other individual against the Conway Police Department or the Defendants; and (3) any supplements written to the original August 9, 2013 incident report. *Doc. 32*

The items listed in 1 and 2 are irrelevant to the issue in this case *i.e.*, whether Defendants used excessive force *against Plaintiff* and/or failed to provide *Plaintiff* with adequate medical care for his injuries. In contrast, any supplements that may have been written to the original August 9, 2013 incident report are highly relevant. Although they have had the opportunity to do so, Defendants have not filed a Response explaining why they should not be required to provide copies of any such supplements to Plaintiff. *See* Local Rule 7.2 (f) (providing that: “The failure to timely respond to any nondispositive motion . . . shall be an adequate basis, without more, for granting the relief sought in said motion”).

Thus, Plaintiff's Second Motion to Compel is granted, in part. Defendants must, **within fourteen days of the entry of this Order**, provide Plaintiff with copies of any supplements that have been written to the August 9, 2013 incident report.

III. Conclusion

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's First Motion to Compel (*Doc. 31*) is GRANTED, as specified in this Order.

2. Plaintiff's Second Motion to Compel (*Doc. 32*) is GRANTED IN PART, as specified in this Order.

Dated this 2nd day of December, 2014.



UNITED STATES MAGISTRATE JUDGE