

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

HERMAN DAVID EVINS

PLAINTIFF

v.

Civil No. 4:18-cv-4095

CAPTAIN ADAMS, Miller County  
Detention Center ("MCDC"); MRS.  
WATSON, MCDC; and CORRECTION  
OFFICER BROWN, MCDC

DEFENDANTS

**ORDER**

Plaintiff Herman David Evins proceeds in this action *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's Motion to Compel. (ECF No. 38). Defendants have filed a Response in opposition to the motion. (ECF No. 40).

On November 7, 2018, this Court entered an Initial Scheduling Order which set the deadline to complete discovery for March 7, 2019. (ECF No. 24). On February 1, 2019, Plaintiff filed his first Motion to Compel seeking a grievance and video footage. (ECF No. 27). The Court denied Plaintiff's motion because he had not attempted to confer with Defendants prior to filing his motion. (ECF No. 28). In accordance with the Initial Scheduling Order, Defendants filed a Motion to Summary Judgment on March 14, 2019. (ECF No. 29). Plaintiff filed a response to the motion on April 15, 2019. (ECF No. 39).

On April 10, 2019, Plaintiff filed the instant Motion to Compel stating:

...I have asked for all of my 2018 requests and Grievances from Miller County Detention Center and have received only the ones that had nothing to do with this case. I also would like to receive the evidence I asked for on June 6, 2018 which I was denied by Cpt. Adams. (see attached request reference #3,016,638)...

(ECF No. 38). Defendants responded to the motion stating they provided copies of Plaintiff's grievances with their Notice of Disclosures on December 11, 2018 and were unaware of any relevant video or photographs. (ECF No. 40). They also represent that any video that did exist was not preserved and was overwritten in the normal course of the operation of the system at the Miller County Detention Center prior to Plaintiff's first request for the video. *Id.*

Rule 34 provides for the production documents and things within "the responding party's possession, custody or control." Fed.R.Civ.P. 34 (a)(1). Defendants cannot produce video they do not have in their possession or control. Further, Defendants cannot produce what does not exist. In addition, the Court notes Plaintiff's Motion to Compel was filed more than a month after the discovery cut-off date of March 7, 2019 and Defendants state they have provided Plaintiff with copies of his grievances.

Accordingly, Plaintiff's Motion to Compel (ECF No. 38) is **DENIED**.

**IT IS SO ORDERED this 25th day of April 2019.**

*/s/ Barry A. Bryant*

HON. BARRY A. BRYANT  
UNITED STATES MAGISTRATE JUDGE