Moore v. Palmer et al Doc. 137

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

MAURICE MOORE,

Plaintiff,		Case No. 12-cv-14783 Hon. Matthew F. Leitman
v.		
CARMEN PALMER et al.,		
Defendants.		
	/	

ORDER DENYING MOTION TO COMPEL (ECF #129)

Plaintiff Maurice Moore ("Moore") is a former inmate of the Michigan Department of Corrections ("MDOC"). On October 29, 2012, Moore filed this action in which he asserted that MDOC employees at three facilities -- Marquette Branch Prison, Michigan Reformatory, and G. Robert Cotton Correctional Facility - violated his constitutional rights while he was incarcerated. (*See* Compl., ECF #1.) On November 16, 2017, Moore filed a motion to compel discovery against Defendants. (*See* Motion, ECF #129.) Moore specifically "seek[s] the production of (9) specific photographs in their original color format." (*Id.* at Pg. ID 1224.)

The Defendants filed a response to the motion to compel and attached affidavits from employees at the three correctional facilities in question – Marquette Branch Prison, Michigan Reformatory, and G. Robert Cotton Correctional Facility. (See ECF #135; Aff. of Aaron Vroman ("Vroman Aff."), ECF #135-2; Aff. of Jerry

Hoult ("Hoult Aff."), ECF #135-3; Aff. of Kimberly Napier ("Napier Aff."), ECF

#135-4.) In each affidavit, the employee swears under oath that his facility does not

have color versions of the photos identified by Moore. (See Vroman Aff. at ¶3, ECF

#135-2 at Pg. ID 1449 ("After conducting a review of the indicated critical incident

report, I have determined that there are no color photographs attached to that

report."); Hoult Aff. at ¶3, ECF #135-3 at Pg. ID 1453 (same); Napier Aff. at ¶3,

ECF #135-4 at Pg. ID 1457 (same).) Moore has not presented any evidence calling

the affidavits into question or indicating that the requested color photographs do, in

fact, exist.

IT IS HEREBY ORDERED that Moore's motion to compel (ECF #129) is

DENIED because the nine photographs in their original color format do not exist

and therefore cannot be produced.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: January 24, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 24, 2018, by electronic means and/or ordinary

mail.

s/Holly A. Monda

Case Manager

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