

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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ADAM HAGEMAN,

Civil No. 19-3019 (JRT/HB)

Plaintiff,

v.

MORRISON COUNTY; SHAWN LARSON,  
*Morrison County Sheriff*; SCOTT  
MCKISSOCK, *Jail Administrator*; TIM  
BRUMMER, *Jail Programmer*; JASON  
WORLIE, *Sheriff's Officer*; MARK  
DZIEWECZYNSKI, *Officer*; JOAN MUSHEL,  
*Correctional Officer*; JENNIFER ORTH,  
*Correctional Officer*; MIKE WHITLOW,  
*Correctional Officer*; ANDY WALTMAN,  
*Correctional Officer*; ETHAN WISE,  
*Correctional Officer*; and SHANNON  
ANDERSON, *Correctional Officer*,

**MEMORANDUM OPINION AND ORDER  
OVERRULING OBJECTIONS TO  
MAGISTRATE JUDGE ORDER AND  
ADOPTING REPORT AND  
RECOMMENDATION**

Defendants.

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Adam Hageman, OID # 251041, MCF – Lino Lakes, 7525 Fourth Avenue, Lino Lakes, MN 55014, *pro se*.

Michael J. Ervin and Scott T. Anderson, **RUPP ANDERSON SQUIRES & WALDSPURGER PA**, 333 South Seventh Street, Suite 2800, Minneapolis, MN 55402, for defendants.

On April 30, 2021, the Magistrate Judge issued an Order, (Docket No. 90), granting in part and denying in part Plaintiff's Motion to Compel, (Docket No. 79), and a Report and Recommendation ("R&R"), (Docket No. 89), recommending that Defendants' Motion

for Summary Judgment, (Docket No. 55), be denied without prejudice.<sup>1</sup> The Magistrate Judge ordered Defendants to obtain video footage given to Crow Wing County and provide it to Plaintiff in an accessible format by June 1, 2021, (Order at 10), but denied Plaintiff's Motion to Compel with respect to video footage from a jail classroom because such video is outside the scope of the discovery requests, and with respect to video footage from August 21, 2019 because the video no longer exists. (*Id.* at 6–7.)

Plaintiff has filed objections to the partial denial of his Motion to Compel.<sup>2</sup> (Docket No. 91.) Because the Motion to Compel is nondispositive, the Court reviews objected-to portions of the Order for clear error. *See* Fed. R. Civ. P. 72(a). First, Plaintiff disagrees that the video from a jail classroom is outside the discovery requests because he requested all video from all cell block areas and the classroom is located in the upper cell block area. However, Plaintiff's Objections do not specifically contradict Defendant MacKissock's declaration that the jail classroom and cell block are separated by 40 to 50 feet and secured doors. (Decl. Scott MacKissock ¶ 14, May 20, 2021, Docket No. 93.) The Court therefore finds that the Magistrate Judge's decision to distinguish between a cell

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<sup>1</sup> The Magistrate Judge recommended denial without prejudice in light of the discovery that remains to be completed pursuant to the partial grant of Plaintiff's Motion to Compel. (*See* R&R at 8–9.) To allow time for Defendants to produce the video given to Crow Wing County and for Plaintiff to incorporate such video in his response to dispositive motions, the Magistrate Judge ordered an extension of time to file dispositive motions. (Order at 10.)

<sup>2</sup> Neither party has objected to the Magistrate Judge's recommendation that Defendant's Motion for Summary Judgment be denied without prejudice and, as such, the Court will adopt the R&R.

block and the jail classroom is not clearly erroneous and will deny Plaintiff's Objections on this finding.

Second, Plaintiff asserts that video from August 21, 2019 is currently stored on a cloud server and was uploaded by Defendant MacKissock. Therefore, Plaintiff argues, the video is within Defendants' possession, custody, or control and is discoverable pursuant to Federal Rule of Civil Procedure 34(a). Yet Plaintiff has produced no evidence to support his contention that the video sought is currently stored in the cloud or to contradict Defendant MacKissock's declaration stating that there is no additional preserved video from August 21, 2019. (Decl. Scott MacKissock ¶¶ 11–12.) As such, the Court finds that the Magistrate Judge's denial of the Motion to Compel with respect to the August 21, 2019 video footage is not clearly erroneous and will deny Plaintiff's Objections on this point as well.

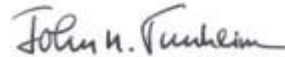
### **ORDER**

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Objections [Docket No. 91] are **OVERRULED**;
2. The Magistrate Judge's Order Denying Plaintiff's Motion to Compel [Docket No. 90] is **AFFIRMED**;
3. The Magistrate Judge's Report and Recommendation [Docket No. 89] is **ADOPTED**;

4. Defendants' Motion for Summary Judgment [Docket No. 55] is **DENIED without prejudice**; and
5. Because Defendants' second Motion for Summary Judgment [Docket No. 101] was filed prematurely before adoption of the Report and Recommendation and denial of Defendants' first Motion for Summary Judgment without prejudice, Defendants shall withdraw and refile their dispositive motions.

DATED: June 30, 2021  
at Minneapolis, Minnesota.



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JOHN R. TUNHEIM  
Chief Judge  
United States District Court