

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMAL WILLIAMS,

Plaintiff,

-against-

AARON JOHNSON,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/6/2021

17-CV-2351 (BCM)

ORDER**BARBARA MOSES, United States Magistrate Judge.**

This action, in which plaintiff seeks damages for wrongful prosecution and denial of the right to a fair trial, is scheduled for a bench trial commencing January 25, 2021. (Dkt. No. 59.) By letter-motion dated December 30, 2020, plaintiff informed the Court that in light of a certain video produced by defendant one day earlier – the content of which would substantially undercut plaintiff's claims – plaintiff intended to seek (i) the dismissal of this action with prejudice pursuant to Rule 41(a)(2), and (ii) discovery sanctions against defendant, pursuant to Rule 37(d), for his failure to produce the video during the discovery period. Pl. Ltr. (Dkt. No. 70) at 1, 2.

In a responding letter, also dated December 30, 2020, defendant joined the motion to dismiss but opposed the motion for sanctions. Defendant asserted that plaintiff was well aware of the video because it was "recovered from plaintiff's own public Facebook page prior to the underlying incident in this action," and that, in any event, "previous defense counsel," who deemed the video "pure impeachment evidence that was not responsive to plaintiff's discovery requests," did not "intentionally withhold discoverable evidence." Def. Ltr. (Dkt. No. 72) at 1, 2.

In a reply letter dated January 4, 2021, plaintiff challenges defendant's factual assertions about the provenance of the video, noting that it is not mentioned in any of the "police paperwork and discovery produced in the criminal case." Pl. Reply Ltr. (Dkt. No. 73) at 1.

No separate motion papers having been filed, the Court construes plaintiff's December 30

letter as his motion to dismiss and for sanctions, and deems the motions fully briefed.

The Court has already adjourned the parties' January 4, 2021 deadline for submitting their joint pretrial order and related materials. (Dkt. No. 71.) The Court hereby VACATES the remainder of the parties' pretrial schedule; VACATES the January 25, 2021 trial date, and ORDERS the parties to appear by telephone on **January 15, 2021, at 10:00 a.m.** (the same time as the previously-scheduled final pretrial conference) for argument on the motions to dismiss and for sanctions. At that time, the parties shall call **(888) 557-8511** and enter the access code **7746387**.

Please treat the conference as you would a public court appearance. If a conference or hearing in another matter is ongoing, please be silent (mute your line) until your case is called.

In advance of the argument, and no later than **January 12, 2021**, the parties shall file a joint letter in which lists (without argument) each discovery request (including, if applicable, deposition questions) that, in either party's view, required the opposing party to disclose the video. Each such request, together with its response, if any, shall be attached as an exhibit to the joint letter. Additionally, the parties shall submit a copy of the video in question, preferably by uploading it to the internet and providing a link in the joint letter. Alternatively, the parties may (without argument) email the video file to Moses_NYSDChambers@nysd.uscourts.gov.

Dated: New York, New York
January 6, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge