

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEWIS EDWARD BYRD III,

Plaintiff,

v.

BRANDON ARENZ,

Defendant.

ORDER

17-cv-191-jdp

Pro se plaintiff Lewis Edward Byrd III is proceeding on a Fourth Amendment excessive force claim against defendant Brandon Arenz. He alleges that Arenz shot at him 11 times and broke his arm during an arrest. Arenz has moved for summary judgment. Dkt. 23. Byrd has not yet responded to that motion. He asks me to compel Arenz to respond to his discovery requests. Dkt. 61. I will deny his request.

Byrd asks me to compel Arenz to produce seven items that he says Arenz claims not to have: (1) photos of Byrd's car, which was involved in the incident; (2) body camera video of the arrest; (3) accident reports and "3-0 scans" concerning the arrest; (4) "firearm recertification requirements for state of Wisconsin Police officers"; (5) Arenz's psychiatric evaluation reports; (6) Arenz's firearm certifications; and (7) documents concerning Arenz's resignation from the City of Hillsboro Police Department. *Id.* at 1. Arenz says he's given Byrd everything he has, and points out that some of these items may be available from other sources, such as the Monroe County Sheriff's Office or the Wisconsin State Highway Patrol. (Arenz also complains that Byrd never asked for items 4 and 5 before, but he says that regardless, he doesn't possess any material responsive to the new requests.)

Byrd says he finds it “hard to believe” that these items don’t exist. *Id.* at 2. But the question is not whether the items exist but whether they are in Arenz’s possession, custody, or control. Arenz says they aren’t, and Byrd has given me no reason to doubt that. I can’t compel someone to produce something they don’t have, so I will deny Byrd’s motion. I encourage Byrd to use the discovery tools available to him to gather the materials he needs. Specifically, Byrd may issue subpoenas under Federal Rule of Civil Procedure 45 requesting the production of documents from non-parties such as the Monroe County Sheriff’s Office and the Wisconsin State Highway Patrol.

ORDER

IT IS ORDERED that plaintiff Lewis Edward Byrd III’s motion to compel production of discovery, Dkt. 61, is DENIED.

Entered April 3, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge