

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

LEIGHTON DWIGHT LINDSEY,

Plaintiff,

v.

GREGORY TRATTLES, JOSEPH CHICANOWICZ,
DYLAN RADTKE, CAPTAIN SALTZER and RYAN
ARMSON,

Defendants.

ORDER

10-cv-385-bbc

Plaintiff Leighton Lindsey was allowed to proceed on his claims that defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz violated his right to be free from cruel and unusual punishment under the Eighth Amendment by using excessive force against him and that defendant Dylan Radtke violated his right to adequate medical treatment under the Eighth Amendment by exhibiting deliberate indifference to his serious medical need. Now before the court is plaintiff's motion to compel discovery, dkt. 31.

Plaintiff moves to compel defendants to answer his first set of interrogatories. Defendants' counsel responds that due to a calendaring error, the date for responding to plaintiff's interrogatories was left off her calendar. When the error was brought to her attention, she immediately undertook to obtain responses and will mail them to plaintiff no later than January 13. Because defendants will respond to plaintiff's interrogatories, his motion to compel will be denied as moot.

As defendants' counsel points out, if plaintiff had brought this to her attention before filing a motion to compel, the mistake would have been caught sooner and court intervention would have been unnecessary. If there are any discovery problems in the future, plaintiff must contact defendants' lawyer first and then seek court relief only if he cannot work things out.

Also, the court notes that plaintiff sent a letter to the court requesting that a copy of the videotape of the January 28, 2010 incident be sent to the institution for his review. (Dkt. 35). Because the court does not have this videotape, it will consider plaintiff's letter a request for the defendants to produce the videotape for plaintiff to view. Pursuant to Fed. R. Civ. P. 34(b)(2). Defendants have thirty days from the date they received a copy of the letter to respond to plaintiff's request.

ORDER

IT IS ORDERED that plaintiff's motion to compel, dkt. 31 is DENIED; defendants are to respond to plaintiff's request for the videotape thirty days from the date they received his request.

Entered this 11th day of January, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge