

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

DARRIN A. GRUENBERG,

Plaintiff,

v.

DUSTIN KINGSLAND and
STEVEN MUELLER,

Defendants.

ORDER

11-cv-574-slc

On April 20, 2012, plaintiff Darrin Gruenberg filed a motion to compel defendants to produce “[s]everal digital color photographs of CCI DS-I cell #06 (or similar cell door), in the open position, with a standard DS-I tether strand connected to it as if an offender will be returning to that cell.” *See* dkt. 27. Plaintiff argues that he needs this information to show the layout of the tether strand as it is connected to the door and the “spectacular pain” caused when an individual’s wrist is “jerk[ed] up.” Defendants object to plaintiff’s request arguing that no such pictures are in their possession. Plaintiff did not submit either his discovery requests or defendants’ responses, but defendants have provided both.

Plaintiff’s original discovery request to defendant Kingsland states he is seeking “Clear color photos of DS-I cell #06 door in the open position with a tether strap connected to it as if an inmate were returning to the cell.” Dkt. 32-2. However, in plaintiff’s motion to compel, he adds the phrase “or similar cell door.” Plaintiff cannot seek something so specific as the photograph of a particular part of a cell door in his discovery requests, and then modify that request in a motion to compel. If plaintiff would like to expand the scope of his initial request, he is welcome to submit to defendants supplemental discovery requests that are not so narrow in scope.

There is nothing in the discovery rules that require defendants to take the requested photographs for plaintiff. Therefore, his motion to compel their production will be denied.

Some parting observations: pursuant to Fed. R. Civ. P. 34(a)(2), plaintiff could ask that he be allowed to *take* a photograph but he has not made such a request, and officials at CCI likely would object to such a request on a variety of grounds. That is an issue for another day. Next, if this case survives dispositive motions and ends up being tried, the court predicts that the State will at that time take photographs of the sort plaintiff seeks now. If the State does so, then will be obliged forthwith to provide copies to plaintiff in response to the instant discovery request.

ORDER

IT IS ORDERED that:

Plaintiff's motion to compel discovery, dkt. 27, is DENIED.

Entered this 17th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge