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

SHAROME ANDRE POWELL,

Plaintiff,

v.

SERGEANT FINK, LIEUTENANT DURDIN, and CORRECTIONAL OFFICER KOPEHAMER,

Defendants.

ORDER

06-C-058-C

The court has granted plaintiff, an inmate at the Waupun Correctional Institution, leave to proceed on his claim of excess force against defendants, who he claims roughed him up in the shower. Before the court are plaintiff's motion to compel discovery (dkt. 32), request for a lien to be placed on defendants' personal assets (dkt. 34), request for expedited compliance with any discovery order (dkt. 35), and motion for production of documents (dkt. 36). Although plaintiff filed these documents between July 28 and August 7, 2006, defendants have not responded to any of them.

It is not entirely clear which discovery demands plaintiff is seeking to compel because he did not include copies of his own demands or the defendants' responses with his motion and brief. Plaintiff suggests that this court review his previously-filed courtesy copies of his discovery demands dated April 30, May 2, May 18 and May 26, 2006 (dkts. 25-28), as well as a letter to opposing counsel and a June 26, 2006 "motion" for interrogatories. *See* Dkts. 29-30. Having reviewed all of these previously-filed discovery requests, I am unable to align

them with plaintiff's current motion. Even so, I believe I can discern plaintiff's major discovery concerns.

As a procedural point and contrary to plaintiff's contention, defendants never waived their right to object to plaintiff's discovery requests. The question is whether their objections are sufficient to overcome plaintiff's claims of relevance.

Substantively, plaintiff claims that he is entitled to review all policies, directives, instructions, *etc.*, governing inmate restraint. In their objections, defendants claimed these policies and procedures are confidential for security reasons such that releasing them to plaintiff would breach the security of the institution. Nonetheless, defendants directed plaintiff to Wis. Admin. Code §§ DOC 306.10-11. Plaintiff contends in his motion that he is entitled to more information because defendant Fink's conduct report indicates that

> [plaintiff] sustained an injury above his left eye that are [sic] consistent with his above resistance to a trained technique of vertical stabilization.

See Attachment to Dkt. 33.

Trial in this case begins on October 2, 2006. It is inevitable that the defendants, including Sergeant Fink, will testify as to what plaintiff did and said, how the defendants reacted and what resulted. Plaintiff is entitled to obtain a preview of this testimony during discovery. For instance, plaintiff is entitled to learn what "trained technique of vertical stabilization" Sergeant Fink applied and how plaintiff's subsequent injuries are consistent with resistance to this technique. If Sergeant Fink or any other defendant intends to testify

at trial about other specific techniques or maneuvers that they employed to subdue plaintiff, then they also must disclose the gist of this testimony during discovery.

The state's alarm at revealing techniques used to restrain unruly inmates is valid. Knowledge of these tactics could allow inmates to develop countermeasures in the future. But there is no way to try this case to a jury without disclosing the maneuvers and techniques specifically used against plaintiff. Defendants may not ambush plaintiff at trial by revealing there for the first time what they did, how they did it, and why they did it. Further, to the extent there are written training manuals, instructions, or other documents that demonstrate the appropriate method by which to employ these techniques, plaintiff is entitled to discover the relevant sections of those so that he can determine whether defendants deviated from their training. The court will grant any necessary protective order to ensure that the information contained therein is not available outside the confines of this lawsuit. For instance, allowing plaintiff to review written manuals with a chaperone present, would suffice; this court would not require the state to provide plaintiff with photocopies of documents explaining restraint techniques.

Next, I surmise that plaintiff seeks production of all institutional documents generated in response to his complaints about this alleged mistreatment, whether he previously has seen these documents or not. This is a legitimate discovery request, at least as to documents that plaintiff has not previously received. If defendants or the institution have not yet provided all documents generated as a result of plaintiff's complaints, they must

do so. Defendants may obtain a protective order limiting the manner of disclosure and the use of the information contained therein (if any additional documents exist).

Finally, it appears that plaintiff seeks from the personnel files of each defendant "documents solely pertaining to and/or revolving around this particular incident." Dkt. 33, second-to-last page. This is a legitimate discovery request, although I doubt there will be any responsive documents. If I am incorrect, defendants must disclose personnel file information specifically relating to plaintiff's allegations in the instant lawsuit. If such information exists, defendants may obtain a protective order limiting the manner of disclosure and the use of the information.

These are the only discernible substantive issues raised in plaintiff's various motions to compel discovery. If I have missed a substantive issue, plaintiff forthwith must alert the court in sufficient detail so that I can discern what needs to happen next. Since I am requiring defendants to produce information responsive to this order by September 5, 2006, this disposes of plaintiff's motion for prompt production (dkt. 35).

Next, plaintiff has moved for an order requiring defendants to photograph the shower stall in which he was restrained (and allegedly assaulted) as an aid to the jury. *See* Dkt. 36. The court will not order defendants to prepare evidence for plaintiff simply because plaintiff thinks it would be useful to him. The rules of discovery impose no such burden on opposing parties and this court sees no need to order such discovery here. It may well be that

defendants will create their own photographs and diagrams of the shower stall, but plaintiff is not entitled to a court order directing creation of such evidence.

Finally, plaintiff has asked this court to file a lien on all personal assets of the defendants "to prevent [them] from the filing of any fraudulent bankruptcy statements and/or motion(s) as a means to get out of paying petitioner any money awarded to him by the courts." *See* Dkt. 34. This request will be denied. Plaintiff's fear that he will be cheated out of a monetary award is unfounded.

Therefore, it is ORDERED that:

(1) Plaintiff's motion to compel discovery (dkt. 32) is GRANTED in part and DENIED in part for the reasons and in the fashion stated above;

(2) Plaintiff's motion for a lien (dkt. 34) is DENIED;

(3) Plaintiff's motion to shorten the disclosure deadline in response to this order (dkt. 35) is GRANTED in part and DENIED in part as set forth above; and

(4) Plaintiff's motion for production of documents within 10 days (dkt. 36) is DENIED as unnecessary.

Entered this 23rd day of August, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge