

IN THE STATE COURT OF LIBERTY COUNTY
STATE OF GEORGIA

ALLYSON RORRO and
CURTIS RORRO

Plaintiffs,

v.
WALMART STORES EAST, LP

Defendant.

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Civil Action No.: 11SV243

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ORDER

Pending before the Court are Plaintiffs' Motion to Compel Production of Surveillance Materials and Defendant Wal-Mart Stores East, LP's Motion for Protective Order of these materials. Having considered the briefs and exhibits pertaining to these motions and having heard oral arguments on June 25, 2014, regarding these motions, the Court hereby rules as follows:

In their Motion to Compel, Plaintiffs seek production of all surveillance videos and photographs as well as the identity of all individuals who performed the surveillance of Plaintiffs. Defendant admits it conducted surveillance of Plaintiffs and further admits that it is in possession of surveillance materials. However, in opposition to Plaintiffs' Motion to Compel, Defendant maintains that such videos and photographs are work product and that the content of the videos and photographs is potential impeachment material that it may or may not use at trial, and that as such, it is not required to produce these materials to Plaintiffs.

This appears to be an issue of first impression in Georgia's appellate courts. However, the persuasive authority from other jurisdictions show two primary approaches. The courts that allow a defendant to reveal the surveillance materials for the first time at trial focus on the need to protect

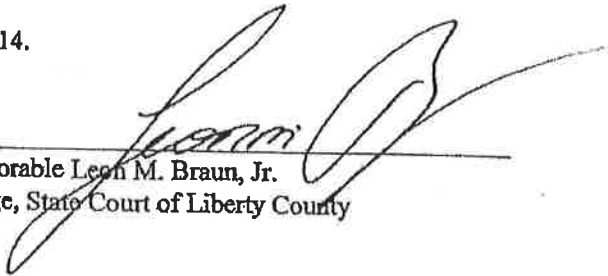
the impeachment value of the materials and the fact that the plaintiff already knows about his or her own condition. *See, e.g., Smith v. AMTRAK*, 22 Va. Cir. 348 (1991). Conversely, the courts that require pre-trial disclosure of surveillance materials are not unmindful of these concerns, which they often address by requiring production of the surveillance only after the plaintiff is deposed. *See, e.g., Pioneer Lumber v. Bartels*, 673 N.E.2d 12, 18 (Ind. Ct. App. 1996). The record of the case herein shows that Defendant has deposed both Plaintiffs, and in fact, has deposed Plaintiff Allyson Rorro three (3) times.

Courts adhering to this second approach have found that the factors unique to a video, such as its highly persuasive nature, the inability to duplicate such evidence as well as concerns that the materials presented may be misleading or incomplete, tip the balance in favor of disclosure. *See, e.g., Roa v. Tetrick*, 2014 U.S. Dist. LEXIS 24619, 9-10 (S.D. Ohio Feb. 24, 2014). However, even under this approach, the plaintiff will not have a substantial need if the defendant does not intend to use the surveillance materials at trial. *See, e.g., Pioneer Lumber*, 673 N.E.2d at 17. The Court finds this second line of cases more persuasive. Therefore, Plaintiffs' Motion to Compel Production of Surveillance Materials is GRANTED and Defendant's Motion for Protective Order is DENIED.

If Defendant herein will not use the surveillance materials at the trial of this case, Plaintiffs will not have a substantial need for such materials, and therefore, Defendant is not required to produce the requested videos, photographs or identities of the individuals who conducted the surveillance. However, if Defendant intends to use any surveillance materials at trial for any purpose, it must produce all surveillance videos and photographs as well as the identity of all individuals who performed any surveillance. Thus, on or before 5:00 p.m. on Monday, July 21, 2014, Defendant must either inform Plaintiffs' counsel in writing that it will not use any surveillance

materials at the trial of this case or it must produce to Plaintiffs' counsel all surveillance videos and photographs in its possession as well as provide the names of all individuals who performed the surveillance. Failure to comply will lead to the exclusion of any surveillance evidence at trial.

SO ORDERED this 10th day of July, 2014.



Honorable Leon M. Braun, Jr.
Judge, State Court of Liberty County