No_____

IN THE
SUPREME COURT OF THE UNITED STATES

Kenneth I. Counce, in pro se,

Applicant,

V.

RYAN M. WOLTING, Technical Kansas Highway Patrol, et al.,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor
Associate Justice of the United States Supreme Court
and Circuit Justice for the Tenth Circuit

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To the Honorable Sonia Sotomayor, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Tenth Circuit

Applicant-Petitioner, Kenneth I. Counce respectfully requests an extention of time to file a petition for writ of certiorari. Sup.Ct.R. 13.5. The earliest deadline for Applicant Counce to file his petition is Tuesday, April 9, 2019, which is ninety days from Wednsday, January 2019, the date when the Tenth Circuit Court of Appeals issued a judgment affirming the United States District Court of Kansas dismissing the instant case. For good cause set forth herein, Applicant asks that this deadline be extended by sixty-days so that the deadline would be Saturday, June 8, 2019.

BACKGROUND

This case arises from a series of events that started with an alleged left turn signal traffic violation by Applicant from an I-70 off ramp, while Respondent Wolting, Technical KHP Trooper, doggedly pursued him for several minutes.

The events that followed resulted in permanent mental and physical permanent injuries, namely, Applicant's left maxillary sinus wall fracture, torned shoulder tendons in both shoulders, four chronically fractured ribs 2-5 on his left side, both knees, with a mediscus torn completely in the left, which have all affected the major functioning of his life over the long term. Your Applicant under the Social Security Disability Act, received the highest amount paid under the law, each month. Additionally, he receives the highest amount of SNAP benifits payable allowed by law, in direct connection with the permanent injuries sustained on October 22, 2013, at the hands of the defendants' actions, or, in-action. Appendix D.

At rest area 224, East-bound on I-70, Applicant was stopped from receiving a meaningful examination by the female medic, by Wolting and Arnold. Both KHP troopers refused to remove or loosen the metal handcuffs.

No medical reports have ever been produced from the Milepost 224 incident, however, the lower courts made findings of facts and conclusion of law based solely on no evidence to support the statements of Defendants Ryan M. Wolting, and Gregory Arnold, a Technical KHP trooper and a KHP Trooper, respectively. In addition to that, the two John Does, 1 and 2, never supported their stories with any evidence under oath. The KHP Defendants refused to voluntarily turn over to the district court any photographs that proved Applicant's alleged facial injuries or injuries to his knees, or video from the dashcam recorders from the first two KHP cruisers to arrive on the scence that clearly appear in the dashcam recordings of both Evinger and Defendant KHP Trooper Gregory Arnold's cruisers.

During the 25-30 minute ride while sitting on top of the metal handcuffs cutting into his right wrist, and cutting off circulation to both hands, Defendant KHP Arnold refused throughout the drive to help in and way. In fact, Arnold advised that "You should know better than to mess with US like that." Those pleas from your Applicant and that specific comment from Arnold were edited, or in the words of the KHP Defendant, "modifed" out of the video of the transport from Milepost 224 on I-70 to the Ellsworth County Jail. This action throughout the dashcam videos from the 3 KHP cruisers were never considered [tampering with crucial] to Applicant's/Plaintiff's allegation.

If not for the so-called "modifications", the audio recording of the female medic having her request to examine Applicant's shoulders, would of been present on the dashcam audio of three (3) different KHP cruisers; there there were a large number of KHP cruiser that were present at one time or another at Milepost 224.

Upon arrival at the Ellsworth County Jail in Ellsworth, Kansas, neither Defendants Sheriff Tracy L. Ploutz, Deputy Sheriff Investigator David Chamberlain, Ellsworth County Deputies John Doe 3 or 4, or Arnold or Wolting (KHP troopers),

assist in contacting a hospital and have Applicant transported to the emergency room. Applicant suffered from blindness in his left eye, along with pain so severe that he was laspsing in and out of consciousness while being propped up in a chair, because of the unbarable pain from the fractured left-maxillary sinus wall, 2nd through 5th fractured ribs, torn shoulder tendon, a torn meniscus in his left knee, grapefruit size injuries to his knees, among others to his back.

For the next 42 days, Applicant pleaded to be taken to a hospital for x rays, and a meaningful diagnoses and treatment, and clinical pain medication. Again and again these requests were refused by the jail's medical provider on the two ocassions PA Shawn McGowan met with Applicat in the office of the Sheriff, Tracy L. Ploutz, and numerous times by Respondent Sheriff Ploutz by way of Theresa Ball, his Jail Supervisor.

Applicant raised the Tenth Circuit Court of Appeals' own adjudication of the same circumstances in Al-Turki v. Robinson, 762 F.3d 1188 (10th Cir. 2014), where it held that "any attempt by the defendant to delinate the exact bounderies of a line of 'twinges of pain' that will not give rise to an Eighth Amendment deliberate indiference claim, and the significant 'substantial' pain that will give rise to such a claim", was clear, here, because no significant medical attention was forthcoming in a timely manner.

In Dobbey v. Michell-Lawshea, 806 F.3d 938 (7th Cir. 2015), the same conclusion was reached by the Seventh Circuit Court of Appeals, where the district court granted defendants' [motion for summary judgment], held, while suffering from an abscessed tooth, as was also one of Applicant's eventual ailments which escilated into an emergency a few days later, that decision did [not] comport with the plain text of its own precedence, or with the Eighth Amedment against [cruel and unusual punishment], i.e., deliberate indifference.

In Perry v. Roy, 782 F.3d 73 (1st Cir. 2015), the First Curcuit Court of Appeals reversed the district court's judgment granting qualified imunity. The court held that nurses at the prison failed to treatRoy's [broken jaw], as was done in Applicant fractured maxillary sinus wall, a very serious "medical condition."

Applicant also raised two unrelated New York Court of Claim cases involving failures to treat (1) a ruptured Achilles (torn) tendon with surgical repair after hearing expert testimony, and (2) found that the doctor had properly diagnosed a [torn biceps muscle] but had refused plaintiff's request to see a specialist for a successful outcome, which would have been surgery. See, UID No. 2013-040-044, Claim No. 118847, ruptured Achilles tendon, and UID NO. 2013-040-026, Claim No. 117217, torn biceps muscle, respectively. In the latter case, the court found for plaintiff for **past pain and suffering, plus, for future pain and suffering.**

Your Applicant likewise suffered two torn shoulder tears and a mediscus tear in the left knee, four fractured ribs on the left side, and an eventual removal of an abcessed tooth below the maxillary sinus wall fracture, among other permanent injuries.However, this Applicant continues to suffer from the maxillary sinus wall fracture where it never was treated nor healed prpoerly and both shoulder wake him several times each night, especially when the weather changes. For the 42 days in jail in 2013, it was a complete nightmare.

This Applicant raises a very important question which affects all plaintiff who are seriously injured to the point of not being capable of filing a Civil Rights lawsuit because of those same permanent injuries: Can the State Court's judgment of expunging the Applicant's misdemeanor criminal case within the meaning of Title 28 U.S.C. § 1738 be essentially nullified in a Federal Court proceeding, among other State Court findings of fact and conclusion of law?

And subsequent to that complexed issue of law, be denied over and over by the lower courts even after demonstrating the reality of the existance of both the physical and psychological injuries; continue to be penalized for not being fit, and deny appointment of an attorney, among others? [1]

OPINIONS BELOW

The January 9, 2019 Order of the Tenth Circuit Court of Appeals affirming the United States District Court of Kansas, is reproduced at Appedix A. The March 2, 2018, final judgment of the United States District Court of Kansas granting of qualified immunity is reproduced at Appendix B. The Ellsworth County District CourtOrder of Dismissal With Prejudice and Return of Defendant's Property and Exspungment of the Conviction on September 22, 2015, is reproduced at Appendix C. The Magistrate who presided over the State Court Case No. 2013 CR 118, and the County Attorney's Office for the County of Ellsworth County, Kansas, and Applicant's Public Defender Counsel, all claim there aer no transcripts of any kind that exists from those State proceedings, thus, no other opions of the State court(s) exist within the meaning of Title 28 U.S.C. § 1738.

JURISDICTION

This Court has jurisdiction under Title 28 U.S.C. §§ 1257 and 1738.

REASONS EXTENTION IS JUSTIFIED

Supreme Court Rule 13.5 provides that "An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extention of time is justified." Sup.Ct.R. 13.5. The specific reasons why an extention of time is justified as as follows:

[1] The Tenth Circuit Court of Appeals inadvertantly failed to list the names of all Defendants named in the lawsuit, and includes defendants that were not involved in the Appeals process, namely PA Shawn McGowan at the Ellsworth County Jail, Deputies John Doe 3 and 4.

1. The Tenth Circuit Court of Appeals essentially nullified the Ellsworth District State Court's dismissal and expungment of the sames issues that were used by the Respondents in lower courts to justify their [qualified imunity defense(s)]. Title 28 U.S.C. § 1738 provides that "such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the court of such State ... from which they are taken." Because of Applicant's limited physical injuries which originated from the October 22, 2013, assaults by the Defendants/Respondents, and ability to remain in a sitting position, the extention is justified under the medical diagnosis of radiologists and other medical professionals.

2. The April 30, 2018, Order of the district court in response to your Applicant's Motion for Leave to Proceed on Appeal in Forma Pauperis, found upon "review of the finacial information submitted in support of plaintiff's request, the court is satified that plaintiff is unable to pay the fees associated with his appeal." None of the evidence presented in that motion has changed financially. Because Applicant needs more time to accumilate money to make copies of documents, and other material necessary to prosecute this case, he asks that the Court consider these obsticles as justifying an extention.

3. Applicant receives a mere $192.00 each month in SNAP Benifits, and $771.00 in Social Security Disability income each month because of the permanent injuries caused by the KHP Defendants, and later denial of medical treatment by all involved for the next 42 days at the Ellsworth County Jail. Thus, this Applicant has to discover extra cash at the end of each month to supplement the supplimental financial assistance.

4. Each copy of each document is approximately 18¢. 10 copies of 15 to 20 pages, time 10, equals out to about $30.00, not including postage.

Applicant therefore requares more time to produce extra income for the filing of his writ of certiorari.

5. The Applicant also needs more time to research Title 28 U.S.C § 1738, in light of the fact that the Honorable Steve Johnson, Division II, Twentieth Judicial District, Ordered the misdemeanor criminal case be dismissed with prejudice as provided by statute, and the previous conviction be expunged and any evidence (Applicant's mini van and its contents, and $8,920) held for prosecuting the case, be released to Applicant as provided by K.S.A, 22-2512. Any longer "[delay]", the court held, would be considered ["unreasonable by the court."] 3 and a half year later, the State Court's Order has been completely ignored, by all County and States defendants officials and defendants.

6. This requested extention is also necessary to accomodate pressing deadlines in the Applicant's personal life, which also involves emotional injuries sustained on October 22, 2013, from the Respondents, in the aggragate. This includes, but is not limited to, his weekly psychological counseling at Parkland Hospitals in Dallas, Texas, which is very expensive.

7. The importance of the issues involved which affect all American Citizens' rights to protection from the federal courts' nullification of State Court orders that received the full faith and credit in the States' Courts, within the meaning of 28 U.S.C. § 1738, is enforceable under the instant circumstances, and therefore required an attorney's appointment under the circumstances.

Dated: March 31, 2019

Kenneth T. Counce - In Pro Se
10222 Walton Walker Boulevard
Dallas, Texas 75220
(469)908-9195

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

COUNCE-petitioner

VS.

RYAN M. WOLTING, ET AL.-RESPONDENT(S)

PROOF OF SERVICE

I, Kenneth Counce, do swear or declare that on this date March 31, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS or that party's counsel, and on every other person required to be served, by depositing and envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

the names and addresses of those served are as follows:

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Attorneys for all KHP Defendants
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2019, 2019

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APPENDIX A

FILED
United States Court of Appeal
Tenth Circuit

January 9, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KENNETH COUNCE,

Plaintiff - Appellant,

v.

RYAN WOLTING, Technical Kansas State Trooper, Kansas Highway Patrol; KANSAS STATE HIGHWAY PATROL; TRACY PLOUTZ, Ellsworth County Sheriff; GREG ARNOLD, Trooper, Kansas Highway Patrol; DAVID CHAMBERLIN, Ellsworth County Deputy Sheriff; JOHN DOE, Civilian with beard; JOHN DOE, Bearded Civilian's Friend; JOHN DOE, Deputy Sheriff for Ellsworth County; JOHN/JANE DOES, Kansas State Highway Patrol Supervisors and Watch Commander(s); DARIAN P. DERNOVISH, Legal Counsel & Records Custodian, Kansas Highway Patrol; ERIC D. SAUER, Captain, N & T Commander, Kansas Highway Patrol; THERESA L. STAUDINGER, Attorney; MARK A. BRUCE, Major, Interim Superintendent, Kansas Highway Patrol; KIRK E. SIMONE, Asset Forfeiture Coordinator, Kansas Highway Patrol; CRISTINA D. TROIANI, Attorney for Sean O'Neil, Chief of Administrative Appeals,

Defendants - Appellees,

and

JOE SHEPACK, ELLSWORTH COUNTY, KANSAS,

No. 18-3056
(D.C. No. 5:13-CV-03199-JTM-KGS)
(D. Kan.)

Defendants.

ORDER AND JUDGMENT*

Before **BACHARACH**, **PHILLIPS**, and **EID**, Circuit Judges.

Kenneth Counce filed this lawsuit against multiple public officials and private individuals under 42 U.S.C. § 1983. The district court dismissed some of his claims under Federal Rule of Civil Procedure 12(b)(6) and granted summary judgment on other claims based on qualified immunity. Counce now appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. Background

This civil rights action stems from a traffic stop and arrest on October 22, 2013. Kansas Highway Patrol (KHP) troopers pulled Counce over on I-70 for routine traffic infractions, then proceeded to a rest stop at his request. Counce appeared nervous, so one of the troopers—Defendant Ryan Wolting—asked him to step outside of his vehicle. A physical altercation took place, with two bystanders coming to the trooper's aid and the trooper ultimately subduing Counce with a Taser. The

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

initial movements that triggered the altercation are preserved on "dash cam" video that is part of the record, though the remainder of the scuffle is captured only through audio. Other dash cam recordings document emergency medical personnel examining and treating Counce at the scene.

Counce was arrested and transported to jail in Ellsworth County, Kansas, where he remained for approximately forty days and received periodic medical treatment for nausea, cold extremities, a potential head injury, and shoulder and back pain. His trip to jail was also recorded on dash cam video. Meanwhile, Randy's Body Shop towed and impounded his vehicle, and troopers confiscated approximately $8,200 in cash.

On November 12, 2013, Counce initiated this pro se action under § 1983. He asserted claims for excessive force incident to his arrest, wrongful confiscation of his currency, denial of access to medical care, and denial of legal postage.[1] Because he was incarcerated at the time, the district court screened his complaint as required by the Prison Litigation Reform Act, 28 U.S.C. § 1915A. It instructed Counce to amend his complaint to comply with Federal Rule of Civil Procedure 8(a).

The operative complaint was filed on October 22, 2015. *See* R., Vol. I at 201-59. Counce asserted sixteen claims[2] against a long list of Defendants, including

[1] Notably, Counce filed a parallel state action asserting the same claims, which was dismissed as "a frivolous lawsuit based on false allegations"; however, given the brevity of the state court's ruling, the district court declined to dismiss this lawsuit on res judicata grounds. R., Vol. I at 102 (internal quotation marks omitted).

[2] Though Counce asserts seventeen claims, he inadvertently skipped Count IX.

KHP troopers, the former Ellsworth County sheriff and his deputy, jail officials, the bystanders, and even the private attorney who tried to collect a debt owed to Randy's Body Shop (Theresa Staudinger). In addition to the original claims listed above, Counce added claims for denial of due process and equal protection, a violation of the Freedom of Information Act (FOIA), and interference with his right to petition the government. The district court whittled down the claims and defendants per § 1915A(b), *see* R., Vol. I at 267-75.

The district court disposed of the remaining claims in stages. It granted Staudinger's motion to dismiss under Rule 12(b)(6), finding that Counce failed to state a claim against her because she was not a state actor as required by § 1983. *See* R., Vol. I at 377-80. Later, it found that the public officials sued in their individual capacities were entitled to qualified immunity and granted summary judgment in their favor. *See* R., Vol. III at 274-95. On March 2, 2018, the district court entered final judgment against Counce. This timely appeal followed.

Counce was a prolific filer, and the district court issued dozens of orders over four-and-a-half years of litigation. The appellate issues adequately presented herein implicate the following rulings: the district court's refusal to appoint counsel for Counce (Issue 1); its Rule 12(b)(6) dismissal of the claim against Staudinger (Issue 10); its summary judgment dismissal of the claims against the public officials (Issues 5, 6, 10); and its discovery rulings, particularly those relating to the production and alleged modification of dash cam videos (Issues 2, 8, 9). We address each in turn.

II. Analysis

Because Counce is proceeding pro se, "we construe his pleadings liberally." *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003). We make some allowances for deficiencies, such as unfamiliarity with pleading requirements, failure to cite appropriate legal authority, and confusion of legal theories. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). But we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Id.*

As a threshold matter, we address the scope of this appeal. The notice of appeal states that Counce appeals "from the final judgment granting the Defendants qualified immunity entered in this action on the 2nd day of March, 2018." R., Vol. III at 297. Based on this language, the appellees ask us to limit our review to the claims resolved in the summary judgment order issued on that same date—namely, the claims against them for excessive force and denial of medical care. We agree the language in the notice of appeal creates an ambiguity about whether Counce only intended to appeal from the grant of qualified immunity. But we construe the designation requirement in Federal Rule of Civil Procedure 3(c)(1)(B) liberally, even though it is jurisdictional. *See Williams v. Akers*, 837 F.3d 1075, 1078 (10th Cir. 2016); *see also Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316 (1988) (stating that "the requirements of the rules of procedure should be liberally construed and . . . mere technicalities should not stand in the way of consideration of a case on its merits" (internal quotation marks omitted)).

Furthermore, "a notice of appeal which names the final judgment is sufficient to support review of all earlier orders that merge in the final judgment." *McBride v. CITGO Petroleum Corp.*, 281 F.3d 1099, 1104 (10th Cir. 2002); *accord Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1383 n.7 (10th Cir. 1994) (articulating "the general rule that appeal from a final judgment supports review of all earlier interlocutory orders" (internal quotation marks omitted)). Under this precedent, our jurisdiction extends to Counce's "attack [of] any nonfinal order or ruling leading up to" the final judgment. *McBride*, 281 F.3d at 1104 (internal quotation marks omitted).

A. Denial of Motion for Appointment of Counsel

Counce first argues that the district court erred in denying his requests for appointment of counsel. He contends that he could not prosecute this case without assistance due to the severity of the injuries he received during the traffic stop and his resulting diminished capacity. He further contends that this case was sufficiently complex to warrant appointment of counsel, especially given his status as a prisoner and his limited legal knowledge. The district court disagreed. It found Counce to be literate, characterized his pleadings as "coherent," and noted that "it does not appear his injuries have affected his abilities to present the facts and his claims." R., Vol. I at 264. It also implicitly reasoned that Counce was able to bring a similar lawsuit in state court without legal assistance. *Id.* at 104-05.

We review the district court's refusal to appoint counsel for an abuse of discretion. *See Steffey v. Orman*, 461 F.3d 1218, 1223 (10th Cir. 2006). "It is not enough that having counsel appointed would have assisted [him] in presenting his

strongest possible case, as the same could be said in any case." *Id.* (internal quotation marks and alterations omitted). "Only in those extreme cases where the lack of counsel results in fundamental unfairness will the district court's decision be overturned." *Id.* (internal quotation marks omitted).

Counce summarily states that the denial of counsel resulted in "fundamental unfairness and rudimentary unjust outcomes." *See* Aplt. Opening Br. at 3.A.1 (internal quotation marks omitted). But his conclusory statement is not enough to satisfy this high bar. We agree with the district court's treatment of Counce's claims, as set forth below, and find no abuse of discretion or fundamental unfairness.

B. Claim Against Private Attorney

Counce also challenges the district court's dismissal of certain individual claims, including its Rule 12(b)(6) dismissal of his claim against Staudinger, the private attorney for Randy's Body Shop who contacted him to collect the debt owed for towing and storage fees. Counce alleged that Staudinger's actions violated his right to be free from unreasonable searches and seizures and deprived him of his property without due process and that she conspired with the KHP to steal his money. *See generally* R., Vol. I at 255-58 (Claim XVII). Staudinger moved to dismiss the claim.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). A plaintiff must make plausible allegations that would support the conclusion that he is entitled to relief.

Khalik v. United Air Lines, 671 F.3d 1188, 1191 (10th Cir. 2012) (internal quotation marks omitted). Applying this standard, the district court held that Counce failed to state a § 1983 claim against Staudinger because her status as a member of the Kansas Bar does not make her a state actor. *See* R., Vol. I at 379-80 (citing *Polk Cty. v. Dodson*, 454 U.S. 312, 318 (1981)). In addition, it found the allegations in the complaint to be inadequate to establish that Staudinger acted jointly with the state to seize property, as required to clothe her with state authority or to allege a conspiracy claim under § 1983. *Id.* at 379-80 (citing *Tonkovich v. Kan. Bd. of Regents*, 159 F.3d 504, 533 (10th Cir. 1998), and *Gallagher v. "Neil Young Freedom Concert,"* 49 F.3d 1442, 1455 (10th Cir. 1995)).

We review the district court's order de novo, *see SEC v. Shields*, 744 F.3d 633, 640 (10th Cir. 2014), and find its reasoning sound. "[T]o hold a private individual liable under § 1983, it must be shown that the private person was jointly engaged with state officials in the challenged action, or has obtained significant aid from state officials, or that the private individual's conduct is in some other way chargeable to the State." *Pino v. Higgs*, 75 F.3d 1461, 1465 (10th Cir. 1996) (internal quotation marks omitted). The allegations must evidence "a specific goal to violate the plaintiff's constitutional rights by engaging in a particular course of action." *Gallagher*, 49 F.3d at 1455. Counce's complaint proffers only vague and conclusory allegations to this effect—for instance, that the KHP's asset forfeiture coordinator "had obviously contacted" Staudinger about the status of Counce's confiscated cash

so she could "write Counce and threaten and attempt to extort" money from him. R., Vol. I at 258. We affirm the dismissal of the claim against Staudinger.

C. Claims Against Public Officials

Counce also challenges the district court's grant of summary judgment to the public officials on qualified immunity grounds for his claims of excessive force and deliberate indifference to his serious medical needs. Embedded within this challenge are complaints about the way the district court handled discovery matters relating to the dash cam videos that recorded his traffic stop. Here, too, we agree with the district court's approach.

"Qualified immunity protects public officials from individual liability in a § 1983 action unless the officials violated clearly established constitutional rights of which a reasonable person would have known." *Mick v. Brewer*, 76 F.3d 1127, 1134 (10th Cir. 1996) (internal quotation marks and alterations omitted). When a defendant pleads a qualified immunity defense, the "plaintiff initially bears a heavy two-part burden." *Id.* First, he must show "that the defendant's actions violated a constitutional or statutory right." *Id.* (internal quotation marks omitted). And second, he must show "that the right allegedly violated was clearly established at the time of the conduct at issue." *Id.* (internal quotation marks and alterations omitted).

After delineating the uncontroverted facts and resolving any controverted facts in Counce's favor, the district court conducted a thoughtful, detailed analysis as to why each individual state actor was entitled to qualified immunity. Focusing on the first prong, the district court found that the KHP troopers did not violate Counce's

constitutional rights. R., Vol. III at 295. The troopers did not use excessive force under the circumstances (even by using a Taser), did not fail to intervene to protect him from the bystanders, and did not interfere with his emergency medical treatment. *Id.* at 281-91. Furthermore, the handcuffs did not cause an actual injury, and Counce did not show that a reasonable jury could find the troopers were deliberately indifferent to his medical needs and emotional distress. *Id.* at 291-92. In reaching these conclusions, the district court frequently referenced the dash cam evidence.

Likewise, the district court found that the officials from the sheriff's office were not indifferent to Counce's medical needs during the booking process or his incarceration at the county jail. *Id.* at 292-95. To support this conclusion, it highlighted Counce's own failure to answer routine medical questions on the booking form. *Id.* at 293. It also summarized the medical treatment he received from a certified physician's assistant, former defendant Shawn McGowan, in response to his six medical requests. *Id.* at 277-79, 293-94.

We review de novo the district court's qualified immunity determination at the summary judgment stage. *Lee v. Tucker*, 904 F.3d 1145, 1149 (10th Cir. 2018). We agree with the district court's reasoning and affirm its summary judgment ruling.

Turning to the related discovery issues, it is clear from the record that Counce conducted ample discovery during this protracted litigation. He seems to believe that additional or unmodified dash cam videos exist, which have not been produced; however, the district court unequivocally determined that "plaintiff has been provided with all relevant discovery that is in the possession of defendants," R., Vol.

III at 105. In any event, discovery issues are "entrusted to the sound discretion of the trial courts." *Punt v. Kelly Servs.*, 862 F.3d 1040, 1047 (10th Cir. 2017) (internal quotation marks omitted). Moreover, to the extent the district court did limit discovery to some degree due to the state actors' assertion of qualified immunity, that practice is consistent with well-established guidelines. The Supreme Court has emphasized that qualified immunity affords broad protection to public officials, giving them "a right, not merely to avoid 'standing trial,' but also to avoid the burdens of 'such *pretrial* matters as discovery . . . , as '[i]nquiries of this kind can be peculiarly disruptive of effective government.'" *Behrens v. Pelletier*, 516 U.S. 299, 308 (1996) (alterations in original) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), and *Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982)).

D. Remaining Issues on Appeal

Counce raises a few other issues as well. In Issue 3, he summarily challenges the dismissal of the excessive force claims against the two bystanders who helped to subdue him, which he now recharacterizes as failure-to-intervene claims (presumably to skirt the deficiency that the bystanders themselves are not state actors). In Issue 4, he contests the dismissal of his claim for denial of access to the courts, without explaining how he states a viable claim or refuting the district court's finding that he was not prejudiced by the jail officials' purported actions. And in Issue 7, he continues his quest to use FOIA as a supplement to discovery, posing the question, "May a requester involved in ongoing litigation use as a collateral method of

discovery the FOIA?" Aplt. Opening Br. at 3-O. He then asks the Court to reverse the Executive Branch's dismissal of his FOIA request. Aplt. Reply Br. at 12.

The briefing on these issues is wholly inadequate under Federal Rule of Appellate Procedure 28(a)(8), so we decline to consider them. *See Bronson v. Swensen*, 500 F.3d 1099, 1104-05 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief. . . . [C]ursory statements, without supporting analysis and case law, fail to constitute the kind of briefing that is necessary to avoid application of the forfeiture doctrine.").

III. Conclusion

We affirm the district court's dismissal of Counce's claims.

His "Motion Requesting the Tenth Circuit Court of Appeals to Take Judicial Notice of Modifications to KHP Defendants' Dashcam Video Recordings Discovered on Troopers Wolting, Evinger, and Arnolds' Dashcams in Exhibits F, G, and H" is denied as moot. That motion asks the Court to order Defendants to turn over additional dashcam recordings and to obtain information about why the dashcam recordings that have been produced were modified. But even if additional or

unmodified dash cam videos did exist, Counce fails to show their existence would affect our analysis.

Entered for the Court

Allison H. Eid
Circuit Judge