APPENDIX

EXHIBIT A

enhancements?

MS. ROSADO: Yes, Judge.

THE COURT: So we will -- we will reconvene on the 17th.

MS. PATTERSON: I just wanted to make sure, just in case there's an issue later on, that he be discharged from any uncharged counts. He's still being held in Orange County on uncharged offenses.

MS. ROSADO: No objections to that, Judge.

Do you know what counts it was?

THE COURT: I mean, between the original and the indictment, there's some uncharged ones.

MS. ROSADO: I believe so, yes.

THE COURT: We'll just put it in the notes, released as to any uncharged counts in this case.

MS. PATTERSON: I will get it to Ms. Rosado.

THE COURT: Yeah, if I can get that, please -- just for the record again, could you tell me which enhancements? Are we H.F.O.?

MS. ROSADO: Judge, it's not based on any of the PRR or --

THE COURT: No enhancements like that?

MS. ROSADO: Correct. No. It's just the discharge of the firearm.

THE COURT: For the charges he was found guilty

EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13825-C

JEFFREY DAVIS,

Plaintiff-Appellant,

versus

ORANGE COUNTY SHERIFF'S OFFICE,
ORANGE COUNTY STATE ATTORNEY OFFICE,
BRIAN LEMONS,
Detective,
JENNIZA ROSADO,
Assistant State Attorney,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: NEWSOM, BRANCH, and LUCK, Circuit Judges.

BY THE COURT:

Jeffrey Davis, a Florida prisoner, filed a *pro se* 42 U.S.C. § 1983 civil rights complaint against: (1) the Orange County Sheriff's Office ("OCSO"); (2) the Orange County State Attorney's Office ("OCSAO"); (3) Detective Brian Lemons, with the OCSO; (4) and Assistant State Attorney Jenniza Rosado, with the OCSAO (collectively "defendants"). Davis contended that his constitutional rights were violated when Detective Lemons submitted a false arrest affidavit, which resulted in his erroneous arrest and subsequent false imprisonment and conviction. He further contended that Rosado failed to prosecute him for over a year, and knew that Detective Lemons

had lied on the arrest affidavit, but purposefully failed to notify the trial court of that fact. Davis indicated that he was bringing suit against the OCSO and OCSAO in their official capacities and against Detective Lemons and Rosado in their official and individual capacities.

The district court dismissed Davis's complaint for failure to state a claim, pursuant to 28 U.S.C. § 1915A(b), finding that: (1) Davis's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994); (2) Rosado had absolute immunity from the claims; and (3) Davis failed to demonstrate that any alleged constitutional violation was the result of a custom or policy of the government.

Davis filed a motion for reconsideration, pursuant to Fed. R. Civ. P. 60(b). However, before his motion was ruled upon, he filed a notice of appeal, indicating his intent to appeal the dismissal of his complaint and challenge the district court's alleged failure to rule upon his Rule 60(b) motion. Davis additionally filed a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was not taken in good faith and assessing the $505.00 appellate filing fee, pursuant to the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. Davis now moves this Court for leave to proceed on appeal and for appointment of counsel.

Because the district court assessed the required filing fee, the only remaining issue in this case is whether an appeal would be frivolous. *See* 28 U.S.C. § 1915(e)(2)(B). "[A]n action is frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation omitted), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (*en banc*).

Here, the district court properly dismissed Davis's complaint. First, Davis's complaint is *Heck*-barred because a civil judgment in his favor under § 1983 would necessarily imply the

invalidity of the underlying convictions for which he is currently imprisoned, due to the fact that his claims are that he was falsely imprisoned and convicted based on false statements contained in his arrest affidavit. *See Heck*, 512 U.S. at 486-87 (holding that if a judgment in favor of the plaintiff on a § 1983 complaint "would necessarily imply the invalidity of his conviction or sentence," the district court must dismiss the complaint unless the plaintiff can "prove that the conviction or sentence has been" reversed, expunged, declared invalid, or called into question by a federal court's issuance of a writ of habeas corpus).

Moreover, the district court correctly concluded that Rosado had absolute immunity from Davis's claims because each claim related to Rosado's actions taken in an effort to initiate and pursue a criminal conviction. *See Jones v. Cannon*, 174 F.3d 1271, 1281 (11th Cir. 1999) (noting that "[p]rosecutors enjoy absolute immunity for the initiation and pursuit of criminal prosecution"). Additionally, the district court correctly noted that Davis's claims against each defendant in their official capacities failed due to his failure to adequately allege that any violation occurred as the result of a government custom or policy. *See Cooper v. Dillon*, 403 F.3d 1208, 1221 (11th Cir. 2005) (noting that when a defendant is sued in his official capacity under § 1983, a plaintiff must show that the alleged constitutional violation was the result of an official government policy or custom). Finally, to the extent that Davis challenges the district court's alleged failure to rule on his motion for reconsideration, such contention is now moot because the district court since has ruled on the motion. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (noting that cases are moot "when the issues presented are no longer 'live'" (citation omitted)).

Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal. Moreover, Davis's motion for appointment of counsel is DENIED AS MOOT.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13825-C

JEFFREY DAVIS,

Plaintiff-Appellant,

versus

ORANGE COUNTY SHERIFF'S OFFICE,
ORANGE COUNTY STATE ATTORNEY OFFICE,
BRIAN LEMONS,
Detective,
JENNIZA ROSADO,
Assistant State Attorney,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: NEWSOM, BRANCH, and LUCK, Circuit Judges.

BY THE COURT:

Jeffrey Davis has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's August 6, 2021, order denying leave to proceed, dismissing his appeal as frivolous, and denying as moot appointment of counsel. Upon review, Davis's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JEFFREY DAVIS,

Plaintiff,

v. Case No: 6:20-cv-1400-Orl-37DCI

ORANGE COUNTY SHERIFF'S OFFICE, ORANGE COUNTY STATE ATTORNEY OFFICE, BRIAN LEMONS and JENNIZA ROSADO,

Defendants.
_____/

ORDER

Plaintiff Jeffrey Davis ("Plaintiff"), a prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Doc. 1). Pursuant to 28 U.S.C. § 1915A(b), the Court is required to perform a judicial review of certain civil suits brought by prisoners to determine whether the suit should proceed:

> (b) Ground for Dismissal - On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint -
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

Thus, the Court is obligated to screen prisoners' civil rights complaints as soon as practicable and to dismiss those actions which are frivolous or malicious or fail to state a

claim for relief. 28 U.S.C. § 1915(e). A complaint is frivolous if it is without arguable merit either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Cofield v. Alabama Public Service Com'n*, 936 F.2d 512, 515 (11th Cir. 1991); *Prather v. Norman*, 901 F.2d 915 (11th Cir. 1990). Additionally, the Court must read the plaintiff's *pro se* allegations in a liberal fashion. *Haines v. Kerner*, 404 U.S. 519 (1972); *Miller v. Stanmore*, 636 F.2d 986, 988 (5th Cir. 1981).

Plaintiff sues Defendant Brian Lemons, a detective with the Orange County Sheriff's Office, and Defendant Jenniza Rosado, an assistant state attorney, in their official and individual capacities and Defendants Orange County Sheriff's Office and Orange County State Attorney Office in their official capacities. (Doc. 1 at 2-3.) Plaintiff alleges that Defendant Lemons submitted a false affidavit charging him with three felonies on December 3, 2017, which led to his false arrest.[1] (Doc. 1 at 3-4.) Plaintiff maintains that Defendant Rosado prosecuted him and knowingly used Defendant Lemons' perjured testimony and failed to notify the judge that Defendant Lemons' affidavit was fabricated. (*Id.* at 5.) Plaintiff seeks compensatory and punitive damages for his false imprisonment and the violation of his constitutional rights. (*Id.*)

[1] The Ninth Judicial Circuit Court of Florida's on-line docket in case number 2017-cf-15616-A-O reflects that Defendant Lemons signed an Affidavit for Arrest Warrant on December 3, 2017, indicating probable cause existed to believe Plaintiff committed attempted first-degree murder with a firearm, shooting into an occupied dwelling, and aggravated assault. A jury convicted Plaintiff *inter alia* of the lesser included offense of attempted second-degree murder, shooting into an occupied dwelling, and aggravated assault. The state court sentenced Plaintiff to a twenty-five-year term of imprisonment for the attempted second-degree murder conviction and to lesser concurrent sentences for the other convictions.

Plaintiff's claims are subject to dismissal for the following reasons. The Supreme Court of the United States Supreme Court has held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnotes omitted). A judgment in favor of Plaintiff in this action would necessarily imply the invalidity of his convictions. Plaintiff has not demonstrated that his convictions or sentences have been invalidated; consequently, his claims for malicious prosecution, false imprisonment, and violation of his Fourth and Fourteenth Amendment rights are not cognizable under section 1983 and must be dismissed with prejudice.

Furthermore, prosecutors are immune from suit under section 1983 for acts taken during the course of their duty as a prosecutor. *Kalina v. Fletcher*, 522 U.S. 118 (1997); *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Jones*, 174 F.3d at 1281 (prosecutors enjoy absolute immunity from suits relating to the initiation and pursuit of criminal prosecution, alleging malicious prosecution, regarding appearances before the court, and stemming from the prosecutor's function as an advocate). Thus, to the extent Plaintiff is suing

Defendant Rosado for actions taken in relation to her duties as prosecutor, she is cloaked with immunity for her alleged improper activities, which are associated with Plaintiff's criminal proceedings.

Finally, a suit against parties in their official capacities is the same as a suit against the municipality. *See Cooper v. Dillon*, 403 F.3d 1208, 1221 n.8 (11th Cir. 2005) (citing *McMillian v. Monroe County*, 520 U.S. 781, 785 n. 2 (1997)). "When suing local officials in their official capacities under § 1983, the plaintiff has the burden to show that a deprivation of constitutional rights occurred as a result of an official government policy or custom." *Id.* at 1221 (footnote omitted) (citing *Little v. City of North Miami*, 805 F.2d 962, 965 (11th Cir. 1986)).

Plaintiff has not alleged any facts demonstrating that the purported constitutional violations resulted from Defendants' policy, custom, pattern, or practice. Consequently, Plaintiff has failed to state a claim against Defendants in their official capacities.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. This case is **DISMISSED** for failure to state a claim upon which relief may be granted.

2. Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Doc. 2) is **DENIED**.

3. The Clerk of the Court is directed to enter judgment and close this case.

DONE and **ORDERED** in Orlando, Florida on August 6, 2020.

ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Unrepresented Party

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JEFFREY DAVIS,

Plaintiff,

v. Case No: 6:20-cv-1400-Orl-37DCI

ORANGE COUNTY SHERIFF'S OFFICE, ORANGE COUNTY STATE ATTORNEY OFFICE, BRIAN LEMONS and JENNIZA ROSADO,

Defendants.
_____/

ORDER

This cause is before the Court on Plaintiff's Motion for Reconsideration (Doc. 6). Plaintiff requests the Court to reconsider its Order dismissing his civil rights complaint. (*Id.*)

Rule 60(b) provides that relief from judgment or an order may be granted for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged; it is based on an

> earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6).

Plaintiff has not demonstrated any basis warranting reconsideration of the order dismissing the case. Plaintiff continues to argue that Defendant Lemons submitted a false affidavit in support of the arrest warrant resulting in his false arrest for attempted first-degree murder, shooting into an occupied dwelling, and aggravated assault. *See* Doc. 6 at 5, 7, 10-13. However, Plaintiff failed to specify in the Complaint what statements in the affidavit are false. *See* Doc. 1 at 5. Plaintiff's blanket statements are "so broad" that they offer "no help in determining which statements in the affidavit are material misstatements or what has been omitted." *Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 515 (11th Cir. 2019).

From his Motion for Reconsideration, it appears Plaintiff may be alleging that Defendant Lemons lied about where Christiana Harvey ("Harvey"), one of the victims, said she was at the time of the shooting and whether Harvey saw Plaintiff with a firearm. (Doc. 6 at 10-12.)

Even if these statements in the affidavit are false, Plaintiff has not demonstrated he is entitled to relief.

> A police officer may be held liable under § 1983 for submitting an application for an arrest warrant that contains false and misleading information or omits information. *Holmes v. Kucynda*, 321 F.3d 1069, 1083 (11th Cir. 2003) (false statements); *Haygood v. Johnson*, 70 F.3d 92, 95 (11th Cir. 1995) (omitted information). But, to amount to a constitutional

> violation, that information must be so clearly material to a determination of probable cause "that every reasonable law officer would have known that [its] omission [or inclusion] would lead to a search [or seizure] in violation of federal law." *Haygood*, 70 F.3d at 95; *see also Franks v. Delaware*, 438 U.S. 154, 165, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978) ("[T]ruthful" "does not mean . . . that every fact recited in the warrant affidavit is necessarily correct [but] . . . that the information put forth is believed or appropriately accepted by the affiant as true."). In other words, "[t]here is no constitutional violation 'if, absent the misstatements or omissions, there remains sufficient content to support a finding of probable cause.'" *Stefani v. City of Grovetown*, 780 F. App'x 842, 850–51 (11th Cir. 2019) (citation omitted).

Llauro v. Tony, No. 1:19-CV-20638, 2020 WL 3637242, at *5 (S.D. Fla. June 30, 2020). Probable cause "'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.'" *Id.* at *6 (quoting *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983)). If "'it is reasonable to conclude from the body of evidence as a whole that a crime was committed, the presence of some conflicting evidence or a possible defense will not vitiate a finding of probable cause.'" *Id.* (quoting *Paez v. Mulvey*, 915 F.3d 1276, 1286 (11th Cir. 2019)).

The Eleventh Circuit has recognized that a single witness' statements are enough to establish probable cause. *See, e.g., Martin v. Wood*, 648 F. App'x 911, 916 (11th Cir. 2016) (concluding probable cause for arrest existed based on a statement from the plaintiff's sister that the plaintiff was mismanaging the funds in their mother's trust). Moreover, under Florida law, "'the obligation to establish probable cause in an affidavit may be met by hearsay, by fleeting observations, or by tips received from unnamed reliable informants whose identities often may not lawfully be disclosed, among other reasons.'"

Thompson v. State, 273 So. 3d 1069, 1074 (Fla. 1st DCA. 2019) (quoting *Johnson v. State*, 660 So. 2d 648, 654 (Fla. 1995)).

In this case, Defendant Lemons' Affidavit for Arrest Warrant provided that two other individuals identified Plaintiff as the person who fired shots into the house into which Harvey fled. (Doc. 6-1 at 7.) Consequently, removing the alleged misstatements would not negate probable cause in the arrest affidavit. Furthermore, from the Incident Report, ample evidence existed to establish a probability or substantial chance that Plaintiff committed attempted first-degree murder, shooting into an occupied dwelling, and aggravated assault.[1] *See* Doc. 6-1 at 4-5. Accordingly, Plaintiff's Motion for Reconsideration (Doc. 6) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on October 5, 2020.

ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Unrepresented Party

[1] To the extent Plaintiff complains that he was never charged by information with the attempted first-degree murder or aggravated assault of Harvey, the Court notes that does not mean probable cause did not exist to support his arrest for those offenses. Furthermore, Defendant Lemons' Affidavit for Arrest Warrant references more than one victim, *see* Doc. 6-1 at 7, and Plaintiff was convicted of the lesser offense of attempted second-degree murder attempted, shooting into an occupied dwelling, and aggravated assault.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JEFFREY DAVIS,

Plaintiff,

v. Case No: 6:20-cv-1400-RBD-DCI

ORANGE COUNTY SHERIFF'S OFFICE, ORANGE COUNTY STATE ATTORNEY OFFICE, BRIAN LEMONS and JENNIZA ROSADO,

Defendants.
_____/

ORDER

This cause is before the Court on the following matters:

1. Plaintiff's has filed a Motion for Relief from Judgment (Doc. 26). Plaintiff requests the Court to reconsider its March 25, 2021 Order concluding that Plaintiff's appeal is not taken in good faith and assessing the appellate filing fee. (*Id.* at 1.)

Rule 60(b) provides that relief from judgment or an order may be granted for:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)-(6).

To support the motion, Plaintiff again argues that the Court erred in dismissing his civil rights complaint. (Doc. 26 at 2-9.) Plaintiff has not demonstrated the applicability of any Rule 60(b) provision. Accordingly, Plaintiff's Motion for Relief from Judgment (Doc. 26), seeking reconsideration of the March 25, 2021 Order, is **DENIED**.

2. Plaintiff's Request for Compulsory Judicial Notice of Discretionary Matter (Doc. 27) is **DENIED** and **STRICKEN**. It is not clear what relief Plaintiff is seeking. To the extent Plaintiff is requesting United States District Judge G. Kendall Sharp to take judicial notice of the state court documents submitted by Plaintiff in support of his first motion for reconsideration or to enter judgment in Plaintiff's favor, the Court notes that Judge Sharp is not the district court judge assigned to this case, nor is Judge Sharp an appellate judge.

DONE and **ORDERED** in Orlando, Florida on April 19, 2021.

ROY B. DALTON JR.
United States District Judge

Copies furnished to:
Unrepresented Party