FILED: May 2, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7016
(4:20-cv-01664-SAL)

CLINTON D. JOHNSON, JR., a/k/a Kayzon Ru

Plaintiff - Appellant

v.

SGT. JOHNSON, City of Conway Police Department Officer; ALLAN G. HUGGINS, II, City of Conway Police Department Officer; LT. ANDERSON, J. Reuben Long Detention Employee; OFFICER COSTELLO, J. Reuben Long Detention Employee; OFFICER STRICKLAND; OFFICER FOUTZ

Defendants - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7016

CLINTON D. JOHNSON, JR., a/k/a Kayzon Ru,

Plaintiff - Appellant,

v.

SGT. JOHNSON, City of Conway Police Department Officer; ALLAN G. HUGGINS, II, City of Conway Police Department Officer; LT. ANDERSON, J. Reuben Long Detention Employee; OFFICER COSTELLO, J. Reuben Long Detention Employee; OFFICER STRICKLAND; OFFICER FOUTZ,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence. Sherri A. Lydon, District Judge. (4:20-cv-01664-SAL)

Submitted: January 17, 2023 Decided: January 20, 2023

Before KING and THACKER, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Clinton D. Johnson, Jr., Appellant Pro Se. Leslie A. Cotter, Jr., Carmen Vaughn Ganjehsani, RICHARDSON PLOWDEN & ROBINSON, PA, Columbia, South Carolina; J.W. Nelson Chandler, CHANDLER & DUDGEON LLC, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clinton D. Johnson, Jr., appeals the district court's order accepting the recommendation of the magistrate judge, dismissing two defendants for failure to effect service upon on them, and awarding summary judgment to the remaining defendants on Johnson's claims alleged in his amended 42 U.S.C. § 1983 complaint. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Johnson's informal brief and other appellate filings do not challenge the bases for the district court's disposition, he has forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Clinton D. Johnson, Jr. a/k/a Kayzon Ru,

Plaintiff,

v.

Sgt. Johnson; Allan G. Huggins, II; Lt. Anderson; Officer Costello; Officer Strickland; and Officer Foutz,

Defendants.

C/A: 4:20-cv-1664-SAL

ORDER

Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C § 1983 for alleged violations of his constitutional rights. This matter is before the court for review of the July 28, 2022 Report and Recommendation (the "Report") of United States Magistrate Judge Kaymani D. West, made in accordance with 28 U.S.C. § 636(b)(1)(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). [ECF No. 248.]

In the Report, the Magistrate Judge recommends granting Defendants Huggins, Johnson, Foutz, and Anderson's motions for summary judgment, ECF Nos. 213 & 214, denying Plaintiff's motion for summary judgment, ECF No. 240, and dismissing Defendants Costello and Strickland from this action. *Id.* On July 27, 2022, Plaintiff filed a letter to the court, and on July 28, 2022, he filed objections to the Report. [ECF Nos. 251, 252.] Defendants Foutz and Anderson replied on August 1, 2022, ECF No. 253, and Defendants Huggins and Johnson replied on August 10, 2022, EC No. 254. Thus, the matter is ripe for review.

For the reasons outlined herein, the court adopts the Report in its entirety.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). A district court is only required to conduct a de novo review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992). In the absence of specific objections to portions of the Magistrate's Report, this court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Thus, the court must only review those portions of the Report to which Petitioner has made a specific written objection. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

"An objection is specific if it 'enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute.'" *Dunlap v. TM Trucking of the Carolinas, LLC*, No. 0:15-cv-04009, 288 F. Supp. 3d 654, 662 n.6 (D.S.C. 2017) (citing *One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996)). A specific objection to the Magistrate Judge's Report thus requires more than a reassertion of arguments from the complaint or a mere citation to legal authorities. *See Workman v. Perry*, No. 6:17-cv-00765, 2017 WL 4791150, at *1 (D.S.C. Oct. 23, 2017). A specific objection must "direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

"Generally stated, nonspecific objections have the same effect as would a failure to object." *Staley v. Norton*, No. 9:07-cv-0288, 2007 WL 821181, at *1 (D.S.C. Mar. 2, 2007) (citing *Howard v. Secretary of Health and Human Services*, 932 F.2d 505, 509 (6th Cir. 1991)). The court reviews

portions "not objected to—including those portions to which only 'general and conclusory' objections have been made—for *clear error*." *Id.* (citing *Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 200; Orpiano, 687 F.2d at 47) (emphasis added).

DISCUSSION

The Magistrate Judge's July 11, 2022 Report thoroughly explains the legal basis for her recommendation. Although Plaintiff subsequently filed a letter to the court and objections to the Report, neither filing contains specific objections to the Report.

Plaintiff's letter, ECF No. 251, is comprised almost entirely of copied portions of state court rules, doctrines, and other documents. He also provides numerous citations to cases and statutes without offering any explanation as to how they connect to Defendants purported conduct or contradict any portion of the Report. *See id.* Plaintiff cannot invoke federal question jurisdiction based on unsupported citations to inapplicable federal authorities. *See Hamilton v. United States*, No. 2:20-cv-1666-RMG-MHC, 2020 WL 7001153, at *4 (D.S.C. Aug. 26, 2020), *adopted*, 2020 WL 5939235 (D.S.C. Oct. 7, 2020), *aff'd*, 848 F. App'x 564 (4th 12 Cir. 2021) (finding no basis for federal question jurisdiction where complaint failed to allege sufficient facts in support of conclusory references to purported federal violations); *Jones v. Cherry*, No. 0:20-cv-3489-JFA-PJG, 2020 WL 7055562, at *2 (D.S.C. Dec. 1, 2020), *adopted*, 2020 WL 7332876 (D.S.C. Dec. 14, 2020) (same).

Similarly, the court is unable to identify a specific objection to the Report in Plaintiff's objections, ECF No. 252. Instead, Plaintiff focuses on incidents outside the scope of his complaint and the Report, and he raises new claims that officers violated his religious freedom. *See id.* at 2–4. Specifically, he alleges that on July 11, 2006, Horry County officers disturbed his religious worship, and presently, the "religious/multipurpose room [at the detention center] is locked." *See*

id. at 2-4. Because Plaintiff's objections raise entirely new issues, they are overruled. *See Dune v. G4s Regulated Sec. Sols., Inc.*, No. 0:13-cv-01676-JFA, 2015 WL 799523, at *2 (D.S.C. Feb. 25, 2015) ("The Court is not obligated to consider new arguments raised by a party for the first time in objections to the Magistrate's Report." (citing cases)).

The only specific portion of the Report that Plaintiff mentions is the "failure to exhaust" section on page 22. *See* [ECF No. 252 at 8.] Plaintiff, however, does not clarify what his objection is to this portion of the Report. And as Defendants point out in their reply, the Magistrate Judge found in favor of Plaintiff on this issue. *See* [ECF No. 248 at 25 (finding that there is a question of fact as to whether Plaintiff properly exhausted his claims under the Prison Litigation Reform Act).]

Importantly, the court notes that Plaintiff's filings do not address (or contest) the Report's findings that dismissal is appropriate because Defendants Huggins, Johnson, Foutz, and Anderson are entitled to qualified immunity on his § 1983 claims. Nor does Plaintiff object to the Report's finding that Defendants Costello and Strickland should be dismissed from this action because Plaintiff failed to effectuate service under Rule 4 of the Federal Rules of Civil Procedure.

In sum, after a careful review of Plaintiff's filings the court cannot identify an objection that "direct[s] the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano*, 687 F.2d at 47. As a result, the court reviews the Report for clear error only, and finding none, adopts the Report in its entirety.

CONCLUSION

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the Report, ECF No. 248, and incorporates the Report by reference herein. As a result, Defendants Costello and Strickland are **DISMISSED** from this action without prejudice due Plaintiff's failure to effectuate

service under Rule 4 of the Federal Rules of Civil Procedure; Defendant Foutz and Anderson's motion for summary judgment, ECF No. 213, is **GRANTED**; Defendant Huggins and Johnson's motion for summary judgment, ECF No. 214, is **GRANTED**; and Plaintiff's motion for summary judgement, ECF No. 240, is **DENIED**.

IT IS SO ORDERED.

August 10, 2022
Columbia, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Clinton Johnson, Jr. a/k/a Kayzon Ru, Plaintiff, v. Sgt. Johnson; Allan G. Huggins, II, Lt Anderson; Officer Costello; Officer Strickland, and Officer Foutz, Defendants.	C/A No: 5:20-cv-1664-SAL-KDW REPORT AND RECOMMENDATION

Plaintiff, a pretrial detainee proceeding pro se and in forma pauperis, brought this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff's allegations in his operative Amended Complaint, ECF No. 66, stem from three separate instances of alleged conduct on the part of the several Defendants. The first violation complained of by Plaintiff involves an arrest involving Defendants Sgt. Johnson, Officer Strickland, and Allan Huggins. Based on the filings in this case, this arrest was conducted by officers with the Conway Police Department. The second violation concerns an altercation with employees at the J. Reuben Long Detention Center with Defendants C.O. Costello, Foutz, and Anderson, as well as two other employees. As to the third alleged violation, Plaintiff alleges he was not provided soap, tissue, a mat, blanket, socks, or undergarments for five days.

This matter is currently before the court on several motions. Defendants Anderson and Foutz, both employees of the Horry County Sheriff's Office, filed a Motion for Summary Judgment, ECF No. 213, on February 4, 2022. Their Motion focuses on the conduct that allegedly took place at the J. Reuben Long Detention Center. Defendants Huggins and Johnson also filed a

Motion for Summary Judgment, ECF No. 214, on that same day. This Motion focuses on the arrest by the Conway Police Department. Plaintiff filed his own Motion for Summary Judgment, ECF No. 240, on June 1, 2022, several months after the dispositive motions deadline set forth in the scheduling order. Defendants Huggins and Johnson filed a Response, ECF No. 242, on June 15, 2022. Defendants Anderson and Foutz filed their Response, ECF No. 245, the same day. Plaintiff filed a reply, albeit untimely, to both of these Responses, on July 5, 2022. ECF Nos. 246; 247.

Plaintiff did not file an easily identifiable Response to either Motion for Summary Judgment filed by Defendants; however, he did file letters after the filing of these Motions. ECF Nos. 221; 226; 229; 231; and 232. The first two letters were filed before the issuance of a text order by the court. In the second letter, filed March 23, 2022, Plaintiff references one of the Motions for Summary Judgment and generally indicates some of the statements within the exhibits to the Motion contain false information. ECF No. 226. The court issued a text order on April 1, 2022, notifying Plaintiff that he should notify the court whether he intended to file a Response to either Motion for Summary Judgment beyond the filing of letters. ECF No. 227. Plaintiff then filed three additional letters after the issuance of the text order. ECF Nos. 229; 231; 232. The undersigned has considered the arguments made by Plaintiff in these filings submitted after the initial filing of the Motions for Summary Judgment. This case was referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(d) and (e), D.S.C. Because these Motions are dispositive, a Report and Recommendation ("R&R") is entered for the court's review.

While there are currently several causes of action alleged against six remaining Defendants, the docket in this case reflects that the service documents of two Defendants, Officer Costello and Officer Strickland, were returned unexecuted. ECF Nos. 140; 142. There is no indication that either

of these two Defendants were properly served. Rule 4(m) of the Federal Rules of Civil Procedure provides that unless a defendant is served within 90 days after a complaint is filed, this court must dismiss an action without prejudice as to that defendant. See Rule 4(m), Fed. R. Civ. P. Because more than 90 days has passed since the filing of Plaintiff's Complaint, indeed more than a year has passed since Plaintiff filed an Amended Complaint, and Plaintiff has not provided the Clerk of Court with a valid address for Defendants Costello and Officer Strickland, the undersigned recommends that these two Defendants be dismissed from this action without prejudice. The remaining Defendants in this case, Defendants Johnson, Huggins, Anderson, and Foutz, have all filed Motions for Summary Judgment.

I. Factual and Procedural Background

On May 7, 2021, the undersigned authorized service of process on the following Defendants: Sgt. Johnson, Allan G. Huggins, Lt. Anderson, Officer Foutz, Officer Costello, and Officer Strickland. ECF No. 92. Both Officer Costello and Officer Strickland's service documents were returned unexecuted. ECF Nos. 140; 142. The undersigned issued an order advising Plaintiff that he had to serve these Defendants within 90 days of the Complaint being filed. ECF No. 150. The undersigned further advised Plaintiff that if the Plaintiff did not bring the case into proper form, i.e. provide service documents with an updated service address for Defendants Costello and Strickland, the case against these Defendants may be dismissed. ECF No. 150. Plaintiff did not comply with this order. Accordingly, Defendants Costello and Strickland were never properly served.

A. Arrest by the Conway Police Department

Plaintiff's operative Complaint is his Amended Complaint filed February 16, 2021. ECF No. 66.[1] He sued several named Defendants in both their official and individual capacity. In his Amended Complaint, Plaintiff alleges that during September 4-7 of an unspecified year, while being detained and arrested, he was strip searched in public, an officer placed his knee in Plaintiff's back while he was in handcuffs, and he was "choked out" in the back of a police car by Defendant Johnson, Officer Guyett, Defendant Huggins, and Defendant Strickland. ECF No. 66 at 5. In the Amended Complaint, Plaintiff indicates that the dates of this alleged incident may be reversed with an incident he believes occurred on or around October 25, again of an unspecified year.

After reviewing Plaintiff's Amended Complaint and the Motion for Summary Judgment filed by Defendant Huggins and Johnson, it appears that the following facts are not in dispute. On October 25, 2019, Defendant Allan Huggins and another officer with the Conway Police Department attempted to arrest Plaintiff based on the existence of a warrant. During the arrest, a third officer, Officer Guyett, placed Plaintiff in handcuffs. Another officer had his knee on Plaintiff's back while the handcuffs were placed on Plaintiff. This officer is not named as a defendant in this case. While placing Plaintiff in the patrol car, Detective Huggins placed a hand on Plaintiff's shoulder and a hand on Plaintiff's sternum. Plaintiff was served with a warrant for assault and battery, as well as being charged with resisting arrest. Exhibit B, Defs. Huggins and Johnson's Motion for Summary Judgment, ECF No. 214-3. After a bench trial, Plaintiff was found

[1] On April 28, 2020, Plaintiff filed his Complaint in federal court. ECF No. 1. After the issuance of four proper form orders, the undersigned recommended dismissing the action pursuant to Federal Rule of Civil Procedure 41(b). ECF No. 53. Plaintiff filed a Motion for Extension of Time to comply with the proper form orders after the issuance of the R&R, and the court granted this Motion on January 27, 2021. ECF No. 60. Plaintiff then filed his Amended Complaint on February 16, 2021. ECF No. 66.

guilty of resisting arrest. Exhibit E, Defs. Huggins and Johnson's Motion for Summary Judgment, ECF No. 214-6. Plaintiff also pled guilty to the charges for assault and battery. Exhibit F, Defs. Huggins and Johnson's Motion for Summary Judgment, ECF No. 214-7.[2]

Defendants Huggins and Johnson dispute any contention by Plaintiff that the officer who placed a knee on his back violated his constitutional rights. Defs. Huggins and Johnson's Br. at 3; ECF No. 214-1. These Defendants further dispute that Plaintiff was choked in the back of the police car or that he was strip searched in public. Defs. Huggins and Johnson's Br. at 3. Defendant alleges that during the arrest, Plaintiff was actively resisting arrest, thus, an officer placed a knee on his back to keep Plaintiff in a stationary position. Defendants state that the officer had a knee on Plaintiff's back for no longer than 30 seconds, as evidenced by the body camera footage provided as an exhibit to their Motion. Exhibit D to Defs. Br; ECF No. 214-5. Defendants maintain Plaintiff was then rolled onto his side and was searched incidental to the arrest, which was also shown on the video footage. Exhibit D to Defs. Br; ECF No. 214-5. Defendants dispute Plaintiff was strip searched. Defendants further state that they placed Plaintiff in the back of the patrol car and had to place a hand on his shoulder and sternum in order to buckle him in the patrol car because Plaintiff resisted being buckled into the patrol car. Defs. Br. at 3.

These Defendants provided both the Declaration of Defendant Huggins, as well as Huggins' body camera video from the day of the arrest. Exhibit C and D, Defs. Huggins and Johnson's Motion for Summary Judgment, ECF No. 214-35; 219. Defendant Huggins avers that

[2] Defendants produced a copy of the Horry County Fifteenth Judicial Circuit Public Index to support both of these statements of fact. Courts may take judicial notice of matters of public record. Cobin v. Hearst-Argyle Television, Inc., 561 F. Supp. 2d 546, 550 (D.S.C. 2008). Defendants allege that Plaintiff was arrested pursuant to a warrant dated October 24, 2019 charging Plaintiff with assault and battery. Defs. Br. at 3; ECF No. 214-1. These charges came as a result of an individual reporting that he had been stabbed in the lower back by a person he identified in a photograph as Plaintiff. Defs. Br. at 2-3; Exhibit A to Defs. Br.; ECF No. 214-2.

Defendant Chris Johnson was not present at the scene and was not involved in the arrest. Affidavit of Allan G. Huggins, ¶ 5, Exhibit C. The body camera video footage shows several officers approach Plaintiff while he is riding a bicycle. Exhibit D, Huggins' Body Camera Video, 19:48:13. Two officers attempt to handcuff Plaintiff while he questions what they were doing. Exhibit D, Huggins' Body Camera Video, 19:48:17-24. In their Motion for Summary Judgment, Defendants identify these two officers as Defendant Huggins and Detective Carter. While attempting to handcuff Plaintiff, an officer places a knee on Plaintiff's back for approximately 27-28 seconds, Exhibit D, Huggins' Body Camera Video, 19:48:26-53. During the time that the officer places a knee on Plaintiff's back, Plaintiff continues to communicate with the officers. Exhibit D, Huggins' Body Camera Video, 19:48:26-53. Once Plaintiff is handcuffed and he learns the officers have an arrest warrant, he becomes upset. Exhibit D, Huggins' Body Camera Video, 19:49:50-19:51:30. The officers give Plaintiff sandals to wear, and they take off his shoes. Exhibit D, Huggins' Body Camera Video, 19:51:50-55. Throughout the duration of the arrest, Plaintiff verbalizes that he is upset about his arrest. Exhibit D, Huggins' Body Camera Video, 19:54:37. He also verbalizes that he is upset that the officers removed his shoes and accuses them of undressing him in front of people. Exhibit D, Huggins' Body Camera Video, 19:55-49-59.

At all times during the video footage, Plaintiff remains fully clothed. The officers attempt to place Plaintiff in the back of the patrol car while Plaintiff continues to state that he is upset he does not have his tennis shoes. Exhibit D, Huggins' Body Camera Video, 19:58:46. Defendant Huggins places a hand on Plaintiff's chest for approximately 35 seconds while he is being buckled into the back of the patrol car. Exhibit D, Huggins' Body Camera Video, 19:59:10-45. During this time frame, Plaintiff asks the police officers why they are choking him. The video footage does not show any officers placing their hands close to Plaintiff's neck or mouth.

B. Incidents at J. Reuben Long Detention Center.

Plaintiff alleges that on September 3 of an unspecified year, he was not given soap, tissue, a mat, a blanket, socks or undergarments for 5 days. ECF No. 66 at 5. Plaintiff does not provide the name of an individual that he alleges is responsible for the denial of these items, nor does he provide any reason why these items were allegedly denied to him. Defendants Anderson and Foutz, both employed with the Horry County Sheriff's Office,[3] provided an affidavit stating they do not have any personal knowledge of any incident remotely similar to these allegations, and Plaintiff does not allege where this alleged violation occurred. Affidavit of Officer James Foutz, Exhibit A to Defendants' Motion for Summary Judgment; ECF No. 213; Affidavit of Lieutenant William Anderson, Exhibit B to Defendants' Motion for Summary Judgment; ECF No. 213.

Plaintiff further alleges that on or around October 25, which he indicates may be the wrong date, while observing an unspecified religious ritual, he was stripped nude, endured 45 minutes of mace/pepper spray, and violated by C.O. Costello and Defendant Foutz, which was witnessed by C.O. Miller, and ordered by Lt. Anderson and Director Rhodes. ECF No. 66 at 5.[4] Plaintiff further alleges that this incident occurred after he told Costello that he had two prior PREA (believed to be a reference to the Prison Rape Elimination Act) violations on record and not to strip Plaintiff. Id. Plaintiff alleges Costello blatantly sprayed him directly in the eyes while he was in the shower, groped him in the shower, and cut off a towel that was around his waist. Id. He also alleges that he

[3] In his Affidavit, Defendant James Foutz states that he was employed as a Detention Officer with the Horry County Sheriff's Office at the J. Reuben Long Detention Center. Affidavit of Officer James Foutz, ¶ 2, Exhibit A to Defendants Anderson and Foutz's Motion for Summary Judgment, ECF No. 213-1; Affidavit of Lieutenant William Anderson, ¶ 2, Exhibit B to Defendants Anderson and Foutz's Motion for Summary Judgment, ECF No. 213-2.

[4] In Defendants Anderson and Foutz's Motion for Summary Judgment, they indicate that this incident Plaintiff references is most closely related to an incident that occurred on November 7, 2019. These Defendants have provided video footage of the incident in question.

was "outrageously detained by mental health" after he asked for both physical and mental medical assistance. ECF No. 66 at 6. Plaintiff alleges he was denied medical treatment. Id. Plaintiff alleges that he entered J. Reuben Long Detention Center ("JRLDC") with two sprains; however, after "excessive force" he acquired a sporadic sprain in his neck, severe loss of hair damage, emotional scarring from medication, taking of his manhood, and violation of his religious freedoms. Id. Plaintiff alleges that he filed a grievance "in person, on kiosk, to the Horry County Courthouse, to Public Defender's Office, Charleston District Court, and to District Courts located in Florence, S.C." Id. at 8.

Defendants Foutz and Anderson (together, the "HCSO Defendants") dispute Plaintiff's allegations. These Defendants contend that the use of pepper spray was necessary and appropriate under the circumstances. To support their Motion, they have provided 14 videos capturing this incident (which they contend occurred on November 7, 2019), along with the affidavit of Major Joey Johnson, and the incident reports related to these events. Defendant Anderson states that he was off duty and not working at the JRLDC on this day. Anderson Aff. ¶ 5. Major Joey Johnson also states that Lt. Anderson was not on duty that day, and his name is not listed on any of the reports documenting the incident. Affidavit of Major Joey Johnson, ¶ 5; ECF No. 213-3. In his affidavit, Defendant Foutz states that Plaintiff had been moved to a unit set aside for administrative separation pending a disciplinary hearing. Defendant Foutz further states that when he went to collect meal trays after lunch ended, Plaintiff refused to hand his tray to Foutz, instead challenging him to a fight. Foutz Aff. ¶ 5; see also Detention Center Incident Report and Supplemental Incident Report, Exhibit A-1 to Foutz Affidavit. In one of his letters to the court, Plaintiff disputes that he challenged Foutz to a fight and disputes that he gestured with the tray as if it were a weapon. ECF No. 226.

Defendant Foutz states that Plaintiff then began to bang his tray against his cell door and window, which prompted Defendant Foutz to notify Officer Costello. Foutz Aff. ¶¶ 7-8; Exhibit A-1. At this point, Foutz states that the JRLDC Emergency Response Team ("ERT") responded, which included Foutz and Costello. Foutz Aff. ¶¶ 8-9; Exhibit A-1. After commanding Plaintiff to put the tray down and allow himself to be handcuffed, Foutz states that Plaintiff continued to wield the tray as a weapon. Foutz Aff. ¶ 9. The ERT decided to spray pepper spray under Plaintiff's cell door after repeated attempts to deescalate the situation proved unsuccessful. Foutz Aff. ¶ 10; Exhibit A-1. ERT member Costello deployed the pepper spray; however, Plaintiff did not submit to being handcuffed. ERT then used a pepper ball gun, shooting the pepper ball into Plaintiff's tray slot, while Plaintiff removed the tray from his cell by pushing it out of the tray slot. Foutz Aff. ¶¶ 10-13; Exhibit A-1. Once this occurred, Defendant Foutz states that Plaintiff allowed himself to be handcuffed. Foutz Aff. ¶ 13. Plaintiff disputes some portions of this narrative and states that he was shot with three shots of pepper ball, and he was shut in his cell for five to ten minutes, at which point his tray went out the door. ECF No. 226.

Defendant Foutz states that Plaintiff was then taken to the shower to wash off the pepper spray. Foutz Aff. ¶ 15; Exhibit A-1. After several minutes, Plaintiff was instructed to exit the shower, but he did not comply. Foutz Aff. ¶ 16; Exhibit A-1. Defendant Foutz states that Costello spoke with Plaintiff for a period of time, asking him to allow himself to be handcuffed; however, his attempts to direct Plaintiff to be handcuffed did not work. Foutz Aff. ¶ 17. After advising Plaintiff he would be pepper sprayed again if he did not comply, Costello administered a burst of pepper spray at Plaintiff. Foutz Aff. ¶¶ 18; Exhibit A-1. Several officers then entered the shower to handcuff Plaintiff. Foutz Aff. ¶ 19; Exhibit A-1. After securing handcuffs on Plaintiff, Defendant Foutz states they attempted to hold Plaintiff in place to finish rinsing him off. Plaintiff

resisted the efforts by officers to assist him in rinsing off. Foutz Aff. ¶¶ 20-21; Exhibit A-1. The officers cut a towel that was tied around Plaintiff's waist, as well. Foutz Aff. ¶ 20; Exhibit A-1. Plaintiff states in one of his letters that the towel had some sort of religious significance. ECF No. 226. The officers returned Plaintiff to his cell and provided him a clean uniform. Foutz Aff. ¶ 22; Exhibit A-1. According to Defendant Foutz, Plaintiff was examined by two nurses, who cleared him of receiving any injury. Foutz Aff. ¶ 23. As best the undersigned can decipher, Plaintiff's substantive response to the HCSO Defendants' statement of events, aside from the information provided above is that the information contained within the affidavits and incident reports are false. He further states that all incidences of being combative were as a result of the denial of his federal rights and rights under state law.

The undersigned has reviewed the video footage provided by the HCSO Defendants. See Exhibit 1 to Affidavit of Major Joey Johnson, Exhibit C. Upon review, the video footage supports Defendant Foutz's statements regarding the incident in question and do not support Plaintiff's allegations. Specifically, the video footage reflects the fact that Plaintiff was banging something in his cell. Exhibit C-1, Video 2. The video footage reflects the fact that an officer, identified by his uniform as Officer Costello, sprays something under Plaintiff's cell door for approximately 2 seconds. Exhibit C-1, Video 2, 17:42:01-03. Officer Costello asks Plaintiff if he is going to "cuff up" and asks him to "drop the tray." Exhibit C-1, Video 2, 17:48:30-45. Plaintiff does not put the tray outside of his cell or otherwise allow himself to be cuffed. Another officer, identified as Defendant Foutz, uses a device to spray or shoot something into the tray slot, and the tray gets dropped out of the slot simultaneously. Exhibit C-1, Video 2, 17:50:28-35. The video footage captures what sounds like the administration of three shots of pepper spray. An officer asks Plaintiff if he will "cuff up" again, and Plaintiff states "yes sir" and places his hands outside his

tray slot to be cuffed. Exhibit C-1, Video 2, 17:52:31-17:53:30. Once Plaintiff is taken to the shower, he verbalizes that he does not want to leave the shower. Exhibit C-1, Video 3. Specifically, Plaintiff yells, "I will not" or "I'm not" several times. Exhibit C-1, Video 3, 18:14:00-15. The video shows Officer Costello asking Plaintiff to "cuff up" to which Plaintiff continuously repeats "It's not happening." Exhibit C-1, Video 3, 18:14:20-30. Plaintiff sounds very agitated and states that they are violating his rights, while Officer Costello states that he is listening to him. Exhibit C-1, Video 2, 18:14:45-18:15:15. Officer Costello explains to him that he needs Plaintiff to "cuff up." Exhibit C-1, Video 2, 18:15:20-25. Officer Costello tells Plaintiff if he does not cuff up, he will get pepper sprayed again. Exhibit C-1, Video 3, 18:16:40-42. Officer Costello then asks if he is going to "cuff up" and Plaintiff says "no," at which point, Officer Costello is seen spraying a short burst of pepper spray from outside the shower door inside the shower. Exhibit C-1, Video 3, 18:16:42-50. Officer Costello asks Plaintiff to "come cuff up" twice, and Plaintiff says he cannot. Exhibit C-1, Video 3, 18:17:54-18:18:06. During the video footage, Plaintiff is not heard referencing any PREA violations when speaking to Officer Costello. Officer Costello and another officer move into the shower and Plaintiff becomes combative with the officers. Exhibit C-1, Video 3, 18:18-57-18:19:13. Plaintiff can be heard saying "take the towel" but tells the officers they cannot take his prison uniform while the officers are attempting to handcuff him in the shower. Exhibit C-1, Video 4, 18:20:20-27. The video shows an officer attempting to untie the towel from Plaintiff's waist before eventually cutting the towel with scissors. Exhibit C-1, Video 4, 18:20:27-58. Plaintiff does not reference or indicate that the towel had any sort of religious significance. The video then shows Plaintiff begin to crouch down and resist showering his face or body. Exhibit C-1, Video 4, 18:21:50. After attempting to help Plaintiff rinse off his face in the shower, the officers take Plaintiff back to his cell. Exhibit C-1, Video 4, 18:22-18:23:25. The officers provide

Plaintiff a clean uniform once he tosses the uniform he had been wearing out of his cell. Exhibit C-1, Video 6, 18:59:49-19:00:11.

II. Standard of Review

The court shall grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that summary judgment is appropriate; if the movant carries its burden, then the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). If a movant asserts that a fact cannot be disputed, it must support that assertion either by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;" or "showing . . . that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248. All that is required is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." Anderson, 477 U.S. at 249. "Mere unsupported speculation . . . is not enough to defeat a summary judgment motion." Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc., 53 F.3d 55, 62 (4th Cir. 1995).

A party cannot create a genuine issue of material fact solely with conclusions in his or her own argument, affidavit, or deposition that are not based on personal knowledge. See Latif v. The Cmty. Coll. of Baltimore, 354 F. App'x 828, 830 (4th Cir. 2009) (affirming district court's grant of summary judgment, noting plaintiff's affidavit, which offered conclusions not based on his own knowledge, did not create genuine issues of material fact).

Further, while the federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case, see, e.g., Cruz v. Beto, 405 U.S. 319, 322 (1972), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact when none exists. Weller v. Dep't of Soc.Servs., 901 F.2d 387, 391 (4th Cir. 1990).

III. Analysis

A. Plaintiff's Filings

The undersigned has reviewed the motions and filings currently in the record. Plaintiff's various letters appear to be a collective response to both of the Defendants' Motions for Summary Judgment. Additionally, Plaintiff filed his own Motion for Summary Judgment. The undersigned has considered the substance of each of Plaintiff's letters. All of the letters were written in light pencil, thereby impacting the ability to clearly read the letters. Additionally, the ability to decipher the context of the letters is challenging in that Plaintiff does not clearly delineate the purpose of each letter. However, the following paragraphs describe the context of each letter and the undersigned has considered the substantive information provided in each filing.

In Plaintiff's letter filed February 28, 2022, ECF No. 221, Plaintiff advises the court that a bag with all of his "legal/law work," along with some personal items were left at an address where

he was picked up by a medic. Plaintiff does not specify the date that these items were left behind, but he indicates that a list of potential witnesses, along with recent documents and current orders were in there. Plaintiff further references officers of Oconee County and seeks discovery. The undersigned addressed this letter in a text order dated April 1, 2022.

Plaintiff's letter filed March 23, 2022, ECF No. 226, provides the most substantive response to the Motions for Summary Judgment. Within this letter, Plaintiff states that Defendant Foutz' affidavit contains false statements. He alleges the line "come fight it from me" is false. He alleges that the statement that Defendant Foutz and Officer Ward approached his cell is false. He alleges that the statement that he would take the tray and gesture as if he was going to assault them is false. Plaintiff appears to allege that Defendants omitted any information about a towel or the religious context, which the undersigned believes to be related to the incident that occurred in the shower. Plaintiff appears to state that he did not throw his tray out at first. Plaintiff indicates that he was saturated by three shots of pepper ball. Plaintiff indicates the "flap was closed," apparently referring to the tray slot, and that it was reopened 5-10 minutes after the incident, and the tray went out the door [of his cell]. Plaintiff specifically addresses the affidavits attached to the Motion for Summary Judgment, ECF No. 213. Plaintiff references Exhibit C to ECF No. 213, which is the Motion for Summary Judgment filed by Defendants Anderson and Foutz and states he wishes to cross examine Defendant Anderson about a poisoning and the false submittal of true and accurate statements by Foutz, as well as incident reports, which he says omits facts.[5] Plaintiff suggests he wants to cross examine Director Marcus Rhodes, regarding evidence of grievances, as well as evidence of prior Prison Rape Elimination Act ("PREA") notifications. Plaintiff alleges that

[5] The deadline for discovery, as set forth in the scheduling order ended on September 20, 2021. ECF No. 137 but was ultimately extended through December 3, 2021. ECF No. 179.

Officer Miller's last statement, apparently referring to the Incident Reports, is false. Plaintiff similarly alleges the last statement of Officer Ward, which appears to be a reference to the Incident Reports, is false. Plaintiff alleges that Delilah Karr is not present for examination. Plaintiff also states that the only truthful statement is the mention of the towel. Plaintiff alleges Exhibit 3 to the Motion for Summary Judgment, ECF No. 213, is a conspiratorial, preemptive classification with no hearing, fair trial, improper procedures amounting to a criminal judgment on November 7, 2019. Finally, Plaintiff states that "all incidences, reports of yelling, combative, disturbance, became about denial of federal rights/state law of access to law, legal materials request(s) since day of incarceration."

Plaintiff's letter filed on April 25, 2022, ECF No. 229, is unintelligible. It is a series of nouns and verbs separated by commas; for example, it states, "the right to bail, bond, to be hired, to hire, love (amour), write, mail, receive mail, to post, school, telephone, email, name (pseudo), abbreviate, amass." This letter does not provide a substantive response to either summary judgment motion.

Plaintiff's letter filed on April 26, 2022, ECF No. 231, advises the court that Plaintiff is being violated "in a major capacity" in a different county, by indifferent officers by an offending circuit. Plaintiff requests papers necessary to file a civil suit. The undersigned does not believe this letter is related to the current lawsuit before the court.

Plaintiff's letter filed on April 26, 2022, ECF No. 232, requests polygraph testing for all officers involved with Oconee County Sheriffs, Detention Center employees, witnesses, and the like. Plaintiff drafted a Petition to list tobacco products, medicinal marijuana, CBD, hemp, oils for religious purposes. Plaintiff also provides a drafted warrant for false information by Judge Blake Norton and Officer/Constable Dancelon. Plaintiff references that one or more individuals has

hindered a federal investigation. Plaintiff alleges he wrote something while in in the Oconee County Detention Center regarding freedom of speech and expression of religion, and he alleges violation of RLUIPA. Plaintiff alleges he is moving for religious freedom of exercise and use of hashish, CBD, oils, and tobacco products. Plaintiff also attached a sandwich crème wrapper to the filing and states that it is harmful to persons. The undersigned does not believe this letter is related to the current lawsuit before the court.

B. Plaintiff's Motion for Summary Judgment

Plaintiff has provided this court with multiple filings and letters during the pendency of this litigation. Under the current scheduling order, dispositive motions were due February 2, 2022. In response to the timely filed summary judgment motions of Defendants, Plaintiff filed several letters. It was not until June 1, 2022, four months after the dispositive motions deadline, that Plaintiff filed a Motion for Summary Judgment. Pro se litigants are subject to the time requirements set forth by the court, even taking into account the deference afforded such litigants. Ballard v. Carlson, 882 F.2d 93, 96 (4th Cir. 1989). Plaintiff provides no reason for filing his dispositive motion several months after the deadline set forth in the scheduling order. Moreover, a review of Plaintiff's Motion does not provide any intelligible basis for granting summary judgment in favor of Plaintiff. Accordingly, the undersigned recommends denying Plaintiff's Motion for Summary Judgment.

C. Defendants Johnson and Huggins' Motion for Summary Judgment

Defendants Chris Johnson and Allan Huggins, both officers with the Conway Police Department,[6] filed a Motion for Summary Judgment on February 4, 2022. ECF No. 214.

[6] According to his Declaration, Detective Allan G. Huggins, II, was a detective with the Conway Police Department during the events complained of by Plaintiff. Declaration of Allan G. Huggins,

Defendants Huggins and Johnson argue that Plaintiff has failed to prove a violation pursuant to § 1983. Defendants further argue that they are entitled to qualified immunity as to Plaintiff's claims.

Under 42 U.S.C. § 1983, relief may be sought when a plaintiff alleges the violation of a right secured by the Constitution by a person acting under color of state law. West v. Askins, 487 U.S. 42, 48 (1988). Because Plaintiff is or was a pretrial detainee at the time of the alleged violation, Plaintiff's excessive force claim is properly brought under the Due Process Clause of the Fourteenth Amendment. Coney v. Davis, 809 F. App'x 158, 159 (4th Cir. 2020). To succeed on such a claim, Plaintiff, as a pretrial detainee, need only show that the alleged use of force purposely or knowingly used against him was objectively unreasonable. Kingsley v. Hendrickson, 576 U.S. 389, 396-97 (2015). Here, the excessive force claim relates to an arrest. The Supreme Court case of Graham v. Connor, 490 U.S. 386, 395 (1989), establishes that claims against law enforcement for excessive force in course of arrest, investigatory stop or other "seizure" of a person are properly analyzed under the Fourth Amendment's objective "reasonableness" standard. The Supreme Court recognized "that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Id. at 396. Further, the Court held that there is not a precise mechanical application of the standard, but "its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id. Additionally, the Court provides that an officer's use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision

---

II, ¶ 1; ECF No. 219. Defendant Huggins further stated that Officer Chris Johnson was not present at the scene or involved in the arrest. Decl. of Huggins, ¶ 5.

of hindsight." Id. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Id. at 396-97. Therefore, guided by the authority in Graham, and viewed in the light most favorable to the Plaintiff, the undersigned must consider whether the use of force was reasonable during Plaintiff's arrest.

Defendant Huggins and Johnson argue that these actions were performed incidental to Plaintiff's arrest was reasonable given the circumstances because Plaintiff was not only resisting arrest but refusing to comply with the officers' orders. Defendants further argue Defendant Johnson was not involved in the arrest at all; therefore, Plaintiff is unable to assert any conduct on his part to support a § 1983 claim. The undersigned has carefully reviewed the several letters filed by Plaintiff after Defendants Huggins and Johnson filed their Motion for Summary Judgment. As best the undersigned can discern, Plaintiff does not address any of the arguments made in this Motion. In reviewing his Amended Complaint, the only reference to Defendant Johnson is that he was one of four individuals he mentions that was there while Plaintiff was arrested. However, Defendant Huggins avers that Defendant Johnson was not present, and the case report attached to their Motion does not indicate he was present. These two Defendants also provided Defendant Huggins' body camera footage, which shows the officers at the scene. Plaintiff has failed to come forward with any evidence, other than naming Defendant Johnson, to support a finding that he was involved in any way with any of the incidents forming the basis of Plaintiff's Amended Complaint. Accordingly, the undersigned recommends dismissing Defendant Sergeant Johnson.

As for Defendant Huggins, he provides a narrative explaining the steps used to arrest Plaintiff. Defendants also provided video footage of the arrest. The video footage captures the

entirety of Plaintiff's arrest through the time he was placed in the back of the patrol car. The video shows officers quickly approach Plaintiff while he is on a bike. The officers remove him from the bike and place him on the ground. The officers repeatedly ask Plaintiff to place his hands behind his back. He questions what they are doing and appears to try and lift himself up off the ground while the officers attempt to place handcuffs on him. While attempting to place handcuffs on Plaintiff, an officer places his knee on Plaintiff's back for approximately 30 seconds until the handcuffs are secure, and they are able to roll him to face forward. Once the officers inform Plaintiff that they have an arrest warrant for him, Plaintiff begins to consistently argue with the officers at the scene regarding his arrest. At all times during the arrest, the undisputable video footage shows that Plaintiff was fully dressed, except for the removal of his shoes. Further, the body camera video footage shows Defendant Huggins placing a hand on Plaintiff's chest while placing him in the back of the patrol car. For the duration of the time the officers are attempting to place him in the back of the patrol car, Plaintiff is talking and referencing that the officers are "choking" him, despite the fact that the video evidence does not show anyone placing their hands near his neck or anywhere other than on the front of his chest. In other words, the undisputed evidence in the video shows that Plaintiff was not choked.

The United States Supreme Court, the Fourth Circuit, and other circuits have consistently held that an officer's actions must be reasonable in considering the amount of force used to secure a suspect. See e.g., Scott v. Harris, 550 U.S. 372, 381 (2007); Graham, 490 U.S. 386; Thomas v. Holly, 533 F. App'x 208, 215 (4th Cir. 2013) cert. denied, 134 S. Ct. 939 (2014). Graham provides the following factors to consider in analyzing the amount of force used: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or

others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. 490 U.S. at 396.

The undersigned finds after a review of the body camera footage and the affidavit of Defendant Huggins that the only force applied by Huggins during the entirety of the arrest was when Huggins placed his hand on Plaintiff's sternum for approximately 35 seconds while attempting to place him in the back of the patrol car.[7] To the extent the video shows the police officers using force, it was proportionate to the force needed for the arrest under the Graham factors. Here, Defendants Huggins and Johnson stated that the arrest was made pursuant to the issuance of a warrant, accordingly the first factor weighs in favor of Defendants. Further, the video evidence shows Plaintiff resisting arrest and failing to comply with Huggins' directives when Huggins was attempting to buckle Plaintiff in the patrol car. The video evidence also shows several individuals, including children, at the scene. Defendant Huggins placed a hand on Plaintiff's chest to help keep him secure while he buckled Plaintiff into the patrol car. Plaintiff's continued questioning of Defendant Huggins and his attempts to avoid being placed in the patrol car could have reasonably put Huggins and bystanders at risk; therefore, the second factor also weighs in Defendants' favor. Finally, as to the third factor, the video evidence shows that Huggins placed his hand on Plaintiff for a very short period of time in order to buckle Plaintiff into the patrol car. The video evidence affirmatively shows that Defendant Huggins did not choke Plaintiff. Instead, the video evidence shows that Defendant Huggins placed a hand on Plaintiff's sternum, but Plaintiff was still able to converse with the officers, and he was clearly not in distress or pain. Plaintiff does not allege he suffered any injury as a result of the arrest, including the allegations of

[7] The undersigned notes that the officer who placed his knee on Plaintiff's back was never identified as a named Defendant in this lawsuit; therefore, whether that officer's actions were reasonable are not before the undersigned.

being choked and that he had a knee placed on his back. Further, the body camera video evidence shows the officers using force for a very limited amount of time because Plaintiff resisted being handcuffed. Finally, as explained by Defendant Huggins, Plaintiff was moving around and resisting being placed in the back of the car; thus, the amount of force used was employed in an attempt to accomplish an arrest. Plaintiff did not respond to or provide a rebuttal to Defendant's assertions or to the body camera footage. Accordingly, the undersigned recommends finding that, viewing the evidence in a light most favorable to Plaintiff, Plaintiff's excessive force claim against Defendant Huggins should be dismissed.

Further, the undersigned recommends finding that both Defendants are entitled to qualified immunity. In Harlow v. Fitzgerald, the Supreme Court held that government officials performing discretionary functions are generally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights which a reasonable person would have known. 457 U.S. 800 (1982). In evaluating whether qualified immunity applies, the court must determine: (1) whether the facts alleged, taken in the light most favorable to Plaintiff show that Defendants' conduct violated a constitutional right; and (2) whether the right was clearly established at the time of the complained of misconduct. Pearson v. Callahan, 555 U.S. 223, 232 (2009). The Fourth Circuit has stated that the purpose of qualified immunity is to ensure that government officials can perform their job free from the specter of endless and debilitating lawsuits. Torchinksy v. Siwinksi, 942 F.2d 257, 261 (4th Cir. 1991). Here, there is no evidence to suggest that these Defendants, Huggins and Johnson, participated in any conduct that violated Plaintiff's rights. There is no evidence Defendant Johnson was involved in the arrest. Defendant Huggins' conduct in placing his hand on Plaintiff's chest was to ensure he could safely buckle him in the back of the patrol car. This interaction captured on the body camera footage supports

Huggins' explanation of the events. As to Plaintiff's claim that he was strip searched in front of the public, the body camera footage shows that he was clothed the entire time. Finally, as analyzed by the undersigned, the Graham factors weigh in favor of Defendant Huggins finding that the use of force was reasonable under the circumstances. Thus, Defendant Huggins did not engage in conduct that violated Plaintiff's rights. Plaintiff does not respond to any of the evidence provided by Defendants. Therefore, the undersigned recommends granting Defendant Huggins and Defendant Johnson's Motion for Summary Judgment on plaintiff's excessive force claims because they are entitled to qualified immunity as a matter of law.

D. Defendants Lt. Anderson and Officer Foutz's Motion for Summary Judgment

On February 4, 2022, Defendants Anderson and Foutz (together, the "HCSO Defendants") filed a Motion for Summary Judgment, ECF No. 213, on several grounds including, (1): Plaintiff failed to exhaust his administrative remedies; (2) Plaintiff has not established that he suffered any injury; (3) Plaintiff cannot show Defendant Anderson was personally involved in any incident sufficient to support a claim under 42 U.S.C. § 1983; (4) Plaintiff's excessive force claim is legally insufficient; (5) Plaintiff's deliberate indifference to his conditions of confinement claim is legally insufficient; (6) Defendants are entitled to qualified immunity; and (7) Plaintiff's claims brought against Defendants in their official capacity are barred by the Eleventh Amendment. The undersigned will consider each argument in turn.

1. Failure to Exhaust

The HCSO Defendants first argue that Plaintiff failed to exhaust his administrative remedies. The Prison Litigation Reform Act (the "PRLA"), 42 U.S.C. § 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until

such administrative remedies as are available are exhausted." This requirement "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532 (2002). To satisfy this requirement, a plaintiff must avail himself of all available administrative remedies. See Booth v. Churner, 532 U.S. 731 (2001). Those remedies "need not meet federal standards, nor must they be 'plain, speedy, and effective.'" Porter, 534 U.S. at 524 (quoting Booth, 532 U.S. at 739).

The purpose of the exhaustion requirement is twofold. First, it gives an administrative agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court[.]" Woodford v. Ngo, 548 U.S. 81, 89 (2006) (quoting McCarthy v. Madigan, 503 U.S. 140, 145 (1992)). Second, "[c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." Id. Satisfaction of the exhaustion requirement requires "using all steps that the agency holds out, and doing so properly." Id. at 90 (quoting Pozo v. McCaughtry, 286 F.3d 1022, 1024 (7th Cir. 2002) (emphasis in original)). Thus, "it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." Jones v. Bock, 549 U.S. 199, 218 (2007). Defendants have the burden of establishing that a plaintiff failed to exhaust his administrative remedies. Anderson v. XYZ Corr. Health Servs., Inc., 407 F.3d 674, 681 (4th Cir. 2005).

In his Amended Complaint, Plaintiff alleges that he filed a grievance "in person, on kiosk, to Horry County courthouse, to Public Defender's office, to Charleston District Court, and to district courts located in Florence, S.C." ECF No. 66 at 8. He further references this lawsuit and internal affairs of JRLDC, as well as alleging that he appealed "to the highest level" and spoke to petty officers all the way up the hierarchy. ECF No. 66 at 8. By contrast, to support a finding that

Plaintiff failed to exhaust his administrative remedies, the HCSO Defendants submitted the Affidavit of Major Joey Johnson. Major Johnson states that upon review of Plaintiff's allegations in his Amended Complaint, Plaintiff makes two claims arising from incidents that allegedly occurred at JRLDC. The first incident involves Plaintiff's claim that on October 25, several officers used pepper spray against him, and the second incident involved the alleged denial of soap, tissue, a mat, and undergarments on September 3. Affidavit of Major Joey Johnson, ¶ 3, attached as Exhibit C to Defendants' Motion for Summary Judgment, ECF No. 213. Major Johnson states that JRLDC has a three-step review and appeal process for inmate grievances, which must be filed within 72 hours of the incident. Aff. of Johnson, ¶¶ 7-8. Major Johnson states that he has reviewed the JRLDC Inmate Grievance system and found no evidence of any grievance filed by Plaintiff regarding any use of force that occurred on either October 25 or November 9, 2019. Aff. of Johnson, ¶ 9. Major Johnson further states that he did not find any evidence of any grievance filed by Plaintiff alleging any use of force involving Defendants Anderson, Foutz, or Costello. Aff. of Johnson, ¶ 9. Finally, Major Johnson states that he reviewed the JRLDC Inmate Grievance system and found no evidence of any grievance filed by Plaintiff regarding the denial of obtaining soap, a mat, or undergarments at or around September 3. Aff. of Johnson, ¶ 10. Plaintiff has not responded to the HCSO Defendants evidence that there are no grievances within the system relating to the allegations in his Amended Complaint.

In his Amended Complaint, while Plaintiff does not specifically allege that he complied with the three-step inmate grievance procedure outlined by Major Johnson, he alleges he submitted grievances "to the highest level." Plaintiff alleges that he filed a grievance "on kiosk," which appears to follow the initial process, and he alleges the final result was "a denial that all events took place." ECF No. 66 at 8. A pro se litigant's verified complaint and other verified submissions

must be considered as affidavit(s) and may defeat a motion for summary judgment when the allegations contained therein are based on personal knowledge. Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991). Viewing the allegations in his Amended Complaint in a light most favorable to Plaintiff, based on the allegations in his pleading, the undersigned recommends finding that there is a question of fact whether Plaintiff properly exhausted these claims as required under the PLRA.

2. Plaintiff's Failure to Establish Injury

The HCSO Defendants next argue that Plaintiff has not established any injury that he suffered while in custody as required by the PRLA. The PLRA provides, "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act." 42 U.S.C. § 1997e(e). In his Amended Complaint, Plaintiff alleges he suffered a sprain in his neck and loss of hair, damage to skin, and emotional scarring caused by medication. ECF No. 66 at 6. The HCSO Defendants argue that none of these injuries could plausibly have been from the incidents described in Plaintiff's Complaint. However, in viewing the allegations in a light most favorable to Plaintiff, because Plaintiff alleges some form of physical injury, and it is conceivable that the injuries could have resulted from the pepper spray incident (damage to skin), the undersigned recommends denying summary judgment on this ground. The undersigned will consider the issue of whether Plaintiff suffered a serious injury in conjunction with Plaintiff's conditions of confinement claim below.

3. No Personal Involvement by Defendant Anderson, as required under 42 U.S.C. § 1983

Defendant Anderson argues that any claims against Defendant Anderson brought pursuant to 42 U.S.C. § 1983 must fail as a matter of law because he had no personal involvement in the

alleged incidents. In his Amended Complaint, Plaintiff alleges that Defendant Anderson "ordered" Plaintiff to be stripped and pepper sprayed. ECF No. 66 at 5. In his affidavit, Defendant Anderson states that he was off-duty on the day of the incident in question and further that he does not appear on any of the reports related to the pepper spray incident. Major Joey Johnson avers to the same set of facts in his affidavit. Defendants argue that it appears Plaintiff named Defendant Anderson based on his rank and position of authority. Liability under § 1983 involves a showing that "the official charged acted personally in the deprivation of the plaintiff's rights." Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985). The doctrine of respondeat superior is inapplicable in these cases. Id.; see Love-Lane v. Martin, 355 F.3d 766, 782 (4th Cir. 2004) (stating that there is no respondeat superior liability under § 1983). Supervisory officials may be held liable in certain circumstances upon a "recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their case." Shaw v. Stroud, 13 F.3d 791, 798 (4th Cir. 1994) (quoting Slakan v. Porter, 737 F.2d 368, 372-73 (4th Cir. 1984)). To establish supervisory liability under § 1983 one must show: (1) the "supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a 'pervasive and unreasonable risk' of constitutional injury"; (2) the "supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices,'"; and (3) there was an "affirmative causal link between the supervisors inaction and the particular constitutional injury suffered by the plaintiff." Shaw, 13 F. 3d at 799 (internal citation omitted). Here, while Plaintiff alleges Defendant Anderson ordered that he be pepper sprayed, he does not come forward with any evidence to refute Defendant Anderson's testimony that he was not working on that day nor did he have any knowledge whatsoever of the events in question. Affidavit of Lt. William Anderson, ¶ 7.

Accordingly, the undersigned recommends dismissing any claims against Defendant Anderson because there is no genuine issue of material fact as to whether Defendant Anderson had any personal involvement in the incidents giving rise to the allegations in Plaintiff's Complaint sufficient to state a claim under § 1983.

4. Excessive Force Claim is Legally Insufficient

The HCSO Defendants argue that Plaintiff's claims of excessive force must fail as a matter of law. Under 42 U.S.C. § 1983, relief may be sought when a plaintiff alleges the violation of a right secured by the Constitution by a person acting under color of state law. West v. Askins, 487 U.S. 42, 48 (1988). The Eighth Amendment prohibition of cruel and unusual punishment "protects inmates from inhumane treatment and conditions while imprisoned." Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996). However, because Plaintiff was a pretrial detainee at the time of the alleged violation, Plaintiff's excessive force claim is properly brought under the Due Process Clause of the Fourteenth Amendment. Coney v. Davis, 809 Fed App'x 158, 159 (4th Cir. 2020). To succeed on such a claim, Plaintiff, as a pretrial detainee, need only show that the alleged use of force purposely or knowingly used against him was objectively unreasonable. Kingsley v. Hendrickson, 576 U.S. 389, 396-97 (2015). In determining whether the force was objectively unreasonable, considerations include the relationship between the need for the use of force and the amount of force used; the extent of the individual's injury; any effort made by the officer to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the individual was actively resisting. Kingsley, 576 U.S. at 397.

Some of Plaintiff's allegations concern the alleged conduct of Officer Costello, who Plaintiff never served with this lawsuit and who the undersigned recommends dismissing from this action for that reason. For the purposes of this summary judgment motion, the undersigned will

focus on the allegations against Defendants Foutz and Anderson. Plaintiff alleges that Defendant Foutz stripped him nude and generally alleges Foutz was involved in 45 minutes of Plaintiff being pepper sprayed and maced. Plaintiff alleges that Defendant Anderson ordered Plaintiff to be pepper sprayed, but as previously explained, Defendant Anderson was not personally involved in the incident complained of by Plaintiff. Further, the undisputable video evidence shows that Plaintiff was not stripped nude, nor does the evidence show that either of these officers violated Plaintiff pursuant to PREA.

Defendants provide the body camera footage of two different officers that captured the incident described in Plaintiff's Complaint regarding the use of pepper spray. The video evidence, along with Foutz' affidavit, establish that Defendant Foutz shot three pepper balls into Plaintiff's cell after Plaintiff refused to return his meal tray and refused to follow the directive to be handcuffed. The video also supports Defendants' assertions that prior to the use of the pepper balls, Plaintiff was disruptive, repeatedly refused directives to "cuff up," and banged his meal tray against the wall or door of his cell. In analyzing whether this force was objectively unreasonable under Kingsley, the undersigned first considers the relationship between the need for the use of force and the amount of force used. Foutz utilized the pepper ball spray after Plaintiff ignored verbal commands to release his meal tray and allow himself to be cuffed. Thus, the video evidence affirmatively shows that Defendant Foutz administered three pepper balls, lasting less than 10 seconds, into Plaintiff's cell after several minutes of Plaintiff's refusal to comply with the officer's directives.

The video evidence also shows that once Plaintiff released the meal tray, Foutz immediately ceased use of the pepper ball shots. Thus, the use of force ended as soon as Plaintiff released the meal tray. Under the first factor and third factor, the video footage supports a finding

that the pepper spray was used to restore order and prevent Plaintiff from using his tray as a weapon. Further, Defendant Foutz, as well as the other officers, initially tried to avoid the use of force by repeatedly asking Plaintiff to comply with being "cuffed up," therefore these factors indicate Defendant Foutz utilized the force to restore order, rather than to harm Plaintiff. Corrections officers act in a "good faith effort to maintain or restore discipline" when confronted with immediate risks to physical safety, as well as to preserve internal order. Brooks v. Johnson, 924 F.3d 104, 113 (4th Cir. 2019). As to the second factor, while Plaintiff advises that the pepper spray was painful, the officers, including Defendant Foutz, almost immediately allowed him to shower. Plaintiff did not appear to have any physical injury beyond complaints of irritation to his skin and alleged loss of hair as stated in his Amended Complaint. He was seen by nurses after the incident and cleared of any injury. These facts further indicate the use of the pepper spray by Defendant Foutz was not excessive or unreasonable.

As to the fourth factor and fifth factor, the extent of the security problem and the threat perceived by the officer, the facts in the record indicate that Defendant Foutz believed Plaintiff was seeking to use the meal tray as a weapon against the officers. Plaintiff refused to return the meal tray to officers until Defendant Foutz employed the use of the pepper balls. Thus, the factors suggest the force was reasonable after Plaintiff refused to comply with the directive to return the meal tray. See Shiheed v. Harding, 802 F. App'x 765, 767 (4th Cir. 2020) (citing the fact that correctional officers do not have to be under physical attack to justify the use of force, and that force may be appropriate to preserve internal order). Finally, as to the sixth factor, the video evidence undisputedly shows Plaintiff was actively resisting the officer's commands. In short, there were multiple efforts made on the part of the officers to limit the amount of force by repeatedly trying to speak with Plaintiff in an attempt to deescalate the situation. Nonetheless,

Plaintiff continued to actively resist providing his meal tray back to the officers, which caused the officers to believe he would use it as a weapon and was therefore a threat to the safety of the officers and other inmates. See Cooper v. Williams, 1:20-CV280, 2021 WL 3779633 (E.D. Va. Aug. 24, 2021) (granting summary judgment and finding that four shots of pepper ball was not the use of excessive force when a plaintiff was disruptive for an extended period of time and repeatedly refused to obey orders). For these reasons, under the Kingsley factors, the undersigned recommends granting summary judgment in favor of the HCSO Defendants as to Plaintiff's excessive force claim.

5. Deliberate Indifference Claim is Legally Insufficient

The HCSO Defendants argue that Plaintiff's allegations regarding deliberate indifference to his conditions of confinement must also fail as a matter of law. Pretrial detainees possess the right to be "free from punishment." Bell v. Wolfish, 441 U.S. 520, 535 (1979). Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt. Bell, 411 U.S. at 535. Conditions of confinement of pretrial detainees are to be evaluated under the Due Process Clause of the Fourteenth Amendment. Martin v. Gentile, 849 F.2d 863, 870 (4th Cir. 1988). To prevail on such a claim, a pretrial detainee must show either (1) an expressed intent to punish or (2) a lack of a reasonable relationship to a "legitimate nonpunitive governmental objective, from which a punitive intent may be inferred." Hill v. Nicodemus, 979 F.2d 987, 990-91 (4th Cir. 1992) (quoting Martin v. Gentile, 849 F.2d 863, 870 (4th Cir. 1988)). The Fourth Circuit has held that a pretrial detainee receives "at least the same protection under the Fourteenth Amendment" as convicted prisoners received under the Eighth Amendment. Young v. City of Mount Rainier, F.3d 567, 575 (4th Cir. 2001). Thus, the "deliberate indifference standard" has been applied in these cases. Id. A plaintiff must prove that he was deprived a "basic need" and that this deprivation was

attended by deliberate indifference on the part of the defendants. Strickler v. Waters, 989 F.2d 1375, 1379 (4th Cir., cert. denied, 510 U.S.949 (1993)). Further, the plaintiff must produce evidence of serious or significant physical or emotional injury resulting from challenged conditions to withstand summary judgment on prison conditions claim. Id. at 1380–1381.

While Plaintiff generally alleges that he was denied several personal hygiene items, he does not identify any individual responsible for this claim. Furthermore, Plaintiff does not allege when or why these items were denied and who did not allow him to access these items.[8] Nevertheless, even construing the allegations as to these Defendants as being responsible for failing to provide these items, his claims must fail as a matter of law. First, Plaintiff has failed to allege that these items were not provided to him due to an intent to punish, nor has he alleged any punitive intent or deliberate indifference on the part of any Defendants.[9] Moreover, Plaintiff does not allege a serious or significant physical or mental injury as a result of the failure to have been provided hygiene items, a blanket, or socks or undergarments for five days. See Harris v. Fleming, 839 F.2d 1232, 1234-35 (7th Cir. 1988) (finding that a prisoner who alleged he was not provided toilet paper for five days and hygiene items for ten days did not make out a conditions of confinement claim in part because the conditions were temporary, affected one inmate, and he suffered no harm). Plaintiff alleges that his injuries were due to his excessive force claim. Accordingly, because Plaintiff fails to allege he suffered any injury as a result of his conditions of confinement claim,

[8] For this same reason, while Plaintiff generally alleges he was "detained by mental health" and denied medical assistance, Plaintiff does not identify anyone responsible for this alleged violation of his rights. Accordingly, the undersigned does not find that Plaintiff has set forth a cognizable claim against any named Defendant that they were deliberately indifferent to his medical needs.

[9] Additionally, the Fourth Circuit has held that removal of a mattress for short periods of time does not state a violation of Plaintiff's constitutional rights. Joyner v. Patterson, No.0:13-cv-2675-DCN, 2014 WL 3909531, at *6 (D.S.C. Aug. 11, 2014).

nor does he identify any Defendants alleged to have violated his rights under this claim, the undersigned recommends granting summary judgment in favor of Defendants on this claim.

5. Qualified Immunity

The HCSO Defendants argue they are entitled to qualified immunity. As previously stated, in evaluating whether qualified immunity applies, the court must determine: (1) whether the facts alleged, taken in the light most favorable to Plaintiff show that Defendants' conduct violated a constitutional right; and (2) whether the right was clearly established at the time of the complained of misconduct. Pearson v. Callahan, 555 U.S. at 232. The HCSO Defendants argue that for the reasons previously considered above, including the fact that Plaintiff's § 1983 claims fail as a matter of law, Plaintiff cannot meet the first prong of the qualified immunity analysis. Further, Defendants argue there is no clearly established law that would put them on notice that the targeted use of pepper spray to help regain control of an inmate who posed a threat to the safety of JRLDC and not providing certain hygiene items or bedding for five days would violate Plaintiff's constitutional rights. The undersigned, having previously recommended that summary judgment be granted as to Plaintiff's § 1983 claims against these Defendants finds that Plaintiff cannot show that Defendants violated his constitutional rights. Therefore, the undersigned recommends finding that qualified immunity applies to these Defendants.

6. Eleventh Amendment Immunity

The HCSO Defendants argue that, to the extent Plaintiff seeks to sue them in their official capacity, they are immune from suit pursuant to the Eleventh Amendment of the United States Constitution. Plaintiff does not respond to this argument. The Eleventh Amendment provides: "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State."

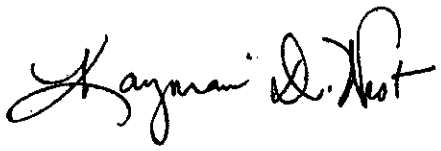
U.S. CONST. amend. XI. The United States Supreme Court has long held that the Eleventh Amendment also precludes suits against a state by one of its own citizens. See Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). This immunity extends not only to suits against a state per se, but also to suits against agents and instrumentalities of the state. Cash v. Granville Cnty. Bd. of Ed., 242 F.3d 219, 222 (4th Cir. 2001). Eleventh Amendment immunity also extends to "arms of the State" and state employees acting in their official capacity. Doe v. Coastal Carolina Univ., 359 F. Supp. 3d 367, 378 (D.S.C. Jan. 9, 2019). The Supreme Court has held that neither a State nor its officials acting in their official capacities are "persons" under § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Moreover, a state cannot, without its consent, be sued in a District Court of the United States by one of its own citizens upon the claim that the case is one that arises under the Constitution and laws of the United States. Edelman, 415 U.S. at 663. The State of South Carolina has not consented to be sued in this case. S.C. Code Ann. § 15-78-20(e).

Here, Defendants argue that, as employees of the Horry County Sheriff's Department, they are immune from suit in their official capacities. In South Carolina, a county Sheriff and the Sheriff's Department are entitled to protection afforded by the Eleventh Amendment. See, e.g., Cromer v. Brown, 88 F.3d 1315, 1332 (4th Cir. 1996) (finding that a sheriff, in his capacity as a state official, is immune from suit under § 1983 for money damages). The undersigned finds that, as the HCSO Defendants are agents or employees of the State, they are entitled to immunity pursuant to the Eleventh Amendment. Accordingly, to the extent Plaintiff seeks to bring claims against Defendants Anderson and Foutz in their official capacity, the undersigned recommends finding that those claims are barred.

IV. Recommendation

For the reasons espoused in this R&R, the undersigned recommends granting Defendant Huggins and Johnson's Motion for Summary Judgment, ECF No. 214. The undersigned further recommends granting Defendant Foutz and Anderson's Motion for Summary Judgment, ECF No. 213. The undersigned recommends denying Plaintiff's Motion for Summary Judgment. ECF No. 240. Finally, the undersigned recommends finding that Defendants Costello and Officer Strickland be dismissed from this action without prejudice due to the failure of Plaintiff to effectuate service under Rule 4 of the Federal Rules of Civil Procedure.

IT IS SO RECOMMENDED.



July 11, 2022
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."