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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2401

JAY FOLSE,

Plaintiff - Appellant,

v.

JOHN MCCUSKEY, JR., in his individual and official capacities; G. RUSSELL ROLLYSON, JR., in his individual and official capacities; WALLACE LOONEY, in his individual and official capacities; LISA HOPKINS, in her individual and official capacities; STEPHEN CONNOLLY, in his individual and official capacities; MICHAEL NUSBAUM, in his individual and official capacities; KEVIN FOREMAN, in his individual and official capacities,

Defendants - Appellees.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., Senior District Judge. (2:22-cv-00171)

Submitted: July 23, 2026 Decided: July 27, 2026

Before WYNN and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

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[2] Jay Folse, Appellant Pro Se. Andrew Wyatt Castillo, CIPRIANI & WERNER PC, Charleston, West Virginia; Christopher Thomas Ferro, PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC, Charleston, West Virginia, for Appellee Wallace Looney.

Unpublished opinions are not binding precedent in this circuit.

[3] PER CURIAM:

Jay Folse appeals the district court's order adopting the magistrate judge's recommendation to grant Defendants summary judgment in Folse's civil action. On appeal, we confine our review to the issues raised in the informal brief. See 4th Cir. R. 34(b); see also *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."). We have reviewed the district court's order in conjunction with the arguments Folse raises in his informal brief and find no reversible error. Accordingly, we affirm the district court's judgment. *Folse v. McCuskey*, No. 2:22-cv-00171 (S.D. W. Va. Oct. 22, 2025). 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

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAY FOLSE,
Plaintiff,
v. Civil Action No. 2:22-cv-00171
JOHN MCCUSKEY JR, G. RUSSELL ROLLYSON, JR., WALLACE LOONEY, LISA HOPKINS, STEPHEN CONNOLLY, MICHAEL NUSBAUM, and KEVIN FOREMAN, each in his or her individual and official capacities,
Defendants.

MEMORANDUM OPINION AND ORDER

Pending is Magistrate Judge Tinsley's Proposed Findings and Recommendation ("PF&R") (ECF No. 115), filed on May 14, 2025, and plaintiff Jay Folse's objections thereto (ECF No. 119), filed on June 2, 2025, relating to the following: plaintiff's pro se "Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey" (ECF No. 107), filed on April 18, 2025; "Motion for Summary Judgment" (ECF No. 86), filed by **[2]** defendants Kevin Foreman and Wallace Looney on May 24, 2025; and "Defendants' Motion for Summary Judgment" (ECF No. 88), filed by defendants John B. McCuskey, Jr., G. Russell Rollyson, Jr., Lisa Hopkins, Stephen Connolly, and Michael Nusbaum on May 24, 2025.

I. BACKGROUND

Plaintiff filed a pro se complaint (ECF No. 1) on April 8, 2022, followed by an amended complaint (ECF

No. 32) on May 31, 2022. He remains pro se. Plaintiff in the operative amended complaint alleges "deprivation of his constitutional rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and state law claims for intentional infliction of emotional distress and economic damages." ECF No. 32 at 1. He brings this Section 1983 action for false arrest, malicious prosecution, and retaliatory arrest and prosecution. Id.

Defendants McCuskey, Rollyson, Hopkins, Connolly, and Nusbaum, by counsel, filed an answer to the amended complaint (ECF No. 62) on September 20, 2023. Defendants Foreman and Looney, by separate counsel, filed an answer (ECF No. 63) to the amended complaint on September 21, 2023.

At all relevant times, defendant McCuskey was the Auditor for the State of West Virginia; defendant Rollyson was the Deputy Commissioner of Delinquent and Non-entered Lands (an **[3]** agent of the West Virginia State Auditor); defendant Looney was a sergeant with the West Virginia Capitol Police; defendant Hopkins was the Senior Deputy Commissioner of Securities and General Counsel for the West Virginia State Auditor's Office ("WVSAO"); defendant Connolly was Deputy State Auditor and General Counsel for the WVSAO; defendant Nusbaum was Associate General Counsel and Senior Regulatory Counsel for the WVSAO; and defendant Foreman was the Director of the West Virginia Capitol Police. See ECF No. 8 at 2.

A.

Plaintiff's allegations stem from interactions between plaintiff and defendants in connection with plaintiff's purchase of tax liens from the WVSAO. See ECF No. 32 at ¶¶5-12, 16-42. After a years-long breakdown of relationship between plaintiff and the WVSAO, on August 12, 2021, defendant Rollyson filed a petition with the Magistrate Court of Kanawha County, West Virginia, for the issuance of a Personal Safety Order ("PSO") against plaintiff, wherein Rollyson stated that the PSO was necessary because plaintiff made "repeated credible threats of bodily injury knowing or having reason to know that the threats caused reasonable fear for safety in violation of West Virginia Code § 53-8-4(a)(3)." ECF No. 22-3 at 2.

[4] The Kanawha County Magistrate Court, acting by Magistrate Shelton, issued the PSO on August 20, 2021. See ECF No. 22-3 at 3. The PSO, endorsed by Magistrate Shelton on August 20, 2021, expired after one year on August 20, 2022. Id. The PSO prescribed the following two pertinent restrictions, the first relating to the Auditor's Office and its General Counsel, and the second related specifically to the petitioner Rollyson:

> (1) Respondent [Folse] shall not have verbal contact with the WVSAO or the General Counsel. All communication shall be via email or USPS.
>
> (2) Respondent [Folse] shall refrain from contacting, attempting to contact, or harassing the person(s) named above [Rollyson], directly or indirectly, or

> through third party, regardless of whether those third parties know of this Order.

Id. at 2.

Plaintiff appealed the PSO to the Kanawha County Circuit Court which affirmed the PSO after plaintiff failed to appear for a scheduled hearing. See ECF No. 56-1 at 3. He appealed to the Supreme Court of Appeals of West Virginia, which affirmed the circuit court order. J.F. v. G.R., No. 21-0813, 2022 WL 17592199, at *1 (W. Va. Dec. 13, 2022). The Supreme Court found that the PSO "prohibit[ed] petitioner [Folse] from contacting, attempting to contact, or harassing respondent [Rollyson] either directly or indirectly through other state employees," and "forbade petitioner from having verbal contact **[5]** with various offices associated with respondent's official position, limiting petitioner's communication with those offices to e-mail and the United States Postal Service." Id. Since the PSO was already then expired, the court denied plaintiff's appeal as moot. Id. at 2.

Plaintiff alleges in the operative complaint that "[d]efendants collectively conspired to file for a [PSO] for the improper purpose to exclude the [p]laintiff from tax sales, to bar him from obtaining tax deeds to properties he already purchased, and to put him in a catch 22 situation where he would be forced to either violate [the PSO] or lose his investment of hundreds of thousands of dollars." ECF No. 32 at ¶ 43. It is clear from the language of the order, as quoted above, that the PSO did none of those things.

Plaintiff alleges various counts under 42 U.S.C. § 1983. See id. As to defendant Looney, plaintiff alleges that Looney "filled out and signed a criminal

complaint for the charge of violating [the PSO]." Id. at ¶ 50. The criminal complaint, filed with Magistrate Hall on October 19, 2021, states the grounds for the assertion that Folse had violated the terms of the PSO as follows:

> **[6]** Defendant [Folse] filed a lawsuit against Deputy Auditor Rollyson and Auditor McCuskey. Defendant attempted to notice a multi-day deposition of both individuals. On October 18, 2021, the Circuit Court of Ohio County issued an Order quashing the deposition notice as Defendant's " . . . attempt to take these depositions was undertaken for an improper purpose." Later that day, Defendant began posting comments on State Auditor J.B. McCuskey's personal Facebook page. Said comments were numerous and clearly done with the intent to abuse, harass and violate the terms of the Final Personal Safety Order entered by Magistrate Shelton. Further, Defendant has emailed Deputy Auditor Rollyson on several occasions since the issuance of the Final PSO in what can be characterized as an unprofessional and harassing manner.

ECF No. 51-3 at 3. Based on this submission, Kanawha Magistrate Brent Hall found probable cause for plaintiff's arrest for violation of the PSO and issued an arrest warrant. ECF No. 32 at ¶ 51. Plaintiff was arrested at a tax auction sale in Marion County, and "was held in North Central Regional Jail." Id. at ¶ 54-56. Ultimately, the charges against plaintiff were

voluntarily dismissed by the Kanawha County prosecutor. Id. at ¶ 111.

Plaintiff maintains that there was a lack of probable cause for the issuance of a warrant, contending the criminal complaint's assertions that he "filed a lawsuit," "attempted to notice a multi-day deposition," and "posted comments on State Auditor J.B. McCuskey's personal Facebook page" were not violations. ECF No. 119 at 14. Plaintiff, in his objections, **[7]** is silent as to the fourth alleged PSO violation, relating to the emails sent to defendant Rollyson. See id.

The first two alleged violations relate to a lawsuit by plaintiff against defendants Rollyson and McCuskey in the Circuit Court of Ohio County, West Virginia, filed on September 13, 2021, with respect to five tax liens he had purchased and for which he sought deeds. See Final Order, Folse v. Rollyson and McCuskey, No. 21-C-149 (Cir. Ct. of Ohio Cnty., W. Va. January 19, 2022). At the start of that case, before defendants responsive pleading was due, plaintiff unilaterally filed a notice of defendants' depositions, which the circuit judge ordered quashed. See Order Quashing Notice, Folse, No. 21-C-149 (October 15, 2021). The case was ultimately dismissed four months later on January 19, 2022, on defendants' motion. Final Order, Folse, No. 21-C-149 (January 19, 2022). On June 13, 2023, the dismissal was affirmed by the Supreme Court. See Folse v. Rollyson, No. 22-0130, 2023 WL 3963835 (W. Va. June 13, 2023).

B.

In this action, on April 1, 2024, plaintiff filed a "Notice of Deposition of John McCuskey Jr." ECF No.

75. Therein, plaintiff sought to schedule the deposition of defendant McCuskey on a specific date and time but included no [8] location. Id. Defendants filed, on April 4, 2024, a motion to quash the noticed deposition, asserting that the notice was deficient inasmuch as plaintiff unilaterally scheduled the deposition at a time when defendants were unavailable, and that plaintiff was seeking to depose defendant McCuskey for an improper purpose. See ECF No. 78.

Magistrate Judge Tinsley entered an order on February 5, 2025, in which he reviewed the parties' well-documented and longstanding history of interpersonal conflict. In view of all the circumstances, Judge Tinsley aptly concluded that defendants' motion to quash should be and was granted insofar as it sought to quash the deposition of defendant McCuskey by oral administration under Rule 30, and otherwise denied it so as to permit plaintiff to depose defendant McCuskey by written questions pursuant to Rule 31 of the Federal Rules of Civil Procedure or, alternatively, by written interrogatories pursuant to Rule 33. ECF No. 101; see also Fed. R. Civ. P. 31, 33.

After plaintiff's noncompliance with that order, on April 4, 2025, Magistrate Judge Tinsley granted defendants' motion entitled "Motion for Enforcement of the Court's February 5, 2025, Order" (ECF No. 102), finding that plaintiff waived his opportunity to depose defendant McCuskey and relieving the defendant from any obligation to respond to the notice of [9] deposition from plaintiff. ECF No. 104. Plaintiff filed an objection with the undersigned judge to Magistrate Judge Tinsley's order on April 18, 2025. ECF No. 108.

Although it is stated in the PF&R that is the subject of this memorandum opinion and order that the matter remained pending in the district court, the undersigned judge, on May 14, 2025, adjudicated plaintiff's objections to the April 4, 2025, order, stating that "[p]laintiff substantially prevailed in his endeavor to depose defendant McCuskey . . . [but] [p]laintiff's failure to abide by the procedure to accomplish the deposition resulted in the consequences described in the April 4, 2025, order." ECF No. 116 at 13. The undersigned judge further noted:

> While plaintiff is correct that pro se litigants are generally afforded leeway regarding litigation errors, the court notes the well-documented history of plaintiff filing numerous lawsuits in this District, his recent argument at the Supreme Court of Appeals of West Virginia, and his self-identification as a law student. Accordingly, Judge Tinsley had reason to conclude that plaintiff's pro se status should not justify his failure to abide by the clear directives of the order of February 5, 2025.

Id. at 17.

[10] C.

Defendants Foreman and Looney ("the police defendants") filed their joint motion for summary judgment (ECF No. 86) on the operative dispositive motion deadline, May 24, 2024. Defendants Connolly, Hopkins, McCuskey, Jr., Nusbaum, and Rollyson, Jr. ("the auditor defendants") filed their joint motion for

summary judgment (ECF No. 88) on the same day. Plaintiff's responses to the motions were due two weeks later. See ECF No. 69. On June 10, 2024, plaintiff filed a motion to extend the response deadline, asking for an indeterminate extension because "[t]here [had] been no discovery exchanged between the parties" and "[t]he Plaintiff is not at fault for the discovery not being exchanged." ECF No. 95 at 1. Although the court found "that plaintiff [had] failed to show good cause for an extension of time to respond," the magistrate judge granted plaintiff's motion "out of an abundance of caution," extending the time for plaintiff to respond to April 30, 2025. ECF No. 105 at 1 (filed April 7, 2025).

On April 30, 2025, nine minutes before plaintiff's extended deadline to respond to defendants' dispositive motions, plaintiff filed a second motion to extend the response deadline, asserting "[plaintiff] [had] not started preparing that response . . . [he] is currently in law school . . . completing academic **[11]** assignments and preparing for finals." ECF No. 111 at 1. The next day, Magistrate Judge Tinsley, "to fully consider the requested extension," ordered that plaintiff "submit a copy of his law school final examination schedule, signed by either the Dean or the Registrar . . . no later than . . . May 12, 2025." ECF No. 113 at 2. After plaintiff failed to comply with the court's order, Magistrate Judge Tinsley denied his second motion to extend, stating, "[d]efendants filed their subject dispositive motions . . . nearly a year ago . . . [p]laintiff has had a meaningful opportunity to prepare a response to the motions, but has chosen not to do so." ECF No. 114 at 2.

As earlier noted, Magistrate Judge Tinsley filed his PF&R on May 14, 2025, ultimately recommending that the undersigned judge deny plaintiff's motion for sanctions, grant defendants' respective motions for summary judgment and/or dismiss plaintiff's claims as a sanction pursuant to Rule 41(b), and dismiss the case from the court's active docket. ECF No. 115 at 24–25. As also earlier noted, plaintiff timely filed his objections thereto on June 2, 2025. ECF No. 119.

[12] II. GOVERNING STANDARD

The court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been made. See Thomas v. Arn, 474 U.S. 140 (1985). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); see also United States v. Leon-Ramirez, 925 F.3d 177, 181 (4th Cir. 2019) (parties typically may not "appeal a magistrate judge's findings that were not objected to below, as [28 U.S.C.] § 636(b) doesn't require de novo review absent objection"); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989).

Upon an objection to the PF&R, the court reviews de novo only "those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1); see also Howard's Yellow Cabs, Inc. v. United States, 987 F. Supp. 469, 474 (W.D.N.C. 1997)("De novo review is not required when a party makes general or conclusory objections that do not direct the court to a specific order . . . ."); United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007); Opriano v. Johnson, 687 F.2d 44,

47 (4th Cir. 1982). "Absent a specific and timely filed objection, the court reviews only for 'clear error,' and need not give any **[13]** explanation for adopting the [PF&R]." United States v. Hernandez-Aguilar, 359 F. Supp. 3d 331, 334 (E.D.N.C. 2019).

III. ANALYSIS

A. Plaintiff's Objections to Denial of His Motion for Sanctions

Plaintiff initially motioned the court for sanctions related to defendants' discovery practices in this case "for [their] refusal to schedule depositions, the filing of a frivolous motion to quash, and refusing to respond to written discovery." ECF No. 107 (filed April 18, 2025) at 1. Plaintiff expresses the same alleged concerns in his objections. See ECF No. 119 ("The reason why discovery did not commence is not the fault of [plaintiff] but rather the Defendants' fault as they refused to schedule depositions or answer any written discovery.").

Magistrate Judge Tinsley duly states that "discovery in this case closed more than one year ago, on May 3, 2024, . . . plaintiff did not file any timely motion to compel [defendants] to respond to discovery he claims to have served . . . ." ECF No. 115 at 14. Indeed, plaintiff did not file any discovery motions alerting the court to the alleged deficiencies until his April 18, 2025, motion for sanctions, nor did he file **[14]** any timely motions attempting to extend or otherwise modify discovery.

In regard to defendant McCuskey's deposition, as discussed above, plaintiff substantially prevailed in procuring the deposition — by written question or by written interrogatory — but failed to follow the

procedure clearly set forth by Magistrate Judge Tinsley and the designated, applicable Rules of Civil Procedure. In regard to the deposition of defendant Rollyson, Magistrate Judge Tinsley correctly notes that "the record is devoid of any indication that Rollyson was served with proper notice . . . ." Id. at 15. For the reasons found by Magistrate Judge Tinsley, plaintiff's objections to the denial of his motion for sanctions are denied. B. Plaintiff's Objections Regarding Summary Judgment

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Material" facts are those necessary to establish the elements of a party's cause of action. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth., 597 F.3d 570, 576 (4th Cir. 2010). A dispute of material facts is "genuine" if, in viewing the record and all reasonable **[15]** inferences drawn therefrom in the light most favorable to the non-moving party, a reasonable fact finder could return a verdict for the non-moving party. See Anderson, 477 U.S. at 248.

The moving party is entitled to summary judgment if the record as a whole could not lead a trier of fact to find for the non-moving party. See Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991). Further, a non-movant who "fails to make a showing sufficient to establish the existence of an element essential to [his] case, and on which [he] will bear the burden of proof at trial" loses at the summary judgment stage. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

1. The Capitol Police Defendants

Magistrate Judge Tinsley recognizes that the relevant arrest underlying plaintiff's claims "was carried out based on an arrest warrant issued by [] Kanawha County Magistrate [Brent Hall], who expressly found that there was probable cause to arrest the Plaintiff." ECF No. 115 at 16. Magistrate Hall found probable cause based on facts supplied by defendant Looney in a criminal complaint. Id. at 4.

Magistrate Judge Tinsley states that in contrast, plaintiff "has not submitted any evidence from which a reasonable jury could conclude that his arrest was unsupported **[16]** by probable cause." Id. at 16. Thus, Magistrate Judge Tinsley recommends granting the police defendants' motion for summary judgment as "[they] have met their burden of demonstrating the absence of material fact with respect to the issue of probable cause." Id. (citing Somers v. Devine, 132 F.4th 689, 697 (4th Cir. 2025) ("[T]he presence of probable cause defeats retaliatory arrest, unlawful arrest, and malicious prosecutions claims alike.")). The police defendants in their motion for summary judgment assert that they are entitled to qualified immunity from plaintiff's constitutional claims because their "actions were based on probable cause." ECF No. 87 at 7.

Plaintiff objects to Magistrate Judge Tinsley's analysis because "a magistrate's finding of probable cause is only a factor in evaluating whether there was actually probable cause for an arrest in the context of a malicious prosecution claim." ECF No. 119 at 14 (citing Hupp v. Cook, 931 F.3d 307, 324 (4th Cir. 2019)). Plaintiff asserts:

> [I]t is not disputed that the warrant was obtained by one of the Capitol Police Defendants for violating a Personal Safety Order. The conduct alleged was that Folse "filed a lawsuit," "attempted to notice a multi-day deposition," and "posted comments on State Auditor J.B. McCuskey's personal Facebook page." Although these specific allegations are largely accurate, they could not possibly support probable cause for violating a [PSO] which was granted to Defendant Rollyson. The officer made false statements that these actions violated the [PSO] when they did not.
>
> **[17]** Id. (emphasis added).

The Fourth Circuit, in the Hupp case on which plaintiff relies, opined that "a defendant to a malicious prosecution claim is not absolved from liability when the magistrate's probable-cause finding is predicated solely on a police officer's false statements." Hupp, 931 F.3d at 324 (internal quotations omitted). In Hupp, there was evidence indicating that the officer defendant misrepresented facts contained in the relevant criminal complaint. Id. at 325.

The circumstances in Hupp are readily distinguishable from the circumstances in this case. First, plaintiff is not arguing that the police defendants misrepresented the factual circumstances culminating in the arrest of plaintiff; rather, he contends that one of them, Officer Looney, "made false statements that [plaintiff's] actions violated the [PSO] . . . ." ECF No. 119 at 14. Plaintiff, then, concedes that the state magistrate who issued the warrant was not operating on false statements made by Officer Looney

with respect to the factual circumstances culminating in plaintiff's arrest. Id. The state magistrate in turn made an independent determination that the relevant PSO was violated based on the factual circumstances alleged by Officer Looney.

[18] Further, plaintiff does not offer any evidence from which a jury could conclude that Officer Looney made false statements in regard to the factual circumstances resulting in his arrest. Thus, there is no genuine dispute as to any material fact on the matter.

"Probable cause is determined by a totality-of-the-circumstances approach. The inquiry turns on two factors: the suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct." Hupp, 931 F.3d at 318 (internal citations and quotations omitted). The court looks to "whether a reasonably prudent officer with [available information] would have thought that probable cause existed for the arrest." Id.

On October 19, 2021, plaintiff was deemed by Magistrate Hall to be in violation of West Virginia Code § 53-8- 11(a), which provides that: "An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor . . . ." W. Va. Code § 53-8-11(a). The PSO specifically prevented plaintiff from "contacting, attempting to contact, or harassing [defendant Rollyson], directly or indirectly, or through third part[ies] . . . ." ECF **[19]** No. 22-3 at 2. The uncontested facts presented in the criminal complaint can be distilled into four alleged violations:

(1) Plaintiff filed a lawsuit in the Circuit Court of Ohio County against defendants Rollyson and McCuskey.

(2) Plaintiff filed a notice in that lawsuit, which was quashed by order of the circuit court, unilaterally noticing the depositions of defendants Rollyson and McCuskey.

(3) Plaintiff posted "numerous" comments on defendant McCuskey's personal Facebook page. Defendant Looney characterized the comments as posted "with the intent to abuse, harass and violate" the PSO.

(4) Plaintiff sent several emails directly to defendant Rollyson. Defendant Looney characterized the correspondence as "harassing."

See ECF No. 51-3 at 3.

First, the court gives no weight to the mere fact plaintiff filed a lawsuit against defendants Rollyson and McCuskey while the PSO was active. Nothing in the PSO precluded plaintiff from the use of the courts to seek redress of plaintiff's claims. However, it is noted that the state circuit court in the relevant lawsuit granted a motion to quash plaintiff's unilaterally scheduled depositions of defendants Rollyson and McCuskey. See Order Quashing Notice, Folse, No. 21-C-149 (October 15, 2021). Plaintiff attempted to schedule these depositions through a "Notice of Taking of Deposition" filed before the defendants' responsive pleading was due. Id. **[20]** at 2. While plaintiff's premature move to take those depositions was a procedural error on his part, it is noted that the circuit court, acting by the Honorable

Michael Olejasz, stated that on September 29, 2021, prior to the plaintiff's deposition notice filing, plaintiff sent an email "demanding that Mr. Rollyson obtain an affidavit from a third-party process server in an unrelated Federal Court lawsuit." Id. at 2–3. The Ohio Circuit Court granted defendants' motion to quash, noting:

> In that email, [plaintiff] states that if the Auditor's Office does not cave to that demand that "I promise that if I have to depose the process server and do formal discovery to get this information that I will repay the favor to you in this litigation." [Plaintiff] is referencing the current lawsuit before this Court. [Plaintiff] goes on to state "[h]ow does a three day long deposition of you and McCuskey sound?" Based on [plaintiff's] own statements, these depositions were noticed for an improper purpose.

Id. at 3.

On October 17, 2021, plaintiff sent an email directly to defendant Rollyson regarding the order, asserting, "You and McCuskey got out of the deposition by getting lucky. Not all judges are as corrupt as Olejasz." ECF No. 1-1 at 13.

Indeed, plaintiff sent several emails directly to defendant Rollyson during the PSO's active period. See id. An email sent to defendant Rollyson, on August 24, 2021, just four days after entry of the PSO, stated, "I am also advising you **[21]** that you are not to call me or I will call the police and report you for phone harassment. You and your staff have called me multiple times and used profanity, mocked me, and

tricked me into meeting you in person so that you could assault me." ECF No. 1-1 at 9. A September 12, 2021, email sent to defendant Rollyson read, "I am also sending this to McCuskey senior. Hopefully, JB will be embarrassed for his father to know what is going on in his office. He's supposed to be a Republican that is against silly bureaucrats like you." Id. at 21. A September 28, 2021, email to defendant Rollyson asserted, "[Y]ou have taken outrageous actions against me including filing a frivolous personal safety order and claimed that I was going to come to your house and assault your family." Id. at 3.

Plaintiff also does not contest posting "numerous" comments on the Facebook page of defendant McCuskey -- who was undoubtably a "third party" as contemplated in the PSO -- during the PSO's active period. The criminal complaint ascribes an abusive, harassing nature to the comments, and plaintiff provides no evidence at the summary judgment stage to the contrary.

The sheer volume of these email communications by plaintiff to defendant Rollyson during the initial two months of the one-year PSO amply support Officer Looney's affidavit **[22]** asserting "several" emails by plaintiff to defendant Rollyson, each of which was in direct violation of the PSO.

With respect to the face of the criminal complaint, the court notes that mere conclusory allegations of plaintiff's violations do not, on their own merit, suffice for probable cause. Giordenello v. United States, 357 U.S. 480, 486, 78 S. Ct. 1245, 1250, 2 L. Ed. 2d 1503 (1958) ("[The magistrate] should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a

crime."); United States v. Wilhelm, 80 F.3d 116, 119 (4th Cir. 1996) ("Appellate courts should pay great deference to magistrates' findings of probable cause. But this does not mean that warrants based on conclusory allegations should be upheld . . . .") (internal citations and quotations omitted).

Defendant Looney's characterization of the Facebook comments as posted "with the intent to abuse, harass and violate" the PSO and his characterization of plaintiff's direct emails to defendant Rollyson as "harassing" are conclusory, though the emails warrant that allegation.

However, it is also not required "that each factual allegation which the affiant puts forth [] be independently documented, or that each and every fact which contributed to his conclusions be spelled out in the complaint." Jaben v. United **[23]** States, 381 U.S. 214, 224, 85 S. Ct. 1365, 1371, 14 L. Ed. 2d 345 (1965). "It [is] simply require[d] that enough information be presented to the [magistrate] to enable him to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." Id.

Defendant Looney's conclusory characterizations are not the entirety of the criminal complaint. The detail provided in his complaint evidences defendant Looney's personal knowledge of the factual circumstances, consistent with probable cause jurisprudence. See Giordenello, 357 U.S. at 486, 78 S. Ct. at 1250 ("[Complaining officer]'s testimony at the suppression hearing clearly showed that he had no personal knowledge of the matters on which his charge was based."). Thus, enough information was

presented to the magistrate for him to appropriately find that the "charges [were] not capricious and [were] sufficiently supported to justify bringing into play the further steps of the criminal process." Jaben, 381 U.S. at 224, 85 S. Ct. at 1371. That the criminal process did not proceed past the plaintiff's arrest is of no moment to the determination of probable cause.

Indeed, without regard to defendant Looney's conclusory characterizations or the other three alleged **[24]** violations, that plaintiff sent several email correspondences directly to defendant Rollyson was itself a clear violation of the PSO which specifically barred plaintiff from "contacting [or] attempting to contact" Rollyson. Thus, probable cause existed for plaintiff's arrest.

In the presence of that probable cause, the police defendants, as they assert, are entitled to qualified immunity from plaintiff's constitutional claims:

> Officers are immune from liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have been known. . . . .
>
> [The analysis] turns on the question of whether [the Officer] was objectively reasonable in believing that probable cause existed to arrest [plaintiff]. Indeed, the presence of probable cause defeats retaliatory arrest, unlawful arrest, and malicious prosecutions claims alike.

Somers, 132 F.4th at 696–697 (internal citations and quotations omitted).

Inasmuch as probable cause did exist for plaintiff's arrest, the police defendants are entitled to qualified immunity and plaintiff's objections thereto are overruled.

[25] 2. The Auditor Defendants

Magistrate Judge Tinsley states that plaintiff failed to submit "any evidence that the Auditor Defendants had any role in having [plaintiff's] arrest warrant issued or played any role in the arrest or prosecution of the Plaintiff . . . ." ECF No. 115 at 17. Further, plaintiff "ha[d] not submitted any evidence from which a reasonable jury could conclude that his arrest was unsupported by probable cause." Id.

Plaintiff objects to Magistrate Judge Tinsley's analysis because "it is simply not logical to assume that the alleged victim in a case had no role in procuring an arrest . . . it can be inferred that, at the least, Defendant McCuskey played a role in procuring the arrest." ECF No. 119 at 15. Plaintiff also asserts that "[defendants] have provided no evidence to support the position that the Auditor Defendants played no role in having [plaintiff] arrested . . . [t]herefore, the burden has not shifted to plaintiff to prove that there is a genuine dispute of material facts." Id.

Inasmuch as the court has determined that probable cause did exist for plaintiff's arrest, there has been found no constitutional violation in which the auditor defendants could have participated. Thus, plaintiff's objections thereto are overruled. **[26]** C. Plaintiff's Remaining Claims

Plaintiff alleges, in addition to his constitutional claims, the state law claim of intentional infliction of

emotional distress ("IIED"). See ECF No. 32 at 23. Plaintiff asserts that defendants caused him emotional distress "by conjuring up the plot to have the [p]laintiff arrested without probable cause." Id. at ¶ 118.

To establish a West Virginia claim for IIED, plaintiff must establish, along with three other elements, "that the defendant's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency . . . ." Hatfield v. Health Mgmt. Assocs. of W. Virginia, 223 W. Va. 259, 262, 672 S.E.2d 395, 398 (2008) (internal citations and quotations omitted).

Inasmuch as the court has found that probable cause did exist for plaintiff's arrest, defendants' routine facilitation of plaintiff's arrest for which there was probable cause cannot rise to the level of "extreme and outrageous" conduct required to prevail on a claim of IIED.

Plaintiff also seeks declaratory and injunctive relief relating to the PSO and the scope of its restrictions. See ECF No. 32 at ¶¶ 139–147. These requests are moot, inasmuch as the PSO is no longer active.

[27] In view of the foregoing, there is no need to address the additional ground presented by the magistrate judge for dismissal of plaintiff's complaint as a sanction based on plaintiff's misconduct during this proceeding.

IV. CONCLUSION

Accordingly, it is ORDERED that:

(1) The plaintiff's objections (ECF No. 119) be, and hereby are, OVERRULED;

(2) The findings and recommendation in the Magistrate Judge's Proposed Findings and Recommendation (ECF No. 115) as set forth above be, and hereby are, ADOPTED by the court and incorporated herein;

(3) Plaintiff's pro se "Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey" (ECF No. 107) be, and hereby is, DENIED;

(4) Defendants Kevin Foreman and Wallace Looney's "Motion for Summary Judgment" (ECF No. 86) be, and hereby is, GRANTED;

(5) Defendants John B. McCuskey, Jr., G. Russell Rollyson, Jr., Lisa Hopkins, Stephen Connolly, and Michael Nusbaum's "Defendants' Motion for Summary Judgment" (ECF No. 88) be, and hereby is, GRANTED; and **[28]**

(6) This action be, and hereby is, DISMISSED from the docket of this court.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: October 22, 2025

s/ John T. Copenhaver, Jr.
John T. Copenhaver, Jr.
Senior United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

JAY FOLSE,
Plaintiff,
v. CIVIL ACTION NO. 2:22-cv-00171
JOHN MCCUSKEY JR., et al.,
Defendants.

PROPOSED FINDINGS & RECOMMENDATION

This matter is assigned to the Honorable John T. Copenhaver, Jr., Senior United States District Judge, and it is referred to the undersigned United States Magistrate Judge by standing order for submission of proposed findings and recommendations for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 3). Pending before this Court are three motions: (1) a Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey filed by Plaintiff Jay Folse ("Plaintiff"), who is proceeding pro se in this civil action (ECF No. 107); (2) a Motion for Summary Judgment filed by Defendants Kevin Foreman and Wallace Looney (ECF No. 86); and (3) a Motion for Summary Judgment filed by Defendants John B. McCuskey, G. Russell Rollyson, Jr., Lisa Hopkins, Stephen Connolly, and Michael Nusbaum (ECF No. 88). For the reasons explained more fully herein, it is respectfully RECOMMENDED that Plaintiff's motion be DENIED, Defendants' motions be GRANTED, and this civil action be DISMISSED.

[2] I. BACKGROUND

Plaintiff filed his original Complaint on April 8, 2022, and thereafter filed the operative Amended Complaint on May 31, 2022. (ECF Nos. 1, 32). Therein, Plaintiff named seven Defendants. First, Plaintiff named Kevin Foreman ("Foreman") and Wallace Looney ("Looney"), both employees and officers of the West Virginia Division of Protective Services (together, the "Police Defendants"). Second, Plaintiff named John B. McCuskey, formerly the Auditor for the State of West Virginia ("McCuskey"); G. Russell Rollyson, Jr., the Deputy Commissioner of Delinquent and Non-entered Lands, an agent of the West Virginia State Auditor ("Rollyson"); Lisa Hopkins, Senior Deputy Commissioner of Securities and General Counsel for the West Virginia State Auditor's Office ("Hopkins"); Stephen Connolly, formerly Deputy State Auditor and General Counsel for the West Virginia State Auditor's Office ("Connolly"); and Michael Nusbaum, Associate General Counsel and Senior Regulatory Counsel for the West Virginia State Auditor's Office ("Nusbaum") (collectively, the "Auditor Defendants").

Plaintiff alleges in the Amended Complaint that the named Defendants deprived him of his "constitutional rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and [committed the] state law [torts of] intentional infliction of emotional distress and economic damages." (ECF No. 32 at 1). These allegations stem from Plaintiff's purchases of tax liens from the West Virginia State Auditor's Office, during the course of which, Plaintiff's relationship with the

Auditor's Office broke down and became contentious. See generally id. at ¶¶ 5-12, 16-42. Ultimately, this breakdown culminated in Defendant Rollyson's decision to file a petition with the Magistrate Court of Kanawha County, West Virginia (the "Kanawha Magistrate [3] Court") for the issuance of a Personal Safety Order ("PSO") against Mr. Folse on August 12, 2021. (ECF No. 22-3).

Plaintiff alleges that "the Defendants collectively conspired to file for a personal safety order for the improper purpose to exclude the Plaintiff from tax sales, to bar him from obtaining tax deeds to properties he already purchased, and to put him in a catch 22 situation where he would be forced to either violate a personal safety order or lose his investment of hundreds of thousands of dollars." (ECF No. 32 at ¶ 43). Upon filing the petition for a PSO, Rollyson allegedly argued to the Kanawha Magistrate Court that the PSO was necessary because Plaintiff made "repeated credible threats of bodily injury[.]" (ECF No. 22-3 at 2). The Kanawha Magistrate Court granted the PSO on August 12, 2021. See id. According to Plaintiff, "[p]revious to the PSO being issued, the Defendants had asked the Plaintiff to come in for a meeting at which they would discuss how to obtain tax deeds that were being refused," but that "[i]nstead of having that meeting as promised, they served him with the PSO." (ECF No. 32 at ¶ 49). Though Rollyson was listed as the protected person on the PSO, it ordered broadly that Plaintiff "shall not have verbal contact with the WVSAO [West Virginia State Auditor's Office] or the General Counsel," and that instead "[a]ll communication shall be via email or USPS." (ECF No. 22-3 at 2). Additionally, the PSO

ordered Plaintiff to "refrain from contacting, attempting to contact, or harassing" Rollyson, "directly or indirectly, or through third part[ties]," and to stay away from Rollyson's "place of employment," among other things. Id. at 2-3. The PSO stated that it would "remain in effect until the 20th day of August, 2022," the maximum under West Virginia statute. Id.at 3. While Plaintiff appealed the Magistrate Court's issuance of the PSO to the Kanawha County Circuit Court, the Circuit Judge affirmed the [4] Magistrate's decision after Plaintiff failed to appear for a scheduled hearing. (ECF No. 56- 1 at 3). Plaintiff appealed the Kanawha County Circuit Court's decision to the West Virginia Supreme Court of Appeals, but the lower court's ruling was affirmed on December 13, 2022. Id. at 4. The PSO expired pursuant to its terms on August 20, 2022. See id.

Plaintiff's Amended Complaint alleges that the PSO "was granted based on numerous falsehoods and false affidavits . . . includ[ing] that the Plaintiff had recently started calling and yelling, using profanity, [accusing] the state auditor [of] treason, and call[ing] twenty-seven times in one day." (ECF No. 32 at 48). Plaintiff alleges that, "[i]n actuality, the Plaintiff was the subject of verbal abuse and harassment from the Defendants," and that Plaintiff's "phone calls were only in an attempt to try and reach the Defendants" to inquire "how to obtain tax deeds to properties and avoid litigation." Id. According to Plaintiff, on October 19, 2021, Defendant Looney, "a Sergeant with the Capitol Police, filled out and signed a criminal complaint" charging Plaintiff with violating the PSO. Id. at ¶ 50.

Based upon Looney's submission, the Kanawha Magistrate Court found that there was probable cause and issued the criminal complaint, which directed that a warrant be issued for Plaintiff's arrest. Id. at ¶¶ 51-53. Plaintiff alleges that "[t]he factual basis for the criminal charge" was comprised of actions which "are clearly protected by the First Amendment [to] the United States Constitution and are protected free speech." Id. at ¶ 59. The Amended Complaint alleges that "[t]he criminal complaint was without probable cause and brought as a retaliatory action in response to the Plaintiff filing lawsuits [against McCuskey and Rollyson] and criticizing the State Auditor on Facebook." Id. ¶ 60. **[5]** Plaintiff alleges that the Magistrate who issued the complaint is a personal friend of Auditor McCuskey, and that their friendship "improperly influenced the criminal case and determination of probable cause." Id. at ¶ 59. Plaintiff alleges he was subsequently arrested at a tax auction sale in Marion County, West Virginia, and that the Marion County Magistrate refused to allow him to post bond. Id. ¶ 54-55. As a result, Plaintiff "was held in the North Central Regional Jail in a cell with fifteen to twenty other men." Id. at ¶ 56.

Based upon these allegations, Plaintiff's Amended Complaint asserts six counts against all the named Defendants. In Count I, Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for false arrest in violation of the Fourth Amendment. Id. at ¶¶ 71-83. Specifically, the Amended Complaint alleges the following:

> Each of the Defendants acted individually and collectively under the color of state law to cause the Plaintiff to suffer a false arrest

> which was without probable cause and in retaliation for [Plaintiff's] First Amendment protected activities. Specifically, Defendant Looney authored, signed, and presented the criminal complaint to Magistrate Brent Hall. Upon information and belief, the other Defendants either acted in a concerted effort to conjure up this plot which led to the false arrest or directed Defendant Looney to author and present the criminal complaint.

Id. at ¶ 75-77. Additionally, Plaintiff alleges that "[t]he criminal complaint authored by the Defendants includes numerous falsehoods and misrepresentations," including that Plaintiff made "repeated threats and harassment" to Rollyson, that the Plaintiff violated the PSO by criticizing Auditor McCuskey, who was not listed as a protected person on the PSO, and by misleadingly characterizing the Plaintiff's email communications as "harassing." Id. at ¶ 80-82.

Similarly, in Count II of the Amended Complaint, Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for retaliatory arrest and retaliatory prosecution in violation of the **[6]** Fourth Amendment. Id. at ¶¶ 84-104. Plaintiff alleges that "[e]ach of the Defendants acted individually and collectively under the color of state law to cause the Plaintiff to suffer a retaliatory arrest which was without probable cause and in retaliation for [Plaintiff's] First Amendment protected activities." Id. at ¶ 86. Further, Plaintiff alleges that "[e]ach of the Defendants acted to collectively conjure up the retaliatory arrest plot," which Plaintiff alleges was personally-motivated and "was intended to have a chilling effect on the Plaintiff's First Amendment

rights and to discourage him from filing more lawsuits and criticizing the State Auditor, John McCuskey, on Facebook." Id. at ¶ 87.

In Count III, Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for malicious prosecution in violation of the Fourth Amendment. Id. at ¶¶ 105-114. Plaintiff alleges that the criminal complaint and subsequent prosecution in state court "resulted in the Plaintiff being held in jail in a pretrial detention unsupported by probable cause," but that his prosecution "ended without a conviction when it was voluntarily dismissed by the Kanawha County prosecutor." Id. at ¶¶ 108-111. Furthermore, Plaintiff alleges that "[e]ach of the Defendants acted individually and collectively under the color of state law to cause the Plaintiff to suffer a malicious prosecution which was without probable cause and in retaliation for First Amendment protected activities." Id. at ¶ 112. According to Plaintiff, "[t]he Defendants conspired and conjured up the plot to have an arrest warrant issued for the Plaintiff that they knew was unsupported by probable cause," and that, "[s]pecifically, Defendant Looney was the individual defendant who authored, signed, and presented that warrant." Id. at ¶¶ 113-114.

Finally, Plaintiff's Amended Complaint asserts a tort claim for intentional infliction of emotional distress (Count IV), and a claim for economic damages (Count V), **[7]** under West Virginia law, as well as a claim for declaratory and injunctive relief against Defendants. (See ECF No. 32). The Defendants then filed several motions to dismiss, and ultimately the Court dismissed all but Counts II, III, IV, and V

against the named Defendants in their individual capacities. (See ECF Nos. 59; 60).

The Court entered a Scheduling Order in this civil action on October 26, 2023, pursuant to which the parties' deadline to complete discovery was May 3, 2024, and dispositive motions were due on May 24, 2024. (ECF No. 69). Importantly, at no point during the discovery phase of this case did Plaintiff file any motion with respect to discovery; nor did Plaintiff otherwise indicate to the Court that discovery was not progressing in accordance with the case schedule.

On April 1, 2024—approximately one month before the close of discovery— Plaintiff served a Notice of Deposition of John McCuskey Jr. (ECF No. 75). On April 4, 2024, the Auditor Defendants sought to quash the deposition on the grounds that that Plaintiff unilaterally scheduled the deposition at a time that Defendants were unavailable and sought to take Defendant McCuskey's deposition for an improper purpose. (ECF No. 78).

The undersigned subsequently entered an Order on April 5, 2024, staying the unilaterally-noticed deposition pending adjudication of the Defendants' Motion to Quash. (ECF No. 79). The undersigned's Order required Plaintiff to file any response to Defendants' motion on or before Friday, April 12, 2024. See id. Additionally, the undersigned ordered Plaintiff to serve a courtesy copy of his response via email, "contemporaneously with his filing of the . . . response[.]" (ECF No. 80). Despite the Court's specific instructions regarding Plaintiff's obligations under this accelerated **[8]** briefing schedule, Plaintiff did not comply with the Court's directives. Instead, Plaintiff emailed a courtesy copy of the Response on Saturday,

April 13, 2024, at 3:36 p.m. The Clerk's Office ultimately received Plaintiff's filed copy in the U.S. Mail on April 22, 2024. (ECF No. 85). Notably, Plaintiff failed to request an extension of time to comply with these deadlines. Defendants objected to Plaintiff's late-filed response, arguing that "[n]ot only does Plaintiff continue to engage in a pattern and practice of deception and unprofessional conduct he also uses the legal system to pursue personal vendetta's [sic] against the Auditor Defendants and their counsel." (ECF No. 82). Defendants sought an award of their attorney's fees and expenses along with an order quashing the deposition noticed by Plaintiff. See id.

On February 5, 2025, the undersigned entered an Order granting in part and denying in part the Defendants' motion to quash. (See ECF No. 101). Therein, the undersigned found that there was not good cause to enter the far-reaching protective order sought by Defendants, entirely preventing Plaintiff from deposing Defendant McCuskey, who is a party in this civil litigation. Id. at 14. However, noting the "well-documented and longstanding history of interpersonal conflict" between Plaintiff and Defendant McCuskey, the undersigned found that there was good cause under the circumstances to prescribe a discovery method other than the one selected by the party seeking discovery. Id. at 14-15. Accordingly, the undersigned permitted Plaintiff to take the deposition of Defendant McCuskey through written questions in accordance with Rule 31 of the Federal Rules of Civil Procedure, or alternatively, to elect instead to propound written interrogatories pursuant to Federal Rule 33. See id. The

undersigned's February 5, 2025 Order expressly notified Plaintiff that he "will bear the burden of complying with **[9]** the procedural and financial requirement that such discovery commands." Id. at 15. Further, the undersigned's Order expressly required Plaintiff "to either propound his Interrogatories, or to serve a Notice in accordance with Rule 31(a)(3), and to otherwise make the arrangements for this discovery, by no later than 4:00 p.m. EST on Monday, February 24, 2025." Id. at 16. Finally, the undersigned's Order expressly notified Plaintiff "that failure to timely comply with the directives of this Order will result in the undersigned's finding that Plaintiff has waived the discovery sought," and "that no extensions of time will be granted except on a showing of good cause, made in advance of the deadline." Id. The undersigned then stayed this matter pending completion of Defendant McCuskey's deposition. See id.

On March 7, 2025, Defendants jointly filed a Motion for Enforcement of the Court's February 5, 2025 Order. (ECF No. 102). Therein, Defendants represent that Plaintiff has not complied with the directives of the undersigned's February 5, 2025 Order. See id. Specifically, Defendants assert that—while Plaintiff elected to take the deposition of Defendant McCuskey under Rule 31—Plaintiff did not serve a Notice in accordance with Rule 31(a)(3), and he did not serve a timely Notice by the February 24, 2025 deadline set forth in the undersigned's Order. See id. at 3-4. Defendants assert that Plaintiff transmitted a Notice via email to defense counsel on February 24, 2024 at 6:32 p.m., "well after the 4:00 p.m. deadline established by the Court." Id. at 4, 10.

The Notice, which Defendants have attached to their motion, merely states the following:

> PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(1), Jay Folse, will take the deposition upon written examination of John McCuskey Jr., at 10:00 am on March 12th before a Notary Public or other person authorized by law to administer oaths. The deposition will be recorded by stenographic means.

[10] Id. at 10. Moreover, Defendants assert that Plaintiff "failed to serve on the other parties the deposition questions to be put to the Defendant McCuskey[.]" Id. at 5. Notably, Plaintiff did not file a copy of the Notice with the Court prior to Defendants' filing of their subject motion; nor did he seek an extension of time to comply with the Court's Order.

Based on Plaintiff's clear failure to comply with the directives of the Court's February 5, 2025 Order, and in accordance with the plain terms of the Order, Defendants requested that the Court enter an order (1) finding that the Plaintiff has waived his opportunity to depose the Defendant McCuskey, and (2) relieving Defendant McCuskey from any obligation to respond to the Notice issued by the Plaintiff. Id. at 7. Plaintiff did not file a response to Defendants' subject motion. Instead, on March 10, 2025, Plaintiff filed a copy of the untimely deposition Notice that he had emailed to the Defendants. (ECF No. 103).

On April 4, 2025, the undersigned entered an Order granting Defendants' motion and finding that Plaintiff has waived the deposition of Defendant McCuskey. (ECF No. 104). Subsequently on April 7,

2025, the undersigned entered an Order (ECF No. 105) granting Plaintiff's first Motion for Extension to File Responses to Defendants' Motions for Summary Judgment (ECF No. 95). Therein, the undersigned found that, while Plaintiff "failed to show good cause for an extension of time to respond to the pending dispositive motions," Plaintiff would be granted a brief extension until April 30, 2025, "out of an abundance of caution, and in light of the federal courts' preference for adjudicating matters on the merits as well as Plaintiff's pro-se status[.]" (ECF No. 105 at 1-2). The undersigned's Order further notified the parties that requests for extension of the deadline must be supported by good cause and made by written motion, submitted in **[11]** advance of the deadline at issue. Id. at 2. Additionally, the undersigned's Order notified Plaintiff of his rights and obligations in responding to a dispositive motion under Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). See id. Finally, the undersigned's Order expressly notified Plaintiff that (1) "failure to serve a timely response to either motion —and/or, if appropriate, failure to attach evidence in rebuttal to Defendants' motions—within the time set forth in this Order and Notice, may cause the Court to conclude that Defendants' contentions therein are undisputed or unopposed, and/or that Plaintiff no longer wishes to pursue his claims against the Defendants;" and (2) "in the event [Plaintiff] fails to dispute or oppose either of the Defendants' motions, the undersigned will likely recommend to the presiding District Judge that this civil action be dismissed for, among other things, failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure—or alternatively, that judgment be

granted to the Defendants, and Plaintiff's claims against the Defendants be dismissed with prejudice." Id. at 3.

On April 30, 2025, at 3:51 p.m. EST—a mere nine minutes before the Court's deadline for Plaintiff to file his responses to the dispositive motions submitted by the Defendants on May 24, 2024—Plaintiff filed a second Motion for Extension of Time to Respond to Defendants' Motions for Summary Judgment. (ECF No. 111). Therein, Plaintiff asserted that he "has not started preparing that response," and that "[t]here is no possibility for him to prepare a response before May 23, 2025." Id. at 1. In support, Plaintiff asserts that he "is currently in law school . . . and is currently completing academic assignments and preparing for finals." Id. He asked that the Court grant him another extension until May 23, 2025, to submit his response briefs. See id.

[12] The following day on May 1, 2025, the undersigned entered an Order explaining that, "[t]o permit the Court to fully consider the requested extension," Plaintiff was ordered to "submit a copy of his law school final examination schedule, signed by either the Dean or the Registrar of Plaintiff's law school." (ECF No. 113 at 2). The Order expressly required Plaintiff to submit this documentation by no later than 4:00 p.m. EST on May 12, 2025. Id. To date, however, Plaintiff has failed to submit any documentation in support of his second request for extension of time. Nor has Plaintiff filed anything further.

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is material when it 'might affect the outcome of the suit under the governing law.'" Strothers v. City of Laurel, 895 F.3d 317, 326 (4th Cir. 2018) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "A genuine dispute arises when 'the evidence is such that a reasonable jury could return a verdict for the non-moving party.'" Id. (quoting Anderson, 477 U.S. at 248). "Thus, at the summary judgment phase, the pertinent inquiry is whether there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Variety Stores, Inc. v. Wal-Mart Stores, Inc., 888 F.3d 651, 659 (4th Cir. 2018) (alteration and internal quotation marks omitted).

"The burden is on the nonmoving party to show that there is a genuine issue of material fact for trial . . . by offering 'sufficient proof in the form of admissible evidence' . . . ." Guessous v. Fairview Prop. Invs., LLC, 828 F.3d 208, 216 (4th Cir. 2016). In ruling **[13]** on a motion for summary judgment, this Court "view[s] the facts and all justifiable inferences arising therefrom in the light most favorable to the nonmoving party." Jones v. Chandrasuwan, 820 F.3d 685, 691 (4th Cir. 2016) (quoting Libertarian Party of Va. v. Judd, 718 F.3d 308, 312 (4th Cir. 2013)).

III. DISCUSSION

A. Plaintiff's Motion for Sanctions

First, presently pending before the Court is the Plaintiff's Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey filed on April 18, 2025. (ECF No. 107). Therein, Plaintiff "moves the Court to sanction Defendants Rollyson and McCuskey for refusal to schedule depositions, the filing of a frivolous motion to quash, and refusing to respond to written discovery." Id. Defendants filed their response in opposition to the motion on April 30, 2025. (ECF No. 110). Plaintiff did not file a reply brief, and his time to do so has expired. See L.R. Civ. P. 7.1(a)(7). As such, the motion is now ripe for adjudication.

First, in Plaintiff's subject motion for sanctions, he argues that discovery sanctions are warranted because he "sent written discovery requests to Defendants" in March 2024, but "Defendants did not respond to Folse's interrogatories, [or] requests for production of documents[.]" (ECF No. 107 at 1). A defendant's responses to interrogatories and requests for production of documents are governed by the Federal Rules of Civil Procedure. Rule 37(a)(3)(B) provides that a party seeking discovery may move for an order compelling an answer or production when a party fails to answer an interrogatory submitted under Rule 33 or fails to produce documents as requested under Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv). However, the Court's Local Rules of Civil Procedure **[14]** expressly provide that "[m]otions to compel or other motions in aid of discovery not filed within 30 days after the discovery response or disclosure requirement was due are waived, and in no event provide an excuse, good cause or reason to delay trial or modify the scheduling order." L.R. Civ. P. 37.1(c). Moreover, discovery in this case closed more

than one year ago, on May 3, 2024. (ECF No. 69). The Plaintiff did not file any timely motion to compel these Defendants to respond to discovery he claims to have served on March 20, 2024, and the opportunity for the Plaintiff to serve additional discovery requests has long since passed. Under these circumstances, the Plaintiff has waived any opportunity he might have had to obtain an order compelling the Defendants to provide discovery. Thus, in accordance with Rule 37(b)(2)(A), the Plaintiff likewise has waived any opportunity he might have had to seek an award of sanctions from these Defendants for the reasons set forth in his motion

Next, Plaintiff argues that discovery sanctions are warranted because he "sent seven emails over the course of several months in addition to multiple phone calls to counsel requesting to schedule depositions," but that Defendants Rollyson and McCuskey refused to appear. (ECF No. 107 at 3-4).

With respect to the deposition of Defendant McCuskey, those issues have been fully litigated, resulting in the undersigned's determination that the Plaintiff has waived the opportunity to depose this Defendant. (ECF No. 104). The undersigned's ruling in that regard is the subject of written Objections filed by the Plaintiff, (ECF No. 108), to which the Defendants have responded, (ECF No. 109), and which remain pending before the presiding District Judge. Under these circumstances then, and for the reasons set forth at length in the undersigned's prior Order, (see ECF No. 104), Defendant McCuskey has **[15]** violated no procedural rule or Order that would support an award of sanctions—and Plaintiff's

untimely attempt to relitigate these same issues is improper.

With respect to the deposition of Defendant Rollyson, the record is devoid of any indication that Rollyson was served with proper notice in accordance with Rule 30(d)(1)(A)(i). Thus, Plaintiff is not entitled to an order compelling Rollyson's deposition. Furthermore, even if Plaintiff had properly served Rollyson with notice of his deposition, the time for Plaintiff to file a discovery motion on this issue has long since expired pursuant to L.R. Civ. P. 37.1(c). Accordingly, Plaintiff has waived this issue.

Finally, interspersed throughout Plaintiff's motion are a number of accusations by Plaintiff with respect to misrepresentations and other misconduct by Defendants and their counsel. To the extent Plaintiff seeks sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure for the alleged misconduct, Rule 11 expressly states that "[t]his rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37." Fed. R. Civ. P. 11(d). Moreover, it is not lost on the undersigned that none of these issues were raised by the Plaintiff during the course of discovery; nor do any of these alleged acts by Defendant impact the Court's prior rulings. Simply put, Plaintiff's own inaction in failing to engage in meaningful discovery in this case—and to seek timely, appropriate relief in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules—is the cause of the procedural posture in this case. By failing to litigate these issues in a timely manner, Plaintiff has waived them. Accordingly, the undersigned respectfully recommends that Plaintiff's Motion for Discovery

Sanctions Against Defendants Rollyson and McCuskey (ECF No. 107) be DENIED as meritless. Moreover, for the reasons set forth below, the Defendants are **[16]** entitled to summary judgment in this civil action; accordingly, the undersigned alternatively recommends that Plaintiff's Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey (ECF No. 107) be DENIED as moot. B. Defendants' Motions for Summary Judgment

i. The Police Defendants' Motion for Summary Judgment

The Police Defendants, Wallace Looney and Kevin Foreman, filed their joint Motion for Summary Judgment on May 24, 2024. (ECF No. 86). The Police Defendants argue that Plaintiff's § 1983 claims based upon false arrest, retaliatory arrest, and malicious prosecution, each fail as a matter of law. (ECF No. 87 at 7). The Fourth Circuit ruled that "the presence of probable cause defeats retaliatory arrest, unlawful arrest, and malicious prosecutions claims alike." Somers v. Devine, 132 F.4th 689, 697 (4th Cir. 2025). The Police Defendants noted it is undisputed that it was a police officer who was not named as a party to this action, and not the Defendants, who arrested the Plaintiff during the arrest that forms the subject of Plaintiff's Amended Complaint. Furthermore, the criminal complaint from the Magistrate Court of Kanawha County, West Virginia, indicates that the arrest was carried out based on an arrest warrant issued by a Kanawha County Magistrate, who expressly found that there was probable cause to arrest the Plaintiff. (See ECF No. 1-1). As such, the Police Defendants have met their burden of

demonstrating the absence of a genuine issue of material fact with respect to the issue of probable cause. Plaintiff, in return, has not submitted any evidence from which a reasonable jury could conclude that his arrest was unsupported by probable cause. As such, the undersigned respectfully recommends that the motion for summary judgment be GRANTED.

[17] ii. The Auditor Defendants' Motion for Summary Judgment

The Auditor Defendants—John B. McCuskey, G. Russell Rollyson, Lisa Hopkins, Stephen Connolly, and Michael Nusbaum—also filed their joint Motion for Summary Judgment on May 24, 2024. (ECF No. 88). According to the Auditor Defendants, the crux of Plaintiff's claims is that he was arrested in "retaliation plot" conjured up by the named Defendants. (ECF No. 89). The Auditor Defendants point out, however, that the sole evidence supplied by the Plaintiff for this contention is the Criminal Complaint, as drafted by Defendant Looney. (See ECF No. 101-1). The Auditor Defendants argue that summary judgment is proper because there is no evidence that any of the Auditor Defendants drafted or issued the Criminal Complaint, or arrested the Plaintiff. (ECF No. 89 at 5-6). Further, the Auditor Defendants, like the Police Defendants, highlight the Kanawha County Magistrate's express determination that there was probable cause to issue the arrest warrant. (See ECF No. 101-1). Absent any evidence that the Auditor Defendants had any role in having the arrest warrant issued or played any role in the arrest or prosecution of the Plaintiff, along with the evidence that Plaintiff's arrest was supported by

probable cause, Defendants demonstrate the absence of any genuine issue of material fact with respect to the issue of probable cause. Plaintiff, in return, has not submitted any evidence from which a reasonable jury could conclude that his arrest was unsupported by probable cause. As such, the undersigned respectfully recommends that the motion for summary judgment be GRANTED. C. The Sanction of Dismissal

Finally, apart from the merits of Defendants' dispositive motions, dismissal as a sanction is appropriate because Plaintiff has ignored multiple warnings by this Court that **[18]** failure to comply with the deadlines set forth in the Court's orders would result in the undersigned's recommendation of dismissal. When courts consider dismissal or default judgment as a sanction, the Fourth Circuit has established the following test: (1) whether the noncomplying party acted in bad faith; (2) the amount of prejudice his noncompliance caused his adversary, which necessarily includes an inquiry into the materiality of the evidence he failed to produce; (3) the need for deterrence of the particular sort of noncompliance; and (4) the effectiveness of less drastic sanctions. Mut. Fed. Sav. & Loan Ass'n v. Richards & Assocs., Inc., 872 F.2d 88, 92 (4th Cir. 1989) [hereinafter Richards]. Although dismissal with prejudice is a harsh sanction which should not be invoked lightly, the ultimate dismissal decision is left to the discretion of the trial court. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Timmons v. United States, 194 F.2d 357, 359 (4th Cir. 1952). Importantly, the Fourth Circuit has explained that "the district court should dismiss the case" when a

plaintiff "has ignored an express warning that noncompliance with a court order will result in dismissal." Bey ex rel. Graves v. Virginia, 546 F. App'x 228, 229 (4th Cir. 2013) (per curiam) [hereinafter Graves]); see also Douglas v. Heater, 2:20-cv-00856, 2021 WL 784806, at *2 (S.D.W. Va. Mar. 1, 2021) (applying Graves and dismissing a civil action pursuant to Rule 41(b) due to Plaintiff's failure to prosecute).

First, dismissal is proper pursuant to Graves, because—by failing to file timely responses to Defendants' dispositive motions, over eleven months after they were filed by Defendants—Plaintiff has ignored an express warning that noncompliance with a court order will result in dismissal. The undersigned's April 7, 2025 Order expressly notified Plaintiff that (1) "failure to serve a timely response to either motion—and/or, if **[19]** appropriate, failure to attach evidence in rebuttal to Defendants' motions—within the time set forth in this Order and Notice, may cause the Court to conclude that Defendants' contentions therein are undisputed or unopposed, and/or that Plaintiff no longer wishes to pursue his claims against the Defendants;" and (2) "in the event [Plaintiff] fails to dispute or oppose either of the Defendants' motions, the undersigned will likely recommend to the presiding District Judge that this civil action be dismissed for, among other things, failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure—or alternatively, that judgment be granted to the Defendants, and Plaintiff's claims against the Defendants be dismissed with prejudice." (ECF No. 105 at 3).

Furthermore, each of the four Richards factors support dismissal. The first Richards factor examines whether the noncomplying party acted in bad faith. Here, the Plaintiff's own explanation for his conduct demonstrates his bad faith. Defendants filed their subject dispositive motions on May 24, 2024—nearly a year ago. Plaintiff has had a meaningful opportunity to prepare a response to the motions, but has chosen not to do so. Moreover, Plaintiff was ostensibly aware of his examination schedule well in advance, but elected to move for an extension of time a mere nine minutes before his responses to the dispositive motions were due—and at that time he informed the Court that he had not even started preparing his response. Although Plaintiff is proceeding pro se in this civil action, he is a prolific litigant and has been advised on countless occasions by this Court that his pro-se status does not excuse him from obeying the applicable procedural rules as well as the orders of this Court. Further, Plaintiff has also been instructed on numerous occasions that his law school commitments do not excuse his obligations to comply with **[20]** Court orders—particularly where, as here, Plaintiff failed to provide a copy of his final examination schedule as ordered by the Court.

The second Richards factor—the amount of prejudice Plaintiff's noncompliance caused his adversary—also weighs in favor of dismissal. Not only have Defendants been prejudiced in expending resources on ultimately uncontested dispositive motions, but they have also been prejudiced to the extent that—in response to Defendants' arguments that there is no genuine dispute of material fact and they are entitled to judgment as a matter of law—

Plaintiff has provided no evidentiary or documentary support for his alleged claims.

Finally, the third factor—the need for deterrence of the particular sort of noncompliance—as well as the fourth factor—the effectiveness of less drastic sanctions— also weigh in favor of dismissal, because the patent ineffectiveness of less-drastic sanctions in the face of Plaintiff's continued noncompliance with Court orders is well-documented. Plaintiff has engaged in a longstanding pattern of ignoring deadlines and disobeying Court orders in this case, as discussed previously in the undersigned's April 8, 2025 Order. (ECF No. 106; see also ECF No. 112). Most significantly, Plaintiff conceded in his second Motion for Extension of Time to Respond to Defendants' Motions for Summary Judgment that—despite having more than eleven months to respond to Defendants' dispositive motions—as of nine minutes before his deadline to submit his response briefs, Plaintiff had not even begun preparing them at all. (ECF No. 111). Plaintiff's flagrant disregard for the deadlines set by the Court—despite being warned that failure to file timely response briefs to the Defendants' dispositive motions could result in dismissal of this action—clearly demonstrates that less drastic sanctions continue to be **[21]** patently ineffective in this case.

Moreover, Plaintiff's pattern of litigation misconduct extends beyond this case to other civil actions before this Court—and despite facing sanctions in those cases, Plaintiff's pattern of misconduct has remained consistent. For instance, in a March 15, 2024 Memorandum Opinion and Order dismissing a civil action brought by Plaintiff and

denying Plaintiff's request for extension of time to submit objections to the undersigned's Proposed Findings and Recommendation, U.S. District Judge Joseph R. Goodwin found that "Plaintiff has repeatedly failed to meet the deadlines set by this court." Folse v. Am. Elec. Power Serv. Corp., 2:23-cv-00201, ECF No. 50 at 2 (S.D. W. Va. Mar. 15, 2024). Further, Judge Goodwin observed the following:

> Because Plaintiff is proceeding pro se, the court has been very generous with Plaintiff's filings, and the documents he has filed in this case have been held to a less stringent standard than if they had been prepared by a lawyer. See Haines v. Kerner, 404 U.S. 519, 520–21 (1972). I do note, however, that Plaintiff is a particularly experienced litigant and either knew or had reason to know of the deadlines imposed by the court as well as the penalties for failing to comply with those deadlines . . . . Moreover, Plaintiff has been advised on multiple occasions that his pro se status does not absolve him of his duty to comply with the Local and Federal Rules of Civil Procedure . . . . He was previously warned by Magistrate Judge Tinsley of the possibility of sanctions for continued failures to comply with the applicable Rules and/or directions of the Court "up to and including the finding that he is a harassing and vexatious litigant subject to a pre-filing injunction pursuant 28 U.S.C. § 1651(a) and the Court's inherent authority to supervise and manage its own docket."

Id. at 2-3. Judge Goodwin concluded that "Plaintiff has continuously failed to meet deadlines and blatantly disobeyed court orders[.]" Id. at 3. As a result, Judge Goodwin rejected Plaintiff's request for an extension of time to file objections to the undersigned's Proposed Findings and Recommendations and dismissed Plaintiff's case. Id.

Likewise, in a June 21, 2024 Memorandum Opinion and Order dismissing another **[22]** civil action brought by Plaintiff, U.S. District Judge Irene C. Berger found that the Plaintiff demonstrated a "history of noncompliance" with deadlines in that case. Folse v. McCormick, 2:22-cv-00435, ECF No. 113 at 4 (S.D. W. Va. June 21, 2024). Judge Berger discussed the Plaintiff's argument in that case that his delay in submitting pretrial filings was not willful or contumacious because he is in law school, "[d]eadlines in law school have to take priority over court deadlines," and he "would rather submit something late to court than get a zero for an assignment." Id. at 5. Judge Berger explained to Plaintiff that "missing court-imposed deadlines has consequences," and that "[p]rocedural rules and deadlines—which are set well in advance—allow parties, counsel, and the Court to manage workloads and ensure that all cases are addressed efficiently." Id. at 8. Judge Berger further noted that "this is not the first instance of the Plaintiff failing to comply with deadlines." Id. Notably, Judge Berger further explained that "[t]he Plaintiff's non-compliance has continued through the present," as "Mr. Folse filed a motion to continue the pretrial hearing and final settlement conference, citing a scheduled surgery." Id. at 8 n.2. Judge Berger explained that "[t]he Court entered an order directing

him to submit documentation by June 12, 2024, which was provided to him via email as well as U.S. Mail," however, Plaintiff "submitted no such documentation and emailed a withdrawal of the motion to the Court's law clerk on June 19, 2024." Id. Based upon Plaintiff's ongoing pattern of disregard for Court deadlines, Judge Berger ruled that, "[w]hile dismissal is a harsh sanction, the Court finds that it is warranted here." Id. at 9. Judge Berger further explained as follows:

> The Plaintiff's own explanation for his conduct demonstrates his bad faith and the need to deter this particular sort of noncompliance. The Court cannot permit litigants to simply ignore court orders and deadlines that they find inconvenient. As discussed, the failure to timely file pretrial
>
> **[23]** disclosures and other pretrial documents is quite prejudicial, as it prevents the other party from meaningful trial preparation in the final weeks before trial. Most important for the Court's consideration in this case, however, is the practical unavailability of lesser sanctions. The exclusion of evidence and witnesses that were not properly disclosed leaves the Plaintiff with little or nothing to bring to trial to prove his claim or to prove damages. Dismissal, in this case, simply flows from the less severe sanction of exclusion, which the Court finds to be clearly warranted.

Id. at 9-10.

Subsequently on March 19, 2025, U.S. Magistrate Judge Omar J. Aboulhosn entered an Order in that

case requiring Plaintiff to pay the Defendant's attorney's fees as a sanction for Plaintiff's "misconduct" and "fail[ure] to comply with this Court's Orders or cooperate in the prosecution of his case." Folse v. McCormick, 2:22-cv-00435, ECF No. 134 at 7-8 (S.D. W. Va. Mar. 19, 2025). Notably, Magistrate Judge Aboulhosn explained that, while Plaintiff "alleged [a] recent diagnosis of a 'Mild Cognitive Impairment' as an excuse for submitting pre-trial documents untimely, it is nevertheless remarkable that the Plaintiff attends law school, has prosecuted numerous civil actions within this District, and on March 18, 2025, delivered oral arguments before the Supreme Court of Appeals of West Virginia[.]" Id. at 6. Based upon Plaintiff's well-documented history of litigation misconduct, Magistrate Judge Aboulhosn found "that without the sanction of having to pay for [the defendant's] attorney fees, the Plaintiff will remain undeterred in bringing numerous lawsuits to this Court and to other courts, and feel that he is somehow excused from complying with court orders due to his pro se status, notwithstanding that he is a very experienced and prolific litigant." Id. at 9. Finally, Magistrate Judge Aboulhosn found that "most importantly, the Plaintiff's unfounded accusations against opposing parties and their counsel as being dishonest and unethical is not only grossly disrespectful, but is unprofessional, and conduct unbecoming of a future lawyer." Id.

[24] In summary, based on the foregoing, the factors enumerated by the Fourth Circuit in Richards all point to dismissal of this civil action as a result of Plaintiff's extensive litigation misconduct. Simply put, Plaintiff has been specifically instructed on numerous

occasions by this Court that he has an obligation to follow the Federal Rules of Civil Procedure and the Court's Local Rules—including the deadlines set forth therein—and that his pro-se status does not afford him a "free pass" to engage in abusive litigation misconduct. (See ECF No. 31). See also, e.g., Folse v. Am. Elec. Power Serv. Corp., 2:23- cv-00201, ECF No. 42 (S.D. W. Va. Oct. 6, 2023). While dismissal is a harsh sanction, the Court cannot permit litigants to simply ignore court orders and deadlines that they find inconvenient—particularly when, as here, the Plaintiff has been specifically notified by multiple judicial officers not only of his obligation to comply with the Court's rules and directives, but also of the consequences he faced if he continued his longstanding pattern of disregarding those rules and directives. As such, dismissal is warranted.

IV. RECOMMENDATION

Accordingly, for the foregoing reasons, it is respectfully RECOMMENDED as follows:

(1) Plaintiff's Motion for Discovery Sanctions Against Defendants Rollyson and McCuskey (ECF No. 107) be DENIED;

(2) Defendants Foreman and Looney's Motion for Summary Judgment (ECF No. 86) be GRANTED;

(3) Defendants John B. McCuskey, G. Russell Rollyson, Jr., Lisa Hopkins, Stephen Connolly, and Michael Nusbaum's Motion for Summary Judgment (ECF No. 88) be GRANTED; and **[25]**

(4) this civil action be DISMISSED from the Court's active docket.

The parties are notified that this Proposed Findings and Recommendation is hereby FILED, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., Senior United States District Judge. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), the parties shall have fourteen (14) days (filing of objections) and three (3) days (mailing) from the date of the filing of this Proposed Findings and Recommendation to file with the Clerk of this Court specific written objections identifying the portions of the Proposed Findings and Recommendation to which objection is made and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown. Copies of any objections shall be provided to the opposing party or, if it is represented by counsel, to its counsel, and to Judge Copenhaver.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Fourth Circuit Court of Appeals. 28 U.S.C. § 636(b)(1); see Thomas v. Arn, 474 U.S. 140, 155 (1985); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

The Clerk is DIRECTED to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff and to transmit a copy to counsel of record.

ENTERED: May 14, 2025

s/ Dwane L. Tinsley
Dwane L. Tinsley
United States Magistrate Judge

APPENDIX D

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

Magistrate Court Case No. 21-M20S-00342

G. Russell Rollyson, Jr — *Petitioner (First / Middle / Last)*

v.

Jay Harrison Folse — *Respondent (First / Middle / Last)*

[Box:] Law Enforcement — Completed Service Verification on Page 4: [ ] Yes [ ] No

PERSONAL SAFETY ORDER FOLLOWING FINAL HEARING

W. Va. Code § 53-8-7; § 53-8-10

On the 12th day of August, 2021, the petitioner filed with this Court a PETITION, pursuant to *West Virginia Code § 53-8-4*, alleging certain acts or offenses by the respondent and requesting this Court grant appropriate relief.

The Court held a Final Hearing in this matter on the 20th day of August, 2021, based upon the following: *(Check one as applicable.)*

[ ] Service was waived by the respondent.

OR

[X] A Temporary Personal Safety Order was previously issued and served upon the respondent, scheduling this matter for a Final Hearing.

OR

[ ] The respondent appeared at the hearing on the Temporary Personal Safety Order, and both the

petitioner and respondent expressly consented to waiving the hearing on the Temporary Personal Safety Order.

The following were present for the hearing: _____

Based on the matters set forth in the PETITION, and based upon a preponderance of the evidence, the Court finds as follows:

A. This Court has jurisdiction and this county is a proper venue to hear the PETITION.

B. The respondent has committed the act(s) described below against

[X] the petitioner.

[ ] the following child(ren): _____ [ ] the following incapacitated adult(s): _____

[2]

Magistrate Court Case No. 21-M20S-00342

C. The petitioner has reasonable apprehension of continued, unwanted, or unwelcome contacts by the respondent, based upon the following act(s) committed by respondent *(Check any or all that apply.)*:

[ ] Sexual Offense(s) or Attempted Sexual Offense(s) as defined in *West Virginia Code § 53-8-1.*

[ ] Stalking in violation of West Virginia Code *§ 61-2-9a(a).*

[X] Repeated credible threats of bodily injury knowing or having reason to know that the

threats caused reasonable fear for safety in violation of *West Virginia Code § 53-8-4(a)(3)*.

-OR- Without admitting any act:

[ ] The respondent consents to the entry of a Personal Safety Order.

D. The Court also finds that *(Check any that are applicable OR check Not Applicable.)*

[ ] a weapon was used, or threatened to be used, in the offense(s) for which the PETITION was filed.

[ ] the respondent has violated a prior Personal Safety Order.

[ ] the respondent has been convicted of an offense involving the use of a firearm.

-OR-

[X] Not Applicable

The Court further makes the following findings of fact in relation to the conclusions stated in Paragraphs A, B, C, and D: Respondent shall not have verbal contact with the WVSAO or the General Counsel. All communication shall be via email or USPS. *[Handwritten entry.]*

Based upon the foregoing, the Court ORDERS the relief designated below with regard to the following protected person(s): G. Russell Rollyson
(Check and complete as applicable.)

[X] Respondent shall refrain from attempting, committing, or threatening to commit any sexual offense, as defined in *West Virginia Code § 53-8-1(9)*; any stalking as defined in *West Virginia Code § 61-2-9a(a)*; or any repeated credible threats of bodily injury as defined in *West Virginia Code §53-8-4(a)(3)*.

[X] Respondent shall refrain from contacting, attempting to contact, or harassing the person(s) named above, directly or indirectly, or through third party, regardless of whether those third parties know of this Order.

[3]

Magistrate Court Case No. 21-M20S-00342

[X] Respondent shall refrain from entering the residence of the person(s) named above.

[X] Respondent shall stay away from the place of employment, school, and residence of the person(s) named above.

[X] Respondent shall not visit, assault, molest, or otherwise interfere with the persons(s) named above; and if any such protected person is a child, respondent shall not engage in such conduct with siblings or minors residing in the household of the child.

[ ] Based upon the matters found in Paragraph D of the Findings stated above, the respondent is prohibited from possessing a firearm as defined in *West Virginia Code § 61-7-7. (Check one below.)*

[ ] Respondent shall surrender all firearms and ammunition possessed or owned by the respondent to the law enforcement officer serving this Order.

[ ] Respondent shall transfer all firearms and ammunition possessed or owned by the respondent to a qualified third party. The law

enforcement officer serving this Order shall determine if the third party is qualified to possess firearms and is not otherwise prohibited by law from possessing firearms.

If no qualified third party is available, the respondent shall surrender all firearms and ammunition possessed or owned by respondent to the law enforcement officer serving this Order.

If the respondent is required to surrender firearms and ammunition, the respondent shall provide, within 5 days of the date of this Order, written documentation to the Magistrate Court Clerk of all firearms and ammunition surrendered or transferred. The written documentation shall include the description of each firearm and the name of the law enforcement agency or third party having possession of the respondent's firearms.

[ ] Respondent shall pay the fees and costs of this proceeding in the amount of $_____ to the Magistrate Court unless a fee waiver request has been granted.

[ ] Other relief the Court deems necessary: _____

VIOLATION OF THIS ORDER MAY RESULT IN CRIMINAL PROSECUTION AND, IF CONVICTED, INCARCERATION, FINE, OR BOTH.

This Order shall remain in effect until the 20th day of August, 2022.

A copy of this Order shall be served upon the parties by the Court or law enforcement. Copies of this Order shall be transmitted immediately, but no later

than the next business day to any law enforcement agency having jurisdiction to enforce this Order, including the county sheriff, the local office of the state police, and any municipal police force, to be placed in a confidential file by such law enforcement agencies pursuant to *W. Va. Code § 53-8-2(a)*.

[ ] The Clerk shall serve a copy of this Order by first-class mail upon the following: _____ *(specify any non-party(ies) to be served, e.g. Board of Education)*

Issued this 20th day of August, 2021 at 9:52 AM.

s/ Joe Shelton
Magistrate's Signature

[4]

Magistrate Court Case No. 21-M20S-00342

NOTICE TO PARTIES: YOU HAVE THE RIGHT TO APPEAL THIS ORDER TO THE CIRCUIT COURT WITHIN 20 DAYS OF THE ENTRY OF THIS ORDER. YOUR APPEAL MUST USE THE *PETITION FOR APPEAL OF ORDER GRANTING OR DENYING FINAL PERSONAL SAFETY ORDER* FORM THAT CAN BE OBTAINED FROM THE MAGISTRATE COURT CLERK'S OFFICE OR ON THE WEBSITE OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA. THE COMPLETED APPEAL FORM MUST BE FILED WITH THE MAGISTRATE COURT CLERK'S OFFICE. IF YOU CANNOT AFFORD THE COSTS OF THESE

PROCEEDINGS, YOU MAY FILE A FEE WAIVER REQUEST WITH THE MAGISTRATE COURT CLERK'S OFFICE.

SERVICE BY COURT

Served upon petitioner on this 23 day of August, 2021, by [ ] Magistrate / [ ] Magistrate's Assistant/Clerk/Deputy Clerk. s/ Michele Cook — *Signature*

Served upon respondent on this 23 day of August, 2021, by [ ] Magistrate / [ ] Magistrate's Assistant/Clerk/Deputy Clerk. s/ Michele Cook — *Signature*

Served upon _____ *[specify non-party(ies) served]* by first-class mail on this ___ day of _____, 20___, by _____. — *Signature*

SERVICE BY LAW ENFORCEMENT (if party not present at conclusion of hearing)

Served upon petitioner by _____ in _____ County, WV, on _____ *(date)* at _____ *(time)* [ ] a.m. [ ] p.m. — *Law Enforcement Signature*

Served upon respondent by _____ in _____ County, WV, on _____ *(date)* at _____ *(time)* [ ] a.m. [ ] p.m. — *Law Enforcement Signature*

FOR COURT USE ONLY

Law enforcement agencies to which a copy of this Order was transmitted: Ohio Co PD. *(Place an asterisk next to the agency responsible for completing service, if known.)*

APPENDIX E

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

WARRANT FOR ARREST

State of West Virginia
v. Case No(s). 21-M20M-09354
Jay Harrison Folse, 4702 Eoff St, Wheeling, WV 26003, (540) 847-2213

To Any Law Enforcement Officer:

WHEREAS this court has found probable cause to believe that the defendant, Jay Harrison Folse did commit an offense or offenses in this County on or about

21st day of August, 2021, previous to the issuance of this warrant 1 count(s) 53-08-11(a)(1): Violation of Personal Safety Order-1st Offense- fine = $1,000 or = 90 days in jail, or both

against the peace and dignity of the State.

Therefore, you are commanded in the name of the State of West Virginia to apprehend the above-named defendant and bring that person before any magistrate in this County, to be dealt with in relation to the charge(s) according to law.

This arrest warrant is to be executed in the following manner *(check one)*:

[X] Forthwith
[ ] Between the hours of 9 a.m. and 4 p.m., Monday through Friday
[ ] Other *(as specified)*: _____

Given under my hand this 19th day of Oct, 2021.

s/ Brent Hall

Brent Hall, Magistrate

Executed by: _____ in _____ County, W.Va., on _____
(Date)

W.Va. Code § 50-2-3; Mag. Ct. Crim. Rule 4 — MCRWARR Rev. 09/2007 — Docket Code: MMWAR — Page 1 of 1

[2]

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

Case No. 21-M20M-09354

State of West Virginia
v.
Jay Harrison Folse — *Defendant (Full Name)* [X] Misdemeanor / [ ] Felony
4702 Eoff St., Wheeling, WV 26003 — *Address; City, State & Zip Code*
Social Security Number: XXX-XX-1865 Date of Birth: 1994 *[month and day redacted; see Sup. Ct. R. 34.6]* Driver's License / Identification Number: *[redacted]* Phone Number(s): 540-847-2213

CRIMINAL COMPLAINT

Mag. Ct. Criminal Procedure Rule 3, 4; 18 U.S.C. § 921(a)(33)

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about August 21, 2021 - October 18, 2021, in Kanawha County, West Virginia, in violation of *West Virginia Code § (cite specific section, subsection, and/or subdivision, if applicable)* 53-8-11, the defendant did *(state statutory language of the offense)* unlawfully &

knowingly fail to comply with the relief granted in a final personal safety order. Possible penalty: confinement in jail not more than ninety (90) days, a fine of up to $1,000.00, or both.

I further state that this complaint is based upon the following facts: On August 12, 2021, Deputy State Auditor G. Russell Rollyson, Jr., applied for a Temporary Personal Safety Order restraining the Defendant, Jay H. Folse, from having contact with him due to repeated threats and harassment. Said Order was granted and a hearing scheduled. On August 20, 2021, a hearing was held with Defendant in attendance. After hearing all the evidence, Magistrate Joe Shelton

[X] Check if continued on an attached sheet?

(If this complaint involves misdemeanor assault/battery [West Virginia Code § 61-2-9] or misdemeanor domestic assault/battery [West Virginia Code § 61-2-28], check all that apply.) The defendant: [ ] is/was the victim's spouse. [ ] is/was a parent or guardian of the victim. [ ] has a child in common with the victim. [ ] is/was living with the victim as a spouse, parent, or guardian. [ ] is a person who is like a spouse, parent, or guardian of the victim. [X] has none of the above connections to the victim.

Complainant *(who appears before Magistrate)*: s/ Cpl. W. E. Looney — *Complainant Name (Full Name)* — State Capitol Bldg., Charleston, WV 25305

On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply: Finding: [ ] No probable cause found [X] Probable

cause found. Issuance: [ ] Summons issued [X] Warrant issued [ ] Warrantless arrest
Date: 10-19-2021 — Complainant Signature: s/ Cpl. W. E. Looney Date: 10/19/21 — Magistrate Signature: s/ Brent Hall

MCRCRCO Rev. 06/2012 (previously MCRCOMP) Criminal Complaint — WVSCA Approved: 06/06/2012 Docket Code(s): MFFCF / MMFCF — Page 1 of 2

[3]

Case No.: 21M20M09354

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

MAGISTRATE COURT CRIMINAL COMPLAINT CONTINUATION SHEET

issued a Final Protective Order directing Defendant "... shall not have verbal contact with the West Virginia State Auditor's Office or the General Counsel. All communication shall be via email or USPS." Further, "[Defendant] shall refrain from contacting, attempting to contact, or harassing the person(s) named above, directly or indirectly, or through third party..." During the hearing, Magistrate Shelton verbally admonished Defendant that any interaction shall be professional in nature. Defendant filed an appeal of this Order to Circuit Judge Jennifer F. Bailey. On September 7, 2021, Defendant contacted the Court seeking to reset the hearing, which was denied. On September 8, 2021, the appeal was heard and denied for failure of Defendant to appear. On October 11, 2022, Defendant appealed that Order to the Supreme Court of Appeals. Simultaneously, Defendant filed a lawsuit against Deputy Auditor

Rollyson and Auditor McCuskey. Defendant attempted to notice a multi-day deposition of both individuals. On October 18, 2021, the Circuit Court of Ohio County issued an Order quashing the deposition notice as Defendant's, "...attempt to take these depositions was undertaken for an improper purpose." Later that day, Defendant began posting comments on State Auditor J.B. McCuskey's personal Facebook page. Said comments were numerous and clearly done with the intent to abuse, harass and violate the terms of the Final Personal Safety Order entered by Magistrate Shelton. Further, Defendant has emailed Deputy Auditor Rollyson on several occasions since the issuance of the Final PSO in what can be characterized as an unprofessional and harassing manner.

Date: _____ Magistrate's Signature: _____

APPENDIX F

STATUTORY PROVISION INVOLVED

W. Va. Code § 53-8-11. Penalties.

(a) *Fines or incarceration.* — An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For a first offense, be fined not more than $1,000 or confined in jail not more than ninety days, or both; and

(2) For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both.

(b) *Arrest.* — A law-enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of a temporary or final personal safety order in effect at the time of the violation.

(Enacted 2012 Regular Session, S.B. 191.)