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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge
Civil Action No. 2022-CP-28-00782
Appellate Case No. 2024-000833

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Christine Jernigan and Justin Jernigan …….., Appellants,

v.

Kershaw County Sheriff's Office…….., Respondent.

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# FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

I. Whether the issues on appeal are immediately appealable or whether they are non-appealable discovery matters.

II. Whether the circuit correctly denied the discovery Motion for Sanctions/Contempt finding that the Appellees acted in good faith in responding so that sanctions are not warranted based upon the totality of the evidence in the record.

III. Whether circuit court correctly ruled that the Appellant did not provide evidence of prejudice or bias in denying Appellant's motion to recuse the trial court judge and refer the Sanctions/Contempt motion to a new judge after the court denied the Sanctions/Contempt motion.

## STATEMENT OF THE CASE

Plaintiffs filed an FOIA action against the Kershaw County Sheriff's Department. The atypical FOIA request was served July 22, 2022. Complaint, Ex. A, FOIA Request, Record @ Page 15. The Sheriff's Department provided an initial response on June 29, 2022, informing the requestor that they did not have any records of this incident in our system other than calls made to central dispatch. Pl. Motion for Sanctions/Contempt Ex. N, Record @ 27, 174.

This was a traffic stop that was determined to be a civil matter. No incident report was prepared. No documents were prepared. There were communications through Kershaw County Central Dispatch, a separate entity from the Sheriff's Department. Through conversations between counsel for the parties, some documentation was obtained and provided. Records were retrieved by Sheriff's Department counsel from Central Dispatch and provided despite the fact that they were not Sheriff's Department records. That included CAD reports and several recorded telephone calls. Many telephone calls were not recorded because the Sheriff's Department does not provide cell phones. Response in Opposition to Motion for Sanctions/ Contempt, Record @ 293. Its deputies and employees use personal cell phones. Those lines are not recorded. Id. Record @ 297.

No incident reports exist because this was a civil matter not assigned to anyone to investigate. After learning which employees were involved, personnel files and training records were provided. Id. @ p. 10. Record @ 296, 301. There were no written records of this event and no incident report. Therefore, there was no incident report number to categorize any documents by. Instead, there was just a citizen encounter that was undocumented.

Thereafter, Plaintiffs filed this FOIA action seeking relief and seeking other documents that they insist exist and are being intentionally withheld. This FOIA action was filed September

12, 2022, in Kershaw County. Summons and Complaint, Record @ 1. The Sheriff's Department timely answered denying the material allegations of the complaint. Answer, Record @ 19.

The Court has considered three motions. Those motions are the subject of this appeal.

The Plaintiffs did not request a hearing when the action was filed. Therefore, the ten-day hearing was delayed several months until they made such a request. The ten-day hearing was held before Judge Newman on December 19, 2022. One order emanated from that hearing and is relevant to this appeal. Form 4 Order of Judge Newman, Record @ 24.

The first motion filed was Plaintiff's Motion for Sanctions/Contempt. Motion for Sanctions/Contempt, Record @ 27. That motion was filed on February 23, 2023. The motion was heard by Daniel Coble in Kershaw County on April 27, 2023. Transcript of hearing, Record @ 477. The parties supplied memoranda regarding the motion. Pl. Memo in support of the motion, Record @ 87. Memo in opposition to the Motion, Record @ 293. The court issued a Form 4 order with formal order to follow on June 2, 2023. Form 4 Order, Record @ 315.

Following the issuance of the Form 4 Order, Plaintiff filed their second motion on July 14, 2023. This was a Motion to Recuse, Vacate and Re-Assign or Alternatively to Reconsider Interlocutory Order. Motion to Recuse, Vacate and Re-Assign or Alternatively to Reconsider, Record @ p. 318. Both parties filed memoranda in support of their positions. Plaintiff's motion in support, Record @ p. 405; Defendant's motion in opposition, Record @ 443. That motion was denied by Order dated October 20, 2023. Record @ 561.

Plaintiff then filed a second Motion to Reconsider on October 30, 2023. Motion to Reconsider, Record @ p. 567. That motion was denied by Order dated May 3, 2024. This appeal followed.

**BACKGROUND (PRESENTED OUT OF ORDER BECAUSE IT IS RELEVANT TO BOTH THE APPEALABILITY ISSUE AND TO THE MERITS SECTIONS THAT FOLLOW)**

Justin Jernigan is a pro se Plaintiff. He is an attorney who represents himself. He is also acting as an advocate as attorney for his mother, Christine Jernigan. He is also the primary witness for the Plaintiffs. He has created confusion throughout this FOIA litigation.

This is a FOIA case against the Kershaw County Sheriff's Department. The confusion began with the Appellants' FOIA request. Rather than requesting specific documents, he told a rambling story in paragraph form and asked for relevant documents. Exhibit A to Complaint, FOIA request. Record @ 15. The Sheriff's Department looked for any documents linked to him and found no incident reports or anything else to link him to anything. Appellants dispute that. Instead, they claim that the Sheriff's Department is lying and withholding that incident report. Pl. Memo. in Support of Motion for Sanctions/Contempt Record @ 91, 94-5, Exhibit G, @ p. 10 of 15, Record @ 91, 94-5, 130. To substantiate that claim, he recites from the Sheriff's Department policy manual with a misleading partial quote:

> "KCSO knew, based upon its official Policy Manual, Chapter 209 – Records, that reports must be prepared documenting all "citizen requests for services that an officer is dispatched….to investigate," and this is true regardless of the subject matter involved (i.e., criminal, or civil requests)."

Pl. Memo in Support of Motion for Sanctions/Contempt @ p. 5, Record @ p. 94.

The language omitted from the quote is crucial. Appellees have pointed that out many times in briefing and in oral argument, yet the argument persists. The policy actually says that it is the policy of the department to document incidents including:

> all citizen requests for services when an officer is dispatched, ***and an employee is assigned*** to investigate.." (emphasis added).

Plaintiff's Memorandum in support of Motion for Sanctions/Contempt, Exhibit G @ p. 10 of 15. Record @ p. 121, 130.

Jernigan left out the language "and an employee is assigned " before the words "to investigate" from the memorandum he supplied to and argued to the court. Pl. Memo. in Support of Motion for Sanctions/Contempt @ p.5, Record @ 94, Transcript of hearing, @ pp. 8 – 43, Record @ 198, 205-30. Instead, he argued that the Sheriff's Department is lying because his manipulated version of the language suggests that they were required to prepare one. The underlying event was determined to be a civil matter. There was no crime. The Sheriff's Department had nothing to investigate. There was no "employee assigned to investigate" so no report was prepared.

The search for Justin Jernigan revealed no documents. Upon further clarification and information from Mr. Jernigan, the Sheriff's Department was able to provide him with a dash cam video, audio recordings, personnel and training files, but no incident or other reports because none exist. This litigation is in large part over whether anything else exists.

There are similar examples of claims of improper conduct in responding to his request that are without merit. For instance, Appellant claims that the audio files have been tampered with and redacted. The Sheriff's Department is not aware of any such redaction. In the separate FOIA case pending against the 911 center, Appellant makes the same claim. The Director of the 911 center has listened to the tapes produced to Mr. Jernigan simultaneously while listening to the recordings in the possession of the Call center and determined that they are identical. There are no redactions. This counsel was present when those recordings were compared. She will be called as a witness in this case as well to testify regarding the lack of tampering with the audio recordings.

The Sheriff's Department retains files on matters that typically begin with an incident report. They received a FOIA request and looked for an incident report that would give them a number by which to search for matters. They found none because there was none. They were interpreting a vague FOIA request and timely reported back that they had no documents responsive to the request and that Mr. Jernigan had been told this was a civil matter.

Through communications between Jernigan and pre-suit counsel, Tommy Morgan, Appellant provided further clarification of what he was seeking. More documents were produced. At the initial hearing on this matter, Judge Newman was confronted with accusations of wrongdoing and a coverup countered by responses that FOIA had been complied with. A sufficient record for her to render a decision did not exist at that point. As a result, she ordered that the Appellees respond to FOIA within twenty days so everyone could be on the same page moving forward and that the Appellees respond to discovery.

The issues in this case surround two discovery matters. Appellants contends that Appellees have not provided proper discovery responses nor complied with Judge Newman's order regarding a response to the FOIA request. Appellees contend that all available documents responsive have been produced, they have not been improperly redacted or edited, nothing has been deleted from the audio tapes and that this case can move forward to final hearing. The circuit court issued a Form 4 Order indicating that the Motion for Sanctions/Contempt would be denied with a formal order to follow. When the formal order was issued the court found that responses were proper and adequate and that the prior order had been complied with in good faith so that sanctions were not warranted. However, prior to that formal order being issued, Appellants moved to recuse the circuit judge or have him reconsider his ruling without knowing the reasons for the denial of the motion because the order had not been drafted or entered yet!

Ultimately, both motions were denied in written orders. The Appellants then again moved for reconsideration. That motion was denied. Appellants now contend that this case has been decided on the merits by those two orders. They also claim that the judge silently ruled on matters not presented to the court in the motions, such as body camera videos that no longer exist. The Appellees contend that the discovery matters have been ruled on, and these orders are not appealable. Further, nothing has been decided with finality.

Appellants also challenge the court's failure to hold the initial hearing sooner and assert that they have been deprived of a mode of trial. Appellants did not request a hearing after filing the action until a much later date. Appellee believes that the circuit court judges do not review pleadings as they are filed. Without a request from Appellant for a hearing, none was scheduled until one was later requested. Appellant's failure to understand the necessity of requesting a hearing cannot be blamed on the court or the Appellees.

As a result of the court's failure to have an earlier hearing. Appellant requests that the relief sought in his complaint should be granted. In other words, because the court did not hold a hearing where none had been requested, the Appellees lose their right to appear and contest this case and Appellants are declared the winner. That is simply an unwarranted result lacking in credibility. That request has never been presented to the trial court and is not properly a part of this appeal.

This matter began with a report to Kershaw County Dispatch (a separate agency) that Christine Jernigan had taken her mother, without permission, from her residential care facility. The Sheriff's Department made at traffic stop. During that traffic stop they were shown competing powers of attorney by Ms. Jernigan and her sister both of whom claimed to be able to control their mother. The Sheriff's Department determined that this was a civil matter for the

Probate Court rather than a criminal matter. There was no criminal investigation because there was nothing to investigate. Appellants contend that there are many documents that should have and were made during the course of the alleged investigation that are being improperly withheld. They allege that audio tapes of phone calls have been tampered with. Other than their allegations, they have not shown any evidence of those matters. They sought sanctions for failing to provide pertinent documents that they assert exist. They sought sanctions against the Appellee for that alleged activity.

This brief will address the appealability of this matter, and the merits. Much of what is submitted here is contained in documents filed in the trial court and incorporated into the record here, that will be referenced in this brief, but not repeated here. In particular, the responses to various motions and the explanations in response to each Paragraph of the FOIA request and to each discovery request are significant to the issues here.

## APPEALABILITY

This Court's original Order dismissing this appeal because the underlying motions are not immediately appealable was correct. The appeal is from three trial court orders all relating to Appellant's request for sanctions against the Appellee for allegedly violating discovery or not complying with a prior court order. None of the orders ruling on those matters or the motions to reconsider ended the case on the merits. Form Orders denying Motion for Sanctions/Contempt, Record @ p. 564; Form Order denying Motion to Recuse, Vacate, Re-Assign or Alternatively Reconsider, Record @ p. 561; Form Order denying Motion to Reconsider, Record @ p. 585. None of the orders fall with the scope of appealable matters under S.C. Code Ann. Section 14-3-330 or Rule 72, SCRCP. In more detail, the orders are:

(1) The first order was by Judge Daniel Coble dated October 20, 2023, denying Appellant's motions for sanctions/contempt after full briefing and hearing. Order Denying Motion for Sanctions/Contempt, Form 4 Order denying Motion for Sanctions/Contempt, Record @ P. 564.
(2) The second order issued by Judge Coble dated October 2023 @ 9:41 am denying Appellant's Motion to Recuse, Vacate and Re-Assign or, Alternatively to Reconsider ***Interlocutory*** order and award sanctions; and (emphasis added). Order denying Motion to Recuse, etc. , Record @ 561.
(3) The third order by Judge Coble dated May 3, 2024, denying Appellants' second motion to reconsider and award sanctions. Order denying Motion to Reconsider, Record @ p. 585.

Appellants misconstrue the Orders in issue. They erroneously claim that the orders determined that Kershaw County Sheriff's Office (KCSO) complied with the statutory requirements of FOIA. The order itself does not mention the statutory requirements of FOIA, much less find that Appellee was in compliance with them. The Order does not prevent a judgment from which an appeal may be taken later and is not a final order affecting substantial rights. It is a discovery order finding no sanctions should be awarded because of the good faith response of the KCSO. It does not determine that the responses were in compliance with FOIA, and good faith is not typically a defense to a FOIA enforcement action. Further, the Order does not affect the mode of trial.

Appellant further alleges that Judge Coble's Order determined that KCSO did not spoilate the body camera videos. The first issue dealing with the original motions for sanctions/contempt was presented differently to the circuit court than it is being characterized here. Importantly, and contrary to Appellant's repeated assertions in their responses in both the lower court and in their motion for re-instatement filed in this case, the Motion for Sanctions/Contempt did not raise the issue of spoilation of body cam video evidence. To be sure, Mr. Jernigan did mention that at the

hour-long hearing, but it was not made a part of the motion, and no relief was sought for that in the motion. This motion was not designed or intended to end the case, and that issue was not part of the motion or the order. Additionally, the body cam and the issue of spoilation was not mentioned in the Order denying the motion. There was no reference to body cams or spoilation. There was no need for the court to address that in its order since it was not a part of the motion. The Court's silence is not a ruling, but simply a reflection that the motion did raise address that. Appellants had argued at hearing that they were seeking that relief. But upon further reflection and a consideration of the motion itself, that request is absent. Certainly, the court studied the motion before ruling on its merit.

Additionally, the Appellant's motion to Recuse, Vacate and Re-Assign or Alternative to Reconsider Interlocutory Order did not request relief for the issue of body cams or spoilation. While reciting their version of the history of this case, the body cam/spoilation issue was mentioned in one sentence at page 5 of the motion - as background history only with no request for a ruling or relief. Even at that late date, Appellants did not identify that as an issue for the court in any writing submitted to the court for review.

The first written mention of body cams and spoilation occurred in the second Motion to Reconsider. In that document, they said that the Court's October 23 Orders "do not address the issues and arguments raised by Plaintiff's Motions concerning the concealment, destruction and/or spoilation of relevant BWC records/evidence." They did not acknowledge that those issues were not raised in either of the two pending motions in issue – the Motion for Sanctions/Contempt and the Motion to Recuse, Vacate and Re-Assign, or Alternatively, Reconsider.

Based upon that, the Appellants contend that this case is immediately appealable in part because the lower court ruled on that issue – body cams and spoilation – finding against them. The court allegedly did so based upon two motions that did not raise the issue and in an order that did not address the issue. They claim that the court *sub silentio* ruled upon that issue. They would have this court find on appeal that the trial court's silence in its order as to an issue not raised in the two motions and not ruled upon in the court's order should be interpreted to have silently ruled upon that issue! Certainly, counsel for the Appellees could not argue to the trial court that the issue of body cam video destruction and spoilation had been decided by that Order so that Appellant cannot proceed to trial on those issues. That issue simply was not ever an issue actually addressed by the court in its orders and there is no preclusive effect.

Instead, the motions dealt with discovery issues. The motion alleged that Kershaw County had not complied with an earlier court order regarding discovery and the providing a deadline for compliance with FOIA. The issues surrounded Appellant's allegations that KCSO was lying and covering up evidence. The Sheriff's Department contended that it had indeed complied with that order in good faith and to the best of its ability as well as the discovery. The KCSO should not be sanctioned for not producing a video that no longer exists simply because they did not produce it. However, the issue regarding "why" the video was destroyed remains an issue for FOIA, pending and subject to proof. After reviewing voluminous exhibits, including a detailed review of the FOIA request and attempts to comply, and a detailed explanation for every interrogatory response and every response to request for the production of documents, the court found that the Appellees acted in good faith and that sanctions were not appropriate. The issues regarding violations of the FOIA statute remain pending. Good faith, along with denials that the Sheriff's Department was lying and covering up, and the lack of evidence to prove that point was

the defense to this motion. Good faith was the basis for denying the motion. Good faith is a defense to a motion for sanctions. While good faith may be a consideration in framing sanctions in a FOIA violation case, good faith is not a defense to a FOIA breach. *Pope v. Wilson*, 831 S.E.2d 442 (Ct. App. 2019). Good faith is a defense for a trier of fact to consider in determining whether an adverse inference is appropriate in that situation. But it is not, on its face, a defense to an alleged FOIA breach. This matter was decided on the appropriate standard for a discovery sanctions motion, not on a standard appropriate for the resolution of a FOIA breach allegation. The motions were considered discovery or case management motions and have no precedential effect on the remainder of the case.

Contrary to Appellants expressed concern, that order did not conclude the case. The form 4 order specifically says that "this order does not end the case".[1] Form 4 Order, Record @ 315. Issues regarding body worn camera videos being deleted were not addressed in the motion or the order. *Id.* Body camera video could not be produced in response to a request for production because it no longer existed. There was no finding regarding the merits of the Appellant's FOIA complaint. *Id*. Instead, the motion requested the court to consider an award of sanctions for not complying with discovery and the prior court order. The court denied the motion based upon the circumstances of why various items were or were not produced when there were allegations of intentional wrongdoing with misquoted policies and no proof.[2]

The transcript of the hearing is revealing. Appellant was complaining that the Kershaw County Sheriff's Department was intentionally hiding and not producing many documents that were in their possession. Transcript of Hearing, on Sanctions/Contempt Motion, April 27, 2023,

[1] Just below the signature box on the Form 4 order is a block for the judge to check as to whether this order ends the case or does not end the case. In all of the orders under appeal, the trial court checked the box that this does not end the case.

[2] Indeed, many items were not produced because they never existed despite Appellant's protestations and request for sanctions based on his belief that they did.

pp. 8-40, Record @ p. 477. The County countered that documents in existence had been produced and Appellant was mistaken in his judgment about other documents that should exist. For example, Appellant contends that the County was required to prepare an incident report of this matter. Transcript of Hearing, on Sanctions/Contempt Motion, April 27, 2023, pp. 16-40, Record @ p. 477, 492-516. Appellant concludes that since in his view the County was required to prepare one, they obviously did prepare one and were lying when they claimed there was nothing to produce because no report was prepared. In their lengthy memorandum in support of their motion they said: "KCSO knew, based upon its official Policy Manual, Chapter 209 – Records, that reports must be prepared documenting all "citizen requests for services that an officer is dispatched…to investigate," and this is true regardless of the subject matter involved (i.e., criminal, or civil requests)." Pl. Memo in Support of Motion for Sanctions/Contempt @ p. 5, Record @ 94.

However, the part of the quote omitted by Appellant with the ellipses changes the meaning completely. Kershaw County responded repeatedly that there was no incident report because this was a civil matter. The Appellant interprets that as the assertion of a civil exemption. That is simply not true. But, Appellants' quote of the policy is incorrect and misleading. The policy actually says – without the omission utilized by Appellant for this argument - that it is the policy of the department to document incidents including "all citizen requests for services when an officer is dispatched, ***and an employee is assigned*** to investigate.." (emphasis added). Pl Memo in Support, Ex. G, KCSO policy, @ p. 10 of 15. Record @ 121.

That illustrates the issues presented to the circuit court in opposition to Appellants motion for sanctions and contempt for failing to properly respond to a prior court order and discovery in this case. Appellant indicated to the court that an incident report was required based on an

incomplete quote, and that the Appellee refused to provide it under a civil exemption or that Appellee was simply lying and hiding it. They requested sanctions for that. Appellee provided evidence to the court that it complied with the prior court order and could not provide such an incident report because this was a civil matter therefore no officer was ***assigned to investigate*** and prepare a report. No report exists! The circuit court simply found that the Appellee was not in contempt of the prior court order given the documentation and information provided. Appellee wants to re-argue that now without illustrating where the court erred in that analysis.

That did not conclude the case and did not address the body camera videos as Appellant now claims in this appeal. It was simply a motion to hold the Appellee in contempt for failing to comply with a court order and discovery. It was, as this court first assessed, a non-appealable discovery order.

As further evidence, the Appellant's second Motion to Reconsider raised the body cams/spoilation issue in two sentences. Appellant's Motion to Reconsider, @ p. 11, Record @ 318, 413, 456. They specifically stated that the Court's orders **do not** address that issue. They mistakenly claimed that the issue was framed by and raised in the motions. But they admitted that the court did **NOT** address those issues.

Moreover, Appellants requested the court to address those issues. The court denied that motion and did not address those issues. The fact that the court denied the motion where Appellants specifically pointed out an issue that, even though not raised in the motion, had not been addressed and requested the court to do so, is further proof that the court did not consider or address that issue. The Court denied the request to reconsider and address that issue in an order where it had not been addressed.

Likewise, the remaining orders appealed from relate to this same matter. They simply are motions asking the court to reconsider its order (twice), withdraw its order and assign the matter to another judge to rehear based on this judge's alleged obvious impartiality because he ruled against Appellant, and to have the judge recuse himself. Record @ 305, 459. Those all relate to the original order issued by the trial court related to a discovery matter based upon a prior court order and discovery in this case.

This court originally dismissed this appeal on the grounds that these matters are not appealable. Appellant responded with a petition to reconsider. In that petition, Appellant alleges that the trial court ruled that the Appellee's response to the FOIA request "complied with" the statutory written requirements of FOIA. However, the trial court's order did not mention or refer to the statutory requirements of FOIA, much less rule on a compliance issue. Order denying Plaintiff's Motion for Sanctions/Contempt, Record @ p. 564. To the contrary, the Sanctions motion only mentioned Judge Newman's order in this case and the discovery in this case. At the initial hearing on this matter Judge Newman had heard the Appellant argue that we had not complied with FOIA while we argued that we had, and that Appellant's counsel was claiming that we had intentionally withheld documents. To put the court in a better position to resolve that dispute, Judge Newman had simply ruled that the Appellee had twenty days to respond to FOIA and that then the matter could go forward. The Appellee provided a detailed response to the matters Appellant claimed had not been produced. Memorandum in Opposition to Motion for Sanctions/Contempt @ pp. 3-20, Record @. P. 293 - 314. That document, the memoranda submitted by the parties and the arguments made at the Sanctions hearing before Judge Coble simply formed the basis for his ruling on the motion for sanctions/contempt for behavior in the discovery phase of this case.

Appellant goes further to assert that the trial court ruled on matters not before it – but silently! Frankly, we had to look up the definition *sub-silentio* as used in Appellant's allegation where he claims that other matters were determined – without being addressed. Judge Coble never expressed a desire to address those matters. Nothing indicates that in the transcript of the hearing nor in the order. Further, while there was some brief discussion of those matters by Mr. Jernigan in the hearing, the matter was not presented as a ground for relief in the motion itself. The Judge's Order is ruling on the pending motion. The failure to rule on a matter that was not raised in the motion cannot be interpreted to be a silent ruling on that matter.

The Appellee's Response to the Request for Sanctions devotes nearly twenty pages to providing the court with the response to: (1) The FOIA request as ordered by the previous order in this case along with an explanation for each response as to why it was in compliance with the order, and (2) the responses to discovery and an explanation as to each response given. Motion for Sanctions, Ex. D, Record @ pp. 69-75. That presumably formed the basis of the court's denial of the sanctions motion under appeal here. Those are clearly factual matters in the underlying case for the court to rule upon. The denial of the sanctions motion did not end the case or rule on the issues ultimate issues in this case. The Form 4 order states that on the face of the order. Form 4 Order, Record @ p. 564. The Appellant was seeking sanctions for alleged violations of discovery and the prior court order. The Appellees were not seeking any relief other than the denial of the sanctions motion. The merits of the case were not before the court. The court denied Appellant's request for sanctions. The case was ready to proceed on the merits of the underlying FOIA claims prior to this appeal.

Prior to the filing of this appeal, Appellant also asserted that this order was interlocutory in nature. After their sanctions/contempt motion was denied, they filed a Motion to Recuse,

Vacate and Re-Assign, or alternatively to reconsider ***Interlocutory*** Order. (emphasis added). Record @ p. 318. The Appellant referred to the one of the orders under appeal here as an interlocutory order. They were correct. This appeal should be dismissed because the matter is not appealable as there is no final order as to any issue in the case other than discovery matters.

An order denying sanctions is generally not immediately appealable because it does not constitute a final order, involves the merits of the case or affect a substantial right. *Richardson v. Halcyon Real Estate Ventures, LLP*, 887 S.E.2d 153. (Ct. App. 2023). Nothing in the orders appealed from here constitute a final order, involve the merits of the case or affect a substantial right. The order merely declines to award sanctions or find Appellee in contempt. The matter before the court was a motion for sanctions/contempt and nothing more.

Likewise, an order ruling on a discovery motion is not immediately appealable. Instead, it becomes appealable after a final order in the case. *Hamm v. South Carolina Public Service Com'n, et. al.,* 439 S.E.2d 852 (1994). The orders under appeal here addressed, in part, a request for sanctions regarding responses to discovery. There has been no final order of the FOIA compliance claims in the lower court, so the matter is not immediately appealable.

While Appellant asserts that the Court's ruling can be interpreted as a ruling on the merits effectively precluding further litigation, that was not the intent nor the ruling. That has not been expressed in the lower court by Appellee. Appellee affirmatively takes the position here that there is no disposition on the merits intended or resulting from that order. The Court's order made no indication that they intended to rule on matters not presented and the orders did not end the case. The ruling simply said that the Appellee had responded in "good faith" and declined to award sanctions for that reason. Good faith does necessarily determine whether a FOIA violation has occurred, and that issue remains open. This appeal should be dismissed because the orders under consideration are not appealable.

## STANDARD OF REVIEW

The standard of review in this FOIA action depends on the characterization of the matter under review.

For questions of law, the review is de novo. *Glassmeyer v. City of Columbia*, 777 S.E.2d 835 (Ct.App. 2015). The Appellees contend that this appeal does not involve questions of law since the issue is a judicial finding that sanctions/contempt against Appellee was not appropriate. That is an intensely factual question and analysis.

For questions of fact, the trial court's findings will not be disturbed unless there is no evidence in the record to reasonably support its findings. *Burton v. York County Sheriff's Department*, 594. S.E.2d 888 (Ct.App. 2004). Here, the record is replete with evidence to support the judge's conclusion that the Appellees acted in good faith and that sanctions and/or contempt is unwarranted.

For the recusal of the judge, the trial court's decision is given significant deference. The party seeking recusal must present evidence of judicial prejudice or bias. *Simpson v. Simpson*, 660 S.E.2d 274 (Ct.App. 2008); *Baskin v. Walkup*, 2025WL 97653 (Ct. App. Jan 15, 2025). The fact that a judge rules against a party is not proof of prejudice, even if the ruling is later found to be erroneous. *Mallett v. Mallett*, 473 S.E.2d 804 (Ct.App. 1996); *Reading v. Ball*, 543 S.E.2d 397 (Ct. App. 1987). There is no evidence of bias or prejudice on the part of the trial judge in this record.

The issues in the motion for sanctions/contempt involve conduct and therefore are questions of fact. The trial court's rulings are properly supported by evidence in the record to support the judge's findings.

## ARGUMENT

**I. The trial court correctly ruled that there were no discovery violations or violations of a court order in this case warranting sanctions/contempt.**

The trial court had three motions before it at various times. The original Motion for Sanctions/Contempt sought traditional sanctions/contempt remedies. Appellees did not seek a ruling on the merits of the causes of action. Appellant's Motion for Sanctions/Contempt @ p.5, Record @ 27. The motion simply stated that the Kershaw County Sheriff's Department had not responded to the court order properly and had not provided proper responses to discovery requests. Both issues were highly contested. The issue for review is whether Appellant can demonstrate that there is no evidence in the record to reasonably support the trial court's findings since this is a question of fact. There is ample evidence in the record supporting the trial court's findings. The motion was properly denied.

The FOIA request and the response thereto are set out in the Appellee's Response in Opposition to the Plaintiff's Motion for Sanctions/Contempt, Record @ pp. 293- 313, with the discovery responses and explanations continuing on pages 304 - 312. Those responses comply with Judge Newman's order. There were no more documents to produce other than what had been previously produced. A response had already been made timely. The explanations were so the record would be clear. As the responses make clear, the documents regarding this incident subject to FOIA and in possession of the Sheriff's Department were limited due to the fact that this was determined to be a civil matter, and no report or investigation was ever undertaken. Appellants unreasonably re-word the Department's policy in their briefing and then claim that the Department is lying and covering up because they were required to write an incident report and obviously did so. That is simply not true and is belied by the understanding of the complete sentence, without omissions, on which Appellants base that argument. In short, Appellants claim

that the Department's policy is to investigate all citizen encounters to which an officer is dispatched to investigate. In reality, the Department's policy is to investigate all citizen encounters to which an officer is dispatched, **and an officer is assigned** to investigate. No officer was assigned to investigate since this was determined to be a civil matter.

Appellants accuse Appellees of bad faith and lying, while Appellants are misrepresenting the policy to the court. A reading of the complete policy illustrated why the documents do not exist here – this was a civil matter and there was no crime. Therefore, no one was assigned to investigate, and no report exists.

After the initial response, there were conversations between Justin Jernigan and pre-suit counsel for the Sheriff's Department, Tommy Morgan. Following the assignment of current defense counsel, there were many additional conversations regarding what Appellants wanted. Based on those conversations, additional documents were produced.

For instance, Kershaw County Central Dispatch had recorded phone calls. Most of the calls Appellant sought were by private cell phone. The deputies for the Kershaw County Sheriff's Department are not assigned department phones. They use their personal cell phones. Those are not recorded. Any calls Appellants requested regarding phone calls with officers at the scene are not recorded and cannot be produced. Other calls to Central Dispatch that are recorded have been produced. Appellant claims they have been tampered with – with no proof.

Kershaw County Central Dispatch is a separate entity that manages dispatches for many different entities and agencies. It is a part of Kershaw County, not the KCSO. Counsel for the Appellees went to Central Dispatch and obtained recordings of the calls that were made to dispatch. There was no obligation under FOIA to do that. But, given the nature and tone of this proceeding, those efforts were made. Afterwards, Appellants complained that the recordings

received from Central Dispatch were edited and tampered with. In response, this counsel went to Central Dispatch, met with the Director and listened to the recordings that were produced to Appellants simultaneously with the recordings that were on the system at Central Dispatch. The Director at Central Dispatch listened too. There were no edits or evidence of any tampering. The recordings were the same. Based upon that, there was nothing else to produce. The Cad reports from Central Dispatch were produced as well. That was done in the FOIA case filed against Kershaw County for Central Dispatch. The Director of Central Dispatch is prepared to testify as to those events and the lack of any evidence of tampering.

After further discussions with Justin Jernigan, despite the fact there was no criminal activity and no report, he wanted training records and personnel files of the officers involved. Those were produced (with lawful redactions) by pre-suit counsel on August 24, 2022. A file was inadvertently missed. That was corrected with the responses to discovery in January 2023.

Mr. Jernigan also noted in his FOIA request that body camera videos are not subject to FOIA. He requested that body cam video be preserved. Unfortunately, the body camera videos were not tagged to any incident report and were never located and pulled. They were written over in accordance with the retention policy.

The Appellees are not aware of any other documentation that has been requested and not provided. The explanations given to the lower court were sufficient to demonstrate good faith sufficient for the court to deny the Motion for Sanctions/Contempt.

Further, Appellant suggests that the Order finds that there was no spoilation of the body cam video so that the issue is precluded from further litigation. They claim that the order ***silently*** denies the motion and determines that there was no spoilation regarding body cam video. First, the Motion for Sanctions/Contempt does not mention body cams and does not seek any relief

regarding body cams. Motion for Sanctions/Contempt, Record @ p. 87. Second, the Order does not mention body cams and does not provide or disallow any relief regarding spoilation of body cams. Order denying Motion for Sanctions/Contempt, Record @ p. 564. The argument that the order, *sub silentio,* precludes further litigation regarding body cams is wrong and has no basis in fact. The Appellees have never argued and will not argue that the body cam issue was disposed of in the denial of sanctions order where it was never mentioned. We could not argue that in good faith when the motion did not request that relief, the order did address that relief. Third, Appellant filed a second motion to reconsider. That motion pointed out that the court had ***not*** addressed the body cam spoilation issue and requested the court to address that. Motion to Reconsider @ p. 11, Record @ p. 318. The court denied that motion requesting that it address that. Order denying second Motion to Reconsider, Record @ p. 567. Consequently, Appellant claims that a motion that did not request relief for the alleged body cam video spoilage, and an order that did not address that issue, followed by a motion to reconsider that requests the court to consider that issue and the denial of that motion, constitutes a silent ruling by the court on that very issue that was never addressed. Appellees contend that the issue was not addressed at all - especially not silently.

The court also correctly concluded and ruled that the Motion for Sanctions/Contempt regarding the discovery responses should be denied. Again, Appellees went to great length to point identify each interrogatory and request for production, the response and an explanation for the response. Those responses appear in the Appellees Response in Opposition to Plaintiffs' Motion for Contempt/Sanctions at pages12–20, Record @ 304-312. They were made in good faith and to demonstrate the difficulty of responding when you are shadow boxing with wrongful allegations of the destruction of evidence that never existed. They were also made to

demonstrate the reasons for the responses provided, to illustrate the good faith of KCSO. There is nothing sanctionable in those responses. The record is replete with evidence to support the court's finding of good faith in responding as a factual matter. The lower court's determination is supported by the evidence. The standard of review is whether there is any evidence to reasonably support the lower court's determination. The determination is factually supported by ample evidence. The trial court properly denied the motion based upon the existence of evidence in the record reasonably supporting its conclusion. Appellant cannot demonstrate that there is no evidence reasonably supporting the trial court's decision.

Likewise, the court's orders do not refuse to enforce prior orders. They simply deny a request for sanctions regarding the compliance with those orders. There was no finding with regard to FOIA, just a finding of a lack of fault-based conduct based upon the motions and arguments and that sanctions did not appear appropriate for conduct regarding compliance with the previous order or responsiveness to discovery requests. Contrary to Appellant's assertions again, the Orders do not mention compliance with FOIA, just response to the matters presented in the motion. Further, compliance with FOIA had already been accomplished prior to the order. Judge Newman's order does not require or address any conduct prior to the day of her Order. Nothing about compliance with the statutory requirements of FOIA has been determined or could have been determined given that Judge Newman's order was not retroactive.

Appellant also argues that the circuit court erred by not complying with the procedural requirements of FOIA. First, that is not an argument that warrants relief against the Appellee(defendant). Second, the Appellant did not request a hearing immediately after filing and service of the Summons and Complaint. Third, the relief requested is to declare Appellant the winner and now allow the Appellee to present a defense – based on the court's alleged failure

to conduct a purely procedural as timely as the Appellant claims they should have. That motion or matter was not presented to the trial court in the form of a motion and has not been ruled upon. Even if it had, the motion has no logical basis in law or in fact. That argument is spurious.

**II. The trial court correctly ruled that there was no evidence of judicial prejudice or bias supporting a Motion to Recuse, Vacate and Re-Assign or Alternatively to Reconsider this Interlocutory Order and that there was evidence supporting the order denying the Motion for Sanctions/Contempt.**

The trial court properly found that the Appellant offered no evidence of judicial bias or prejudice sufficient to support a motion to recuse himself and/or re-assign the motion to another impartial judge. The Court also properly found that there were no grounds to reconsider his prior ruling on the Motion for Sanctions. Likewise, the court properly determined that the Appellant did not meet their burden for relief on the second motion to reconsider.

Further, the grounds for recusal are wholly lacking merit. The motions were made in response to notification that the court intended to rule against Appellant on the Sanction/Contempt motion. The Motion to Recuse, Vacate and Re-Assign, or Alternatively, to Reconsider was filed July 14, 2023 – three months ***before*** the formal order denying the Motion for Sanctions/Contempt was issued. At that point, Jernigan was only aware of the Form 4 Order indicating an intent to deny the motion. While he does not like our use of the word "intent," in South Carolina judges are free to change their mind after the entry of a Form 4 order up until the point a formal order is signed.

In any event, despite not having seen the reasoning for the order, Jernigan filed a 26-page motion seeking recusal because the judge is not fair and impartial – based on the only known fact that the judge intends to deny his Motion for Sanctions/Contempt.

In that motion, he begins by describing an uneven playing field without ever inquiring as to the actual facts. He begins by claiming that a well-informed observer would have questions

about the judge's decision-making process – all without knowing what the decision-making process was because there is no formal order yet. Motion to Recuse, Vacate and Re-Assign or Alternatively Reconsider Interlocutory Order @ p. 1, Rec. @ p. 318.

He next claims that KCSO' defense counsel is a "well-known local area attorney and has been defending cases filed against law enforcement agencies for over thirty years." He contrasts that with himself and his mother, private citizens who do not live in the local area and are appearing as strangers before this Court. At the hearing on this motion, counsel informed Mr. Jernigan, on the record in argument to the court that I had never met the judge before the hearing on the Sanctions motion. Transcript of Hearing of October 11, 2023 @ p. 25-27, Record @ p. 527. And, I had maybe two cases pending in Kershaw County. *Id.* Had Mr. Jernigan inquired before insinuating an unlevel playing field, this allegation could have been avoided. It bears repeating: the only information Mr. Jernigan had to base his meritless grounds for recusal are that the judge intended to deny his Sanctions motion. The actual Order Mr. Jernigan was contesting had not even been written at the time of his motion. The recusal motion and the subsequent second motion for reconsideration are without merit and were properly denied.

Appellant or Attorney Jernigan makes many other accusations that are not relevant to the current issues. For instance, he claims that defense counsel could not draft an order upon request from the court to justify the denial of the Motion for Sanctions/Contempt. In reality, after receipt of the email from the judge's law clerk, Appellant begin questioning the process. Because of that, I believed it appropriate to wait until that worked itself out especially in a situation where one of the pending motions is requesting the judge recuse himself. Transcript of hearing, October 11, 2023 @ p. 4, 25, Record @ p. 527. The judge changed his mind and issued his own

order. Appellant Jernigan routinely tries to decide and ascribe sinister motive to actions he does not understand or agree with, without any inquiry into reality.

## Conclusion

This appeal should be dismissed because it involves discovery/case management orders. These orders are not appealable under statutory law - 24-3-330, or under procedural rules – Rule 72, SCRCP. These matters were decided as discovery matters, applied a discovery matter standard of review and did not silently address matters which were not raised as a ground for relief in motions nor addressed in the subsequent Orders ruling on those motions.

As to the merits, the trial court properly considered the evidence of record in determining that the Sanctions/Contempt motion should be denied. The record is replete with facts that support that factual ruling. The ruling did not affect any substantial right or preclude further litigation on the issues raised in the pleadings. It did not silently rule on any of those issues, particularly where the issue was not raised in the motion, was not addressed in the order and the court denied a motion to reconsider and address those issues that the Appellant stated were not addressed.

Further, the grounds for recusal are wholly lacking merit. The motions were made in response to notification that the court intended to rule against Appellant on the Sanction/Contempt motion. The Motion to Recuse, Vacate and Re-Assign, or Alternatively, to Reconsider was filed July 14, 2023 – three months before the formal order denying the Motion for Sanctions/Contempt was issued. At that point, Jernigan was only aware of the Form 4 Order indicating an intent to deny the motion.

The trial court properly handled the difficult issues it was handed. This court should dismiss the appeal. But if this court decides the case on the merits, the trial court should be affirmed.

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May 22, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge
Civil Action No. 2022-CP-28-00782
Appellate Case No. 2024-000833

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Christine Jernigan and Justin Jernigan …….., Appellants,

v.

Kershaw County Sheriff's Office…….., Respondent.

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**CERTIFICATE OF COMPLIANCE**

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The undersigned counsel for the Respondent, Kershaw County Sheriff's Office, certifies that the Final Brief of Respondent Kershaw County Sheriff's Office complies with Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

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**CERTIFICATE OF COUNSEL**

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The undersigned counsel for the Respondent, Kershaw County Sheriff's Office, certifies that the Final Brief of Respondent Kershaw County Sheriff's Office complies with Rule 211(b), SCACR.

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**CERTIFICATE OF SERVICE**

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Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Morrison Law Firm, counsel for the Appellant, does hereby certify that service of the **Final Brief of Respondent** in the above-captioned matter was made upon all counsel of record by email only this the 22nd day of May, 2025, as follows:

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