

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SGT. BRIAN T. POPE,

Defendant-Appellant,

v.

CLAYTON HULBERT, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF JEFFREY
HULBERT, *et al.*,

Plaintiffs-Appellees.

* * * * *

**MOTION TO SUSPEND BRIEFING PENDING RESOLUTION
OF THE MOTION FOR RECONSIDERATION OR, IN THE
ALTERNATIVE, FOR A 30-DAY EXTENSION**

Defendant-Appellant Sgt. Brian T. Pope, through his attorneys, submits this motion to suspend briefing pending resolution of a motion for reconsideration in the district court or, in the alternative, for a 30-day extension of the briefing schedule.

1. On December 16, 2020, Sgt. Pope filed a motion for summary judgment in the district court. ECF 76 (D. Md.). In support of the motion, Sgt. Pope wanted to use surveillance footage depicting the demonstration prior to and during the arrest that gave rise to this action, but could not do so given the proprietary nature of the video format. Exhibit A: Affidavit of Scott Beckman at 2-3, ¶¶ 2-3; ECF 76-1 (D. Md.) at 6 n.6 (referring to “the lengthier surveillance video [that] depicts demonstrators regularly using the crosswalks”).

2. The State of Maryland's surveillance footage is captured and maintained as a G64X File, which requires a program called Genetec Video Player to view the video file. Ex. A at 1, ¶ 2. The file format cannot be converted to a file format that is acceptable to the district court. Ex. A at 2, ¶ 3; Electronic Case Filing Policies and Procedures Manual at 16 (stating "the Court will only accept video or audio files in the following file formats: .avi, .mp3, .mp4, .mpeg, .wma, .wav., and .wmv."), *available at* <https://www.mdd.uscourts.gov/sites/mdd/files/CMECFProceduresManual.pdf>.

3. In light of these obstacles, Sgt. Pope proceeded to file the motion for summary judgment without submitting the surveillance footage as an exhibit because other video footage filmed by a member of the media was available and showed the latter part of the incident when police had arrived, ECF 76-1 at 6 n.6 (D. Md.) (citing Bryan P. Sears, "Breaking: Two members of the conservative Patriot Picket were arrested . . .," FACEBOOK (Feb. 5, 2018), *available at* <https://www.facebook.com/bpsears/posts/10155248494247286>), and because the question of precisely where the demonstrators were actually standing and walking during the demonstration was unlikely to be material to any of the issues raised in the motion for summary judgment.

4. On April 22, 2021, the district court granted in part and denied in part the motion for summary judgment. ECF 88, 89 (D. Md.).

5. The district court concluded, in pertinent part, that “there is a factual dispute as to whether any of the Patriot Picket members were in the street or crosswalks prior to Sgt. Pope ordering the group to move.” ECF 88 at 17 (D. Md.).

6. Given the existence of surveillance footage depicting the events that are the subject of the alleged factual dispute identified by the district court, Sgt. Pope decided to file a motion for reconsideration and make another attempt at presenting the video file to the court. The motion was timely filed on May 7, 2021. Local Rule 105.10 (D. Md.); ECF 91 (D. Md.).

7. Because the video file cannot be converted to a format approved by the district court, counsel for Sgt. Pope tried to have the video file uploaded to a link or shared drive so that it could be accessible to the district court, but was unsuccessful. ECF 91 (D. Md.) at 2 (stating “[c]ounsel has been having technical difficulties preparing a link or shared drive to serve as the method of citing to the video As a result of ongoing technical difficulties—and that today is the due date for the filing of a motion for reconsideration—the video will be put onto a DVD on Monday for filing and service”).

8. The Clerk’s office rejected the physical exhibit because leave of court is required to file electronic documents in physical format. ECF 92 (D. Md.).

9. Ms. Briana Hilberg in the district court Clerk’s office indicated that a motion for leave of court should be filed and that the video file format should be on

the list of acceptable formats in the Electronic Case Filing Policies and Procedures Manual. As noted above, Sgt. Pope had previously been informed that it was not possible to submit the surveillance video in a format on the court's list of acceptable formats. Ex. A at 2-3, ¶¶ 2-3.

10. The next day, on May 13, 2021, counsel for Sgt. Pope filed a motion for leave to file an electronic video file in physical format. ECF 93 (D. Md.).

11. Ultimately, the Office of the Attorney General's Information Technology ("IT") Department was able to create a file in a format that is approved by the district court by playing the video on the Department's computer and recording the screen with a screen capture feature. Ex. A at 3, ¶ 4. The recording of the video is in .avi and .mp4 formats.

12. At the request of Briana Hilberg, a DVD containing the files was mailed to her. Exhibit B: Cover Letter to Briana Hulberg. The cover letter indicated, among other things, that "[i]n accordance with this Court's Electronic Case Filing Policies and Procedures Manual, and because the native video could not be converted to another format, the information technology department in our office played the video and recorded it using a screen capture feature. The recordings of the video are also on the DVD in .avi and .mp4 formats." Ex. B.

13. Counsel for Sgt. Pope called Ms. Hilberg to confirm receipt and to ensure that nothing more was required with regard to the filing of the video.

14. Because a motion for reconsideration of a partial summary judgment ruling is not among the motions listed in Rule 4(a) of the Federal Rules of Appellate Procedure, the filing of the motion for reconsideration did not extend the time for filing a notice of appeal. *See American Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003) (“[A]n order of partial summary judgment is interlocutory in nature,” and “[m]otions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment” under Fed. R. Civ. P. 59(e) or 60(b)).

15. On May 20, 2021, Sgt. Pope filed a timely notice of interlocutory appeal to avoid challenges to the timeliness of the filing. ECF 94 (D. Md.).

16. If the motion for reconsideration were granted, then the district court’s decision on reconsideration potentially would have resolved most, and possibly all, of the need for this interlocutory appeal. If the motion for reconsideration were denied, then Sgt. Pope likely would have filed an amended notice of appeal to include the district court’s ruling on the motion for reconsideration.

17. The district court did not rule on the motion for reconsideration and, instead, entered an order staying the case pending the outcome of this appeal. ECF 98 (D. Md.).

18. After drafting the brief of appellant, it has become clear that this Court would benefit from a ruling on the motion for reconsideration because it could

potentially either narrow the questions to be resolved in this interlocutory appeal or eliminate the need for the appeal altogether.

19. In the interest of judicial efficiency and the desirability of having a cleaner record upon which to rule, Sgt. Pope requests that this Court issue an order suspending the briefing on the appeal pending the district court's ruling on the motion for reconsideration. Alternatively, Sgt. Pope requests a 30-day extension of the briefing schedule.

20. On Friday, July 16, 2021 at 8:14 p.m., counsel for Sgt. Pope emailed counsel for plaintiffs-appellees about his intent to file this motion and sought consent. At 9:56 p.m. that same day, counsel for plaintiffs-appellees responded that appellees do not consent and oppose this motion.

21. Counsel for Sgt. Pope emailed counsel for plaintiffs-appellees about adding a request for a 30-day extension as alternative relief in this motion this morning. Plaintiffs-Appellees do not consent.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ James N. Lewis

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Attorneys for Defendant-Appellant
Sgt. Brian T. Pope

CERTIFICATE OF SERVICE

I certify that on this 19th day of July 2021, a copy of the foregoing motion to suspend briefing pending resolution of the motion for reconsideration or, in the alternative, for a 30-day extension was filed electronically and served on counsel of record, who is a registered CM/ECF user:

Cary Johnson Hansel, III, Esquire
HANSEL LAW, P.C.
2514 North Charles Street
Baltimore, Maryland 21218
Attorneys for Plaintiffs-Appellees

/s/ James N. Lewis

James N. Lewis

EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SGT. BRIAN T. POPE,

Defendant-Appellant,

v.

No. 21-1608

CLAYTON HULBERT, AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF JEFFREY
HULBERT, *et al.*,

Plaintiffs-Appellees.

* * * * *

AFFIDAVIT OF SCOTT BECKMANN

I, Scott Beckmann, am over eighteen years of age, am competent to testify, have personal knowledge of the matters to which I testify below, and hereby declare as follows:

1. I am the Director of Information Technology for Maryland's Office of the Attorney General.
2. The State of Maryland's surveillance footage at issue in this case is captured and maintained as a G64X File, which requires a program called Genetec Video Player to view the video file. The proprietary nature of the video format prevents it from being converted into other file formats.

3. A G64X File cannot be converted to a file format that is acceptable to the district court, including .avi, .mp3, .mp4, .mpeg, .wma, .wav., and .wmv.

4. Our office created a file that is approved by the district court by playing the video on our computer and recording the screen with a screen capture feature. The recording of the video is in .avi and .mp4 formats.

I DO SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND ACCURATE.



Scott Beckmann

EXHIBIT B

(410) 576-6955

(410) 576-6878
rshaw@oag.state.md.us

May 18, 2021

HAND-DELIVERY

Clerk of the Court

United States District Court for the District of Maryland

ATTN: Briana Hilberg

101 West Lombard Street

Baltimore, Maryland 21201

Re: *Jeff Hulbert, et al. v. Sgt. Brian T. Pope, et al.*
United States District Court for the District of Maryland
Case No.: 1:18-cv-00461-SAG

Dear Ms. Hilberg:

Enclosed is a copy of the DVD that was referenced in Sgt. Brian T. Pope's motion for reconsideration (ECF 91), filed on May 7, 2021. It is being filed in response to this Court's notice that it was incorrectly filed. ECF 92. A motion for leave has been filed and is pending before Judge Gallagher. ECF 93.

The native video is in a zip file on the DVD. It requires the Genetec Video Player to play the video, which is also in the zip file. After you launch the video player, click and drag the G64X File into the video player. The video file is located in the folder labeled "Lawyers Mall." The video should begin playing promptly after the video file is released into the video player.

In accordance with this Court's Electronic Case Filing Policies and Procedures Manual, and because the native video could not be converted to another format, the information technology department in our office played the video and recorded it using a screen capture feature. The recordings of the video are also on the DVD in .avi and .mp4 formats.

Sincerely,



Ryan U. Shaw
Administrative Officer

Page 2 of 2
May 18, 2021

enclosure

cc: The Honorable Stephanie A. Gallagher (w/ two copies of the enclosure)
Cary J. Hansel, Esquire (w/ one copy of the enclosure)
John Frederickson, Assistant Attorney General (w/ one copy of the enclosure)

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* * * * *

ORDER

Upon consideration of Defendant-Appellant's Motion to Suspend Briefing Pending Resolution of the Motion for Reconsideration of, in the Alternative, for a 30-Day Extension, it is this ____ day of _____ 2021, by the United States Court of Appeals for the Fourth Circuit,

ORDERED that Defendant-Appellant's Motion to Suspend Briefing Pending Resolution of the Motion for Reconsideration or, in the Alternative, for a 30-Day Extension be, and it is hereby **GRANTED**; and it is further

ORDERED that briefing is **SUSPENDED** pending resolution of a motion for reconsideration by the United States District Court for the District of Maryland; and it is further

ORDERED that the United States District Court for the District of Maryland shall lift its stay and rule on the pending motion for reconsideration.

Judge, United States Court of Appeals for
the Fourth Circuit

cc: All parties and counsel of record

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Plaintiffs-Appellees.

* * * * *

ORDER

Upon consideration of Defendant-Appellant's Motion to Suspend Briefing Pending Resolution of the Motion for Reconsideration or, in the Alternative, for a 30-Day Extension, it is this ____ day of _____ 2021, by the United States Court of Appeals for the Fourth Circuit,

ORDERED that the deadlines set forth in the briefing order are extended by 30 days; and it is further

ORDERED that appellant's brief and joint appendix shall be filed on or before August 18, 2021 unless briefing is suspended pending resolution of a motion for reconsideration in the United States District Court for the District of Maryland.

Judge, United States Court of Appeals for
the Fourth Circuit

cc: All parties and counsel of record