IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0008

JEREMIAH LOWRIE,

Plaintiff and Appellant,

v.

STATE OF MONTANA; NICK RANSOM; and KEVIN DOWNS,

Defendants and Appellees.

OFFICER NICK RANSOM'S RESPONSE BRIEF

On Appeal from the Montana First Judicial District Court
Lewis and Clark County
The Honorable Christopher Abbott, Presiding

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STATEMENT OF THE ISSUE

Was the District Court within its discretion when it dismissed Lowrie's claims against Officer Ransom because Lowrie repeatedly failed to answer discovery requests?

STATEMENT OF THE CASE

Lowrie sued the State of Montana on January 25, 2024. (Compl.; Dkt. 1.) While the Complaint named only the State, Lowrie alleged facts against Helena Police Officer Nick Ransom. Lowrie had a summons issued for Officer Ransom. He then formally served Officer Ransom. To avoid being defaulted, Officer Ransom filed a motion to dismiss on February 26, 2024. (Officer Ransom's Mot. to Dismiss and Br. in Supp.; Dkt. 7.) The District Court denied Officer Ransom's motion on March 15, 2024. (Order on Mot. to Dismiss; Dkt. 13.) In its order, the Court further amended the caption of the case to clarify that Lewis & Clark County Attorney Kevin Downs and Officer Ransom were defendants. *Id*.

Officer Ransom served discovery requests on Lowrie on March 26, 2024. Lowrie did not respond. (Officer Ransom's Mot. to Compel and Br. in Supp.; Dkt. 18.) Following that failure, Officer Ransom filed a motion to compel on May 10, 2024. *Id.* Lowrie did not oppose the motion, and Officer Ransom submitted it for decision on May 31, 2024. (Order Granting Officer Ransom's Mot. to Compel; Dkt. 21.) The Court granted the motion to compel that day. *Id.* It ordered Lowrie

to fully respond to discovery within ten days. *Id.* It further cautioned Lowrie that "[f]ailure to comply with this order may result in further sanction, potentially including dismissal." *Id*.

Lowrie provided partial responses. After contacting Lowrie to meet and confer about his incomplete responses, Officer Ransom filed his Motion to Dismiss as a Discovery Sanction. (Officer Ransom's Mot. to Dismiss as Disc. Sanction and Br. in Supp.; Dkt. 25.) Lowrie opposed the motion. The Court concluded that sanctions, though not dismissal, were appropriate. (Order on Mot. for Sanctions; Dkt. 32.)

It ordered that Lowrie was to answer Officer Ransom's discovery requests fully within forty-five days. *Id.* As before, the Court warned Lowrie that his failure to follow the Court's order could lead to dismissal. *Id.* It noted that Lowrie had waived all objections by failing to timely answer discovery. *Id*. In addition, the Court "contingently" awarded Officer Ransom his fees. *Id.* Specifically, the Court noted that its order on fees would be vacated if Lowrie fully responded to discovery. *Id.* Finally, due to several vaguely threatening and profane messages, the Court ordered Lowrie to refrain from using "abusive, profane, obscene, or threatening language in his communications with any lawyer, party, or witness in this matter." *Id*.

Lowrie again failed to completely answer discovery. Officer Ransom filed his second motion to dismiss as a discovery sanction on September 27, 2024, more than five months after full responses were due. (Officer Ransom's Second Mot. to Dismiss due to Disc. Sanctions and to Assess Fees ("Ransom's Second Motion"); Dkt. 37.) The Court agreed that Lowrie still had not answered discovery, dismissed his claims, and awarded Officer Ransom $500, a small portion of the amount that he had expended briefing the various discovery motions. (Order on Second Mot. for Sanctions; Dkt. 47.)

STATEMENT OF FACTS

I. Officer Ransom arrests Lowrie for violating an order of protection, Lowrie sues, and Officer Ransom seeks discovery.

This case arises from Lowrie's repeated violation of an order of protection in favor of his ex-wife. Officer Ransom arrested Lowrie for these violations, and Lowrie now claims that act comprises "kidnapping." Officer Ransom served standard discovery requests to Lowrie after the Court denied his motion to dismiss.

First, Lowrie ignored the requests. (Officer Ransom's Mot. to Compel and Br. in Supp.; Dkt. 18.) Officer Ransom conferred with him, explaining that all parties to litigation have a duty to respond to discovery requests. *Id*. Lowrie would not comply. *Id.* Officer Ransom filed a motion to compel, to which Lowrie did not respond. *Id.* The Court granted the motion, which reads:

> Officer Nick Ransom moved the Court for an order pursuant to Mont. R. Civ. P. 37(a)(1) compelling Mr. Lowrie to answer his written discovery. Based on the foregoing, it is hereby ORDERED that Mr. Lowrie fully respond to Officer Ransom's discovery within ten days of this order. Failure to comply with this order may result in further sanction, potentially including dismissal.

(Order Granting Officer Ransom's Mot. to Compel; Dkt. 21.)

II. Lowrie refuses to comply with the Court's first order.

Contrary to the Court's clear order, Lowrie only provided partial responses that list potential fact witnesses. (Officer Ransom's Mot. to Dismiss as Disc. Sanctions and Br. in Supp.; Dkt. 25.) He refused to provide other pertinent information. *Id.* For instance:

- Despite claiming damages arising out of physical and psychological conditions, he refuses to answer standard personal injury requests related to his medical providers or provide medical records. *Id.*
- He refuses to answer if he has any expert witnesses and, if so, what opinions they have. *Id.* This includes a critical request regarding whether medical providers have opinions not stated in medical records.
- Lowrie will not disclose whether he claims any lost wages or medical expenses against Officer Ransom, and if so, how much. *Id.* When asked to

produce documents validating his lost wages claims, he sarcastically responded "OK," without providing such documents. *Id*.

- He claims he seeks $10,000,000 in damages while ignoring clear requests regarding how he calculated that number. *Id*.
- Officer Ransom asked Lowrie if he has any social media and whether he has commented on this case. *Id*. He answered "denied" even though he frequently uses a publicly available Facebook profile to comment on this case. He does not disclose whether he has made non-public comments responsive to discovery or whether he has other social media accounts.
- Lowrie responded to requests for production regarding texts or emails referencing any party in this case or about its subject matter, "OK." He produced no such documents. *Id.*
- He refused to respond to questions about his communications with Kylie Clark before he was arrested for violating her order of protection. *Id.* Officer Ransom asked the Court to dismiss Lowrie's claims. *Id.*

In its second order, the Court did not dismiss Lowrie's claims. (Order on Mot. for Sanctions; Dkt. 32.) The Court faulted Lowrie's responses and reiterated that his objections were waived because he did not respond promptly. *Id*. The Court, however, did not dismiss Lowrie's claims. Instead, it ordered:

> 2. Within **forty-five days** of the filing date of this Order, Lowrie **shall fully** answer or respond to all previously served interrogatories, requests for production, and requests for admission. Lowrie has waived all objections to these requests by his failure to lodge specific and timely objections. Failure to do so may result in dismissal of Lowrie's claims against Ransom with prejudice, in addition to any other sanctions that may be allowed by law.

Id. at 7. It also found:

> Finally, the Court cautions that this is likely Lowrie's last chance to comply with discovery. If Lowrie does not substantially comply with this Court's discovery orders, in addition to imposition of fees and costs, the Court may dismiss this matter with prejudice.

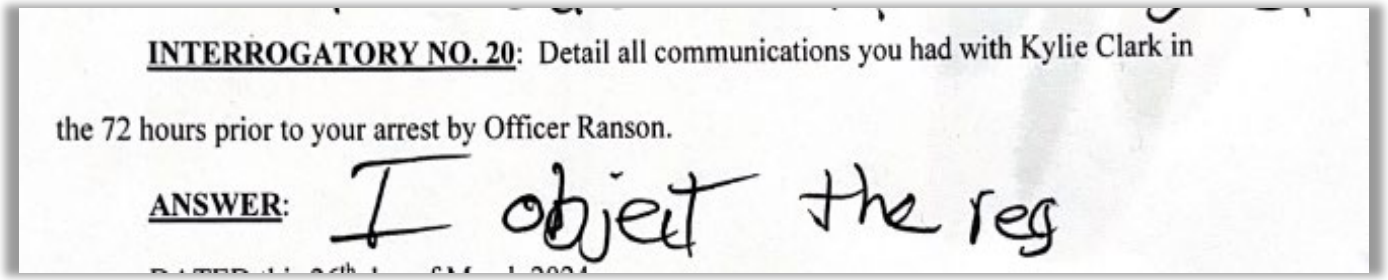
Id. at 6.

III. Lowrie refuses to comply with the Court's second order requiring full responses.

Despite this warning, Lowrie refused to respond in full. He submitted a hastily drawn, incomplete supplementation. (Ransom's Second Mot., Ex. B. (Lowrie's Second Resp. to Disc. Req.); Dkt. 37.) First, as discussed above, a large question in this case is whether Officer Ransom had probable cause to arrest Lowrie. Since the arrest was made due to Lowrie's violation of a protective order, Officer Ransom is entitled to the information proving that Lowrie did violate that order. This is especially that case since the Code provides that "[a]rrest is the

preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim." Mont. Code Ann. § 46-6-311.

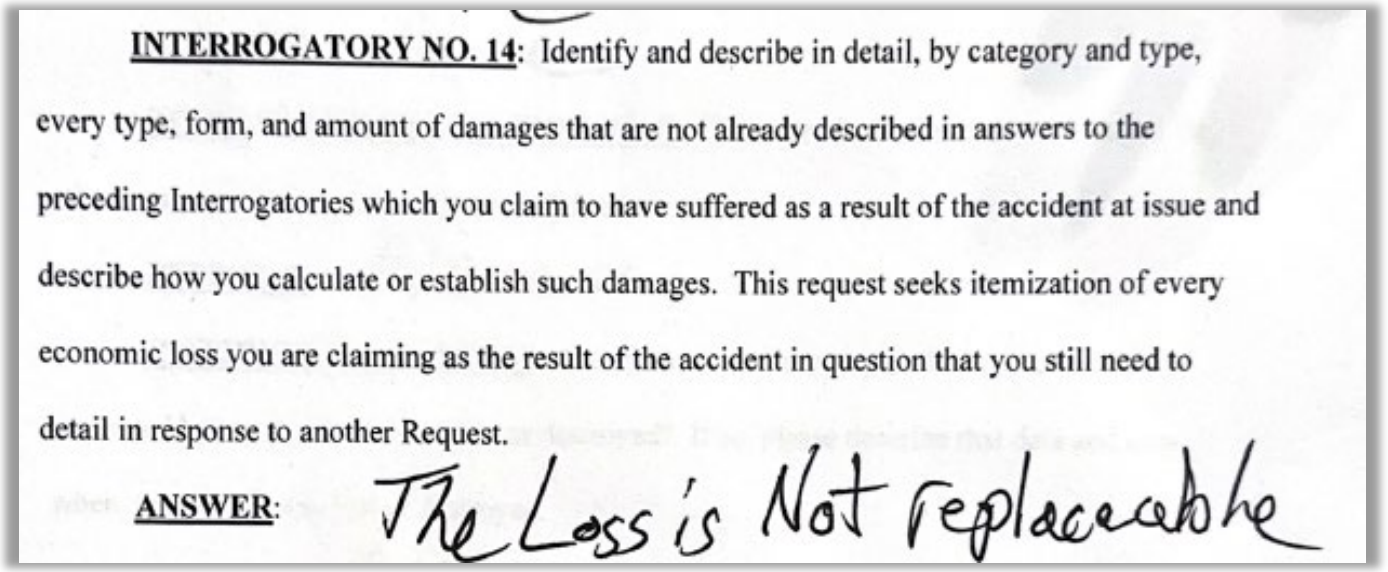
Despite the obvious relevance of this information and the Court's abundant warnings that (a) Lowrie waived his objections and (b) this was his last chance, he responded as follows:



INTERROGATORY NO. 20: Detail all communications you had with Kylie Clark in the 72 hours prior to your arrest by Officer Ranson.

ANSWER: I object the req

(Ransom's Second Mot., Ex. B; Dkt. 37.) Moreover, Officer Ransom is entitled to discover the damages that Mr. Lowrie claims. He seems to disagree:

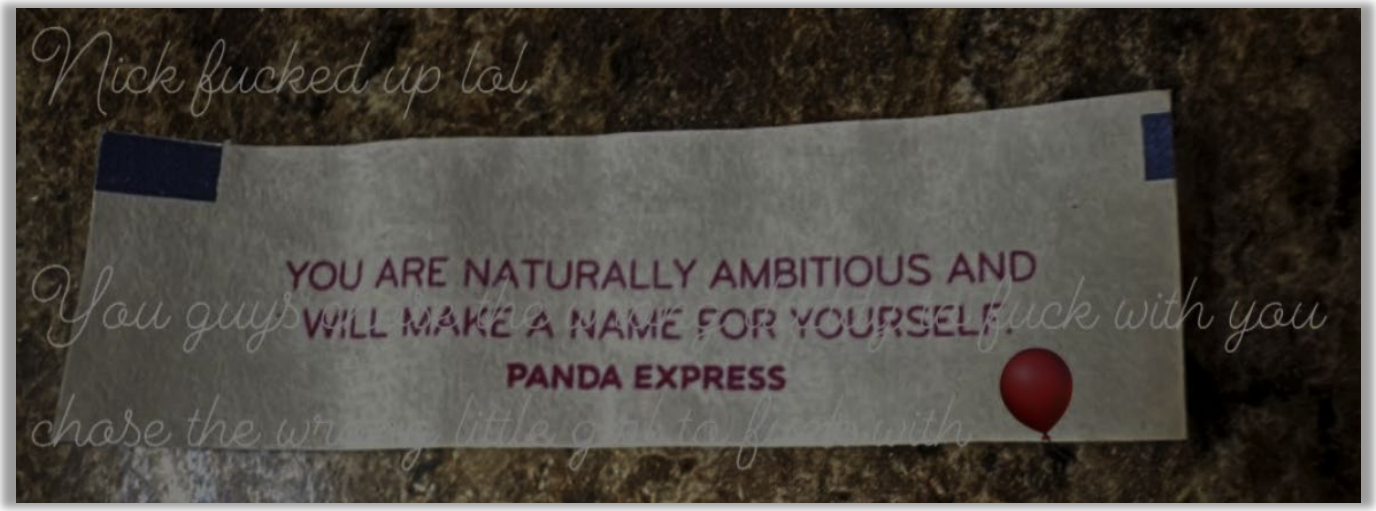


INTERROGATORY NO. 14: Identify and describe in detail, by category and type, every type, form, and amount of damages that are not already described in answers to the preceding Interrogatories which you claim to have suffered as a result of the accident at issue and describe how you calculate or establish such damages. This request seeks itemization of every economic loss you are claiming as the result of the accident in question that you still need to detail in response to another Request.

ANSWER: The Loss is Not replaceable

Id. Officer Ransom asked what amount of lost wages Lowrie claimed, and he responded that he missed four days. *Id.* He provided no information about the loss amount. *Id.* None of these responses include anything close to what was requested.

Mr. Lowrie also refused to provide documents. Officer Ransom requested all communications about himself, the claims and defenses at issue, and social media posts germane to Lowrie's claims. *Id.* Lowrie responded that there was "one" post, which he emailed to counsel, and he did send one. *Id.* However, looking at the public portion of his social media, Lowrie failed to produce dozens of responsive documents. Even excluding the Facebook messages, Lowrie posted a photo with a puerile hidden message on Instagram:



It reads "Nick fucked up lol [sic]. You guys chose the wrong daddy to fuck with [sic] you chose [sic] the wrong little girl to fuck with."[1] Lowrie also has produced no private text messages, which seems nearly impossible given the glut of communications available.

Lowrie also refused to answer the requests for admission in full. For instance, Lowrie claimed Officer Ransom's arrest was illegal because it did not occur in the City of Helena. The City has enacted a rule that its officers can make arrests within five miles of the City limits, as it is allowed to do per code. Mont. Code Ann. § 7-32-4301; Helena City Code § 2-4-5. Even though Officer Ransom provided proof in his motion to dismiss that Lowrie's residence is within that radius, Lowrie responded, "I object" when asked to admit that his property was within five miles of the City of Helena. He also refused to provide any factual support for his claims that his arrest was illegal in interrogatories, which followed up on requests for admission.

STATEMENT OF THE STANDARD OF REVIEW

This Court "review[s] a district court's imposition of discovery sanctions for an abuse of discretion." *Smart v. Molinario*, 2004 MT 21, ¶8, 319 Mont. 335, 83 P.3d 1284. The Court "ha[s] consistently deferred to a district court's imposition

[1] This message may also violate the Court's July 22, 2024 Order, which directed Lowrie to refrain from abusive and profane language.

of sanctions because the trial judge is in the best position to know . . . which parties callously disregard the rights of their opponents and other litigants seeking their day in court. The trial judge is also in the best position to determine which sanction is the most appropriate." *Xin Xu v. McLaughlin Research Inst. for Biomedical Sci., Inc*., 2005 MT 209, ¶ 17, 328 Mont. 232, 119 P.3d 100.

These standards apply equally when the sanctioned party is *pro se*. *See id.* (applying the standard to a *pro se* litigant). "All litigants, including those acting *pro se*, must adhere to … procedural rules." *Id.* ¶ 23, citing *In re P.D.L.*, 2004 MT 346, ¶ 13, 324 Mont. 327, 102 P.3d 1225.

SUMMARY OF THE ARGUMENT

This Court should affirm the District Court's dismissal of Lowrie's claims against Officer Ransom. First, Lowrie has failed to show any way that the District Court erred. He suggests only that the District Court said he never provided any answers to discovery. That is provably incorrect. The District Court correctly found that Lowrie's responses were materially deficient, even after it twice ordered complete responses. In total, Lowrie fails to provide any analysis that would support reversing the District Court. In such circumstances, this Court affirms the District Court rather than scouring the record to attempt to concoct support the appellant failed to provide.

Second, even if Lowrie had provided sufficient support for his appeal, it still fails. The District Court correctly followed the logic in *Xin Xu* and found that Lowrie's repeated failure to completely respond to discovery merited dismissal of his claims against Officer Ransom. In addition to the instructions to the discovery itself, the Court twice warned Lowrie that his case could be dismissed if he failed to participate in discovery. All told, the District Court provided Lowrie wide breadth and ample opportunity to comply with his litigation obligations. Lowrie's refusal to comply with the Court's order makes dismissal appropriate, and certainly not an abuse of the Court's wide discretion.

ARGUMENT

I. Lowrie has not shown how the District Court abused its discretion. This Court does not need to concoct arguments for Lowrie that he did not proffer.

The District Court carefully and repeatedly explained to Lowrie that he needed to answer discovery in its entirety, or his case would be dismissed. The District Court ultimately found that Lowrie's responses were incomplete. Lowrie failed to provide any analysis to show that this finding was in error. This failure dooms his appeal.

It is "not this Court's obligation to locate authorities or formulate arguments for a party in support of positions taken on appeal." *State v. Flowers*, 2004 MT 37, ¶ 44, 320 Mont. 49, 86 P.3d 3, citing *Cutler v. Jim Gilman Excavating, Inc.*, 2003

MT 314, ¶ 22, 318 Mont. 255, 80 P.3d 1203. Thus, this Court "will not consider unsupported issues or arguments" on appeal. *Id.*, *see also In re Marriage of McMahon*, 2002 MT 198, ¶ 6, 311 Mont. 175, 53 P.3d 1266 ("This Court has repeatedly held that we will not consider unsupported issues or arguments") (citations omitted). This Court is also "under no obligation to locate authorities or formulate arguments for a party in support of positions taken on appeal." *Id.*, citing *In re B.P.*, 2001 MT 219, ¶ 41, 306 Mont. 430, 35 P.3d 291.

Therefore, the failure to cogently state why a decision was in error is "fatal [to an appeal]" and comprises "sufficient cause for [the Court] to decline to address the issue." *State v. Blackcrow*, 1999 MT 44, ¶¶ 32-33, 293 Mont. 374, 975 P.2d 1253, citing *Johansen v. State, Dept. of Natural Resources*, 1998 MT 51, ¶ 24, 288 Mont. 39, 955 P.2d 653; *Small v. Good*, 284 Mont. 159, 163, 943 P.2d 1258, 1260 (1997); *State v. Sol*, 282 Mont. 69, 76, 936 P.2d 307, 311 (1997); *Rieman v. Anderson*, 282 Mont. 139, 147, 935 P.2d 1122, 1127 (1997).

In its second order granting sanctions against Lowrie, which was its third order regarding his failure to answer discovery, the Court agreed to dismiss Lowrie's claims against Officer Ransom. It noted, "[t]his Court previously ordered that 'Lowrie **shall fully** answer or respond to all previously served interrogatories, requests for production, and requests for admission. Lowrie has waived all objections to these requests by his failure to lodge specific and timely objections.'

[Citation omitted.] Lowrie has not complied with this directive in several respects." (Order on Second Mot. for Sanctions; Dkt. 47, emphasis in the original).

First, the District Court noted that, despite repeated warnings, Lowrie refused to answer discovery regarding his damages. It found:

To take a few examples, Request for Production No. 5 directs him to produce true and correct copies of all federal income tax returns for the last five years. He responded, "None." Lowrie would have been required by federal law to file income tax returns for the past five years. The claim that he has no tax returns thus appears not to be credible. Lowrie was asked in Interrogatory No. 12 to calculate all lost wages or income, and any dates he missed at work. Lowrie did not provide those dates or a calculation, simply saying he was held four days without bond. Lowrie similarly did not even attempt a calculation of any future lost wages in response to Interrogatory No. 13, stating instead that "Night Terrors effect (*sic*) my sleep." Lowrie similarly did not substantively respond to a request for a calculation of all other economic damages in Interrogatory No. 14, other than to claim the loss, whatever it is, is "not replaceable." (Ransom's Second Mot.; Exs. A and B; Dkt 37.)

The District Court correctly recognized that, often, Courts can remedy failures to participate in damages discovery by limiting damages at trial. However,

it also noted that Lowrie's failure to answer was not limited to requests regarding damages. First, he would not produce correspondence related to his arrest:

As Officer Ransom notes, Lowrie contends there is "only one post" on social media related to the incident in question here (Request for Production No. 7), while there is extensive evidence publicly available on social media suggesting Lowrie has frequently discussed this case on social media. Lowrie implausibly claims that he has no emails, messages, or communications about the incident or any defendant, again a contention contradicted by the record. (Requests for Production 8 and 9.) And when asked to produce all communications between Lowrie and Kylie Clark (the subject of the order of protection) in the seventy-two hours preceding his arrest (Interrogatory No. 20), Lowrie purports to object, even though the Court indicated that all objections were waived. (Order on Mot. for Sanctions at 6; Dkt. 32.)

Lowrie has not engaged with these findings. The sum of his argument regarding the dismissal of his claims against Officer Ransom is that he twice answered discovery. The Court recognized that he provided responses on two occasions. However, those responses were woefully inadequate. What is more, the Court found that Lowrie's actions prejudiced Officer Ransom and offended the orderly administration of justice. (Order on Second Mot. for Sanctions at 4; Dkt.

47.) Lowrie has failed to provide any analysis as to why these holdings were incorrect.

It is not incumbent on the Court or Officer Ransom to comb the record for arguments that Lowrie has not proffered. This Court should follow the holdings in *Flowers*, *Cutler*, *McMahon*, and the other cases listed above. The District Court should be affirmed.

II. The District Court did not abuse its discretion when it dismissed Lowrie's claims as a discovery sanction.

Lowrie's repeated and willful failure to completely respond to discovery justified the District Court's dismissal of his claims against Officer Ransom. Mont. R. Civ. P. 37(d)(1) provides sanctions are appropriate when a party fails to serve complete answers to interrogatories or requests for production. "Since 1981," this Court has "consistently stated that discovery abuses will not be dealt with leniently." *Xin Xu*, ¶ 19-21 (dealing with a *pro se* plaintiff). "Sanctions for abuse of discovery procedures are imposed in order to deter unresponsive parties in an action; it is the attitude of unresponsiveness to the judicial process, regardless of the intent behind that attitude, which warrants sanctions." *Id*. ¶ 24 (citation omitted).

This Court has "repeatedly affirmed the imposition of sanctions, including dismissal with prejudice, by various district courts for discovery rule violations." *Id.* ¶ 20, citing *Jerome v. Pardis*, 240 Mont. 187, 193, 783 P.2d 919, 923

(1989); *In re Marriage of Massey*, 225 Mont. 394, 399, 732 P.2d 1341, 1344 (1987); *Dassori v. Roy Stanley Chevrolet Co.*, 224 Mont. 178, 180, 728 P.2d 430, 432 (1986). The Court focuses on two concerns when determining whether a discovery sanction is appropriate: "whether there was an actual failure to comply with the judicial process, and whether the severity of the sanction was appropriate." *Id.* ¶ 21, *citing Smith v. Butte-Silver Bow County*, 276 Mont. 329, 340, 916 P.2d 91, 97 (1996) and *McKenzie v. Scheeler*, 285 Mont. 500, 949 P.2d 1168 (1997).

First, Lowrie fails to show that he complied with the judicial process. After two orders requiring full responses to discovery, Lowrie still refused to fully answer requests. In addition to refusing to provide any details regarding his damage claims, Lowrie refused to answer important questions about his arrest. For instance, the District Court specifically informed Lowrie that he had waived objections by failing to answer in a timely manner. Nevertheless, he objected to the request regarding his communications with Kylie Clark, which led to his arrest.

Second, the District Court did not abuse its discretion when it dismissed Lowrie's claims against Officer Ransom. When it determines whether a discovery sanction is appropriate, this Court examines three factors:

1) Whether the consequences imposed by the sanctions relate to the extent and nature of the actual discovery abuse;

2) The extent of the prejudice to the opposing party that resulted from the discovery abuse; and

3) Whether the court expressly warned the abusing party of the consequences.

Xin Xu, ¶ 26, citing *Butte-Silver Bow County*, 276 Mont. at 339-40, 916 P.2d at 97. "Failure to comply with discovery procedures, in itself, is prejudicial to the other party." *Id*. ¶ 21.

Regarding the first factor, the District Court correctly determined that Lowrie's failure to answer discovery was serious. Lowrie obviously failed to respond in substance to any discovery about his damages claims. The District Court was potentially willing to let that slide. It indicated that, when a party fails to provide information about a damages claim, prejudice can be resolved by refusing all evidence related to that claim at trial.

Lowrie's discovery abuses went much further, however. For instance, despite arguing that his arrest was illegal, he refused to provide the information that would show Officer Ransom had probable cause to arrest him. As discussed, Lowrie was subject to a protective order in favor of his daughter's mother. He refused, however, to provide information about the nature and amount of communication he had with the protected party.

In addition, even after the Court made it abundantly clear to Lowrie that he waived the ability to object to requests because he failed to respond in a timely manner, Lowrie attempted to interpose objections to prevent Officer Ransom from gathering information. This showed that Lowrie was unwilling to follow the Court's orders. Moreover, it proved that he had no intention of complying with his discovery obligations. No matter what the Court ordered, Lowrie simply would not respond.

Regarding the second factor, without the requested information, it was impossible for Officer Ransom to fully develop his defense or to adequately defend himself against Lowrie's specious claims. For instance, he was unable to show the Court the extent of Lowrie's violations of the protective order. This information was vital in proving that Lowrie willfully violated that order, which necessitated his arrest. The District Court correctly found that the extent of prejudice Lowrie caused required dismissal.

Regarding the third factor, the District Court explicitly warned Lowrie twice that his claim could be dismissed if he failed to completely answer discovery. First, in its order compelling discovery, the Court noted that "[f]ailure to comply with this order may result in further sanction, potential including dismissal." (Order Granting Mot. to Compel; Dkt. 21.) Then, after Lowrie failed to provide complete responses, the Court was more forceful. "[T]he Court cautions that this

is likely Lowrie's last chance to comply with discovery. If Lowrie does not substantially comply with this Court's discovery orders, in addition to imposition of fees and costs, the Court may dismiss this matter with prejudice." (Order on Mot. for Sanctions; Dkt. 32.) Lowrie received all of the warning he could have asked for before the Court dismissed his claims.

Therefore, the District Court was correct in dismissing Lowrie's claims against Officer Ransom. Lowrie's violations of the Court's orders and the Rules of Civil Procedure evince his disregard for the judicial system. Moreover, his failures were myriad and prevented Officer Ransom from obtaining the information he needs to defend himself. Thus, even if Lowrie had satisfied his burden of providing reasons the District Court erred, this Court should affirm.

CONCLUSION

This Court should affirm the District Court's order dismissing Lowrie's claims against Officer Ransom as a discovery sanction.

RESPECTFULLY SUBMITTED this 25th day of April 2025.

By: _____

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with proportionately spaced Times New Roman text typeface of 14 points, is double-spaced except for footnotes and for quoted and indented material, and the word count calculated by Microsoft Word for Windows is 3,764 words, excluding certificates of service and compliance.

By: 
Murry Warhank

CERTIFICATE OF SERVICE

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