NO. CIV-16-184-HE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TABATHA BARNES, *et al*.,

Plaintiff,
v.

THE CITY OF OKLAHOMA CITY, a municipal corporation, *et al.*,

Defendants.

DEFENDANT ROCKY GREGORY'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

Respectfully Submitted,

Kenneth Jordan
MUNICIPAL COUNSELOR

By: Sherri R. Katz, OBA # 14551
Richard N. Mann, OBA #11040
Thomas Lee Tucker, OBA # 20874
Assistant Municipal Counselors
200 N. Walker Ave., 4th Floor
Oklahoma City, OK 73102
(405) 297-2451
sherri.katz@okc.gov
richard.mann@okc.gov
thomasltucker@okc.gov
Attorneys for Defendant City, Citty and Gregory

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TABATHA BARNES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-16-184-HE
	)	
THE CITY OF OKLAHOMA CITY, a municipal corporation, et al.,	)	
	)	
Defendants.	)	

DEFENDANT ROCKY GREGORY'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

COMES NOW a Defendant, Rocky Gregory, and pursuant to Rule 56 of the Federal Rules of Civil Procedure (FRCP) and the doctrine of qualified immunity, respectfully requests that this Court grant him Judgment herein as there is no issue of material fact and he is entitled to Judgment as is more fully set out in his Brief in Support submitted herewith.

BRIEF IN SUPPORT

MATERIAL FACTS NOT IN DISPUTE

1. On May 26, 2000, Detective Gregory was employed by the City of Oklahoma City as a police recruit and was assigned to the Oklahoma City Police Department (OCPD) Training Academy where he received basic police training from then to November 9, 2000, or for 928 hours. (Syllabus of Class No. 116, Exhibit 2; Affidavit of Chief Citty, Exhibit 1.)

2. After graduating from the academy, he received further training of four (4) months in the OCPD field training program. On March 16, 2001, Detective Gregory was assigned as a patrol officer to the Santa Fe Division. (Exhibit 1.)

3. On April 6, 2007, Detective Gregory was assigned to the Detective Division of the OCPD and given a three-month course in "investigator's school." He was rotated into various investigative units where he was assigned to work with a senior detective who evaluated his work. (Exhibit 1.)

4. On July 18, 2008, Detective Gregory was assigned to the Sex Crimes Unit. From this date until January 16, 2015, when he was reassigned to the Homicide Division of the OCPD, he investigated claims of sexual assault, including those claims against other police officers. One of the claims was that an OCPD officer named Maurice Martinez was sexually abusing the foster children in his care. This case was assigned to Detective Gregory on January 14, 2011. (Exhibit 1). As a result of his investigation, on April 22, 2011, Martinez was charged with 33 counts of sexual abuse of a child; one count of attempting to prevent a witness from testifying; one count each of possession of obscene material involving a minor, harboring a runaway child, and conspiracy to commit a misdemeanor, and on April 25, 2011, Martinez was arrested. On August 21, 2012, Martinez pled guilty to thirteen counts and received twenty-five years' incarceration as punishment (suspended, except two years in the County Jail). Information, Amended Information, and Judgment and Sentence filed in *State of Oklahoma v. Maurice Martinez,* Oklahoma County District Court, Case No. CF-2011-2327, Exhibits 3-5.)

5. On May 24, 2014, at approximately 3:05 a.m., Terri Morris and Christopher Shelton were involved in a "domestic" altercation in the middle of the street at N.E. 23rd and Kelly Avenue. Mr. Shelton called 911. (Audio Recording of 911 Call w/date & time stamp, Exhibit 6; Exhibit 1.) Ms. Morris complained to the responding officers she had been sexually assaulted by an OCPD officer 3 or 4 days earlier near the City Rescue Mission. See ¶ 15 of the City's Motion for Summary Judgment filed herein. There is no May 11, 2014, report made by Plaintiff Morris as is alleged at ¶ 25(a) of the Amended Complaint [Doc. 8]. Ms. Morris does not know when she made this complaint. However, in Holtzclaw's criminal trial, she testified she would not dispute she reported it on May 24, 2014. (Morris Trial Testimony, pp. 3162-3166; Holland Trial Testimony, pp. 3195-3203). See also Ms. Morris' Answers to Defendant City's Admissions No. 1, Exhibit 7. The transcript of her testimony in *State v. Holtzclaw,* CF-2014-5869, and the statements of Judge Henderson in this case affirms that Ms. Morris could not be certain about the date it occurred. (Trial Transcript, p. 3221.) In the preliminary hearing of the criminal case, Ms. Morris "acknowledged" the assault occurred on May 8, 2014. (Morris Preliminary Hearing Testimony, Vol. II, pp. 6-7).) When deposed, Ms. Morris testified that she has no evidence to dispute that the OCPD's investigation of her sexual assault occurred on May 25 (sic) (Morris Deposition, p. 51); does not remember the date it occurred, (*id*, pp. 49, 62, 77); admits that the officer ran her name through the computer, (*id,* p. 62), but the incident did not occur on May 8, (*id*, p. 59-61), even though that is the only date Holtzclaw ran her name. (Gregory Deposition, p. 202-203.) Of the victims that were later attributed to Holtzclaw, Ms. Morris was the first person to report to OCPD that

one of its officers had engaged in sexual assault. (Gregory Trial Testimony, p. 3204.)

6. As a result of Mr. Shelton's 911 call described in ¶ 5, OCPD Sgt. D. Williams and Officer J. Thomas interviewed Ms. Morris who admitted she had smoked crack cocaine "a few hours prior" and that she had been raped by a police officer the three days earlier (i.e., on May 20 or 21, 2014). She also stated that the officer met her as she was walking to the City Rescue Mission from a "drug rehab facility." She described the officer as a dark skinned muscular white male with black hair and forty years old. Holtzclaw is a male, half Caucasian, and half Japanese and, at the time of this incident, was twenty-seven years old. (Gregory Transcript re OCPD 14-041539 (013) - Interview of Holtzclaw, pp. 48 and Gregory Report, OCPD Case No. 14-041539 (028) – Arrest of Holtzclaw, Exhibits 8 and 9; Exhibit 1.) These officers called their lieutenant and advised her of the facts. She called the on-call sex crimes lieutenant and advised him of Ms. Morris' claim.[1] He declined to send out a Sex Crimes investigator that night. (Testimony of Holland, pp. 3195-3203; Report of Officer Thomas, OCPD Case No. 14-041539 (001), Exhibit 10; Exhibit 1.)

7. On May 27, 2014, this case was assigned to Detective Gregory. He immediately attempted to locate Ms. Morris to re-interview her. His efforts are documented in his report in OCPD Case No. 14-041539 (004); Exhibit 11; Exhibit 1; Gregory's Trial Testimony pp. 3203-3206; Gregory Deposition, pp. 200-202; 242; 246-277)

[1] See the 09/08/11 Memo from Kuhlman on Revised Call Out Procedures of the OCPD, Exhibit 12.

8. From May 27, 2014, to June 3, 2014, Detective Gregory continued his attempts to contact Ms. Morris. (*Id*.) Ms. Morris testified it was hard to locate her because she was scared. (Morris Deposition, pp. 63-64.)

9. On June 3, 2014, a confidential informant called Detective Gregory and advised him that Ms. Morris had been arrested. (Gregory Trial Testimony, p. 3205; Gregory Report, OCPD 14-041539 (009), Exhibit 13; Exhibit 1.) Detective Gregory met with Ms. Morris at the scene who advised him she did not want to pursue charges against the police officer who had sexually assaulted her. (Morris Trial Testimony, pp. 3168, 3170; Morris Deposition, pp. 66-68.)

10. Detective Gregory told Ms. Morris that he was on her side and wanted her to speak with him so he could assist her. He also advised her that he worked with female victims of sexual assault and was there for her. He told her that he wanted to investigate this matter and if an officer assaulted her, he wanted him to be found. He tried to assure her he was there for her and wanted to just speak with her briefly even just to gain some knowledge into what happened. (Gregory Report re OCPD Case No. 14-41539 (009), Exhibit 13; Exhibit 1; Gregory Trial Testimony, p. 3269.)

11. Detective Gregory and Ms. Morris went to the OCPD station where he again tried to interview her. This interview was video recorded. (Video Recording of Morris' Interview on 06/3/14, Exhibit 21; Exhibit 1.) During this interview, Ms. Morris would not give him the exact location of the sexual assault, a date, or look at a photo lineup. (*Id*; Gregory Trial Testimony, pp. 3206-7; Morris Trial Testimony, p. 3173.)

12. Ms. Morris advised Detective Gregory that she came to sign a refusal to

prosecute form, not to talk about the incident. Detective Gregory told her the police department was on her side. He advised her that they have investigated officers in the past and those officers had to face their crimes. He tried to get her to understand that the OCPD did not want to just let this issue go. Ms. Morris stated she just did not want to go through with charges or the investigation. (Exhibit 13; Exhibit 1; Morris Deposition, pp. 64, 67, 70.) Contrary to this statement, Ms. Morris "claims" that Gregory did not promise to protect her from Holtzclaw or the OCPD. See her Response to Defendant City's Requests for Admission Responses #5A and B, Exhibit 7. (Of course, this "explanation" makes no sense. On May 24, 2014, she told at least three officers of the sexual assault).

13. On June 3, 2014, Ms. Morris signed a Refusal to Prosecute form, which stated she was "too scared just want to let it go moving in out of town at the end of month." (06/03/14 Refusal to Prosecute Form, Exhibit 14; Exhibit 1; Morris' Trial Testimony, p. 3170; Morris' Deposition, p. 70.) The name of the defendant is blank as the OCPD had not been able to determine who the alleged officer was. The date of the assault is blank because of Ms. Morris' failure to timely or correctly advise the police of the date. Lastly, the location is also incorrect. Compare this with Count 12 of the 08/29/14 Information filed in *State v. Holtzclaw* and the attached Affidavit of Probable Cause of Detective Davis (last paragraph of p. 1 and first paragraph of p. 2), Exhibit 15.[2]

14. "Command" checked the computer records of the OCPD and found that two officers had "run" the name Terri Morris (Sellers *via* his Mobile Data Computer

[2] The Probable Cause Affidavit is inaccurate as to the "date of the investigation." *See* Fact No. 15 in Defendant City's Motion for Summary Judgment filed herein.

"MDC" on April 11, 2014, and Holtzclaw had run her name through the Varuna and CAD system on May 8, 2014. (Trial Transcript of Gregory, pp. 3222-3225.) No officer ran her name on May 20 or 21, 2014. (Officer Sellers does not fit the description of the officer-assailant. (Gregory Trial Testimony, pp. 3265-66, 3311.) Next, "Command" checked the AVL (Automatic Vehicle Locator, i.e., GPS) of patrol officers' vehicles.[3] No OCPD vehicle (including these two) were near the Rescue Mission on May 20-21, 2014. (Gregory Trial Testimony, pp. 3239, 3265-66, 3311-12.)

15. On June 18, 2014, Plaintiff Ligons was sexually assaulted by Holtzclaw.[4] Afterwards, she called her first cousin, Francis Carter, and stated that the police had stopped her and made her "go down on him." Ms. Ligons asked her to call her son, an OCPD officer, and ask what she should do because she went to the Springlake Station, and it was closed. (Frances Carter Trial Testimony, pp. 663, 673-74; Ligons Deposition, pp. 75, 130-1.) Ms. Carter called her son, who told her to call 911 and report it to the OCPD. (Anthony Carter Trial Testimony, pp. 680-88.) She did not call 911. (Ligons Deposition, pp. 75, 130-131.) Ms. Ligons was able to flag down two police cars, one occupied by a patrol lieutenant and notified them of the assault. (Ligons Trial Testimony, pp. 517-22.) This lieutenant called dispatch for the on-call sex crimes lieutenant who assigned the case to Detective Kim Davis (Wegner Report re OCPD Case No. 14-049050 (020), Exhibit 16; Exhibit 1). Detective Davis met Ms. Ligons at the hospital for a rape

[3] The AVL "hits" (i.e., the computer records the vehicle's location) every two seconds if the vehicle is in motion, or every five minutes if stopped. (Davis Preliminary Hearing, Testimony, Vol. II, p. 119-121).

[4] She did not know the name of the officer, but provided the date, time, and place of the assault. (Davis Deposition, pp. 95-102).

exam and interview. (Davis Trial Testimony, pp. 755-6, 1141; Davis Deposition, pp. 97-8, 102.)

16. Detective Davis advised Detective Gregory of the assault of Ms. Ligons because she was aware that he tried to investigate Ms. Morris' claim of sexual assault by an OCPD officer. The AVL of all the second shift Springlake officers was checked because of its proximity to the location of this assault. All the officers were eliminated except for Holtzclaw, who later admitted he had shut off his mobile computer; he "logged off," which in turn shuts off the AVL, prior to his contact with Ms. Ligons. (pp. 6, 9; 36-43, Exhibit 8; Exhibit 1; Davis Preliminary Hearing Testimony, pp. 127-28; Davis Trial Testimony, pp. 841-42, 847, 855-56.) He admitted he did not call this traffic stop in (to dispatch) (Davis Trial Testimony, p. 847).

17. At approximately 4:00 p.m. on June 18, 2014, Holtzclaw was at lineup at the Springlake station. The detectives advised him they wanted to speak to him. He agreed to the interview and accompanied them to the downtown police station. (Davis Trial Testimony, pp. 802-04.)[5]

18. Holtzclaw was interviewed for several hours. He admitted he conducted a traffic stop of Ms. Ligons, but denied any sexual assault occurred and stated he could not recall if he saw her breasts or put [his] penis in her mouth. (Davis, p. 1069; Exhibit 8, pp. 21-22; Exhibit 1.) He denied recognizing photos of Ms. Morris and stated he did not

[5] Detective Davis testified that "command" told her to interview Holtzclaw then even if she was not ready. (Davis Deposition, p. 240). Command got involved "because you can't have an officer out there committing crimes." (Davis Deposition, pp. 211-2).

recall any such stop. Exhibit 8, pp. 25-27, 62-63. His pants were taken. (Exhibit 8 at p. 75-76; Exhibit 1.) He was immediately placed on administrative leave, which includes the confiscation of his badges and firearm. (Exhibit 8, pp. 83-88; Exhibit 1; Administrative Leave Memo, Exhibit 56; Exhibit 1.) His patrol vehicle was seized to be searched and fingerprinted. (Gordon Report re OCPD Case No. 14-049050 (043), Exhibits 17 and 1.)

19. Detective Gregory again tried to track down Plaintiff Morris and on June 24, 2014, he succeeded. Ms. Morris refused to go to the downtown police station but agreed to another interview in the back seat of a patrol car. She also agreed to view a photo lineup. Pursuant to OCPD Procedure 239.0-239.10, Exhibit 18, regarding photo lineups, Gregory obtained the assistance of Detective Higginbottom to show Plaintiff Morris the photo lineup. She could not identify the officer who assaulted her but stated it could be either "a" or "c." Holtzclaw's photo is "c." (Higginbottom's Report re Case No. 14-041539 (011) and Photographic Lineup Admonition Form in this case, Exhibits 19 and 20; Exhibit 1; Gregory Trial Testimony, pp. 3270-71.) Ms. Morris claims she did identify the suspect. (Morris Trial Testimony, p. 3172.)

20. During the June 24, 2014, interview, Ms. Morris told Det. Gregory that this incident happened on May 20 or 21, 2014, within a two-block radius of the City Rescue Mission. This interview has been recorded and transcribed. (Video Recording of Interview and Gregory Report re OCPD Case No. 14-041539 (016), Exhibits 21 and 22; Exhibit 1.)

21. The OCPD continued to investigate the claims of Plaintiffs Ligons and

Morris. It was determined that Holtzclaw's uniform pants contained the DNA of an unknown female. Detective Gregory again attempted to locate Plaintiff Morris to obtain her DNA sample. (Gregory Trial Testimony, p. 3212.)

22. On July 10, 2014, Plaintiff Morris was in the Oklahoma County Jail, and she was again interviewed. During this interview, she admitted that she lied about the location of the sexual assault because it occurred in front of a crack house at Liberty Station, and she did not want her boyfriend to know she was smoking crack. (Exhibit 22; Exhibit 1; Gregory Trial Testimony, pp. 3159-60, 3174-75, and 3213-16.) Detective Gregory and Lt. Muzny checked Plaintiff Morris out of jail and asked her to show them the route the police car took with her in it on May 8, 2014. Her description was "mostly"[6] confirmed by the AVL. (Gregory Trial Testimony, pp. 3214-3217, 3228-3230, 3232-3233, 3236-3240; Gregory Deposition, pp. 200-202, 242-246, 247-248).

23. The AVL on Holtzclaw's vehicle was checked and identified the location of the May 8, 2014, contact with Ms. Morris at N.E. 24th and Lindsay (Liberty Station). (Gregory Trial Testimony, pp. 3212, 3214-23, including arguments and descriptions of exhibits by attorneys.)

24. The OCPD pulled all the names of black females who had past arrests for drugs or prostitution that Holtzclaw had run through the OCPD computer system from January 1, 2014, until June 18, 2014, for dispatch and the OCPD's "800" number (warrants) and attempted to interview all those individuals. When contacted, nine (9)

[6] Det. Gregory was unable to corroborate on the AVL where Plaintiff Morris said the officer dropped her off. (Gregory Trial Testimony, p. 3239.)

admitted that they had been assaulted by an OCPD officer. One advised her probation officer, and one had her attorney and pastor contact DA Prater. (Former Plaintiff Bowen.) (Muzny Trial Testimony, pp. 2383-2410; Gregory Trial Testimony, pp. 1974-1977.)

25. On August 29, 2014, District Attorney (DA) David Prater filed the first of four (4) Informations against Holtzclaw. (Exhibits 15). Detective Gregory arrested Holtzclaw. (Exhibits 1 and 9). The local media also reported the filing of the Information and Holtzclaw's arrest on this date.

26. Detective Gregory was not a supervisor with the OCPD and had never been Holtzclaw's supervisor. (Exhibit 1.)

27. Detective Gregory did not investigate the death of Clifton Darnell Armstrong (¶ 21(a) of Plaintiffs' First Amended Complaint)[7] nor the claim of physical assault (¶ 21(b) and (i) of Plaintiffs' First Amended Complaint) by Demetria Campbell. (Exhibit 1.)

ERRONEOUS ALLEGATIONS CONTAINED IN PLAINTIFFS' AMENDED COMPLAINT

At ¶ 21(a), Plaintiffs allege that Holtzclaw "caused the death of Clifton Darnell Armstrong on May 1, 2013." **FACTS:** The City and four (4) individual officers were sued in U.S. District Court for the Western District of Oklahoma Case No. CIV-14-413-F, styled *Maiden v. City of Oklahoma City, et al.* The City filed its Brief in Support of its Motion for Summary Judgment [Doc. 34] on May 29, 2015, and Plaintiff dismissed the

[7] On December 14, 2018, when responding to Defendant Bennett's Motion for Summary Judgment, Plaintiffs claimed the issue was Holtzclaw assaulting African American females. [Doc. 159 at pp. 23-25]. Armstrong was not a female.

case instead of responding. [Doc. 41] Holtzclaw's participation (he took the place of Ms. Maiden and her mother in securing the legs of Mr. Armstrong who was resisting being placed in protective custody) was described at ¶ 30 of the City's Brief. Further, the Oklahoma State Medical Examiner opined that Mr. Armstrong died of "Acute Methamphetamine Toxicity." [Fact 25; Exhibit 58, Doc. 34.] When this incident occurred, it was investigated by the Homicide Unit of the OCPD and the facts of the case were presented to the DA's office, which cleared the officers. (08/02/13 Prater Letter, Exhibit 23 herein) Then the OCPD conducted an administrative investigation of the officers' conduct to see if they complied with OCPD policies and procedures. Gregory did not participate in either investigation. (Exhibit 1.)

At ¶ 21(b), Plaintiffs alleged that Ms. Demetria Campbell's complaint complained that "Defendant Holtzclaw illegally detained, arrested, victimized by unlawful force, and sexually assaulted an African-American female named Demetria M. Campbell . . ." **FACTS:** On November 5, 2013, the OCPD received a call from a nurse at OU Medical Center, who advised the dispatcher that a patient claimed an officer physically assaulted her. Lt. Bennett was sent to investigate (pursuant to the OCPD Use of Force procedures) Ms. Campbell's complaint. There is nothing in the 911 call (Audio Recording of 911 Call from Hospital, Exhibit 24; Exhibit 1), Ms. Campbell's medical records (Exhibit 25, filed under seal), Lt. Bennett's UOF investigation attached as Exhibit 26, or her notice of tort claim that describes Ms. Campbell's complaint as sexual in nature. (Campbell Notice of

Tort Claim, Exhibit 27.)[8] Further, at her deposition she produced her handwritten note on the back of Lt. Bennett's business card. This note also does not describe the assault as sexual. (Note on Card, Exhibit 29, Campbell Deposition, p. 164.)

At ¶¶ 24 and 25, Plaintiffs alleged that on May 8, 2014, the Sex Crimes Unit opened an investigation into Holtzclaw. Apparently, this comes from the statement of Detective Kim Davis in the Affidavit of Probable Cause attached to the Information filed against Holtzclaw. (Exhibit 15.) This "statement" refers to the then first known sexual assault committed by Holtzclaw (on Ms. Morris). It was not until after Ms. Ligons came forward that the Detectives were finally able to obtain the name of a possible suspect. Detective Davis was not assigned to this investigation until June 18, 2014, and the assault

[8] She also did not identify the officer by name. Instead, a citizen called in a stolen vehicle and gave a description of the alleged thief (Exhibit 28; Exhibit 1). Holtzclaw responded to the call and saw Ms. Brown (a/k/a Campbell) and took her into investigative detention because she met the description of the suspect. He claimed he had to "put her up against a wall to stabilize her" because of her resistance. (Report of Holtzclaw (part of the UOF investigation, Exhibit 26; Exhibit 1; Holtzclaw Deposition, pp. 96-97.) Once she was in custody, he radioed in her information. He drove to the scene where the victim was. The victim was unable to identify Ms. Campbell as the person driving the stolen car and she was released. (Exhibit 26; Exhibit 1). Lt. Bennett questioned Holtzclaw, who denied using any force on Ms. Campbell other than stabilizing her on the wall. This claim was not investigated by the Sex Crimes Unit. (Exhibit 1). Ms. Campbell has now (after the arrest, prosecution and conviction of Holtzclaw) been deposed. She claims that Holtzclaw had an erection when he placed her up against the wall, which she felt in her "butt." She also claims she told Lt. Bennett that Holtzclaw was "perverted, prejudiced, rude, hateful and a racist." (Campbell Deposition, pp. 49, 51-52, 133-134, 174-176, 178). Lt. Bennett denies that she told him this. (And, of course, it is not in the OU medical records, nor in the handwritten note she made of this incident, nor in her personal doctor's notes. (Exhibit 25; Campbell Deposition, pp. 108-117, 155-156, and pp. 169-172).) More importantly, it is not in his UOF report. (Exhibit 26; Exhibit 1). No administrator of the OCPD, nor the City itself, could have known of this claim. (Ms. Campbell refused to explain why the "perverted" claim is not in her Notice of Tort Claim. (Campbell Deposition, pp. 196-197).)

of Ms. Morris was not her case. (Davis Trial Testimony, pp. 1084; 1141-42; see also Davis Deposition, pp. 263-265 denying that this investigation started on May 8, 2014. See also Gregory Deposition, pp. 218-219 that Ms. Morris' case was assigned to him on May 27, 2014; Exhibit 11; Wenzel Deposition, pp. 35-6.) Plaintiff Morris has no idea when this assault occurred. See Facts 5-14; 19 and 20 herein. At ¶ 25(a), Plaintiffs alleged that the OCPD received Ms. Morris' complaint on May 11, 2014. In her complaint and her testimony from Holtzclaw's criminal trial, she stated the assault occurred "3 or 4 days earlier." The domestic incident between her and Mr. Sheldon occurred on May 24, 2014. When initially interviewed, Ms. Morris also gave an inaccurate location. She refused to cooperate with Detective Gregory, yet she and the other Plaintiffs herein have the audacity to sue him.

The investigation into Ms. Ligons' complaint was not because a relative of hers is an OCPD officer as Plaintiffs alleged at ¶ 42. (Exhibit 1.) Even Plaintiff Ligons does not believe this allegation. (Ligons Deposition, p. 74, referring to ¶ 42 of the First Amended Complaint [Doc. No. 8]; Ligons Deposition, pp. 72-73) As stated herein, Detective Gregory attempted to get Ms. Morris to cooperate, and she refused. (Fact Nos. 7-14.) No one besides Plaintiffs Morris and Ligons came forward until either contacted by the OCPD detectives or when the news of Holtzclaw's arrest was publicized.

Plaintiffs imply, if they do not actually allege, that the City should know what an officer is doing with a citizen based on equipment installed in an officer's patrol car and equipment available for the officer's use. See ¶¶ 21(b)(x), 26, 38(e), 43, 44, 78, 79 and 119. A patrol car is equipped with a "radio" for the officer to communicate with a

dispatcher, an MDC (Mobile Data Computer) for the officer to "run" a person's name to see if the department has had prior contact with them and to check for arrest warrants. It also has a GPS-AVL tracking device to track the officer's vehicle location and its speed. Plaintiffs also misrepresent that somehow these devices would allow the OCPD or a dispatcher to know that an officer was sexually assaulting a citizen. See ¶ 43. This is not true. (Citty Deposition, p. 294.) The truth is that when Ms. Morris came forward, Detective Gregory (and others) checked those communication devices to see if any officer had advised dispatch they were interviewing Ms. Morris or requested that that unit run Ms. Morris' name on May 20 or 21, 2014, and if the AVL revealed an officer was at the "location" that Ms. Morris provided. This investigation revealed no officer had run her name on May 20 or 21, 2014, nor was there a patrol car at the location she gave. (Wenzel Deposition, pp. 53-54, 96, 100-102.) It revealed that Holtzclaw had run her name on May 8, 2014, from a different location. (Wenzel Deposition, pp. 63-64, 102-3.) When she finally advised the police where she was assaulted, the AVL confirmed Holtzclaw was at that location on May 8, 2014. (Gregory Trial Testimony recited herein at p. 10.) It was then "determined" that this was the date and location of this assault and that Holtzclaw was the perpetrator. (Gregory Trial Testimony, pp. 3204-3217, 3221-3244.)

The Sex Crimes Unit obtained the computer records of Holtzclaw for January 11, 2014, to June 18, 2014. Certain African American females who appeared on the list were contacted and asked if they had had any inappropriate contact with an officer. Those who admitted such contact were interviewed, and these detectives attempted to confirm their

"claims" by use of Holtzclaw's AVL to determine if he was at the location claimed. (Muzny Trial Testimony, pp. 2383-2410; Gregory pp. 1974-1977, 2217-2219.)

At ¶ 44, Plaintiffs continue with the erroneous claim that the OCPD "failed" to investigate Ms. Campbell's complaint by failing to check the GPS in Holtzclaw's vehicle and by "checking his . . . previous traffic stops . . ." The OCPD was able to identify Holtzclaw as the officer that Ms. Campbell was complaining about because it checked its records to see what officer had contact with her on this evening. Holtzclaw called in that he had a possible suspect in his vehicle. (Dispatch Tape, Exhibit 30; Exhibit 1.) Ms. Campbell did not identify the officer by name. (Campbell Deposition, p. 162-163.) In any event, Defendant Gregory was not involved in this investigation. (Exhibit 1)

Regarding the failure to submit Ms. Campbell's complaint to the DA for prosecution as stated in ¶ 45, Plaintiffs ignore that an officer is allowed to use some force to detain a person without violating any criminal law. (22 O.S. § 643(1) and (2).) The OCPD reviews each use of force to determine if the force violates criminal law and OCPD policy. (See OCPD Procedures 150.0, *et seq.*, Exhibit 31; Exhibit 1.) If determined to be a possible violation of criminal law, the investigation is referred to the DA's office. (See OCPD Procedure 150.18(K), Exhibit 31; Exhibit 1.) Only those that are determined to be a possible violation of state law are submitted to the DA's office. State law does not require that all officers' or any officer's use of force be referred to the DA's office. (See 22 O.S. § 34.2.) Because Lt. Bennett did not report that Ms. Campbell reported a sexual assault, or Ms. Campbell did not complain of a sexual assault and because the only force was that Holtzclaw placed her up against a wall to stabilize her, it

was not submitted to the DA. And of course, Plaintiffs ignore that the OCPD gave DA Prater its criminal investigation into the Armstrong incident and the DA "cleared" those officers including Holtzclaw.

Lastly, Detective Gregory's attempted investigation of Ms. Morris' complaint disproves any claim that Ms. Ligons' complaint was investigated only because a relative of hers is an OCPD officer. (See ¶ 42.) His actions investigating the complaint against former officer Maurice Martinez also disproves this allegation.

STATEMENT OF THE CASE

Plaintiffs' Amended Complaint filed herein is thirty-eight (38) pages long and contains eleven (11) "causes of actions." As to Detective Gregory, it appears[9] that Plaintiffs' Fourth Cause of Action "Conspiracy to Interfere (sic) with Fourth and Fourteenth Amendment Rights", Fifth Cause of Action "Fourth and Fourteenth Amendment Failure to Supervise,"[10] Sixth Cause of Action "Fourth and Fourteenth Amendment Municipal Liability – Ratification",[11] and Plaintiffs' Seventh Cause of

[9] Each cause of action has a subheading that apparently states which defendant(s) that claim is raised against. The subheadings are misleading. In some of the paragraphs under some of the causes, the individual Defendants are actually named (see ¶¶ 69, 70 and 74); some do not name the Defendants (see Fifth Cause of Action); and some are contradictory (see Sixth and Seventh Causes of Action), which claim to be theories of municipal liability, yet the subheadings assert the claim is raised against "All Defendants[.]" This Defendant objects as he is entitled to know what Plaintiffs claim he did wrong. See *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), *Ashcroft v. Iqbal,* 556 U.S. 662 (2009), *Robbins v. Dept. of Human Services,* 519 F.3d 1242 (10th Cir. 2008) and *Bryson v. Gonzales,* 534 F.3d 1282 (10th Cir. 2008).

[10] The subheading of this cause alleges it is brought against "all Defendants." Plaintiffs' fail to allege in this cause (¶¶ 75-84) which Defendant is or was Holtzclaw's supervisor.

[11] The only individual Defendant identified in these two causes of action is Citty at ¶¶ 87 and 88, wherein Plaintiffs allege that Defendant Citty knew of the acts of the other

Action "Fourth and Fourteenth Amendment Municipal Liability – Failure to Train" are to apply to him.[12]

An individual defendant is protected from defending a § 1983 lawsuit unless he is "plainly incompetent or . . . knowingly violates the law." *Mullenix v. Luna,* 577 U.S. __, 136 S. Ct. 305, 308 (2015) *(per curiam)*, quoting *Malley v. Briggs,* 475 U.S. 335, 341 (1986). Plaintiffs' counsel ignores previous decisions of this Court, the Tenth Circuit, the Supreme Court, the facts, and their obligations under Rule 11 of the FRCP and 28 U.S.C. § 1927 as to this Defendant and he objects.

The Tenth Circuit Court has already held that there is no duty to investigate a claim of criminal conduct in *Jennings v. City of Stillwater,* 383 F.3d 1199 (10th Cir. 2004), and but for Plaintiffs' counsel's misrepresenting the facts, a Motion to Dismiss asserting qualified immunity could have been filed on this defendant's behalf. Detective Gregory was never responsible for the training or supervision of Holtzclaw. (Exhibit 1.) He did not investigate the *Armstrong* case as the Homicide Unit of the OCPD did because it was a death in the custody of OCPD officers. (See OCPD Procedures 150.18-150.31 and 302.20, Exhibits 31 and 32; Exhibit 1.) Detective Gregory did not investigate the Campbell claim because it was not reported (at least by Lt. Bennett) as a sexual assault.

Defendants and ratified them. It is not clear if Plaintiffs' ratification claim refers to the sexual assaults of Holtzclaw or the (alleged) failure to investigate, supervise or train Holtzclaw by the other Defendants.

[12] In responding to Defendant Bennett's Motion for Summary Judgment, Plaintiffs concede that the Sixth and Seventh Causes of Action should be dismissed as to Bennett. [Doc. 159, p. 7 n.1]. Of course, Plaintiffs did not dismiss that claim against Detective Gregory.

(Exhibit 26; Exhibit 31; Exhibit 1.) Detective Gregory tried to get Ms. Morris to cooperate in the investigation of her claims of sexual assault by an OCPD officer. She refused. (Facts 5-13 herein.)

Plaintiffs' Failure to Cooperate with Discovery

Additionally, and equally troubling is the failure of Plaintiffs' counsel to cooperate in good faith with this Defendant's (or any other Defendants') discovery. Defendants City, Citty and Gregory served Plaintiffs' counsel with two sets of discovery (Exhibits 33 through 42) requesting any evidence of these Defendants' "involvement" as alleged by Plaintiff and got no statement of evidence, just restatements of Plaintiffs' allegations and lectures. Despite Plaintiffs' alleging five times that Holtzclaw sexually assaulted Ms. Campbell (¶ 21(b)(iii) and (xi); 69, 70, and 74), when asked what evidence Plaintiffs have to prove this allegation, these Defendants were told:

> **Response to No. 16:** Plaintiff Ligons objects to this interrogatory to the extent that it seems to narrow Ms. Campbell's complaint to the OCPD on November 5, 2013, to that of an OCPD officer sexually assaulted her. Without waiving her objection, based on information and belief, Ms. Campbell, on or about November 5, 2013, notified and complained to Defendant Bennett that Holtzclaw illegally detained, arrested, used unlawful force, and sexually assaulted her without provocation, probable cause, or justification. Defendants' narrowing of Ms. Campbell's complaint against Holtzclaw to only sexual assault implies that the numerous other deprivations of Ms. Campbell's constitutional rights didn't matter, and in fact were excused by Defendant Bennett.

Regarding Plaintiffs' claim of conspiracy, these Defendants were advised:

> **Response to No. 15:** Based upon information and belief, neither Defendant Citty, Gregory, Bennett, nor Holtzclaw are African American, similar to Ms. Campbell. Ms. Campbell's complaint against Holtzclaw was not investigated to the same extent the other African American victims were investigated. In fact, Defendant Bennett concluded that Holtzclaw's

> actions regarding Ms. Campbell were within departmental guidelines. Consequently, Ms. Campbell's complaint was covered up, not adequately investigated, nor presented to the DA for prosecution. Defendants City, Citty, Gregory, and Bennett either knew, or should have known, about Campbell's complaint against Holtzclaw, however, they conspired to cover up that case and not present it for prosecution.

(Plaintiffs' (separate) Responses to Defendant City's, et al Second Set of Interrogatories, Exhibits 34, 36, 38, 40, 42.) Plaintiffs' counsel has repeatedly made false accusations against the City for failure to comply with their discovery requests. While Defendant City denies these claims, Plaintiffs did nothing to prepare for their depositions except Terri Morris who prayed (Morris Deposition, p. 10; 11-12); Ligons who reviewed no documents including her trial transcript and only talked to her attorneys (Ligons Deposition, pp. 12-13); Barnes did nothing but got a lot of rest (Barnes Deposition, p. 10); Lyles did nothing (Lyles Deposition, p. 9), but Lyles stated she read the "Book of Holtzclaw" (*id* at p. 41) and then denied it (id at p. 65)[13]; and Hill did nothing. (Hill Deposition, p. 15.)

Each Plaintiff was asked why they sued Detective Gregory and the response except for one was the same, "I don't know." (Depositions for: Morris, p. 81; Lyles p. 78-79; Barnes p. 87; Hill pp. 90-92 and Johnson, p. 63.) Ligons does not know who Gregory is and can't say if she has evidence he conspired or is a supervisor (Ligons Deposition, p. 86-88, 89).

STANDARD ON SUMMARY JUDGMENT

[13] In response to Defendant City's Supplemental Request for Production of Documents, Plaintiffs' counsel denied there is a Book of Holtzclaw. (Exhibit 45).

To succeed on a Motion for Summary Judgment, the moving party must establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. However, when the moving party has carried its burden, the nonmoving party must do "more than simply show that there is some metaphysical doubt as to the material facts" and must "come forward with 'specific facts showing that there is a *genuine issue for trial*.'" *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986). Thus, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issues of *material* fact." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 247-248 (1986). "Material" facts are those "that may affect the outcome of the suit involving the governing law." *Id.* at 248. Furthermore, when an opposing party tells a story that is "blatantly contradicted by the record, so that no jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a Motion for Summary Judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

Lastly, summary judgment is appropriate where the moving party shows that the opposing party is unable to produce sufficient evidence in support of the opposing party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In that case, the Court stated in part "[t]he moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Id.* at 323.

CONSTITUTIONAL RIGHT AT ISSUE

In *Graham v. Connor,* 490 U.S. 386, 394 (1989), the Supreme Court cited to its prior opinion in *Baker v. McCollan*, 443 U.S. 137, 140 (1979), and stated: "("The first inquiry in any § 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged")."

In *Pearson v. Callahan,* 555 U.S. 223, 129 S.Ct. 808, 815 (2009), the Court restated the general rule regarding qualified immunity by stating:

> The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. The protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Groh v. Ramirez,* 540 U.S. 551, 567, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (KENNEDY, J., dissenting) (citing *Butz v. Economou,* 438 U.S. 478, 507, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) (noting that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law").)
>
> Because qualified immunity is "an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth,* 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L.Ed.2d 411 (1985) (emphasis deleted).

And at 129 S.Ct. 823, the Court stated:

> …"The principles of qualified immunity shield an officer from personal liability when an officer reasonably believes that his or her conduct complies with the law. Police officers are entitled to rely on existing lower court cases without facing personal liability for their actions."

In *Wilson v. Layne,* 526 U.S. 603, 618 (1999), the Court stated, "If judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy."

Plaintiffs' First Amended Complaint appears to allege unreasonable seizures, violations of due process and equal rights protections, and the right to bodily integrity and privacy.

Detective Gregory does not challenge that Holtzclaw may have violated the Plaintiffs' constitutional rights, but Detective Gregory denies that he unlawfully seized them or that he can be responsible for Holtzclaw's alleged unreasonable seizures of them; denies that he was responsible to supervise or train Holtzclaw; denies that he investigated Campbell's complaint (or the death of Armstrong); or that he "failed" to investigate Morris' complaint. In *Jennings v. City of Stillwater,* 383 F.3d 1199 (10th Cir. 2004), the Court rejected a failure to investigate cause of action (as least as to the one plaintiff). He further denies that there is a constitutional right to an investigation.

PROPOSITION I

DEFENDANT GREGORY IS ENTITLED TO JUDGMENT ON PLAINTIFFS' FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION

Obviously, Detective Gregory is not the municipality nor is he the policy maker of the municipality. (OKC Municipal Code § 43-4.) He is not responsible for training officers or supervising them. Plaintiffs' Sixth Cause of Action alleges a ratification of the Defendants' actions as "within policy." It is unclear which actions of Defendants were supposedly ratified. To suggest that Detective Gregory ratified Holtzclaw's acts is just

even more incredulous. He investigated the complaints of some of the victims and found others. The DA charged Holtzclaw, based in part, upon Detective Gregory's work. (Gregory Report re 14-068166 (10) Exhibit 43; Exhibit 1.) Detective Gregory arrested Holtzclaw. (Gregory Deposition, p. 93.) Holtzclaw was convicted, in part, because of Detective Gregory's investigation.

PROPOSITION II

DEFENDANT GREGORY IS ENTITLED TO JUDGMENT ON PLAINTIFFS' FOURTH CAUSE OF ACTION

Plaintiffs' Fourth Cause of Action is labeled "Conspiracy to interfere with Fourth and Fourteenth Amendment Rights" and apparently claims that there was some meeting of the minds of the individual Defendants (except, of course, the actual tortfeasor, Holtzclaw) from the time of Ms. Campbell's complaint and Ms. Ligons' complaint.

Detective Gregory has pointed out in this Brief that the paragraphs contained in this section are full of erroneous "facts." (These erroneous facts were repeated by Plaintiffs in other cases that appear to have copied this Amended Complaint.) In fact, the Plaintiff in *Grate v. City, et al.,* refers to allegations in other cases as evidence to support her claims against this Defendant. See her answers to Interrogatories attached as Exhibit 44. Again, Detective Gregory objects—pleadings are not evidence.

Detective Gregory asked Plaintiffs for evidence regarding this alleged conspiracy and received an answer that appears to be a restatement of Plaintiffs' allegations, not facts. (Exhibits 33-42 and 45.) It is not clear why Plaintiffs believe that only African Americans can investigate claims of African Americans. It is unclear why Plaintiffs

believe they have a constitutional right to an investigation of an incident involving some other person and that such investigation be conducted "to the same extent the other African American victims were investigated." It is unclear how Lt. Bennett's "determination" is applicable to Detective Gregory. It is not clear how or why Plaintiffs believe that they have a right, constitutional, or otherwise, to have a DA prosecute anyone. In fact, they do not. In *Dohaish v. Tooley,* 670 F.2d 934, 937 (10th Cir. 1982), the Court held:

> The ordinary citizen does not have a general interest justifying a lawsuit based on the criminal prosecution or non-prosecution of another. *Linda S. v. Richard D.,* 410 U.S. 614, 619, 93 S.Ct. 1146, 1149, 35 L.Ed.2d 536 (1973). Such a right is not recognized in the law and, indeed, it would be contrary to public policy to allow every private citizen to force the prosecutor to proceed with a case in pursuit of a private objective. The district attorney is sworn to uphold the law generally and does not have a duty to enforce the law for the purpose of providing satisfaction to a third person who has no direct legal interest.
>
> Even if such actions were permitted, only the victim would have the required legal standing to bring such an action. *See Warth v. Seldin,* 422 U.S. 490, 498-99, 95 S.Ct. 2197, 2204-05, 45 L.Ed.2d 343 (1975).

Detective Gregory was not assigned the investigation into Ms. Campbell's "complaint"—Lt. Bennett was, and he investigated it pursuant to OCPD procedures No. 150.0–150.18 as a use of force. There is no constitutional right to an adequate investigation. (This Defendant denies Lt. Bennett's investigation was inadequate.) See *Jennings v. City of Stillwater,* 383 F.3d 1199, 1205 (10th Cir. 2004), wherein the Court stated:

> The question in this case is whether the United States Constitution provides a cause of action for victims of crime when state or local law enforcement officials fail to perform a proper investigation. In general, federal courts are not entrusted with the responsibility of ensuring the effective enforcement of state criminal laws; that role falls to state and local

> law enforcement authorities. It is the duty of executive officials—not the courts—to take care that criminal laws are faithfully executed. *See* U.S. Const., art. II, § 3; *see Morrison v. Olson,* 487 U.S. 654, 690, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988).
>
> Plaintiff puts forward three alternative legal theories for a constitutional cause of action against the police officers who allegedly mishandled or sabotaged the case against her alleged assailants, and the City of Stillwater.
>
> * * *
>
> Sympathetic though we are to a young person who has undergone such an ordeal, exacerbated by the alleged dereliction of duty on the part of the police who are employed to protect her, we conclude that none of these legal theories can be sustained. (Note omitted).

Regarding Detective Gregory's handling of Ms. Morris' complaint, either the Plaintiffs' counsel failed to interview their client, Terri Morris, or she is again telling another story. To allege at ¶ 70:

> …that on or about May 11, 2014, Plaintiff Morris complained that she had been illegally detained, arrested, victimized, and sexually assaulted by Holtzclaw, and that Defendants Citty, Bennett, Gregory, and John and Jane Does knowingly failed and apparently refused to take any action as a result of Morris' complaint, other than Gregory giving her his card after she had reported to him that she had been raped by Holtzclaw…

is contrary to the facts of this case and the testimony of Ms. Morris and Detective Gregory. Perhaps Plaintiffs' counsel should have read Detective Gregory's or their client's testimony from Holtzclaw's trial regarding his efforts to get Ms. Morris to cooperate so he could investigate her complaint (and one more time, she did not say "I was raped by Officer Holtzclaw;" she did not know the name of the officer; she did not know the date of this assault; and she did not give the police the correct address until after Ms. Ligons' complaint.) Plaintiffs fail to advise how a victim can be required to cooperate with a police investigation.

As argued in Chief Citty's Brief, this case can be resolved by the Tenth Circuit's opinion in *Schneider v. City of Grand Junction Police Dept.,* 717 F.3d 760 (10th Cir. 2013), and the cases cited therein. There is not much discussion in that case about the claim against the officer who investigated a prior claim of sexual assault against the officer, except that Ms. Schneider failed to show how the supervisor could have taken any specific action against this officer to stop the subsequent assault. *Id.* at 789-790. However, at n. 7 at p. 775, the Court stated:

> In addition, PSA Dyer is not a policymaker for the City. In seeking to impose municipal liability, Ms. Schneider contends that Chief Gardner ratified PSA Dyer's decision not to update the background investigation. "However, a municipality will not be found liable under a ratification theory unless a final decisionmaker ratifies an employee's specific unconstitutional actions, as well as the basis for these actions." *Bryson v. City of Okla. City,* 627 F.3d 784, 790 (10th Cir. 2010). Given that PSA Dyer's actions were not unconstitutional, Chief Gardner's alleged ratification of those actions does not impose liability on the City.

Defendant Gregory is entitled to Judgment on Plaintiffs' 4th Cause of Action as his actions in attempting to investigate the claims of Ms. Morris (or anyone else) were not unconstitutional.

PROPOSITION NO III

DEFENDANT GREGORY IS ENTITLED TO QUALIFIED IMMUNITY

Detective Gregory's actions were not unconstitutional under either *Jennings v. City of Stillwater* or *Schneider*. He is entitled to rely upon the Tenth Circuit's previous decisions defeating Plaintiffs' claims against him, including being entitled to qualified immunity.

A. Conspiracy

In 2017, the United States Supreme Court decided *Ziglar v. Abbasi,* 582 U.S. __, 137 S.Ct. 1843 (2017). In *Ziglar,* the Court stated at 1867-1868:

> When two agents of the same legal entity make an agreement in the course of their official duties, however, as a practical and legal matter their acts are attributed to their principal. And it then follows that there has not been an agreement between two or more separate people. See *id.,* at 771, 104 S.Ct. 2731 (analogizing to "a multiple team of horses drawing a vehicle under the control of a single driver").

In *Ziglar* at 137 S.Ct 1868-1869*,* the Court held the officials were entitled to qualified immunity on a § 1985(3) claim given the lack of clearly established law regarding whether the intra corporate doctrine lacks to that type of conspiracy. Therefore, when the Court stated at 1869, "[t]hese consideration suggest that officials employed by the same governmental department do not conspire when they speak to one another and work together in their official capacities[,]" the Court could not be referring to official capacity in the sense that official capacity is just another way of naming the entity the employee worked as a defendant since that entity is not entitled to qualified immunity. *Owen v. City of Independence,* 445 U.S 622 (1980) and *Starkey ex rel. A.B. v. Boulder County Social Services,* 569 F.3d 1244 (10th Cir. 2009). All the alleged co-conspirators were City employees assigned to the OCPD. Detective Gregory is entitled to qualified immunity on this cause of action.

CONCLUSION

WHEREFORE, for reasons stated herein, Detective Gregory is entitled to Judgment.

Respectfully Submitted,

Kenneth Jordan
MUNICIPAL COUNSELOR

/s/ Thomas Lee Tucker
Sherri R. Katz, OBA # 14551
Richard N. Mann, OBA #11040
Thomas Lee Tucker, OBA # 20874
Assistant Municipal Counselors
200 N. Walker Ave., 4th Floor
Oklahoma City, OK 73102
(405) 297-2451
sherri.katz@okc.gov
richard.mann@okc.gov
thomasltucker@okc.gov
Attorneys for Detective Gregory

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2021, I electronically transmitted the attached Defendant Rocky Gregory's Motion for Summary Judgment and Brief in Support to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants on file herein.

/s/ Thomas Lee Tucker