

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

TABATHA BARNES, <i>et al.</i> , <sup>1</sup>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-16-184-HE
	)	
THE CITY OF OKLAHOMA CITY	)	
a municipal corporation, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS CITY OF OKLAHOMA CITY, BILL CITY, AND ROCKY  
GREGORY’S RESPONSE TO PLAINTIFFS MORRIS, HILL, AND LYLES’  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

**COMES NOW** Defendants City of Oklahoma City, Bill City, and Rocky Gregory, and hereby **OBJECT** to Plaintiffs Morris, Hill, and Lyles’ Motion for Partial Summary Judgment (Doc. 288). In support of their Response, Defendants submits as follows:

**STATEMENT OF THE CASE**

Plaintiff’s Motion is based on the theory that Defendant Daniel Holtzclaw was found to have committed the acts as alleged in the Oklahoma City Police Department pre-determination hearing, and thus, the Defendants should be *estopped* from relitigating the issues of any sexual misconduct against Plaintiffs Morris, Hill, and Lyles. However, as

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<sup>1</sup> Plaintiffs inexplicably and constantly attempt to style this case as Lignons, *et al.*, However, the case was filed as Barnes, *et al.* (Doc. 1), and Plaintiff Lignons was not added to the case until the Amended Complaint (Doc. 8). With all the multiple plaintiffs and defendants in all the multiple cases, the constant restyling of the case seems like a bad-faith attempt at creating confusion. Defendants respectfully request this Court to order Plaintiffs to refrain from attempting to restyle the case.

shown below, Plaintiff's claim for partial summary judgment is not proper, and therefore, must be denied.

**MATERIAL FACTS NOT IN DISPUTE**

For the purposes of brevity and ease of issues, Defendant City admits Plaintiff's Statement of Facts Nos. 1-28 are undisputed, however, reserves the right to question their materiality. Further, Defendant City shows:

1. Plaintiff Hill did not come forward as a victim until after Defendant Holtzclaw had been arrested. (Exhibit 1, Testimony of Hill, pp. 1230-1233; 1266-1270; 1272-1273).

2. At Defendant Holtzclaw's trial, Plaintiff Hill admitted she exchanged Facebook messages with Defendant Holtzclaw (Exhibit 1).

3. Defendant Holtzclaw was acquitted of all counts that concerned Plaintiff Hill (Exhibit 2, Judgment and Sentence in *State v. Holtzclaw*, Oklahoma County Case No. CF-2014-5869, Counts 21-26).

4. Plaintiff Morris alleged in May 2014 that she had been raped by an Oklahoma City Police Officer. However, OCPD Detectives were unable to locate her for a follow up interview until July 2014 (Exhibit 3, Testimony of Detective Gregory, pp. 3203-3216)

5. Defendant Holtzclaw was acquitted of all counts that concerned Plaintiff Morris (Exhibit 2, Judgment and Sentence in *State v. Holtzclaw*, Oklahoma County Case No. CF-2014-5869, Counts 12, 35-36).

6. Plaintiff Lyles did not come forward as a victim until after Defendant Holtzclaw had been arrested. (Exhibit 4, Testimony of Lyles, pp. 3604-3636).

7. Defendant Holtzclaw was acquitted of all counts that concerned Plaintiff Lyles (Exhibit 2, Judgment and Sentence in *State v. Holtzclaw*, Oklahoma County Case No. CF-2014-5869, Counts 17-20).

8. Defendant Holtzclaw was charged, prosecuted, and convicted by the State of Oklahoma through the Oklahoma County District Attorney's Office, not Defendant City of Oklahoma City.

9. Defendant Holtzclaw was terminated for misconduct that was absolutely outside the course and scope of his employment with Defendant City of Oklahoma City.

### **STANDARD OF REVIEW**

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). “A genuine dispute as to a material fact exists when the evidence, construed in the light most favorable to the non-moving party, is such that a reasonable jury could return a verdict for the non-moving party.” *Carter v. Pathfinder Energy Services, Inc.*, 662 F.3d 1134, 1141 (10<sup>th</sup> Cir. 2011) (quotations and citation omitted).

### **ARGUMENT AND AUTHORITY**

Defendant City generally objects to Plaintiff's motion and asserts that it should be denied in its entirety.

**THE OCPD PRE-DETERMINATION HEARING DID NOT RESOLVE PLAINTIFFS FEDERAL 42 U.S.C. § 1983 COMPLAINT OF A CONSTITUTIONAL VIOLATION.**

Plaintiffs' suit against Defendant City of Oklahoma City, Citty, and Gregory, alleges that the Defendants failed to train and supervise Defendant Holtzclaw or was

deliberately indifferent to the threat he posed to the plaintiffs in these cases (Doc. 8, Amended Complaint). This issue was simply not litigated in Holtzclaw's termination hearing. The United States Supreme Court has held that "one general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate that issue in the earlier case." *Allen v. McCurry*, 449 U.S. 90, 95 (1980).

According to Plaintiff's Amended Complaint (Doc. 8), any potential liability on behalf of the Defendants is directly related to what its officers knew, when they knew it, and what they did with that information. Whether, and especially when Plaintiffs Morris, Hill, and Lyles were allegedly sexually assaulted, are important facts to be determined by a jury. Defendant Holtzclaw was acquitted of every charge that concerned these Plaintiffs. Defendant City should absolutely be allowed to bring into question the timing and validity of these Plaintiffs' allegations as they relate to Defendants City, Citty, and Gregory's liability under the Plaintiffs' theory.

Moreover, as noted by this Court in an Order denying a similar motion to Plaintiffs Ellis and Raines in CIV-16-19-HE, "identity of issues is lacking," and there simply was not a "full and fair opportunity, within the meaning of the collateral estoppel doctrine, to litigate the pertinent issues in the termination hearing." (*Ellis v. Holtzclaw*, CIV-16-19-HE, Doc. 121, p. 3).

Further, it appears a substantial portion of the testimony presented at the termination hearing was hearsay in nature, based on other officers recounting their interviews of various witnesses. There is nothing necessarily wrong with permitting hearsay testimony in the context of an employment hearing.

However, where the credibility of witness recollections is central, as it appears to be here, the lack of witness availability for in-person cross examination is significant. Taking all these factors together — potential technical differences between the departmental policy violations and the constitutional violations alleged, the impact of pending criminal charges on litigation strategy, and the looser evidentiary standards applicable to this administrative hearing — the court concludes the result of the termination hearing and process is not such as should preclude Holtzclaw from denying liability here.

(*Ellis v. Holtzclaw*, CIV-16-19-HE, Doc. 121, p. 4). Similarly, as to Defendant Holtzclaw, Defendants City, City, and Gregory should be precluded from litigating any issue that denies their liability in the present case. As such, Plaintiff's motion must be denied.

### **CONCLUSION**

There exists material issues of fact that Defendants City, City, and Gregory have not been afforded a full and fair opportunity to litigate. Thus, Plaintiffs' motion must be denied.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of October 2020, I electronically transmitted the above document to the Clerk of the Court using ECF filing system. Based on the records currently on file in this case, the Clerk of the Court will transmit Notice of Electronic filing to those registered participants of the Electronic Case Filing System.

/s/ Thomas Lee Tucker  
Assistant Municipal Counselor