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

JANNIE LIGONS, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: CIV-16-184-HE
	)	
1. DANIEL HOLTZCLAW, individually,	)	
	)	
2. THE CITY OF OKLAHOMA CITY, a municipal corporation,	)	
	)	
	)	
Defendants.	)	

RESPONSE OF DEFENDANT HOLTZCLAW
TO JOINT MOTION OF PLAINTIFF'S MORRIS, HILL & LYLES FOR PARTIAL SUMMARY JUDGMENT & BRIEF IN SUPPORT

Defendant, Daniel Holtzclaw, hereby objects as follows to the motion of the Plaintiffs Morris, Hill, and Lyles, for partial summary judgment–even though the allegations of all three resulted in acquittal of Holtzclaw at the state court criminal trial (Doc. 288):

STATEMENT OF UNCONTESTED FACTS

Holtzclaw addresses the statement of facts as proffered by the Plaintiffs in their motion:

¶¶ 1-3 Admitted.

¶ 4. Disputed. Plaintiffs outline allegations made by Morris against Holtzclaw, but even the allegations are disputed. Not only does Holtzclaw maintain his innocence, *see infra*, there is a dispute as to the nature of the allegations. As Exhibit #2 indicates, Det. Gregory of the Oklahoma City Police Department interviewed reporting officer Jonathan Thomas, who is the officer who took the report from Morris on the day she made the sexual assault complaint against Holtzclaw (May 24, 2014). According to Officer Thomas, "I asked if her breasts were ever exposed. She stated 'no.'" Exhibit #2 at 2. Also, Det. Gregory reported that, "[Morris] only had her pants unzipped and did not ever have them taken down." *Id*. These statements conflict with the allegations alleged by Plaintiff in the motion.

¶¶ 5-25. Admitted.

¶ 26. Denied. This question is improper because it assumes both non-consent and "acts" committed by Holtzclaw. As he repeatedly stated in his deposition, Holtzclaw denied any wrongdoing and claims innocence. Holtzclaw denied guilt in sexually assaulting the Plaintiffs. *See* Exhibit #1 at 136 ("I am innocent of all charges."); 142 ("Again, during my course as a police officer, I have never done anything sexual in nature with any male or female."); 142

("Again, I'm innocent of all charges[.]"); 143 ("I have not done anything sexual in nature with any man or woman throughout my course as a police officer."); 199 ("Again, I'm innocent of all charges[.]"); 226-27 ("I am not guilty, I'm innocent of all charges.")

¶ 27 Holtzclaw admits that he has been sued for police misconduct before. However, this statement is incomplete and misleading because it omits the fact that the lawsuit was dismissed without any findings of wrongdoing or misconduct on the part of Holtzclaw. *See* Exhibit #3 (Amended Joint Stipulation of Dismissal in *Maiden v. City, et al.*, No. CIV-14-413-F (W.D. Okla.))[1]

HOLTZCLAW'S ASSERTION OF UNCONTESTED FACTS

1. In his sworn deposition in this civil case, Holtzclaw denied guilt in sexually assaulting the Plaintiffs. *See* Exhibit #1 at 136 ("I am innocent of all charges."); 142 ("Again, during my course as a police officer, I have never done anything sexual in nature with any male or female."); 142 ("Again, I'm innocent of all charges[.]"); 143 ("I have not done anything sexual in nature

[1] This lawsuit started in state district court in Oklahoma County as *Maiden v. City, et al.*, No. CJ-2014-107 (Okla. Co.), and named Daniel Holtzclaw as a defendant. According to the on-line docket, this state case was removed to federal court where it was later dismissed without any finding of wrongdoing on the part of Holtzclaw or the other Defendants.

with any man or woman throughout my course as a police officer."); 199 ("Again, I'm innocent of all charges[.]"); 226-27 ("I am not guilty, I'm innocent of all charges.")

2. Holtzclaw adopts the statement of material facts alleged by the City in its response to this motion. *See* Doc. 300 at 2.

3. Holtzclaw was acquitted of all criminal charges made against him by Hill, Morris, and Lyle. *See* Doc. 300-2 (Judgment and Sentence); Doc. 288 at 19 n.2.

4. Plaintiff Lyles told police that her contact with the officer that assaulted her was a consensual police encounter. Exhibit #4. According to the police report, Lyles stated that the officer did not arrest or detain her, but rather asked her what she was doing as she walked down the street. *Id*. After a record check came back clear, he offered her a ride home, which she declined initially but then accepted. *Id*.

5. Lyles also told police during her interview that the officer who sexually assaulted her was the same officer who wrote her "some tickets" about a year prior. Exhibit #5; Exhibit #7. She said this officer wrote her tickets and let her go. *Id*. Police obtained copies of all of the tickets written to Lyles, and discovered that Holtzclaw had never written her a ticket. *Id*. The tickets were

written by Officer Allan Cruz. *Id*.

6. Plaintiff Hill testified at trial that officers (including Holtzclaw) encountered her while she was high on PCP. Exhibit # 6 at 1232. She was placed in the back of a patrol car and a female officer searched her. *Id*. 1249. During this search, the officer found a small glass vial of PCP on Hill's person. *Id*. Hill tried to get rid of this evidence by "crushing" it in her mouth. *Id*. 1249-50; 1329 (Q. "[Y]ou had it in your mouth you crunched down on it with your teeth and you shattered it inside your mouth?" A. Yes, I did."). This vial had PCP in it, so police called an ambulance to take her to the hospital. *Id*. 1250, 1330-31.

7. Plaintiff Morris could not pick Holtzclaw out of a photographic line-up. Exhibit #8.

8. Morris testified at the preliminary hearing that when Holtzclaw made contact with her that she had a crack pipe. Exhibit #9.

9. Morris testified at trial that she was walking down the street when she was approached by Holtzclaw. Exhibit #10.

SUMMARY JUDGMENT STANDARD

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). The Tenth Circuit has stated that a genuine issue of 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 (10th Cir. 2011).

ARGUMENT AND AUTHORITY

The Plaintiffs have outlined the general legal principles applicable to motions for partial summary judgment. Doc. 288 at 13. However, application of those principles to this case compels the conclusion that the motion must be denied. The Plaintiffs seek summary judgment on two grounds, neither of which are persuasive:

1. Issue Preclusion.

If this motion sounds familiar, it should. Plaintiffs Ellis and Raines presented to the Court a similar motion earlier this year, arguing essentially the same ground–that the contested civil termination hearing that was held by the City when it wanted to fire Holtzclaw as a police officer should bar re-litigation of the issues raised there. *See Ellis v. Holtzclaw*, CIV-16-19-HE (Doc. 107). This Court rejected this claim and denied the motion. *Id*. (Doc. 121). The Court should do so again on this one.

As this Court has recognized in the prior Order denying a similar motion, Tenth

Circuit precedent allows for issue preclusion for state agency determinations under limited circumstances. *Id*. (Doc. 121 at 2-3 (*citing Salguero v. City of Clovis*, 366 F.3d 1168 (10th Cir. 2004)). However, this Court refused to find such circumstances as to two other Plaintiffs who made similar allegations against Holtzclaw, on the grounds that identity of issues was lacking (they were similar, but not the same), and that it was "questionable" whether determinations of violation of police department policy are necessarily the same as the constitutional violations alleged by the Plaintiffs. *Id*. (Doc. 121 at 3).

Further, this Court concluded that Holtzclaw was not afforded a "full and fair opportunity" within the meaning of the collateral estoppel doctrine to litigate the pertinent issues in the employment termination proceeding because: 1) that hearing occurred prior to Holtzclaw's trial, at a time when he had a significant interest in limiting his involvement "so as not to reveal the approach he expected to take in the criminal trial, where the stakes were considerably higher"; and 2) 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. *Id*. (Doc. 121 at 3).

The same result must obtain here. Plaintiffs make no effort to address these issues, do not attempt to rebut the fact that Holtzclaw was in a pre-trial posture at the

time of the employment termination hearing or that the rules of evidence do not apply in such proceedings (the hearsay problem noted by this Court); and Plaintiffs further make no effort to show this Court that the same issues were litigated at the employment hearing, or that the constitutional violations they raise now in this proceeding are the same legal issues as those decided at the termination hearing.

For these reasons, like the first time around with the two prior Plaintiffs, this Court must conclude that "the result of the termination hearing and process is not such as should preclude Holtzclaw from denying liability here." *Id*. (Doc. 121 at 5).

This is especially so in light of the fact that a jury acquitted Holtzclaw of the claims made by Hill, Morris, and Lyle. The jury rejected their accusations for good reason–they were not credible.

Lyle told police that the officer who assaulted her was the same one who wrote her tickets a year before, and that officer turned out to be someone other than Holtzclaw.

Hill was arrested while high on PCP, actually bit down on the glass vial when police found it and it exploded in her mouth, which resulted in her being taken to the hospital where a sexual assault allegedly occurred. Her allegations are not credible and the jury rejected them.

Morris could not even pick Holtzclaw out of photo line-up; and when

Holtzclaw made contact with her during a consensual encounter, she had a crack pipe.

Finally, as outlined, *supra*, Holtzclaw has consistently denied the allegations and has asserted his innocence. Thus, partial summary judgment on the basis asserted by the Plaintiffs is unwarranted, and the motion of the Plaintiffs for partial summary judgment should be denied because the termination hearing should not be given any legal preclusive effect.

2. 42 U.S.C. § 1983.

Plaintiffs move for partial summary judgment on the basis that Holtzclaw was acting under color of law when he performed unreasonable seizures, assaults and batteries as to S.H., and used excessive force. Doc. 288 at 14-21. Plaintiffs are not entitled to summary judgment on any of these grounds.

First, there were no unreasonable seizures in this case. Plaintiffs assert that Morris and Lyles were arrested. Doc. 288 at 18. They were not.

As Holtzclaw pointed out, *supra*, Lyles stated that the officer who assaulted her did not arrest or detain her; he simply ran a records check and offered her a ride home. She declined initially but then accepted. There is nothing to indicated that this contact was anything other than a consensual police encounter with a citizen. Holtzclaw did not exert police authority, he simply asked her if she wanted a ride and she accepted.

Similarly, Morris was walking down the street when she was approached by Holtzclaw in his patrol car and she volunteered that she had a crack pipe. There is nothing unreasonable about a police officer detaining further a person who admits this. *See United States v. Sokolow*, 490 U.S. 1, 7 (1989) (every investigative stop must be justified by reasonable suspicion supported by articulable facts that criminal activity may be afoot).

Consensual encounters between police and citizens do not implicate the Fourth and Fourteenth Amendments. *United States v. Sandoval*, 29 F.3d 537, 540 (10th Cir. 1994). Both Lyles and Morris were walking down the street and Holtzclaw started talking to them without exerting legal authority. There is nothing unusual or unlawful about this. Morris admitted during this consensual encounter that she had a crack pipe on her person. Holtzclaw does not read the Plaintiff's motion to seriously assert that this is not a reason sufficient to conduct further investigative questioning.

Finally, there is nothing unreasonable about the arrest of Hill. Hill was detained with others at some apartments where several police officers converged, including Holtzclaw. As Hill admitted, a female officer patted her down for weapons and contraband, found a glass vial of PCP, and Hill put the vial in her mouth and tried to eat it to destroy the evidence because she did not want to be arrested and sent to

jail.

Police sent for an ambulance to take her to the hospital because of her own actions, and Holtzclaw was the officer that guarded her at the hospital. There is nothing at all unreasonable about any of that.

Plaintiffs have made no case nor provided uncontroverted facts that Holtzclaw acted unreasonably under color of law.

As to the Plaintiff's claims of excessive force and assault and battery as to Hill, these claims are contested. A jury did not believe the testimony of any of these three women, acquitted Holtzclaw of all criminal counts related to them, and Holtzclaw has asserted his complete innocence in his deposition as to all claims by all Plaintiffs.

CONCLUSION

There exists issues of material fact that cannot be resolved at the summary judgment pre-trial level; nor is there any legal claim of issue preclusion that satisfies the criteria set forth by the Supreme Court and the Tenth Circuit. Thus, the motion of the Plaintiffs must be denied.

DATED this 26th day of October, 2020.

Respectfully submitted,

/s/ James L. Hankins
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2020, I electronically transmitted the attached Notice of Appeal to the Clerk of Court using the ECF System for filing. Based on the records currently in the file, the Clerk of the Court will transmit a Notice of Electronic Filing to the registered participants of the Electronic Case Filing System.

/s/ James L. Hankins