

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

SHERRY ELLIS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	NO. CIV-16-0019-HE
)	
DANIEL HOLTZCLAW, <i>et al.</i> ,)	
)	
Defendants.)	

TABATHA BARNES, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	NO. CIV-16-0184-HE
)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,)	
)	
Defendants.)	

ADAIRA GARDNER,)	
)	
Plaintiff,)	
)	
vs.)	NO. CIV-16-0349-HE
)	
DANIEL HOLTZCLAW, <i>et al.</i> ,)	
)	
Defendants.)	

ROSETTA GRATE,)	
)	
Plaintiff,)	
)	
vs.)	NO. CIV-16-0412-HE
)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Defendant Holtzclaw has moved to compel certain discovery from defendant City of Oklahoma City. Certain aspects of the motion were resolved by the court’s order of September 13, 2021 [Doc. #361]. The court held a hearing on November 4, 2021, as to the remaining discovery sought to be compelled and finds and concludes as follows:

1. DNA testing/abstracts. Holtzclaw seeks access to the pants and belt of his uniform, which were seized during the City’s investigation of him and were the basis for key testimony against him at his criminal trial. He indicates he wishes to have his own experts examine those objects to conduct their own tests and to evaluate the results of DNA tests performed by the State. Counsel indicated at the hearing that those results are viewed as pertinent to the claims in this case of plaintiffs Gardner, Lyles, and Morris.

The City indicates that certain reports of its testing results can be provided to Holtzclaw, but objects to any further production on the basis that further testing of the materials may result in destruction of the sample, that the evidence may yet be needed in the event a retrial of the charges against Holtzclaw should occur, and that the evidence is only marginally related to remaining issues in this case.

The court concludes there is a significant continued interest in maintaining the integrity of the evidence at issue notwithstanding the completion of the criminal trial of Holtzclaw and the exhaustion of direct appeals. Holtzclaw continues to maintain his innocence of all the criminal charges and has initiated post-conviction efforts in state court to set aside those convictions. Further, the parties have noted that the trial judge in the state criminal trials has resigned from the bench in the wake of allegations as to his own sexual misconduct. While the parties have been unable to point to any direct connection between the judge's alleged improper activities and the prosecution of Holtzclaw,¹ the possibility of some basis for post-conviction or habeas relief grounded in those or other circumstances, though remote, make a further trial possible. There is thus a significant basis for avoiding any actions in this civil case which might impair evidence or confuse the chain of custody as to it.

Also pertinent to the present issue is the somewhat marginal nature of the evidence sought as to the claims in this case. Holtzclaw's efforts to review and/or challenge the DNA evidence appears considerably more focused on undercutting the evidentiary basis for certain of his convictions, rather than on proving or disproving some issue still open here. To the extent that a plaintiff's claim here is based on conduct which was the basis for a criminal conviction against Holtzclaw, he will not be allowed to relitigate the issue of liability. Nor can he appropriately use this case solely as a discovery vehicle for

¹ *The allegations of misconduct by the judge apparently involve female Assistant District Attorneys who are as yet unidentified, and counsel here indicated they do not know whether any of the allegedly involved ADAs were also involved with the Holtzclaw case.*

seeking information to use as grounds for post-conviction or habeas relief. Counsel indicated at the hearing that the DNA evidence sought here (i.e., what examination of the pants showed) was the basis for the conviction on the counts involving Gardner. But those counts did result in a conviction and, as noted, this case is not the proper vehicle for challenging or re-litigating the conviction related to Gardner.

Holtzclaw indicates he also seeks the evidence for use here as to the claims of plaintiffs Morris and Lyles, whose claims arise out of alleged circumstances which did not result in a criminal conviction against plaintiff. However, the alleged conduct as to Morris was almost six weeks before the date Holtzclaw's pants were seized by investigators and any suggestion that further examination now would reveal relevant information is extraordinarily remote and borders on pure speculation. The alleged conduct as to Lyles was closer in time to the seizure but, as noted above, the DNA evidence was not used in the criminal trial as to the count involving Lyles and issues as to the propriety of the testing do not implicate the claims of Lyles here. The court concludes the marginal relevance and relatively speculative nature of the information sought for use in resolving the claim of plaintiff Lyles is outweighed by the competing considerations of remoteness and the need to avoid jeopardizing the evidence for use in a potential criminal retrial.

The motion will be denied as to the additional testing sought on the pants and belt.

2. Comparative samples for Gregory and Davis. In light of the court's conclusion as to further testing, it is unnecessary to belabor Holtzclaw's request to compel the production of DNA materials from Gregory and Davis for comparative purposes.

However, the court notes that no discovery request for DNA samples via Rule 35 was made prior to the filing of the motion to compel at the conclusion of the discovery period. The City indicates, and Holtzclaw does not appear to dispute, that it does not have existing records as to the DNA of Gregory or Davis.

3. Ruddock's review of Taylor testimony.

Holtzclaw seeks to compel the production of Campbell Ruddock's review of OCPD chemist Elaine Taylor's testimony at the criminal trial. It is unclear from the current submissions who or what initiated Ruddock's review of Taylor or how that relates to the court review apparently triggered by the Court of Criminal Appeals' consideration of Holtzclaw's appeal. However, it appears that any criticisms of Taylor's testimony in the criminal case would be subject to the same issues as noted above as to the DNA evidence. That evidence was offered as to Holtzclaw's conduct involving Gardner, not Lyles or Morris, and the court declines here to order discovery substantially focused on undercutting the criminal conviction rather than resolving the open claims in this case. Any deficiencies in the testing or testimony do not appear to have a significant application here.

4. Incident reports involving plaintiff Grate.


Defendant Holtzclaw seeks six OCPD incident reports apparently involving prior complaints by plaintiff Rosetta Grate. Although these were also not sought by appropriate discovery request prior to the motion to compel, the City indicates it has identified the complaints and that there is no particular burden to them from turning them over. In these circumstances, the court concludes the City should be directed to turn

them over, but subject to the condition that the referenced reports continue to be held confidential by all parties and that, absent further order of the court, they be used only for the purposes of Case No. CIV-16-0412-HE.

For the foregoing reasons, defendant Holtzclaw's motion to compel [Doc. #223] is **GRANTED** as to his request for the Grate incident reports, but otherwise **DENIED**.

IT IS SO ORDERED.

Dated this 10th day of November, 2021.



JOE HEATON
UNITED STATES DISTRICT JUDGE