

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

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

ORDER

Plaintiffs filed this case alleging various claims against defendant Daniel Holtzclaw, a former Oklahoma City police officer. They also assert claims against the City of Oklahoma City, its former police chief Bill Citty, and certain individual officers, based on alleged deficiencies in the hiring, training, supervision, and investigation of Holtzclaw. The §1983 claims against Chief Citty in his individual capacity all essentially seek to impose supervisory liability on him for the various violations of rights alleged to have been committed by Holtzclaw.¹ Those include claims for wrongful seizure, wrongful use of force, and violation of bodily integrity, grounded in the Fourth and Fourteenth Amendments to the Constitution. Plaintiffs also assert a conspiracy claim against Citty based on 42 U.S.C. § 1985.

¹ The court previously dismissed plaintiffs' claim against Citty based on state law. See Doc. #27.

Chief City has moved for summary judgment as to all claims against him.² Plaintiffs have responded to the motion. Plaintiffs' response indicates that it objects to summary judgment only as to the claims of plaintiffs Ligons and Lyles; it does not purport to object to the motion on behalf of plaintiffs Hill, Barnes, Morris, and Johnson.³

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 Servs., Inc., 662 F.3d 1134, 1141 (10th Cir. 2011) (quotations and citation omitted).

When evaluating a summary judgment motion based on the defense of qualified immunity, the court must "engage in a two-pronged inquiry." Tolan v. Cotton, 572 U.S. 650, 655 (2014). Taking the facts in the light most favorable to plaintiff, the court must determine whether the defendants' conduct violated a constitutional right. *Id.* at 655-56. Also, the court must determine "whether the right in question was clearly established at the time of the violation." *Id.* at 656 (quotations and citation omitted).

A party's failure to respond to a motion for summary judgment does not constitute, by itself, a sufficient basis for granting summary judgment. The movant must still

² Only the individual capacity claims against City are addressed here. To the extent plaintiffs have sued City in his official capacity as a basis for municipal liability, those claims will be separately addressed in connection with the City's motion.

³ The claims of plaintiff Syrita Bowen were previously dismissed as to all defendants [Doc. # 75].

demonstrate that no genuine issue of material fact exists and that movant is entitled to judgment. Reed v. Bennett, 312 F.3d 1190, 1195 (10th Cir. 2002).

Applying these standards to the parties' submissions, the court concludes defendant City's motion should be granted.

A. Supervisory Liability

To establish an individual capacity claim based on "supervisory liability," a plaintiff must show an affirmative link between the supervisor and the constitutional violation. Dodds v. Richardson, 614 F.3d 1185, 1195 (10th Cir. 2010). This requires proof of personal involvement, causation, and culpable state of mind. Burke v. Regalado, 935 F.3d 960, 997 (10th Cir. 2019). The plaintiff can show personal involvement by establishing the supervisor created or had responsibility for the continued operation of the unconstitutional policy, custom, or procedure which resulted in the violation of plaintiff's constitutional rights. *Id.* The causation element requires a showing that defendant's action(s) caused the constitutional violation by setting in motion a series of events that the defendant knew, or reasonably should have known, would cause others to deprive the plaintiff of his or her constitutional rights. *Id.* As to the third element, a plaintiff must show that "the supervisor acted knowingly or with deliberate indifference that a constitutional violation would occur." Dodd v. Richardson, 614 F.3d 1185, 1196 (10th Cir. 2010) (quotations and citation omitted).

Defendant City's motion offers substantial evidence, undisputed by plaintiffs, that Holtzclaw was thoroughly vetted before he was hired, that he received substantial training as a police officer, and that the City's policies and procedures did not authorize or condone

sexual misconduct by an officer. There is no evidence of any custom or practice permitting the sort of misconduct alleged here. There is no evidence supporting an inference of an affirmative link between Citty, acting as Holtzclaw's supervisor, and the alleged constitutional violations.

Plaintiffs point to a prior incident involving Demetria Campbell, which they say should have put defendants on notice of Holtzclaw's misconduct. However, as discussed by the court previously [Doc. # 190], the evidence as to Ms. Campbell's statements to both the medical personnel at the hospital and to the investigating officer does not support an inference that she was objecting to sexual misconduct by Holtzclaw. Further, it is undisputed that defendant Citty knew nothing of the Campbell incident until later, after Holtzclaw had been identified by the police investigation as the one assaulting black women.

Plaintiffs also point to allegations of rape made by Terri Morris. They offer evidence that her allegations were not assigned to an investigator until three days after she made her complaint. A three-day delay under the circumstances here does not support a conclusion of deliberate indifference, but, regardless, there is no evidence the delay was due to anything Citty did. Further, plaintiffs' evidence that Citty, when briefed, directed the Investigations Bureau to continue the investigation rather than turning it over to Internal Affairs, or that he failed to order a polygraph examination, does not support an inference of indifference to the charges.

In short, there is no evidence to suggest Chief Citty acted inappropriately as the investigation(s) progressed or that there is any basis for a finding of deliberate indifference as to any of the “supervisory liability” constitutional claims asserted by plaintiffs.

B. § 1985(3) Conspiracy

“The essential elements of a § 1985(3) claim are: (1) a conspiracy; (2) to deprive plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom.” Tilton v. Richardson, 6 F.3d 683, 686 (10th Cir. 1993) (citation omitted). The conspiracy “must be motivated by some racial, or perhaps otherwise class-based, invidiously discriminatory animus.” *Id.* (quotations and citation omitted).

Chief Citty has presented evidence of the policies and procedures of the department and actions related to the hiring, supervision, and investigation of Holtzclaw that are all inconsistent with any conspiracy to interfere with plaintiffs’ constitutional rights. Nothing in the evidence suggests any such conspiracy nor any act by Chief Citty in furtherance of such conspiracy. Chief Citty is entitled to summary judgment on plaintiffs’ civil rights conspiracy claim.

C. Qualified Immunity


Even if plaintiff had come forward with some evidence to support a supervisory liability or other claim against Citty, the court would nonetheless grant summary judgment in his favor. Citty has invoked the defense of qualified immunity and plaintiffs’ rather perfunctory response does not even attempt to make a showing that his conduct violated some clearly established constitutional right. Once the defense is raised, a plaintiff “bears

the burden to demonstrate that the defendant violated his constitutional rights and that the right was clearly established.” Singh v. Cordle, 936 F.3d 1022, 1033-34 (10th Cir. 2019). They have not done so here.

Accordingly, defendant City’s Motion for Summary Judgment [Doc. #362] is **GRANTED**. Final judgment in favor of City against plaintiffs will be entered at the conclusion of the case.

IT IS SO ORDERED.

Dated this 7th day of December, 2021.



JOE HEATON
UNITED STATES DISTRICT JUDGE