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

TABATHA BARNES, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CIV-16-0184-HE
	)	
CITY OF OKLAHOMA CITY, *et al.*,	)	
	)	
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. Those claims are in the nature of "supervisory liability" claims, based on alleged deficiencies in the hiring, training, supervision, and investigation of Holtzclaw, and seek to impose liability on the City and other defendants for violations committed by Holtzclaw. The violations of rights alleged to have been committed by Holtzclaw include claims for wrongful seizure, wrongful use of force, and violation of bodily integrity, grounded in the Fourth and Fourteenth Amendments to the Constitution. Further, plaintiffs assert a conspiracy claim against the defendants based on 42 U.S.C. § 1985. And finally, plaintiffs Ligons and Hill assert tort claims against the City under state law.

Oklahoma City has moved for summary judgment as to plaintiffs' claims under § 1983 and Oklahoma law.[1] Plaintiffs have responded to the motion. The response does

[1] *The motion does not address the conspiracy claim asserted pursuant to 42 U.S.C. § 1985.*

not purport to resist the motion as to all claims of all plaintiffs and some are tacitly conceded. As to the matters the response does address, plaintiffs do not challenge the City's formal policies as to matters in issue here but contend that the City had a custom and practice of inadequately supervising and training its officers and inadequately responding to citizen complaints. As to plaintiffs Ligons and Lyles, they also assert municipal liability based on the actions of Chief Citty as the policymaker for the police department. And finally, plaintiff Ligons contends that the City is liable to her under state law for actions by Holtzclaw that were within the scope of his employment.

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).

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 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). As to those claims and issues embraced by the motion but not explicitly responded to by plaintiffs, the court has reviewed the City's submissions and concludes the City's motion is sufficiently supported to warrant summary judgment.

A. Municipal Liability under § 1983.

For purposes of the present motion, the City does not dispute that then-officer Holtzclaw violated the constitutional rights of the various plaintiffs by his conduct. Rather, the determinative question is whether the City is responsible for those violations under the standards and "stringent proof requirements" applicable to § 1983 claims. *See* Schneider v. City of Grand Junction Police Dept., 717 F.3d 760, 763 (10th Cir. 2013). Under § 1983, a municipality is not automatically responsible for the constitutional and other violations committed by its employees. Brown v. Montoya, 662 F.3d 1152, 1164 (10th Cir. 2011). Rather, the municipality is liable only if a plaintiff's injury is caused by the policy of, or some custom and practice of, the municipality. Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978). More specifically, a plaintiff must establish these elements to make out a basis for municipal liability: an official policy or custom, causation, and the necessary state of mind. Burke v. Regalado, 935 F.3d 960, 998 (10th Cir. 2019). If a custom or practice is the basis for liability, it "must be so well settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice." *Id.* (quotations and citation omitted). To establish causation, the challenged policy or practice must be so closely related to the constitutional violation as to show that the municipality was the "moving force" behind the injury alleged. Schneider, 717 F.3d at 770. As to the state of mind element, a plaintiff must demonstrate that the municipal action or inaction reflects "deliberate indifference" to the known or obvious consequences of its conduct. Bd. of Cnty. Comm'rs. v. Brown, 530 U.S. 397, 407 (1997).

As noted above, plaintiffs do not challenge the formal policies adopted by the City of Oklahoma City. Rather, they contend that the custom and practice of the City, particularly its failure to adequately supervise police officers and to respond to citizen complaints, reflects deliberate indifference to the rights of plaintiffs and that that indifference led to their injuries.[2] The court concludes plaintiffs' evidence is insufficient to create a justiciable question based on these theories.[3]

Plaintiffs' evidence does not support an inference that there was a practice of the OCPD responding inappropriately to allegations of sexual misconduct by its officers or that there was some deficient practice as to their supervision such as would support a conclusion of deliberate indifference. At most, they suggest instances where, with the benefit of 20/20 hindsight, the OCPD might have done something better or quicker, but that is not the standard.

For example, plaintiffs suggest the department's review of use of force situations should have been more extensive. However, it is undisputed the department had in place a review process for uses of force and that it used it. Further, it is undisputed that officers, like Holtzclaw, who had more than a set number of uses of force in a particular time period were monitored more closely via the Early Intervention Program. Plaintiffs say the

---

[2] The Amended Complaint also asserts a claim based on failure to train. The City has presented unrebutted evidence of the training received by Holtzclaw and other officers and plaintiffs have not responded to the motion as to that claim. Further, as noted in Schneider, the absence of specific training directed to sexual assault does not suggest deliberate indifference — any reasonable officer would have understood such conduct to be improper without specific training on it.

[3] Various of plaintiffs' arguments are discussed more fully in the orders addressing the claims against the individual defendants in this and the related cases.

program was not thorough enough, or that the additional review was limited, but neither of those assertions, even if true, suggest deliberate indifference to uses of force.[4]

Plaintiffs suggest that supervisors should have monitored the physical movements of their officers more closely or that they should have checked to see when officers were accessing the records management system. It is undisputed that is exactly what the department did as to Holtzclaw once if had information it viewed as sufficiently specific and credible. But the absence of such continuous and detailed oversight where such indicators are lacking does not support an inference of deliberate indifference.

Plaintiffs suggest supervision was deficient because supervisors did not automatically refer complaints against officers up the chain of command. However, a process which involves screening and resolution of complaints at the initial supervisory level where possible strikes the court as thoroughly unremarkable. It does not support an inference of deliberate indifference as to police misconduct.

The particular instances of supervision involved as to Holtzclaw also do not support an inference of deliberate indifference. The court has separately addressed the conduct of defendant Bennett as to his investigation of the Campbell complaint**.** *See* Doc. #190. The conduct does not suggest deliberate indifference as to Holtzclaw's alleged actions. Similarly, the investigation of defendant Morris' complaints does not show deliberate indifference. It is undisputed that, when she reported her alleged rape, she indicated it had

[4] *Even if the court's conclusion was otherwise, there would be the additional issue of whether the use of excess force in other situations would have foreshadowed sexual misconduct like that involved here.*

happened three or four days before. It is also undisputed the department investigated the complaint. The assignment of an investigator three days after she reported it, rather than instantly, does not support an inference of deliberate indifference, particularly in light of the time frame she described. Further, it is undisputed that the department followed up on her complaint and attempted to link her allegations with other information as to officer assignments, but it did not fit. The investigation showed Holtzclaw had a prior contact with Morris, but the contact was two to three weeks prior to the date she suggested the rape occurred. Given that time gap and other issues as to Morris' credibility, plaintiffs' suggestion that Chief Citty should have then suspended Holtzclaw on the basis of Morris' complaint is unpersuasive. Further, Morris' initial statements eventually proved to be false in various respects but, for present purposes, the significant aspect is that the City's investigation of Morris' complaint does not support an inference of deliberate indifference to police misconduct. In sum, plaintiffs' evidence is insufficient to raise an issue of material fact based on claimed deficiencies in the City's supervisory efforts.

Plaintiffs' suggestion of some systemic deficiency in responding to citizen complaints fares no better. Plaintiffs suggest Chief Citty rarely ordered administrative proceedings against an officer if a case was presented to the district attorney and charges were declined. But that characterization acknowledges such actions did sometimes occur and, in any event, a referral to the district attorney is inconsistent with an inference of deliberate indifference. Similarly, plaintiffs' objection that Chief Citty did not automatically suspend an officer when a citizen complaint was made is unpersuasive.

There is nothing unreasonable about making a preliminary evaluation of whether a complaint is sufficiently credible or justified before suspending an officer.

Plaintiffs also point to the differences in outcome for citizen complaints against officers versus administrative investigations. The evidence indicates that, in 2014, there were 189 citizen complaints against officers and that seven percent were found to be sustained. Plaintiffs contrast that with the 176 administrative investigations where 48% were found to be sustained. That comparison strikes the court as thoroughly unremarkable. Administrative investigations would have occurred after supervisors or others in the chain of command identified some conduct that they viewed as warranting discipline. Citizen complaints have gone through no such filter. The evidence therefore does not suggest some differential treatment in comparable situations and does not support an inference of deliberate indifference to police misconduct.

In short, even drawing all inferences from the evidence in favor of the plaintiffs, there is no basis for an inference that the City of Oklahoma City had some custom or practice suggesting deliberate indifference to plaintiffs' rights. In light of that conclusion, it is unnecessary to analyze whether a basis for other necessary aspects of plaintiffs' § 1983 claims (i.e., causation) have been shown. The City's motion for summary judgment will be granted as to the § 1983 claims.

B. State Law Claims

The City has moved for summary judgment as to all claims asserted by plaintiffs under state law based on the Oklahoma Governmental Tort Claims Act, 51 Okla. Stat. §§ 151-172. Under the Act, a person asserting a claim against a political subdivision must file

a notice of tort claim as a precondition to recovery. *Id.* § 156. It is undisputed that, of the plaintiffs now in the case, only plaintiffs Ligons and Hill did so. That state law claims against all other plaintiffs are therefore barred.

As to those who did file notices of claim, the City seeks judgment on the basis that the actions of Holtzclaw violating plaintiffs' rights were outside the scope of his employment. Only plaintiff Ligons has responded to this aspect of defendant's motion.

In general, municipalities in Oklahoma are liable only for the "tortious acts of police officers committed within the scope of employment as defined by the GTCA." Tuffy's, Inc. v. City of Oklahoma City, 212 P.3d 1158, 1167 (Okla. 2009). Sexual misconduct like that which plaintiffs allege as to Holtzclaw is plainly outside the scope of his employment. *See* Bd. of Cnty. Comm'rs v. Ass'n of Cnty. Comm'rs, 339 P.3d 866, 870 (Okla. 2014); Schovanec v. Archdiocese of Oklahoma City, 188 P.3d 158 (Okla. 2008). Plaintiff Ligons concedes that Holtzclaw was acting outside the scope of his employment when he orally sodomized her, but contends he was acting within the scope when he made her pull down her pants and pull up her shirt "while searching for contraband during a traffic stop." Ligons cites no authority for the remarkable assertion that having a woman expose her breasts and pull down her pants is a normal incident of a traffic stop and that plainly is not the case. As a result, there is no plausible basis suggested here for concluding that the actions of Holtzclaw at issue in this case were within the scope of his employment.

The City's motion will be granted as to plaintiffs' claims asserted pursuant to state law.

C. Conspiracy claim - § 1985.

The City's motion does not explicitly seek summary judgment as to the conspiracy claim asserted pursuant to 42 U.S.C. § 1985. However, none of the evidence submitted in the various motions has suggested a plausible basis for a conspiracy claim and the court has entered summary judgment on it as to any defendants who raised the issue. In those circumstances, it appears no conspiracy claim plausibly remains for resolution. However, as the City's motion did not explicitly seek judgment as to that claim and the parties have not otherwise addressed it, plaintiffs are directed to indicate, by an appropriate filing within seven days, whether, in their view, a basis for conspiracy claim remains in light of the court's other rulings.

For the foregoing reasons, defendant City of Oklahoma City's Motion for Summary Judgment [Doc. #368] is **GRANTED** as to all claims against it other than the § 1985 conspiracy claims. The appropriate disposition of the conspiracy claims will be addressed by further order.

IT IS SO ORDERED.

Dated this 20th day of December, 2021.

JOE HEATON
UNITED STATES DISTRICT JUDGE