

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

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

**PLAINTIFF REGINA COPELAND’S MOTION FOR  
PROTECTIVE ORDER & BRIEF IN SUPPORT**

COMES NOW Plaintiff Regina Copeland (“Ms. Copeland”), by and through her attorneys of record, and, in accordance with Federal Rule of Civil Procedure 26(c)(1), hereby moves for a protective order to limit the scope of questioning at her upcoming deposition to protect her from embarrassment and oppression and to prevent discovery that is disproportionate to the needs of this case. In support, Ms. Copeland presents as follows:

1. Ms. Copeland is scheduled to be deposed by counsel for Defendant Daniel Holtzclaw at 1:00 P.M. on Tuesday, September 22, 2020.
2. In prior depositions in this action, counsel for Defendant Holtzclaw have used the discovery process in this case for the sole purpose of eliciting testimony to use in Defendant Holtzclaw’s forthcoming post-conviction relief motion in state court.
3. In prior depositions, defense counsel have engaged in abusive discovery practices against Plaintiffs, causing undue distress, embarrassment, and oppression to innocent victims of sexual assault.

4. Ms. Copeland's claims in this action arise out of the same events that resulted in a final judgment of conviction against Defendant Holtzclaw for first degree rape of Ms. Copeland.

5. The undersigned counsel certifies that Mr. Melvin C. Hall, counsel for Ms. Copeland, and Mr. James Hankins, counsel for Defendant Holtzclaw, have conferred in good faith about the concerns raised herein and were unable to come to an agreement.

### **ARGUMENT & AUTHORITIES**

Ms. Copeland seeks the Court's protection from questioning about the facts of the rape she suffered at the hands of Holtzclaw that gave rise to her claims in this action on the grounds that such questioning will cause her embarrassment and oppression and would be disproportionate to the needs of this case. Under Federal Rule of Civil Procedure 26(c)(1), the Court has the authority to "issue an order to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense" by issuing a protective order upon a showing of good cause by the movant. The options available to the Court in ruling upon such a motion include "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters." *Id.* at R. 26(c)(1)(D). Ms. Copeland asks that the court forbid inquiry into the facts of Holtzclaw's rape of Ms. Copeland and the facts of the OCPD's investigation of Ms. Copeland's report of sexual assault.

#### **I. The Court Should Forbid Inquiry into Holtzclaw's Rape of Ms. Copeland.**

The Court should issue an order prohibiting defense counsel from inquiring into the facts of Holtzclaw's rape of Ms. Copeland. Whether the rape occurred is not at issue in this case, because Holtzclaw's final judgment of conviction of the rape in his prior state-court criminal prosecution is *conclusive evidence* of the facts of that offense in this civil action arising from the same events.

Accordingly, the doctrine of collateral estoppel prevents him from re-litigating those facts in this case. *Benham v. Plotner*, 795 P.2d 510 (Okla. 1990); *Lee v. Knight*, 771 P.2d 1003 (Okla. 1989); *see also Franklin v. Thompson*, 981 F.2d 1168, 1170 (10th Cir. 1992).

In light of the preclusive effect of Holtzclaw's final judgment of conviction for rape in the first degree, it would be disproportionate to the needs of this case to require Ms. Copeland to rehash the facts of the rape, which, by their very nature, would require her to discuss very sensitive and traumatic details with total strangers whose predecessors have shown a propensity for using depositions for improper purposes and to embarrass, harass, and oppress Holtzclaw's victims.

For example, at the deposition of Plaintiff Jannie Ligons on December 14, 2018, Mr. Doug Johnson, then-counsel of record for Holtzclaw, berated Ms. Ligons (whose claims against Holtzclaw in this action also arise from the same set of facts that resulted in a final judgment of conviction) about how far Holtzclaw's penis was from her face:

Q Okay. How far was it from your face?

A Close.

Q Six inches, a foot?

[...]

THE WITNESS: I don't know exactly right now, a foot or six inches, it's close, it's in my face, so that's close.

[Excerpts from Depo. of Jannie Ligons (Dec. 14, 2018) (filed as **Exhibit 1**), 165:20-166:7]

Mr. Johnson also pressed Ms. Ligons about the length of time Holtzclaw kept his penis in her mouth: And when he – what did you understand him to mean when he said “come on”?

Q Okay. What did you do?

A He put his penis in my mouth.

Q For how long?

A I don't know how long.

MR. SOLOMON-SIMMONS: Object to the form.

THE WITNESS: It seemed like a lifetime to me.

Q (By Mr. Johnson) Okay. But I'm just asking you, and I – ma'am, I know this is hard, I'm trying to rush through it. How long was his penis in your mouth?

MR. SMITH: And I object to your statements.

THE WITNESS: I don't know exactly how long.

Q (By Mr. Johnson) You don't have to give me exactly, just your best recollection.

A Too long.

Q Would a minute, a second, ten minutes?

MR. SOLOMON-SIMMONS: Object.

THE WITNESS: Too long.

Q (By Mr. Johnson) Do you have – okay. Do you have any idea, do you have any recollection whatsoever of how long his penis was in your mouth as you've described, at that time?

MR. SOLOMON-SIMMONS: Asked and answered several times, sir.

MR. SMITH: Object to form.

THE WITNESS: Too long.

Q (By Mr. Johnson) Is that the best you can do? You don't want to put seconds or minutes on it?

MR. SMITH: Objection

THE WITNESS: I'd rather not.

MR. SOLOMON-SIMMONS: Objection to the form.

MR. SMITH: Same objection.

THE WITNESS: A second is too long.

Q (By Mr. Johnson) Okay.

A But it – I – and I know it wasn't for a second.

Q You know it was longer than that, might have been a minute; correct?

A I don't know.

MR. SOLOMON-SIMMONS: Object to form.

MR. SMITH: Same objection

Q (By Mr. Johnson) Was that you don't know?

A It was a long time.

[Ex. 1, 168:1-170:7].

Mr. Johnson even asked Ms. Ligons to comment on the appearance of Holtzclaw's penis:

Q [...] Okay. You turned around and I think you've testified that you saw him take his penis out; is that correct?

A Correct.

Q Describe what you are looking at, is there anything you can tell us unique about his penis?

MR. SOLOMON-SIMMONS: Object to form. Don't answer that.

MR. JOHNSON: Are you instructing your client not to answer a question? You understand Mr. Holtzclaw's doing 263 years, so I'm going to ask that question again.

Q (By Mr. Johnson) Is there anything you can describe unique about the officer's penis that you say was in front of you that evening?

MR. SOLOMON-SIMMONS: Object to form.

MR. SMITH: I thought this was a civil suit and not an appeal of his criminal case.

MR. SOLOMON-SIMMONS: Yeah.

MR. SMITH: Are you telling her not to –

MR. JOHNSON: He's a defendant.

MR. SMITH: Are you – are you telling her not to answer, Mr. Solomon?

MR. SOLOMON-SIMMONS: I just objected.

MR. SMITH: Okay. I apologize. Ma'am, you have to answer it, if you understand it.

THE WITNESS: I understand it.

MR. SMITH: Okay.

THE WITNESS: It was just – it was just a white penis.

[Ex. 1, 164:16-165:19].

In another example, Mr. Richard Smith, then-counsel for Defendant City, through his questioning of Plaintiff Terri Morris at her deposition on December 13, 2018, placed the blame for Holtzclaw's sexual assault of Ms. Ligons on *Ms. Morris* because her petrifying fear of retaliation initially made her reluctant to cooperate in OCPD's investigation of Holtzclaw:

Q (By Mr. Smith) May 3rd, 20 – excuse me, thank you. June 3rd, I'm looking at yours because I can't find mine, I don't want to look at your notes, you don't have any notes. It's not dated, is it, yes it is, June 3rd, 2014. So you see that, you see the top of that date?

A Uh-huh.

Q Do you realize that some of the ladies hadn't been violated by Holtzclaw on that date?

A I guess, I don't – I don't know, I didn't –

Q Including Ms. Ligons here.

A Okay. Well, I didn't know.

Q Do you know if you would have tried to cooperate, Ms. Ligons may not have been violated?

MR. SOLOMON-SIMMONS: Object to form.

MR. HALL: Object to form.

MS. HECKENKEMPER: Object to form.

Q (By Mr. Smith) You get to answer it, ma'am, they didn't tell you not to.

A Well, I didn't know, I was thinking about my – us, myself.

Q Ms. Ligons sue you?

[Excerpts from Depo. of Terri Morris (Dec. 13, 2018) (filed as **Exhibit 2**), 72:3-25].

Since Holtzclaw's final judgment of conviction precludes him from re-litigating the facts of his rape of Ms. Copeland in this action, it would be disproportionate to the needs of the case to require Ms. Copeland to sit through such intensely personal, traumatic lines of questioning.

**II. The Court Should Forbid Inquiry into OCPD's Investigation of Ms. Copeland's Report of Sexual Assault.**

The Court should also forbid questioning into OCPD's investigation into Ms. Copeland's report of sexual assault, as it would similarly be disproportionate to the needs of this case. Counsel for Holtzclaw has, throughout this case, appeared to use depositions as a means of eliciting testimony for the sole purpose of aiding Holtzclaw in seeking post-conviction relief. One of the key pieces of Holtzclaw's petition for relief will inevitably be the argument that he was convicted as a result of Detectives Davis and Gregory's "tunnel vision" and OCPD's "bias" against him. [See Excerpts from Depo. of Daniel Holtzclaw (Oct. 21, 2019) (filed as **Exhibit 3**), 10:21-12:22, 19:17-21:13]. Consequently, Ms. Copeland also anticipates that she will be asked about OCPD's investigation of her report of sexual assault, even though the issue is tangentially relevant, if at all, to the claims and defenses in this case; Ms. Copeland did not report her rape to OCPD until after Holtzclaw had been arrested for his offenses against Plaintiff Ligons, which was long after Holtzclaw had victimized each of the Plaintiffs in this case. Any testimony regarding OCPD's investigation into Ms. Copeland's report of sexual assault would simply have no bearing on any claims or defenses in this action. And, importantly, Holtzclaw has not asserted any cross-claims against the City. Consequently, any questioning on this topic would be disproportionate to the needs of the case, and Ms. Copeland should not be required to sit through questioning for the sole purpose of Holtzclaw's hoping to obtain evidence that he can use in a wholly separate proceeding in a completely different court.

## CONCLUSION

WHEREFORE, premises considered, Ms. Copeland respectfully requests that the Court protect her from being re-victimized by being forced to re-live one of the most traumatic events any woman could ever live through, considering that Holtzclaw's final judgment of conviction already conclusively establishes that the event occurred for purposes of this action, and that the Court prevent Holtzclaw's counsel from wasting Plaintiffs' counsel's time by using Ms. Copeland's deposition to elicit testimony regarding OCPD's investigation of Ms. Copeland's report of sexual assault, as such testimony would be irrelevant to the claims and defenses in this action and could only be procured for the purpose of using it in Holtzclaw's post-conviction proceedings.

Respectfully submitted,

**RIGGS, ABNEY, NEAL, TURPEN,  
ORBISON & LEWIS, P.C.**

*s/ Kimberli J. M. Heckenkemper*

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*Attorneys for Plaintiffs Copeland, Hill,  
Johnson, Ligons, Lyles & Morris*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2020, I filed the above document with the Clerk of Court. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the Electronic Case Filing System.

s/ *KyMBERLI J. M. HECKENKEMPER*