Lacaze v. City of Oklahoma City et al

2024 | Cited 0 times | W.D. Oklahoma | March 29, 2024

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA REUBIN E. LACAZE, JR.,) Plaintiff,) v.) Case No. CIV-20-1281-G THE CITY OF OKLAHOMA) CITY et al.,) Defendants.)

OPINION AND ORDER Now before the Court is a Motion for Summary Judgment filed by Defendant City (Doc. No. 66). Plaintiff Reubin E. Lacaze, Jr. has submitted a Response (Doc. No. 112), and Defendant City has submitted a Reply (Doc. No. 118).

methamphetamine and drug paraphernalia was not booked into evidence. Plaintiff, who was an OCPD sergeant and the officer responsible for booking the narcotics, became the subject of an investigation into the whereabouts of the missing evidence. At the end of the investigation, Plaintiff elected to participate in a disciplinary proceeding called a -Deputy Chief Wade Gourley.

Following the predetermination hearing, Gourley sustained all allegations of misconduct against Plaintiff, which included allegations that Plaintiff had lost or thrown ing evidence, and that Plaintiff was untruthful about what had happened to the evidence in an official police report and during the subsequent investigation. Plaintiff was terminated for untruthfulness in September 2019 by Gourley, who was by then the OCPD Chief of Police. Plaintiff was later reinstated to his position following an arbitration. On December 22, 2020, Plaintiff initiated this federal lawsuit against Defendants ll Weaver, OCPD Captain Vance Allen, and OCPD Lieutenant Doug Kimberlin. See Compl. (Doc. No. 1). In his Complaint, Plaintiff alleges claims of racial discrimination in violation of Title VII of the Civil Rights Act of 1964 against Defendant City, racial discrimination in violation of 42 U.S.C. § 1981 against all Defendants, and conspiracy to violate civil rights against all Defendants. See id. ¶¶ 63-83. Defendant City seeks summary judgment on all of . See Mot. at 18-29.

I. Standard of Review Summary judgment is a means of testing in advance of trial whether the available evidence would permit a reasonable jury to find in favor of the party asserting a claim. The e is no genuine dispute as to any material

A party that moves for summary judgment has the burden of showing that the undisputed material facts require judgment as a matter of law in its favor. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). To defeat summary judgment, the nonmovant need not convince the Court that it will prevail at trial, but it must cite sufficient evidence admissible at trial to allow a reason i.e., to show that there is a question of material fact that must be resolved by the jury. See Garrison v. Gambro, Inc., 428 F.3d

933, 935 (10th Cir. 2005). The Court must then determine esents a sufficient disagreement to require submission to a jury or whether it is so one- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986).

Parties may establish the existence or nonexistence of a material disputed fact by:

affidavits or declarations, stipulations . . . , admissions, interrogatory

ials cited do not establish the absence or

presence of a genuine dispute, or that an adverse party cannot produce

Fed. R. Civ. P. 56(c)(1)(A), (B). While the Court views the evidence and the inferences drawn from the record in the light most favorable to the nonmoving party, see Pepsi-Cola Bottling Co. of Pittsburg, Inc. v. PepsiCo, Inc. will be

insufficient; there must be evidence on which the [trier of fact] could reasonably find for Liberty Lobby, 477 U.S. at 252.

II. Undisputed Material Facts 1

A. The Demand Suppression Operation Plaintiff, who is African American, began working as a police officer for the OCPD in 1993 and was permanently assigned to the Vice Unit in 2001. See

1 Facts relied upon are uncontroverted or, where genuinely disputed, identified as such and viewed in the light most favorable to Plaintiff as the nonmoving party. (Doc. No. 67) at 12:20-13:6 . In March 2018, the Vice Unit conducted a week long demand suppression operation targeting prostitution customers at various hotels in Oklahoma City. See , at 23:10-24:8. On the evening of March 28, 2018, as a result of the suppression operation, OCPD officers arrested Brandon Brawley for possession of methamphetamine and soliciting prostitution services at the Wyndham Hotel. See (Doc. No. 66-2) (Doc. No. 80) at 34:1-37:15. Det. Jeff Coffey arrest , and Off. Kelsey Lawson 2

and Lt. Kimberlin signed the affidavit. See , at 34:1-13; (Doc. No. 66-31). The probable cause affidavit states that u -like substance with

. The probable cause affidavit further represents that [t] Id. At the time Det. Coffey prepared the probable cause affidavit, however, the substance recovered had not been tested. -25. Det. Coffey later testified in a deposition that he expected the substance would be tested prior to being booked into the property room. Id. at 35:1-7. At the conclusion of the March 28, 2018 operation, Lt. Kimberlin assigned Plaintiff and Det. Alonzo Rivera to book the evidence . Ex. 1, at 47:17-21. Before Plaintiff left the Wyndham, Det. Coffey handed him a brown

2 Off. Lawson (now Brown) was the female officer posing as a prostitute who was propositione paper sack, informing Plaintiff that the sack contained methamphetamine, which had not yet been tested, 3

and two glass pipes. Id. at 47:22-48:7. According to Plaintiff, Det. Coffey asked Plaintiff to book the narcotic evidence the two glass pipes could be disposed of. See id. at 48:1-7. Plaintiff represents that he took

the sack from Det. Coffey without looking inside and left the Wyndham. See id. at 61:17- 25, 67:6-14. Plaintiff and Det. Rivera arrived at the at 1:09 a.m. on Thursday March 29, 2018, to book the evidence, and after booking the evidence, Plaintiff and Det. Rivera went to their homes. See id. at 80:9-12, 97:15-21, 103:14-18.

On the morning of March 30, 2018, Det. Coffey asked Plaintiff for the drug seal number of the narcotic evidence that was supposed to have been booked into the property room. See id. at 102:5-103:8, 114:2-6. Plaintiff was not able to provide the drug seal number and thrown away Id. at 102:22-103:5. Plaintiff then told Det. Coffey that he would prepare a report on the missing evidence. See id. at 103:12-13.

The next day Plaintiff created a supplemental report within the OCPD Vice Unit

booking process and were unable to be located. (Doc. No. 66-5). The

3 Members of the Vice Unit are required to adhere to the Standard Operating Procedures for the unit regarding the collection and preservation of evidence. (Doc. No. 66-3) § 1000.00; see also . Ex. 4 (Doc. No. 66-4) §§ 184.01, 184.10, 184.30. OCPD Vice Unit activity reporting system reflects that Plaintiff and Det. Coffey updated and reviewed the report multiple times on March 31 and April 2, 2018. See Ex. 6 (Doc. No. 66-6) at 1-2. The report was then updated and reviewed by Plaintiff on

April 3, 2018, and submitted to Lt. Kimberlin for approval. See

B. The Administrative Investigation and Disciplinary Process Lt. Kimberlin reviewed the report on April 5, 2018, and then called Plaintiff and Det. Coffey to his office to discuss the misplaced evidence. See 68:2- 10; see also (Doc. No. 68) at 104:1-23. Lt. Kimberlin directed Plaintiff, Det. Coffey, and Det. Rivera to go to the PMU to search for the evidence, which they did to no success. at 104:19-105:7; at 131:3-6. After informing his supervisor, Capt. Allen, of the report of misplaced evidence, Lt. Kimberlin was instructed to conduct an administrative investigation into the matter on April 7, 2018. See

On June 27, 2018, Lt. Kimberlin conducted an interview of Plaintiff with a Fraternal Order of Police representative present. See (conventionally filed). During this interview, Plaintiff indicated that he did not conduct a search upon realizing that the narcotic evidence was missing because if he had left

the bag containing the narcotic evidence on the PMU room countertop, where he last recalled seeing it, someone would have found the sack and called him. See id. at 21:03-22:08. Subsequently, on September 27, 2018, Lt. Kimberlin and Capt. Allen interviewed Plaintiff again. Mot. Ex. 17 (Doc. No. 70). In this interview, Plaintiff stated he threw away the paper sack in a dumpster located outside of the PMU, thinking the sack only contained glass pipes and no narcotic evidence. See id. at 6:251-266. Plaintiff stated that he realized that he threw the paper sack away when Det. Coffey asked for the drug seal number. See id. at 31:400- 32:406. On November 28, 2018, Capt. Allen requested that a polygraph examiner administer a series of polygraph examinations on those involved in the missing narcotic , including Plaintiff and Det. Coffey. See (Doc. No. 72) at 1. Those examinations reported inconclusive results for both Plaintiff and

Det. Coffey. Id. at 1, 5.

On January 30, 2019, Plaintiff was placed on Administrative Leave with pay at the direction of then-OCPD Chief Bill Citty. See (Doc. No. 73). On April 9, 2019, Lt. Kimberlin and Capt. Allen conducted a third interview with Plaintiff, presenting Plaintiff with allegations of untruthfulness, which Plaintiff denied. See Mot. Ex. 21 (Doc. No. 74). On May 3, 2019, Plaintiff received a Predetermination Hearing Notification from then-Deputy Chief Wade Gourley. See (Doc. No. 75) at 14-26. The May 3, 2019 Predetermination Hearing Notification contained six untruthfulness during the subsequent investigation. See id. at 14-15.

The predetermination hearing was held on May 19, 2019. See (Doc. No. 76) at 1. Deputy Chief Gourley was the hearing examiner. See id. Capt. Allen

was the presenter, reporting the facts gathered throughout the investigation, and Lt. Kimberlin was a witness. See id. at 1, 5-7. Plaintiff, who had a FOP representative present with him, was given the opportunity to present his own evidence and refute the allegations against him. See id. at 41-51. Plaintiff admitted that he had thrown the sack away, that the wording of his report was inaccurate, and that his actions showed a lack of judgment, but Plaintiff insisted that he did not intend to mislead anyone. See id. at 42-48. Plaintiff explained that he was frustrated and embarrassed, which led to his lapse in judgment, admitting he knew he should have stated in his report that he threw the sack away. See id. Deputy Chief Gourley presented his findings sustaining the allegations against Plaintiff to then-interim OCPD Chief Jeff Becker. See (Doc. No. 77).

In July 2019, Deputy Chief Gourley was appointed as OCPD Chief of Police. Mot. Ex. 26 (Doc. No. 66-26) ¶ 1. No decision on the findings of the predetermination

hearing had been made in the interim. On September 5, 2019, Chief Gourley terminated u]ntruthfulness. See Mot. Ex. 27 (Doc. No. 79).

Subsequently, following an arbitration proceeding, Plaintiff was reinstated to his position as a

sergeant/investigator with OCPD. Compl. ¶ 62.

C. Alleged Comparators Plaintiff alleges four instances in which he believes that white officers were treated more leniently than truthfulness. The first instance in which non-minority comparators allegedly received more lenient treatment involves Det. Coffey, Off. Lawson, and Lt. Kimberlin, the three white officers who either prepared, signed, or approved the Brawley P.C. Affidavit. Plaintiff argues that these three officers were never disciplined for including unsubstantiated statements in the sworn affidavit and violating OCPD procedure with respect to truthfulness. See

at 10. OCPD Procedure 361.05 prescribes:

An officer, who arrests an individual for any drug violation, must perform a field test on the drug(s) and obtain a positive indication for the drug. The officer is responsible for including this information in the probable cause affidavit. The jail provides supplies used for field-testing cocaine, methamphetamine, amphetamines and heroin. -12) at 2. Additionally, OCPD Procedure 184.30 directs -testing of narcotics will be utilized to identify possible evidence prior to -4).

In his deposition, Plaintiff acknowledged that it was the OCPD practice at the time of the suppression operation to not field test narcotic evidence because of concern that the substance may be -255:7. Plaintiff represented that upon recovering narcotic evidence during an investigation, Vice officers would take the narcotics back to the Vice office to test, weigh, package, and assign a drug seal number prior to booking the evidence into the property room. See id. If the narcotic evidence tested differently than was initially stated in a probable cause affidavit, the officers who prepared the affidavit would be notified and they would correct the affidavit. See id.

Plaintiff also identifies Off. D.G. Brewer and Maj. William Patten as comparators. See . Brewer is a white officer who was issued a Class III reprimand by Chief Gourley, but was not terminated, for making false statements to criminal investigators relating to a 2017 domestic assault incident involving Off. Brewer and his then-wife, who was also a police officer. See -21) (filed under seal). Relatedly, Maj. William Patten, a white police officer, was not disciplined for his actions when he, in connection with a civil case arising out of the Brewer incident, deleted personal text messages relating to the incident. See 114-24) at 32:1-33:6 -5) at 61:4-25.

Finally, Plaintiff offers Det. Bryn Carter as a comparator. Det. Carter is a white cause affidavit by David Prater, the then-District Attorney of Oklahoma County . See 23 (Doc. No. 114-23). Det. Carter was subsequently

investigated by Internal Affairs unit . See Ex. 5, at 56:1-57:20. Chief Gourley represents that t allegations to not be substantiated, and so Det. Carter was not disciplined. See id. In

response, D.A. Prater informed Chief Gourley that his office would no longer take charges where

Det. Carter was an affiant on a probable cause affidavit and that his office had a duty to give Brady/Giglio disclosures in all cases where Det. Carter was a witness. See Resp. Ex. 23, at 3.

III. Discussion

termination constituted racial discrimination in violation of Title VII and 42 U.S.C. § 1981, The Court considers each claim in turn.

A. Racial Discrimination in Violation of Title VII Under Title VII, it is unlawful for an employer to discharge an individual or 42 U.S.C. § 2000e-2(a)(1). discrimination on the basis of race may prove intentional discrimination through either

direct evidence of discrimination (e.g., oral or written statements on the part of a defendant showing a discriminatory motivation) or indirect (i.e., circumstantial) evidence of Kendrick v. Penske Transp. Servs., Inc., 220 F.3d 1220, 1225 (10th Cir. 2000). 4

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), provides the analytical framework for claims of disparate treatment involving circumstantial evidence of discrimination, as are at issue here. Under this framework, the plaintiff must first establish a prima facie case of discrimination. See id. at 802. If the plaintiff satisfies this initial Id. is warranted unless [the plaintiff] can show there is a genuine issue of material fact as to

whether Plotke v. White, 405 F.3d

4 s case are the same whether that Carney v. City & Cnty. of Denver, 534 F.3d 1269, 1273 (10th Cir. 2008) (internal quotation marks omitted). 1092, 1099 (10th Cir. 2005). The parties agree that the McDonnell Douglas framework applies. See

i. Prima Facie Case The burden at the prima facie stage is not onerous. Tabor v. Hilti, Inc., 703 F.3d 1206, 1216 (10th Cir. 2013). To establish a prima facie case of racial discrimination, a plaintiff must present evidence showing that (1) he belongs to a protected class, (2) he suffered an adverse employment action, and (3) the circumstances surrounding the adverse action give rise to an inference of discrimination. Ibrahim v. All. for Sustainable Energy, LLC, 994 F.3d 1193, 1196 (10th Cir. 2021). 5

Id.

Defendant City concedes that Plaintiff is a member of a protected class as an African American and that he suffered an adverse employment action, but the City disputes that the adverse action occurred under circumstances giving rise to an inference of discrimination. See As detailed above, Plaintiff alleges four instances in which white OCPD officers who had committed similar violations

involving untruthfulness received less severe punishment than Plaintiff. See 34, 39-42. Considering these specific comparator examples most favorably to Plaintiff,

5 facie inquiry in all cases is whether the plaintiff has demonstrated that the adverse

employment action occurred under circumstances which give rise to an inference of DePaula v. Easter Seals El Mirador, 859 F.3d 957, 969-70 (10th Cir. 2017) (second alteration in original) (quoting Kendrick, 220 F.3d at 1227). and given his light burden at the prima facie stage, see Tabor, 703 F.3d at 1216, the Court finds that Plaintiff has satisfied his burden to show an inference of discrimination through Chief Ibrahim, 994 F.3d at 1196. The Court therefore finds that

Because Plaintiff concedes that Defendant City has satisfied its burden under the second step of the McDonnell Douglas framework by proffering a legitimate, see - 39, the Court proceeds to the final step of the analysis.

ii. Pretext The burden now shifts back to Plaintiff to show that material fact as to whether the proffered reasons [for termination] are Plotke, 405 F.3d at 1099. This final step requires that P proffered reasons were so incoherent, weak, inconsistent, or contradictory that a rational

Bekkem v. Wilkie, 915 F.3d 1258, 1268 (10th Cir. 2019) (internal quotation marks omitted Id. (internal quotation marks omitted).

Dewitt v. Sw. Bell Tel. Co., 845 F.3d 1299, 1307 (10th Cir. 2017) (internal quotation marks omitted). One way a plaintiff may show pretext on a disparate- by providing evidence that he was treated differently from other similarly-situated, nonprotected employees who violated Kendrick similarly situated when they share a supervisor or decision-maker, must follow the same

Ibrahim, 994 F.3d at 1196. comparing the relative treatment of similarly situated minority and non-minority

employees, the comparison need not be based on identical violations of identical work r Kendrick, 220 F.3d at 1233 (internal quotation marks omitted).

Plaintiff alleges four instances in which white OCPD officers who committed the same or similar violations as Plaintiff received less severe punishment than Plaintiff. See 34, 39-42. The Court examines each instance in turn.

a. The Brawley P.C. Affidavit First, Plaintiff argues that Det. Coffey, Off. Lawson, and Lt. Kimberlin, the three white officers who either prepared, signed, or approved the Brawley P.C. Affidavit, were never disciplined for including unsubstantiated statements in the sworn affidavit. See Resp. at 40. Defendant City does not dispute that these officers shared the same supervisors

and were subject to the same rules and standards as Plaintiff, but the City denies that the conduct in preparing, signing, and approving the Brawley P.C. Affidavit is See Def. Mot. at 22-23.

Plaintiff was officially terminated for untruthfulness during an administrative investigation and for falsifying a police report. See . Like making false statements in an administrative investigation or police report, making unsubstantiated statements in a probable cause affidavit implicates the integrity of the officers who prepared the affidavit. OCPD Rule 120.0 states conduc Mot. Ex. 22, at 10. Plaintiff further contends that including unsubstantiated statements in

a probable cause affidavit is specifically Procedure 361.05 prescription n officer, who arrests an individual for any drug violation, must perform a field test on the drug(s) and obtain a positive indication for the drug. The officer is responsible for including this information in the probable cause affidavit. Ex. 12 (Doc. No. 114-12) at 2; see . Additionally, Plaintiff argues that this

conduct violates OCPD Procedure 184.30, which instruct -testing of narcotics will be utilized to identify possible evidence prior to booking of the Ex. 4, at 4; see . 6

Defendant City argues, with supporting evidence, that the unsubstantiated statements in the Brawley P.C. Affidavit representing the weight of the substance and that

OCPD practice regarding field testing at the time. See -23; Ex. 31. In his deposition, Plaintiff himself stated that it was practice at the time

to not field test narcotic evidence because of the possible presence of Ex. 1, at 254:11-255:7. Plaintiff stated that upon recovering narcotic evidence during an

6 Procedure 184.30 possession of the suspected narcotic, and a field test is not available, that person may be placed in jail on those charges and the suspected narcotics submitted to the lab for chemical , at 5. Brawley was also arrested for soliciting prostitution services. See investigation, Vice officers would take the narcotics back to the Vice office for testing. See id. Then, if the narcotic evidence tested differently than was initially stated in a probable cause affidavit, the officers who prepared the affidavit would be notified and they would correct the affidavit. Id.

Viewing the facts in the light most favorable to Plaintiff as the nonmovant, the Court concludes that no signing, and approving the Brawley P.C. Affidavit, which contained unsubstantiated

statements, conduct in making false statements during the investigation and administrative hearing. There is no genuine dispute that Det. Coffey, Off consistent with OCPD practice at the time was not consistent with such practice. 7

It cannot reasonably be said that actions consistent with a department practice are of comparable

seriousness to actions inconsistent with department practice. Accordingly, Det. Coffey, Officer Lawson, and Lt. Kimberlin are in this respect not similarly situated to Plaintiff and are not proper comparators.

b. Off. D.G. Brewer As another example of pretext, Plaintiff argues that he received more severe punishment than Officer D.G. Brewer for violation of rules of comparable seriousness. See

7 This is not to say that the Court agrees with a policy of including yet-to-be-verified statements in probable cause affidavits with the intention of proving them later. The issue regarding the B missing narcotic evidence. Off. Brewer was a white officer who was issued a Class III reprimand by Chief Gourley for making false statements to criminal investigators relating to a 2017 domestic assault incident involving Off. Brewer and his then-wife, who was also a police officer. See . Brewer shared the same decision maker, Chief Gourley, and were subject to the same department policies regarding integrity and truthfulness. See , at 3, 4; at 4, 10. But unlike Plaintiff, Officer Brewer was not terminated for his untruthfulness. See

Defendant City argues that Off. Brewer was not similarly situated to Plaintiff discipline and termination resulted from on-duty activities in which he misled his supervisors while Off. discipline resulted from off-duty activities in which he misled criminal investigators. See Mot. at 23. Both instances involve a police officer being disciplined by the same decision maker for untruthfulness, however. Viewing the facts in the light most favorable to Plaintiff, the Court concludes that a reasonable factfinder could find Plainti and Off. offenses to be comparable, regardless of when the untruthfulness occurred or to whom the officers were untruthful, and so find the officers to be similarly situated and the rationale for termination to be pretextual as to Plaintiff. See Ibrahim

c. Maj. William Patten Additionally, Plaintiff argues that Maj. William Patten, a white police officer who deleted personal text messages relating to the 2017 Brewer incident, demonstrates pretextual. See 34; , at 32:21-33:6. Plaintiff argues that Patten intentionally deleted these text messages after a lawsuit was filed against him. See id. Plaintiff bears the burden Plotke, 405 F.3d at 1099.

Plaintiff, however, does not explain messages violates any OCPD policy or rule regarding truthfulness. Accordingly, because Plaintiff has not provided sufficient summary judgment evidence supporting a finding that Maj. and are comparable, Maj. Patten is not an appropriate comparator for the purposes of establishing pretext. Cf. Kendrick, 220 F.3d at 1232 (

d. Det. Bryn Carter Finally, Plaintiff argues that tenure as Chief, was publicly accused of perjury in a sworn probable cause affidavit by

D.A. Prater, received less severe punishment than Plaintiff for violating a rule of comparable seriousness. See - Resp. Ex. 23. Following D.A. Det. Carter was investigated by Internal Affairs unit at Chief igation found the allegations to be unsubstantiated. See Resp. Ex. 5, at 56:1-57:20.

Defendant City contends this incident is not a proper comparator, arguing, was investigated by OCPD and his case is still the subject of an ongoing investigation by Def. s Reply (Doc. No. 118) at 4.

Plaintiff has provided evidence that, if believed, proves that a white officer who was accused of perjury by a public official was cleared by OCPD and not disciplined at all, while Plaintiff, an African American officer, was terminated for his untruthfulness during an internal administrative investigation. Viewing the facts in the light most favorable to Plaintiff, the Court concludes that a alleged conduct to be of comparable seriousness conduct, and so find Plaintiff and Det. Carter to be similarly situated. See Ibrahim, 994 F.3d at 1197.

Accordingly, because a reasonable jury could conclude that Det. Carter and Off. Brewer were similarly situated to Plaintiff and received greater leniency for their infractions, a genuine dispute of material fact exists as to whether the stated reason for was pretextual. Defendant City is therefore not entitled to summary n violation of Title VII of the Civil Rights Act of 1964.

B. Racial Discrimination in Violation of 42 U.S.C. § 1981 raised, arguing that proper § 1981 claim against a state actor such as the City of Oklahoma City must Mot. at 25. The Court agrees. In the Tenth Circuit, a § 1981 claim cannot be brought against a state actor. Bolden v. City of Topeka, ; accord Hannah v. Cowlishaw, 628 F. App x 629, 632-33 (10th Cir. 2016).

Plaintiff argues that the § 1981 claim is properly pled because Chief Gourley was Defendant the OCPD and he caused Plaintiff to suffer a constitutional violation. See -47. The cases Plaintiff cites in support of this proposition, however, address defendant liability on claims brought pursuant to § 1983, rather than § 1981. See Monell v. N.Y.C. . Servs., 436 U.S. 658 (1978); , 717 F.3d 760 (10th Cir. 2013). Accordingly, because Plaintiff cannot recover damages under § 1981 against Defendant City as a matter of law, Defendant City is entitled to 1981 claim. 8

C. claim. See Plaintiff alleges that [t]he Defendants, either implicitly or

explicitly, entered into an unlawful agreement to deprive Lacaze of his federal rights by and that [t] ¶¶ 80-

8 Plaintiff did not request leave to amend his Complaint to assert a § 1983 claim against Defendant City. 81. While the Complaint does not specify, presumably Plaintiff brings his conspiracy claim pursuant to either 42 U.S.C. § 1983 or 42 U.S.C. § 1985(3).

§ 1983 or § 1985(3)] requires at least a combination of two or more persons acting in concert and an allegation of a meeting of the minds, an agreement among the defendants, or a general conspiratorial Brooks v. Gaenzle, 614 F.3d 1213, 1227-28 (10th Cir. 2010), abrogated on other grounds by Torres v. Madrid, 592 U.S. 306 (2021). Further, specific facts showing an agreement and concerted action amongst the defendants because

Id. at 1228 (alteration and internal quotation marks omitted).

Defendant City argues that Plaintiff only offers conclusory allegations that conspiracy had to [have] unable to offer any specific facts showing an agreement and concerted action among the

defendants. In his Response, Plaintiff argues that a rational jury could find that Defendants City, Gourley, Kimberlin, Allen, and Weaver conspired to cause policy violations by other officers, but they each acted to minimize those violations and

shie

Id. Plaintiff offers no specific facts and points to no evidence regarding an agreement or concerted action among the defendants to minimize the referenced violations, however. Additionally report was false implicates only Lt. Kimberlin.

Further, for a civil conspiracy unless the City could actually be said to have participated through Hogan v. Winder, No. CIV-12-123, 2012 WL 4356326, at *5 (D. Utah Sept. 24, 2012), aff d, 762 F.3d 1096 (10th Cir. 2014); see also Martinez ex rel. N.M. v. Ryel, No. CIV-20-833-F, 2020 WL 6555946, at *5 (W.D. Okla. Nov. 6, 2020) (noting that a government entity cannot be held liable for a § 1983 civil conspiracy claim based on a theory of respondeat superior). Plaintiff does not allege or argue that Defendant City participated in a conspiracy to violate his civil rights through a policy or custom.

For the above reasons, and as the record reflects no genuine issue for trial, Defendant conspiracy claim pursuant to Federal Rule of Civil Procedure 56.

CONCLUSION For the reasons cited herein Summary Judgment (Doc. No. 66) is GRANTED IN PART and DENIED IN PART.

Defendant City for racial discrimination in violation of 42 U.S.C. § 1981 and for conspiracy to violate his civil r racial discrimination in violation of Title VII of the Civil Rights Act of 1964.

IT IS SO ORDERED this 29th day of March, 2024.