UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

KATERI LYNEE DAHL,	]	
	]	
Plaintiff,	]	
	]	
v.	]	No. 2:22-cv-00072-KAC-CRW
	]	
CHIEF KARL TURNER, and	]	
CITY OF JOHNSON CITY, TENNESSEE,	]	
	]	
Defendants.	]	

REPLY BRIEF OF KARL TURNER, IN HIS INDIVIDUAL CAPACITY, IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Chief Karl Turner, in his individual capacity, ("Turner") replies to the Response of Kateri Lynne Dahl ("Dahl") [Doc. 82] as set forth below. In addition, Turner continues to rely on all arguments made in his opening brief. Turner acknowledges that this Reply Brief is longer than normal, but Dahl's "Omnibus Opposition Brief" of fifty-four (54) pages is mostly focused on her claims against Turner, in his individual capacity.

I. CHIEF TURNER IS ENTITLED TO QUALIFIED IMMUNITY AS TO THE FIRST AMENDMENT RETALIATION CLAIM

A. Dahl's Response improperly attempts to broaden her 1st Amendment claim

Dahl accuses Turner's dispositive Motion of ignoring the fact that Dahl was repeatedly retaliated against over a period of 6½ months, not just the non-renewal of her contract in June of 2021. *See Doc. 82, Response, PageID ##: 2092 (footnote omitted) and 2123*. In other words, that she was repeatedly subjected to retaliation in violation of the First Amendment. But Dahl's own First Amended Complaint makes it clear that her First Amendment retaliation claim is limited to the non-renewal of her contract. *See Doc. 56, First Amended Complaint, PageID #: 803.*

Moreover, her Response contains no First Amendment retaliation analysis of the alleged 6½ months of retaliation. Therefore, this attempt is without merit. Before leaving this subject, it should be noted that she has never claimed that interactions with the Tennessee Bureau of Investigation ("TBI") in December 2020 were protected conduct. She was beginning to investigate Sean Williams ("Willams") during November 2020; and her supervisor, AUSA Wayne Taylor ("AUSA Taylor"), viewed that work within the scope of her job duties. *Deposition of Wayne Taylor, p. 51, lines 1-11.* Moreover, she told Chief Turner on December 8, 2020 that AUSA Taylor had reached out to the TBI because it was working a rape/sex trafficking case in Chattanooga that involved a female who also associated with Williams. *Transcript, Doc. 61-9, PageID #: 1082, lines 1-24.* Therefore, in addition to the fact that she never alleged any interactions with the TBI were protected conduct, there is no evidence of speech as a private citizen and no analysis of an adverse action that would chill the rights of a person with ordinary firmness.

In Dahl's Response, the alleged protected speech she relies upon is her May 11, 2021 meeting with Federal Bureau of Investigation Special Agent Bianca Pearson and alleged "contemporaneous complaints to DOJ colleagues." *Doc. 82, PageID #: 2126.* In Dahl's Response, she does not assert that Turner had actual knowledge of protected conduct. Instead, she alleges that there is circumstantial evidence that he knew and that Turner's arguments as to why he recommended her non-renewal were pretexts for retaliation.

B. Dahl argues there is circumstantial evidence that Turner knew of her May 11, 2021 meeting with FBI Special Agent Bianca Pearson and her contemporaneous complaints to DOJ colleagues

In her Response, Dahl sets forth eight (8) numbered arguments that she claims support her

argument that there is circumstantial evidence that Turner knew of her complaints.

1. Dahl argues that notice of the TBI meeting quickly got back to CID Captain Kevin Peters ("Peters").

Turner's Reply: As a starting point, Dahl's Response is alleging that the fact that a December 2020 TBI meeting related to investigating Sean Williams was reported to Chief Turner, is circumstantial evidence that her May 11, 2021 complaint to the FBI and contemporaneous complaints to DOJ colleagues were reported to Chief Turner before he recommended her non-renewal in June 2021. With respect to the December 2020 TBI meeting, notice of that meeting got back to Turner because someone at the TBI told a JCPD SIS Investigator about the meeting. It would be odd for two different law enforcement agencies to be looking into the same matter without knowledge or coordination, so the SIS Investigator reported that information back to JCPD. *Peters Depo., pp. 32-33, lines 22-25; lines 1-24.* Dahl's supervisor, AUSA Wayne Taylor, acknowledged he should have informed JCPD of scheduling the TBI meeting and that he simply did not think to do so. *Taylor Depo., p. 50, lines 12-21.* These events from early December 2020 are not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

2. Dahl argues that retaliation followed days later with LeGault's list of cases, which Turner in turn sent to AUSA Taylor.

Turner's Reply: Sgt. LeGault had been complaining to Captain Peters about a lack of Dahl's productivity and lack of responsiveness. *LeGault Depo., p. 31-32, lines 1-25; 1-24.* Captain Peters told him to provide a list of cases. That list was sent to Turner and Peters on Friday, December 11, 2020 and forwarded to Dahl's supervisor, AUSA Taylor on December 15, 2020.

Turner's email to AUSA Taylor (that Dahl claims was retaliatory) reads as follows:

> Wayne,
>
> These are cases we would like information on regarding prosecution. I understand the complications with the federal grand jury and COVID-19. If Kat could send an update I will pass the information on to SIS. Thank you for assisting us in this matter.
>
> Best,
>
> Karl

Turner Decl., Doc. 66-1, Exhibit B, PageID #: 1224. This December 15, 2020 email is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

3. Dahl argues that Jane Doe 2's report to the FBI quickly got back to JCPD.

Turner's Reply: In November 2020, Jane Doe 2 went to the FBI to report an alleged rape, which is a state law crime. The rape allegedly occurred in Johnson City. The fact that someone at the FBI contacted the local law enforcement agency with jurisdiction to investigate a rape claim is unsurprising. What would have been surprising would have been the FBI *not* referring a rape victim to her local law enforcement agency. This event from November 2020 is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

4. Dahl argues that JCPD Officer Joe Jaynes ("Jaynes"), who was the FBI liaison officer, had the ability to tell Turner that Dahl had complained to the FBI.

Turner's Reply: Dahl took the deposition of Jaynes. In reviewing his deposition, it turns out that Dahl chose to avoid asking him directly whether he had any knowledge of Dahl making a

complaint to the FBI. Therefore, filed as Exhibit 1 to this Reply is a short Declaration from Jaynes explaining that: (1) during May and June 2021, he was only working in the FBI office one day per week, (2) he had no knowledge of Dahl's May 11, 2021 meeting (either at the time or later while Dahl was a SAUSA), and therefore, (3) he never reported to anyone about Dahl's complaint since he did not know about it until after Dahl's lawsuit was filed. Finally, Dahl knew at the time that she took his deposition that he was the FBI liaison during this time frame. Officer Jaynes was asked about his work schedule at the FBI. He testified that at JCPD he worked four ten-hour shifts, either Monday through Thursday or Tuesday through Friday. He would then go to the FBI office on the one day of the week that he was not working at JCPD, which would have been either a Monday or a Friday. *Jaynes Depo., Pages 11-12, Lines 21-25; 1-7.* This Court can take judicial notice that May 11, 2021 was a Tuesday. Therefore, Dahl's assertion that Jaynes might have overheard her conversation with Special Agent Pearson is gross speculation. And of course, that does not even take into account the fact that if the FBI office is a small, open air-office, as Dahl alleges, then why would she speak within earshot of a JCPD officer when she was allegedly there to complain about the JCPD. Dahl knew Jaynes and worked with Jaynes. *Jaynes Depo., p. 25-26, lines 14-25; 1-12.* This is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

5. Dahl argues that Jaynes went outside the chain of command when he wrote his June 23, 2021 email to Peters about Dahl's alleged uncommunicativeness.

Turner's Reply: This was after Turner had recommended the non-renewal of Dahl's contract. *Sandos Decl., Doc. 66-2, PageID#: 1238, Ex. B, PageID #: 1245.* This is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or

making contemporaneous complaints to DOJ colleagues.

6. Dahl argues that Sgt. LeGault went outside the chain of command when he texted Turner on June 29, 2021.

Turner's Reply: This was after Turner had recommended the non-renewal of Dahl's contract, and was the same day Dahl came to see Turner to discuss the non-renewal decision. *Dahl Decl., Doc. 82-21, PageID #: 2544 ¶ 100.* This is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

7. Dahl argues that Turner's unilateral decision to fire Dahl departed from past and normal procedures.

Turner's Reply: As a starting point, Dahl's assertion that there was a normal procedure for the renewal of a SAUSA is unsupported by admissible evidence. Dahl relies upon hearsay testimony. *See Doc. 82-21, Dahl Decl., PageID #: 2542 at ¶ 96.* Dahl cannot rely upon hearsay to prove the truth of the matter asserted. *See Federal Rule of Civil Procedure 56(c)(4) and Slowik v. Lambert*, 2024 WL 113782, at *4 (E.D. Tenn. 2024).

Moreover, the undisputed evidence is that after Dahl failed to do what she said she would do in the May 19, 2021 meeting, and failed to at least report back to Peters (so he could report back to Turner), Turner went to the City Attorney to tell her that he wanted to recommend the *renewal* of Dahl's contract so long as the City could terminate the contract early if Dahl's work performance did not improve. *Turner Decl., Doc. 66-1, PageID #: 1216; Sandos Decl., Doc 66-2, PageID #: 1238.* It was the City Attorney who advised him that the better course of action would be to recommend non-renewal and it was the City Attorney who advised him that they did not need

to advise the other parties to the MOU in advance. *Sandos Decl., Doc. 66-2, PageID #: 1238.* The fact that Turner followed the advice of the City Attorney is not circumstantial evidence that Turner was varying from "normal" procedure related to the renewal of a SAUSA contract, much less that Turner knew of the FBI meeting on May 11, 2021 or Dahl's contemporaneous complaints to DOJ colleagues. In fact, the only reasonable inference is that he was *not* seeking to retaliate against Dahl under circumstances where he went to the City Attorney still wanting to renew her contract after Dahl failed to do what she said she would do in the May 19, 2021 meeting. City Attorney, Sunny Sandos, has given her deposition testimony in this action, wherein she confirmed Turner's version of events. *Sandos Depo., Page 31, lines 18-24.*

8. Dahl argues that Turner never consulted with her after the June Grand Jury about why the five cases were not indicted.

Turner's Reply: Dahl's Response asserts that Turner's failure to follow up with *her* is circumstantial evidence that he knew of her May 11, 2021 FBI meeting or contemporaneous complaints to DOJ colleagues. But as addressed *infra*, it was Dahl who agreed to report back to Peters so that he could report to Turner. *Transcript of Dahl Recording, May 19, 2021, Doc. 61-11, PageID ##: 1151-52.* This is not circumstantial evidence that Turner knew of Dahl complaining to the FBI on May 11, 2021 or making contemporaneous complaints to DOJ colleagues.

9. Temporal proximity

Dahl's Response actually does not have a number "9." However, her Response does argue that there is circumstantial evidence based on temporal proximity. Dahl's argument is that the May 19, 2021 meeting occurred only eight days after she reported concerns about the JCPD to Agent Pearson. But her temporal proximity argument is flawed. What is unusual about this case is that

this Court has a secret recording (and transcript) of the May 19, 2021 meeting. Turner urges the Court to listen to the actual recording. This is a friendly meeting to review Dahl's cases, and as discussed in the next section, Dahl is absolutely the only person choosing which cases she would take to the June 2021 Grand Jury (and that happened to be five cases). And, Dahl agreed to report back to Peters the results of the June Grand Jury. *Dahl Recording Transcript, Doc. 61-11, PageID# 1151-52, lines 24-25; lines 1-19.* And as Dahl has characterized it, Turner made it clear in the May 19, 2021 meeting that he expected her SAUSA contract to be renewed for another year. This is inconsistent with Dahl's theory of temporal proximity. *See e.g., Doc. 14, Original Complaint, PageID #: 123 at ¶ 68;* and *see Doc. 61-11, Dahl Recording Transcript, PageID #: 1152-53, lines 20-25; line 1-23*.

Moreover, there is a temporal proximity issue, and that is the temporal proximity between the May 19, 2021 meeting and Turner's decision to recommend the non-renewal of Dahl's contract based on: (a) Dahl failing to do what she said she would do in the June Grand Jury – ***or at least report back to Peters as to why she could not do what she represented she would do***, and (b) Turner going to City Attorney Sunny Sandos, telling her that he planned to recommend Dahl's renewal, but wanted to make sure that the MOU could be terminated early if Dahl continued to have performance issues; and the City Attorney's advice that the better course of action would be to recommend to the City Manager the non-renewal of Dahl's contract. Therefore, based upon a review of the circumstances (including the May 19, 2021 secret recording), temporal proximity is not a basis for concluding that there is circumstantial evidence that Turner knew of Dahl complaining to the FBI in May 11, 2021 or making contemporaneous complaints to DOJ

colleagues. Moreover, in *Kuhn v. Washtenaw Cty.*, 709 F.3d 612, 628 (6th Cir. 2013), the Sixth Circuit held that " 'an intervening legitimate reason' to take an adverse employment action 'dispels an inference of retaliation based on temporal proximity.' " *Kuhn, supra,* was quoting *Wasek v. Arrow Energy Servs., Inc.*, 682 F.3d 463, 472 (6th Cir. 2012). As addressed in the next section, Dahl's Response asserts that Turner's interpretation of the May 19, 2021 meeting establishes pretext; but as explained below, Dahl is incorrect. Therefore, Turner's legitimate concerns from the May 19, 2021 meeting that led to his recommendation that Dahl's contract not be renewed – *after consulting with the City Attorney* – constitute an additional reason that the May 11, 2021 FBI meeting does not provide a temporal proximity argument (especially when Turner had no knowledge of the meeting). *See Doc. 66-1, Turner Decl., PageID #: 1217 at ¶¶ 36-37.*

In summary, Dahl's Response does not allege that Turner had actual knowledge that Dahl had complained to the FBI on May 11, 2021 or actual knowledge of Dahl's alleged contemporaneous complaints to DOJ colleagues. Instead, Dahl attempts to cobble together a circumstantial evidence argument, which amounts to no more than speculation. *See Rodriguez v. City of Knoxville, Tennessee*, 2021 WL 1092218, at *1 (E.D. Tenn. 2021) ("mere conclusory and unsupported allegations, rooted in speculation, are insufficient [to defeat a motion for summary judgment]. *Bell v. Ohio State Univ.*, 351 F.3d 240, 253 (6th Cir. 2003).

C. Dahl's arguments of pretext

i. Overview

In Dahl's Response, she asserts that Turner is not entitled to qualified immunity because a reasonable jury could disbelieve his proffered reason. *Doc. 82, PageID #: 2127.* Dahl's argument

does not address what a reasonable police chief could have believed, which is the second prong of the qualified immunity analysis. So for example, Dahl argues that a reasonable jury could find that Dahl did not agree to take five cases to the Grand Jury in June 2021. While Turner disagrees with Dahl's conclusion, that is the first prong analysis. But Dahl omits the second prong analysis of what a reasonable police chief could have believed from the May 19, 2021 meeting – and there is a secret recording and transcript of that meeting. Likewise, Dahl argues that a reasonable jury could find that Peters reversed his request in the May 19, 2021 meeting that Dahl needed to report back to him the outcome of the June 2021 Grand Jury. Again, Turner disagrees with Dahl's conclusion, but that is the first prong analysis. What Dahl omits is the second prong analysis of whether a reasonable police chief could have believed from the May 19, 2021 meeting that Dahl had agreed that she would report the results of the June 2021 Grand Jury to Peters.

Next, Dahl divides her arguments on the issue of pretext into pre-May 19, 2021 events and the May 19, 2021 meeting. As Turner makes clear in his opening brief, he relied on complaints made by SIS, through Sgt. LeGault, as an impetus for requesting the May 19, 2021 meeting to review the status of her cases. But it was Dahl's failure to do what she said she would do in the May 19, 2021 meeting that led Turner to go to City Attorney Sandos, telling her that he intended to recommend the renewal of Dahl's contract, but wanted to know whether the City could terminate the contract early if Dahl's work performance did not improve. And it was at that point that the City Attorney advised Turner that the better course of action would be to recommend to the City Manager the non-renewal of Dahl's contract as opposed to the City potentially finding itself in the position of attempting to terminate a one-year contract early. Based on the foregoing, the pretext

argument should be focused on the parties' arguments as to what occurred in the May 19, 2021 meeting and Turner's discussion with Attorney Sandos. Dahl's Response addresses her version of the May 19, 2021 meeting and ignores the fact that Turner was still willing to recommend the renewal of Dahl's contract until his discussion with Attorney Sandos.

Turner's position is that Dahl is legally incorrect under the first prong analysis as to her positions that: (a) she did *not* indicate to Turner and Peters that her plan was to take five specific cases to the June 2021 Grand Jury, and (b) she did not have to report back to Peters the results of the June 2021 Grand Jury because he reversed that request during the meeting. Next, Turner's position as to the second prong of the qualified immunity analysis, which Dahl's Response never addresses, is that a reasonable police chief could have believed from that May 19, 2021 meeting that Dahl represented that she planned to present five (5) cases to the Grand Jury and that Dahl agreed to report back to Peters the results of the June 2021 Grand Jury.

ii. Legal issue related to the analysis of the May 19, 2021 meeting

Turner asserts that Dahl's interpretations of the secret recording are *blatantly contradicted* by the recording itself. Therefore, the recording controls. *See Coble v. City of White House, Tennessee*, 634 F.3d 865, 869 (6th Cir. 2011).

iii. On the issue of pretext, Dahl's Response asserts that she only agreed to take certain cases to the Grand Jury in the "next round or couple of rounds."

In her Response Dahl implies that Peters selected the five cases that she would take to the Grand Jury and that she only agreed to take those cases in the "next round or couple of rounds." Here are the relevant excepts from Dahl's Response:

At one point [during the May 19, 2021 meeting], Peters checks five suspects on this

list. See Ex. 11 at 102-03.

Doc. 82, PageID #: 2112.

> [Dahl] then references the five cases that Peters checked on the list, stating they "were all on my list of to go, like, for the next round *or next couple of rounds.*" Ex. 11 at 102 (emphasis added). But she did not commit to present them for indictment at the June grand jury.

Doc. 82, PageID #: 2113 (italics added by Dahl in her Response).

> Turner argues that the recording [of the May 19, 2021 meeting] clearly shows that Dahl would seek the indictment of five particular persons at the June grand jury and email Peters to confirm. But it doesn't. At best, Dahl loosely states that the five cases "were all on my list of to go, like, for the next round or next couple of rounds."

See Doc. 82, PageID #: 2130.

In this Reply, Turner asserts that the transcript demonstrates that Dahl, herself, selected the cases that she would take to the Grand Jury. *See 61-11, PageID #: 1140 at lines 3-18.* And more importantly, while Dahl did initially state "for the next round or next couple of rounds," they began discussing specific persons Dahl had identified, and Turner had the following exchange with Dahl:

MR. TURNER: So is [POTENTIAL CRIMINAL DEFENDANT 5] – this is for the next Grand Jury.

MS. DAHL: Uh-huh (Affirmative).

Doc. 61-11, PageID #: 1140 at lines 3-5. And then Turner proceeded to go over the other four names Dahl identified. The fact that Dahl was representing that these cases would proceed at the June 2021 Grand Jury is further bolstered by Dahl's agreement to report back to Peters the results of the June 2021 Grand Jury. *Doc. 61-11, PageID ##: 1151-52, lines 24-25; lines 1-18.*

Therefore, on the issue of pretext, under the first prong of the qualified immunity analysis,

Turner asserts that the evidence demonstrates that Dahl did represent that she intended to take five cases to the June 2021 Grand Jury based on the transcript of her own secret recording. In the alternative, under the second prong of the qualified immunity analysis, a reasonable police chief could have believed that Dahl represented in the May 19, 2021 meeting that she intended to take five cases to the June 2021 Grand Jury.

iv. On the issue of pretext, Dahl's Response asserts that Peters reversed himself during the May 19, 2021 meeting regarding his request that Dahl report back directly to him on the results of the June 2021 Grand Jury

Dahl's Response argues that Turner's reliance on Dahl's failure to report directly back to Peters is pretextual because he reversed himself as to that request during the May 19, 2021 meeting. In support of her position, Dahl's Response (which cites to pages of the transcript, not PageID ##s), asserts as follows:

First, Dahl's Response quotes Turner and Peters from pages 110-111 of the transcript of the May 19, 2021 meeting:

> Turner suggested having Sgt. Legault prioritize SIS cases rather than individual investigators giving Dahl cases. *Id.* at 110-11.
> …
>
> Peters then again suggests that Dahl's communication about the cases run through Legault, *id.* at 110, contradicting his earlier request that Dahl email him about the five cases … Peters states, "I'll talk to Jeff and just have them start – and Jeff can go through you on which cases are the most important." *Id.* at 111.

See Doc. 82, PageID #: 2114. Then Dahl asserts:

> Peters again reverses his earlier request for an update email by suggesting that Dahl communicate with Sgt. LeGault: "I think that's going to be a better way of doing it is just one person communicating with her on cases that we need done. Get Jeff – get Sergeant LeGault to do it." *Id.* at 122.

See Doc. 82, PageID #: 2115.

In Reply, Turner asserts that a review of the May 19, 2021 transcript reveals two different topics were being discussed. First, Turner and Peters were making the suggestion that going forward, it might be easier for Dahl to have cases sent to her by the SIS supervisor, Sgt. LeGault as opposed to each SIS investigator jockeying to have his cases reviewed by Dahl for prosecution. That is the discussion on pages 110-111 [*Doc. 61, PageID ##: 1147-48, lines 13-25; 1-21*].

In Dahl's Response, she is attempting to represent that discussion as a reversal of Peters' request that Dahl report directly to him the results of the June 2021 Grand Jury. But at the time of the discussion on pages 110-111, Peters had not yet made the request that Dahl report to him the results of the June 2021 Grand Jury. That request was not made until several pages later. *Doc. 61-11, PageID ##: 1151-52, lines 24-25; lines 1-18.* Then, after approximately seven more pages of discussion, Turner circles back to the fact that going forward, Sgt. LeGault will send cases to Dahl. *Id., PageID #: 1159, lines 18-25.*

In summary:

1. Turners, Peters, and Dahl discussed that going forward it would be easiest to have Sgt. LeGault sending cases to Dahl. *Doc. 61-11, PageID ##: 1147-48, lines 13-25; 1-21* (which Dahl cites as pages 110-111).

2. After discussing the cases that Dahl intends to take to the June 2021 Grand Jury, Peters explains that he would like Dahl to report directly back to him the results of the June 2021 Grand Jury (and he explains why it is important for her to report directly back to him). *Doc. 61-11, PageID ##: 1151-52, lines 24-25; lines 1-18 (which is on pages 114-115 of the transcript).*

3. Seven pages of discussion later, Turner circles back to the original discussion about Sgt. LeGault sending cases to Dahl going forward. *Doc. 61-11, PageID #: 1159, lines 18-25 (which Dahl cites as page 122).*

The assertion in Dahl's Response that Peters "again" reversed himself is reckless because Dahl's quotes from pages 110-111 are before Peters had made any request for Dahl to report directly back to him the results of the June 2021 Grand Jury. But more importantly, the transcript is clear that Peters never reversed himself regarding Dahl reporting back to him the results of the June 2021 Grand Jury. It is surprising that Dahl would even take the position in her Response that Peters reversed himself because she tried to take this position in her deposition, and after a review of the transcript, she admitted her "mistake." *Doc. 61-4, Dahl Depo., pp. 32-33, lines 1-25; lines 1-9.*

As to the issue of pretext, under the first prong of the qualified immunity test, there is no evidence of pretext because the transcript clearly establishes that Peters made this request and it was not reversed. This is especially true where Dahl has chosen not to address in her Response that on June 8, 2021 Peters sent Dahl an email inquiring about the results of the June Grand Jury and Dahl made no effort to respond. *Peters Depo., Doc. 61-6, p. 89, lines. 15-25, p. 90, lines 1-17, and Doc. 66-1, PageID # 1233, which is Exhibit F, the June 8, 2021 email.* And finally, Dahl's Response *completely ignores* that even in June 2021, Turner was still willing to recommend that Dahl's contract be renewed, as long as it could be terminated early if her work performance did not improve, and the City Attorney advised him against that course of action. Based on the foregoing, Dahl cannot establish pretext.

Therefore, under the first prong, Dahl's conclusions as to the May 19, 2021 meeting are incorrect as a matter of law. Alternatively, under the second prong, a reasonable police chief could have believed that Dahl had selected five cases that she intended to take to the June 2021 Grand Jury, and that she had agreed to report back directly to Peters.

v. Miscellaneous issues related to Dahl's First Amendment retaliation claim

First, in Dahl's Response, she alleges that she could not proceed with the indictments of the five persons she identified in the May 19, 2021 meeting because for weeks she had been "consumed" with trial preparation. *Doc. 82, PageID #: 2116.* This excuse is irrelevant. First, if Dahl had been consumed with trial preparation for weeks, then that begs the question of why, on May 19, 2021, Dahl represented to Turner and Peters that she intended to seek five indictments on June 9, 2021. The case Dahl is referencing is now known to be *U.S.A. v. Melvin Chism*, No. 2:19-cr-115. There is no mention of this upcoming trial with Turner and Peters. And most importantly, if she had reached a point where she felt that she did not have time to seek the indictments due to her pending trial, then she needed to report back to Peters as she had agreed to do in the May 19, 2021 meeting. This is a First Amendment retaliation claim. What is relevant is what information was in the possession of Turner – not what was going on in Dahl's mind. She cannot seek to prove pretext based upon information that Turner did not possess.

Next, Dahl's testimony is replete with hearsay. Turner objects to this Court relying on Dahl's testimony that is clearly hearsay in opposition to the Motion for Summary Judgment. *See Slowik, supra,* at *4. This includes, but is not limited to, Dahl's testimony as to what Janes Does or other persons allegedly told her that she now introduces for the truth of the matter asserted. This

includes Dahl's statements in her declaration at paragraphs 115-116. *See Doc. 82-21, PageID #: 2549.*

Finally, in *Dahl's Response* she asserts that Turner's citation to the testimony of Dahl's supervisor, AUSA Taylor, experiencing similar work performance problems, is not evidence that could be used as grounds to non-renew her contract. *Doc. 82, PageID #: 2132.* In Reply, Turner states that he was not arguing "after-acquired evidence" as grounds for non-renewal. Instead, the fact that: (1) Dahl met with Turner and Peters to review her cases, (2) Dahl agreed to report back to Peters, and (3) Dahl failed to do so is odd behavior. Turner was simply making this Court aware of the fact that Dahl's supervisor, AUSA Taylor, has now testified to his perception of similar odd behavior. *Taylor Depo., Pages 32-35, Lines 12-25; 1-25 and Ex. 111 (email).*

D. In closing as to First Amendment retaliation claim

Karl Turner, in his individual capacity, has been sued in the related case of *Jane Does 1-9 v. City of Johnson City, Tennessee*, No. 2:23-cv-00071-TRM-JEM. It is in that case where the issues of his alleged fault related to Sean Williams and sexual assault investigations will be heard. Dahl's Response almost reads like a pleading in that case as opposed to addressing her two legal claims: (1) First Amendment retaliation, and (2) Fourteenth Amendment Procedural Due Process.

As to her First Amendment retaliation claim, she has no evidence that Turner had actual knowledge that she engaged in protected activity and her arguments of circumstantial evidence are so weak as to constitute speculation.

On the issue of retaliation/pretext, under the first prong of the qualified immunity test, Dahl's interpretation of her own secret recording is not supported by a review of that recording.

Alternatively, Dahl has failed to argue the second prong of the qualified immunity test – *i.e.*, what a reasonable police chief could have believed based on the May 19, 2021 transcript. And clearly, a reasonable officer could have believed that: (1) Dahl represented that she intended to take five cases to the June 2021 Grand Jury (and failed to do so), and (2) Dahl agreed to report directly back to Peters as to the outcome of the Grand Jury (and failed to do so). Based on the foregoing, including the arguments made in his opening brief, Turner is entitled to qualified immunity as a matter of law under the first and/or second prongs of the qualified immunity test.

II. CHIEF TURNER IS ENTITLED TO QUALIFIED IMMUNITY AS TO THE FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS CLAIM

A. Dahl's Response

Dahl's Response demonstrates a misunderstanding of the legal issue before the Court. *Normally*, someone in Dahl's position – *i.e.*, someone claiming a property interest entitling her to due process – would be suing the *entity*. Undersigned counsel is not aware of any case law that would excuse the entity for a failure to provide due process based upon a mistake in the law. *However, Dahl chose* to only sue Chief Turner, in his individual capacity. *See Doc. 56, PageID ##: 804-06 at ¶¶ 170-82.* Based upon that litigation decision by Dahl, Turner is entitled to assert the defense of qualified immunity, which he has done. Under the first prong, the question is whether Dahl was entitled to due process. In her First Amended Complaint, she alleges that even though Tennessee is an "employee-at-will" State, she has a limited property interest as a whistleblower under the Tennessee Public Protection Act ("TPPA"). *Id., PageID #: 804 at ¶ 172.*

With respect to the first prong of the qualified immunity analysis, Turner's opening brief adopts by reference Johnson City's arguments as to why Dahl's TPPA claim fails as a matter of

law. If Dahl's TPPA claim fails as a matter of law, then she had no limited property interest, and therefore, she had no right to due process under the Fourteenth Amendment. In other words, Turner would be entitled to summary judgment under the first prong of the qualified immunity analysis.

What Dahl misunderstands in this context is the second prong of the qualified immunity analysis. Under the second prong, the question is whether the law was so clearly established that every reasonable police chief in Turner's position *would have known* that Dahl had a property interest that entitled her to procedural due process. *See Saucier v. Katz*, 533 U.S. 194, 201-02 (2001). Stated conversely, as long as a reasonable police chief *could have believed* that Dahl did not have a property interest, then Turner is entitled to qualified immunity. *Anderson v. Creighton*, 483 U.S. 635, 638-39 (1987). More specifically, even if Dahl is correct that the TPPA provides her a limited property interest as an alleged whistleblower, then as long as a reasonable police chief could have believed she did not come under the TPPA, Turner is entitled to qualified immunity under the second prong. Turner's opening brief argues that a reasonable police chief could have believed that Dahl was an independent contractor (who did not come under the TPPA). Filed with this Reply Brief as Exhibit 2 is a Notice of Determination from the EEOC wherein Dahl was found to be an independent contractor. That finding is not binding on this Court. But if the EEOC, an agency focused on employment matters, could find that she was an independent contractor under the MOU, then a reasonable police chief could have believed she was an independent contractor. In her Response, Dahl argues that Turner is asserting a mistake of law defense and that that only applies in the context of the Fourth Amendment. She cites *Hein v. North Carolina*, 574 U.S. 54, 66, (2014) for the proposition that "the 'mistake of law' defense has only

been recognized … in the Fourth Amendment … context and must be objectively reasonable." *See Doc. 82, PageID #: 2133.* Dahl's reliance on *Heien, supra,* which was not a qualified immunity case, is misplaced. The Supreme Court merely held that a mistake of law or fact in the Fourth Amendment context must be objectively reasonable, which is the Fourth Amendment standard. More importantly, Dahl failed to reference the pertinent part of *Heien, supra*:

> Contrary to the suggestion of Heien and *amici,* our decision does not discourage officers from learning the law. The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved. Cf. *Whren v. United States,* 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). **And the inquiry is not as forgiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity for a constitutional or statutory violation.**

See Heien v. North Carolina, 574 U.S. 54, 66-67 (2014) (italics in original, bold added). Therefore, the correct standard under the second prong of the qualified immunity analysis is whether the law was so clearly established that Dahl possessed a property interest entitling her to procedural due process under the Fourteenth Amendment that every reasonable police chief *would have known* that Dahl was entitled to due process under the specific facts of this case. In other words, the law must be so clear that it is "beyond debate." *See D.C. v. Wesby*, 583 U.S. 48, 64 (2018). And finally, the burden is on Dahl to prove the clearly established law. *Barrett v. Steubenville City Schools*, 388 F.3d 967, 970 (6th Cir. 2004). She has failed to do so. Therefore, Turner is entitled to qualified immunity under the first and/or second prongs of the qualified immunity test.

B. Dahl's Response attempts to expand her property interest claim

At the end of Dahl's Response on this issue, she makes arguments that do not appear to follow the legal theory she has pleaded, which is that the TPPA provided her with a limited

property interest. Specifically, Dahl alleges:

> a dispute of fact remains whether Dahl was afforded all the process she was due under the MOU. *See Young v. Township of Green Oak*, 471 F.3d 674, 684 (6th Cir. 2006); *Armstrong v. Reynolds*, 22 F.4th 1058, 1068 (9th Cir. 2022) (state and common law protections created a limited property interest). To the extent that Turner's retaliatory motive and unilateral termination prevented any discussion or process at all with MOU partners, then it violated Dahl's procedural due process rights.

See Doc. 82, PageID #: 2134. Again, the only theory pleaded in her First Amended Complaint is that even at-will employees have a limited property interest to engage in whistleblowing activities under the TPPA. *See Doc. 56, PageID ##: 804 at ¶¶ 171-72*. Now, Dahl appears to be trying to make a new argument that the MOU, in and of itself, provides her with a property interest. This theory has not been raised factually or legally. Moreover, the cases Dahl cites do not help her cause. In *Young*, *supra*, the plaintiff was an employee of a governmental entity who was entitled to due process under the Veterans Preference Act. *Id. at p. 683.* And *Armstrong*, *supra*, which is a Ninth Circuit case, is addressing the fact that under Nevada law a whistleblower has a limited property interest. *Id. at p. 1067-68.*

To the extent that Dahl is now alleging that the MOU, in and of itself, entitles her to procedural due process, that claim fails under the first prong of the qualified immunity test because: (1) this factual/law theory was never pleaded, and (2) there is no legal authority cited that would support a finding that a one-year contract (that can be renewed or not) creates a property interest in the renewal decision. Finally, under the second prong, Dahl has cited no authority that would have placed every reasonable police chief on notice that her MOU – in and of itself – created a property interest so as to entitle her to due process before the non-renewal decision was made. And

with respect to the Ninth Circuit case, it does not support this particular argument (only the theory she has pleaded). Moreover, even if that case had been on point for a theory that the MOU – in and of itself – created a property interest, that case is not clearly established law under the second prong of the qualified immunity test because it is a Ninth Circuit case that was decided *after* the non-renewal decision. Based on the foregoing, Turner is entitled to qualified immunity under the first or second prong as to Dahl's procedural due process claim.

III. CONCLUSION

Police Chief Karl Turner, in his individual capacity, is entitled to summary judgment as to all claims based upon the defense of qualified immunity.

Respectfully submitted,

s/K. Erickson Herrin
K. Erickson Herrin, BPR # 012110
HERRIN, McPEAK & ASSOCIATES
515 East Unaka Avenue
P. O. Box 629
Johnson City, TN 37605-0629
Phone: (423) 929-7113
Fax: (423) 929-7114
Email: lisa@hbm-lawfirm.com

s/ Thomas J. Garland, Jr.
Thomas J. Garland, Jr., BPR # 011495
MILLIGAN & COLEMAN PLLP
P.O. Box 1060
Greeneville, TN 37744-1060
Phone: (423) 639-6811
Fax: (423) 639-0278
Email: tgarland@milligancoleman.com

s/ Emily C. Taylor
Emily C. Taylor, BPR # 27157
WATSON, ROACH, BATSON & LAUDERBACK, P.L.C.
P.O. Box 131
Knoxville, TN 37901-0131
Phone: (865) 637-1700
Fax: (865) 525-2514
Email: etaylor@watsonroach.com

Attorneys for Defendants, City of Johnson City, Tennessee, and Karl Turner, in his individual capacity