

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.]

**MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR PARTIAL JUDGMENT ON
THE PLEADINGS AND FOR SUMMARY JUDGMENT ON BEHALF OF
KARL TURNER, IN HIS INDIVIDUAL CAPACITY**

I. INTRODUCTION

The plaintiff, Kateri Dahl (“Ms. Dahl”), has sued the City of Johnson City (“Johnson City”) and Police Chief Karl Turner (“Chief Turner”), in his individual capacity.¹ The claims against Chief Turner are: (1) Count I, First Amendment retaliation, (2) Count II, Procedural Due Process violation, and (3) Count III, Substantive Due Process violation. *Doc. 56: First Amended Complaint, PageID ##: 802-08 at ¶¶ 160-90.*

II. DISPOSITIVE MOTION STANDARDS

With respect to the summary judgment standard, in *Kutchinski v. Freeland Cmty. Sch. Dist.*, 69 F.4th 350 (6th Cir. 2023), the Sixth Circuit explained:

¹ At the time of the events at issue, Karl Turner was the Police Chief. On February 28, 2023, he retired pursuant to an offer of six additional months of compensation made to all City employees who were already eligible for full retirement and who retired by that date. *Declaration of Karl Turner*, ¶¶ 2, 3. Any person identified by “rank” in this Brief will be the rank held by that person at the time of the events in question.

Summary judgment is appropriate where “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). In reviewing the motion, we view all evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. *Palma v. Johns*, 27 F.4th 419, 427 (6th Cir. 2022).

Id. at 356. With respect to the motion for judgment on the pleadings standard under Rule 12(c), it is the same standard as a Rule 12(b)(6) motion. *Roth v. Guzman*, 650 F.3d 603, 605 (6th Cir. 2011).

In *Zelaya v. Hammer*, 516 F. Supp. 3d 778, 793 (E.D. Tenn. 2021), this Court explained:

On a Rule 12(b)(6) motion, the Court considers not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer “more than the mere possibility of misconduct.” *Id.* at 679, 129 S.Ct. 1937. For purposes of this determination, the Court construes the complaint in the light most favorable to the plaintiff and assumes the veracity of all well-pleaded factual allegations in the complaint. *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 859 (6th Cir. 2007).

III. LAW ON QUALIFIED IMMUNITY

Under the first prong of the qualified immunity test, the nonmovant must present sufficient evidence that the officer violated a constitutional right. Without this showing, the officer prevails. Under the second prong, even if the nonmovant can present sufficient evidence of a constitutional violation, the officer is still entitled to summary judgment unless the nonmovant can prove that the law was so clearly established that *every* reasonable officer *would have known* the conduct was unconstitutional. *See Saucier v. Katz*, 533 U.S. 194, 201-02 (2001). Stated conversely, if a reasonable officer “could have believed” his actions were constitutional, then he is entitled to qualified immunity under the second prong. *Anderson v. Creighton*, 483 U.S. 635, 638-39 (1987). The law must be “clearly established” and make it clear “beyond doubt” that no reasonable officer could have believed his conduct was lawful. *See D.C. v. Wesby*, 138 S. Ct. 577, 589-90 (2018).

IV. CONCISE STATEMENT OF THE FACTUAL AND LEGAL GROUNDS WHICH

JUSTIFY THE RULING SOUGHT

A. Background

Pursuant to a grant from the United States Department of Justice (“DOJ”), Ms. Dahl was employed under a Memorandum of Understanding (“MOU”) to be a Special Assistant United States Attorney (“SAUSA”) tasked with assisting the Johnson City Police Department (“JCPD”) in bringing federal charges against persons arrested by JCPD officers. Ms. Dahl began work in September of 2019, and the MOU was renewed for a second year effective July 1, 2020. However, the MOU was not renewed for a third year and it expired on June 30, 2021. *Sandos Decl.*, ¶ 3.

B. Complaints leading up to May 19, 2021 meeting

In the latter part of 2020, Chief Turner and Captain Peters, who was the head of the JCPD’s Criminal Investigation Division (“CID”), began receiving complaints about Ms. Dahl’s work performance from Sgt. Jeff LeGault, who was over the Special Investigations Squad (“SIS”) within CID. Sgt. LeGault’s complaints included complaints from other SIS investigators reporting their concerns about Ms. Dahl through the chain of command to Sgt. LeGault. At Captain Peters’ request, on December 11, 2020 Sgt. LeGault emailed to Chief Turner and Captain Peters a list of cases: (a) sent to Ms. Dahl for possible prosecution and (b) not sent to Ms. Dahl due to her lack of progress on other cases. On December 15, 2020, Chief Turner forwarded that email and the attached list of cases to Ms. Dahl’s supervisor, Assistant United States Attorney Wayne Taylor, asking that Ms. Dahl provide an update. Next, on March 23, 2021 Sgt. LeGault sent Chief Turner and Captain Peters a revised list of cases based on continued complaints regarding Ms. Dahl’s work performance. On April 22, 2021 and May 1, 2021, Sgt. LeGault sent an email to Chief Turner

and Captain Peters complaining about Ms. Dahl's lack of responsiveness related to an attempt to obtain a federal criminal complaint in order to keep in custody a dangerous individual who was subject to making bail on a state charge. *Turner Decl.*, ¶¶ 19, 21 and Exhibits D, and E.

C. May 19, 2021 meeting

Based upon continued complaints from SIS through Sgt. LeGault, Chief Turner requested a meeting with Ms. Dahl so that he and Captain Peters could review her list of cases. That meeting occurred on May 19, 2021. Ms. Dahl secretly tape recorded this meeting. They reviewed the March 23, 2021 list of cases sent by Sgt. LeGault. On the copy they reviewed, Captain Peters wrote the name of the person being investigated beside the JCPD case number. Ms. Dahl advised them that at the next Federal Grand Jury in June she would seek indictments for five persons. These five cases were not only on Sgt. LeGault's March 23, 2021 list, they were also on Sgt. LeGault's original list from December 11, 2020. During the May 19, 2021 meeting, Ms. Dahl specifically agreed to report the results from the Grand Jury back to Captain Peters so he could in turn report back to Chief Turner. *Deposition of Kateri Dahl*, p. 30, line 18 to p. 33, line 19.

On June 9, 2021 the Federal Grand Jury met. Ms. Dahl did not seek indictments on any of the five persons she had identified in the May 19, 2021 meeting. Moreover, she did not report back to Captain Peters – which not only had been agreed to in the May 19, 2021 meeting, but Captain Peters had specifically sent her an email on June 8 (not knowing the date of the June Grand Jury) requesting a report. Captain Peters reported to Chief Turner that Ms. Dahl had not sought indictments of any of the five persons *and* she had not reported back to him (Captain Peters) as promised. *Deposition of Kevin Peters*, pp. 89, line 8 to p. 90, line 23; *Deposition of Kateri Dahl*,

p. 32 line 23 to p.33, line 19; Exhibit 46 Email dated June 8, 2021.

Ms. Dahl's contract was set to expire at the end of June 2021, and could only be renewed for one year under the terms of the MOU. Chief Turner discussed the matter with the City Manager, Pete Peterson, and the City Attorney, Sunny Sandos. Chief Turner inquired of the City Attorney whether the contract could be renewed, but then terminated, if necessary, a few months later. The City Attorney advised him that it would be easier to not renew her contract as opposed to renewing the contract for another year and then attempting to terminate it early. *Sandos Decl.*, ¶¶ 4-6. Chief Turner followed the legal advice and recommended to the City Manager that Ms. Dahl's contract not be renewed -- and that is what occurred. *Turner Decl.*, ¶¶ 32, 33.

With respect to the First Amendment retaliation claim, Ms. Dahl alleges that her contract was not renewed in retaliation for protected conduct (consisting of alleged complaints to the Federal Bureau of Investigation ("FBI") and "third parties" about corruption or "plain incompetence" by the JCPD). Chief Turner is entitled to qualified immunity under the first prong and/or second prong of the qualified immunity test because he did not know that she had engaged in any alleged protected activity. *Turner Decl.*, ¶¶ 35, 38. Alternatively, Chief Turner is entitled to summary judgment because he would have taken the "same action" even if he had known of her protected conduct based on: (a) her failure to do what she represented she would do on May 19, 2021, and (b) legal advice received by the City Attorney.

With respect to the procedural due process claim based on an alleged property interest, Ms. Dahl alleges she was an employee-at-will who had a limited property interest based on Tennessee Code Annotated § 50-1-304(a)(3), which protects an employee who refuses to participate in or

remain silent about illegal activities. Even if there is a disputed fact as to whether she was an employee under the MOU, Chief Turner is entitled to summary judgment based upon the first prong because: (1) there is no proof that Ms. Dahl refused to participate in or remain silent about “illegal activities”; and/or (2) there is no proof that Chief Turner *knew* that Ms. Dahl had refused to participate in or remain silent about “illegal activities.” Chief Turner is also entitled to summary judgment under the second prong for the following reasons. First, Ms. Dahl cannot prove that every reasonable police chief would have known that Ms. Dahl was an employee of Johnson City under the MOU. If a reasonable police chief could have believed she was not an employee, then a reasonable police chief could believe this state statute did not apply to Ms. Dahl (and her only claim of a property interest is based on that state statute applying to her). Second, there is no clearly established law that this state statute created a property interest. And third, based on the information known to Chief Turner, a reasonable police chief could have believed he was not aware that Ms. Dahl was refusing to participate in or remain silent about “illegal activities.”

Next, it is unclear if Ms. Dahl is asserting a procedural due process claim based on an alleged liberty interest (she makes one reference to a “name-clearing hearing” in the context of addressing her due process claim based on a property interest). If so, that claim fails under the first prong because: (1) Chief Turner did not voluntarily publish a stigmatizing statement that would trigger the right to a name-clearing hearing; and (2) Ms. Dahl did not request a name-clearing hearing. Alternatively, under the second prong, Ms. Dahl’s claim fails because: (1) a reasonable police chief could have believed he had not voluntarily published a stigmatizing statement, and/or (2) a reasonable police chief could have believed there was no obligation to provide a name-

clearing hearing where Ms. Dahl made no such request.

With respect to the substantive due process claim that Chief Turner's conduct allegedly "shocks the conscience," Ms. Dahl has failed to state a claim under the generalized notions of substantive due process where the alleged shocking conduct is First Amendment retaliation. Alternatively, Chief Turner is entitled to summary judgment based upon the first and/or second prongs of the qualified immunity test for the same reasons he is entitled to summary judgment as to the First Amendment retaliation claim.

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

A. Ms. Dahl's federal constitutional claim

In Count I of the First Amended Complaint, Dahl alleges that Chief Turner retaliated against her in violation of the First Amendment by not renewing her contract based on the following alleged protected activity:

162. Dahl engaged in protected First Amendment activities outside her chain of command by making allegations to multiple third parties, including the FBI, about Johnson City Police Department's failures to investigate and seize Williams, and the substantial likelihood that Johnson City Police Department was either corrupt or plainly incompetent.

Doc. 56, PageID #: 803.

B. Law

In *Sensabaugh v. Halliburton*, 937 F.3d 621 (6th Cir. 2019), the Sixth Circuit affirmed the grant of summary judgment in favor of the Director of Schools of Washington County, Tennessee. In doing so, the Sixth Circuit set forth what a government employee must show in order to prevail on a First Amendment retaliation claim:

(1) [he] engaged in protected conduct; (2) an adverse action was taken against [him] that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two – that is, the adverse action was motivated at least in part by [his] protected conduct.

If he makes this showing, “the burden then shifts to the employer to demonstrate ‘by a preponderance of the evidence that the employment decision would have been the same absent the protected conduct.’ ” If the employer makes such a showing, “summary judgment is warranted if, in light of the evidence viewed in the light most favorable to the plaintiff, no reasonable juror could fail to return a verdict for the defendant.”

Id. at 627-28 (citations omitted). The “same action” defense arises out of the United States Supreme Court case of *Mount Healthy*:

Once the plaintiff has met his burden of establishing that his protected conduct was a motivating factor behind any harm, the burden of production shifts to the defendant. If the defendant can show that he would have taken the same action in the absence of the protected activity, he is entitled to prevail on summary judgment.” *Id.* (citing *Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285-86, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)).

See Vereecke v. Huron Valley Sch. Dist., 609 F.3d 392, 400 (6th Cir. 2010).

C. Analysis of *prima facie* case

i. *Ms. Dahl alleges she was an employee*

Ms. Dahl asserts that she was an employee of Johnson City. For purposes of this Motion for Summary Judgment only and because it simplifies the legal standard for purposes of constitutional analysis, Chief Turner will assume that Ms. Dahl could make this showing at trial²

² As addressed *infra* in the context of the Fourteenth Amendment property interest claim, there is a difference between assuming for purposes of argument that Ms. Dahl could prove at trial she was an employee *versus* the second prong of the qualified immunity test – *i.e.*, whether every reasonable police chief *would have known* she was an employee.

ii. Ms. Dahl's allegations of protected conduct

Ms. Dahl's allegations of protected conduct are as follows:

162. Ms. Dahl engaged in protected First Amendment activities outside of her chain of command by making allegations to multiple third parties, including the FBI, about Johnson City Police Department's failures to investigate and seize Williams, and the substantial likelihood that Johnson City Police Department was either corrupt or plainly incompetent.

163. Ms. Dahl's communications about sex crimes and public corruption were not expressions made pursuant to her duties as a SAUSA under the MOU (which limited the scope of her employment as prosecuting violent, firearms and drug trafficking crimes).

164. The MOU did not contemplate that Dahl would investigate and make protected communications to one of her supervisors, Chief Turner, and/or a partner agency under the MOU, Johnson City. Those actions and communications were therefore not made pursuant to her employment duties as a SAUSA under the MOU.

165. Ms. Dahl's protected activities and communications played at least a part in defendant Chief Turner's decision to tell the Mayor and City Manager of Johnson City not to extend the MOU for Dahl's employment.

Doc. 56, PageID #: 803. And specifically with respect to the FBI, Ms. Dahl alleges:

84. On May 11, 2021, on her own initiative and outside her chains of command at the U.S. Attorney's Office and Johnson City Police Department, Ms. Dahl made a report to an agent with the local Federal Bureau of Investigation office expressing her concerns about how Johnson City Police Department had handled the Williams case.

Id. at PageID #: 780.

iii. Ms. Dahl cannot establish a prima facie case

In order to establish a *prima facie* case, Ms. Dahl must prove that there was a causal connection between her protected conduct and the adverse action. Even if one assumes she can show protected conduct and an adverse action, she still cannot establish a *prima facie* case because

there is no evidence that Chief Turner knew that Ms. Dahl had engaged in protected conduct. If Chief Turner did not know that she had engaged in protected conduct, then logically there is no connection between her protected conduct and the adverse action. On this issue Chief Turner has testified as follows:

1. At the time he recommended to the City Manager that Ms. Dahl's contract not be renewed, he had absolutely no knowledge that Dahl had had made any complaints to the FBI or any third party alleging "Johnson City Police Department's failures to investigate and seize Williams, and the substantial likelihood that Johnson City Police Department was either corrupt or plainly incompetent." *Turner Decl.*, ¶¶ 35, 36.
2. Likewise, during that same time frame he had no knowledge that Ms. Dahl was allegedly investigating him or Johnson City. *Turner Decl.*, ¶ 36.

Based on the foregoing, under the first prong of the qualified immunity test, Ms. Dahl cannot establish a *prima facie* case because she cannot show a causal connection between her protected activity and the adverse action *based on Chief Turner's lack of knowledge that she had engaged in protected activity*. Alternatively, under the second prong of the qualified immunity test, a reasonable police chief could have believed that he had not violated Ms. Dahl's First Amendment rights where he did not know that she had engaged in protected activity.

D. Analysis of "same action" defense

Even if Ms. Dahl could establish a *prima facie* case – which in the context of this case means that Ms. Dahl could establish that Chief Turner knew she had engaged in protected activity – Chief Turner is still entitled to summary dismissal under the first prong of the qualified immunity analysis because Chief Turner can show that he would have taken the same action in the absence of any protected activity. *See Vereecke, supra*, at 400 and *Smallwood, supra*, at 627-28.

i. Complaints leading up to May 19, 2021 meeting

As set forth earlier (and as described in more detail in Chief Turner's declaration), in the latter part of 2020, Chief Turner and Captain Peters became aware of complaints from SIS officers – through their supervisor, Sgt. LeGault – about Ms. Dahl's work performance. Sgt. LeGault was asked to prepare a list of cases, and on December 11, 2020, Sgt. LeGault emailed Chief Turner and Captain Peters a list of cases: (a) sent to Ms. Dahl for possible prosecution and (b) not sent to Ms. Dahl due to her lack of progress on cases sent to her. On December 15, 2020, Chief Turner forwarded Sgt. LeGault's email and attached list to AUSA Wayne Taylor, Ms. Dahl's supervisor in the United States Attorney's Office in Greeneville and requested an update on Ms. Dahl's cases. Next, on March 23, 2021, Sgt. LeGault sent a revised list of cases to Chief Turner and Captain Peters that was similar to the December 11, 2020 list. Then, on April 22, 2021 and May 1, 2021, Sgt. LeGault sent an email to Chief Turner and Captain Peters complaining about Ms. Dahl's lack of responsiveness related to an attempt to obtain a federal criminal complaint to keep in custody a dangerous individual who was subject to making bail on a state charge. *Turner Decl.*, ¶¶ 12-21 and Exhibits A, B, C, D and E.

ii. May 19, 2021 meeting

Based on continued complaints from SIS through Sgt. LeGault, Chief Turner requested a meeting with Ms. Dahl so that he and Captain Peters could review her list of cases. That meeting occurred on May 19, 2021. *Turner Decl.*, ¶ 22. Ms. Dahl secretly tape recorded this meeting. *Dahl Depo.*, p. 22, lines 5-15. The City of Johnson City has had a court reporter transcribe the recording. A copy of the secret tape recording of May 19, 2021 being filed under seal. A copy of the transcript

(with redactions) is an *Exhibit to the Motion for Summary Judgment*. Although the transcript is not official, it is provided as a courtesy to the Court and to assist the Court in reviewing the secret recording. For ease of reference, citations to the transcript of the secret recording are provided as necessary.

On the copy of the March 23, 2021 list that was reviewed with Ms. Dahl, Captain Peters wrote the name of the person being investigated beside the JCPD case number. Ms. Dahl advised them that at the next Federal Grand Jury in June that she would seek indictments of five persons. *See Exhibit to Motion for Summary Judgment, Transcript, p. 102, lines 6 to p. 103 line 25*. These cases were not only on Sgt. LeGault's March 23, 2021 list, they were also on Sgt. LeGault's original list from December 11, 2020. The names of the five persons identified by Ms. Dahl have been redacted from the transcript.

During the May 19, 2021 meeting, Captain Peters then requested that Ms. Dahl report directly back to him on the indictments obtained from the June Grand Jury because he told her that there were apparently some communication issues, and he wanted to know directly from her the indictments obtained so that he, in turn, could report to Chief Turner. She agreed to send Captain Peters an email report. *Exhibit to Motion for Summary Judgment, Transcript, p. 114 line 24 to p. 115, line 13*.

During the May 19, 2021 meeting, the exact date of the June Grand Jury was not mentioned. On June 8, 2021, Captain Peters sent an email to Ms. Dahl requesting a status report on the June Grand Jury. *Peters Depo., Exhibit 6*. The Grand Jury actually met the next day. *Dahl Depo. p. 32, line 3 to p. 33 line 19; Peters Depo., Exhibit 6, June 8, 2021 email*. Ms. Dahl never

reported back to Captain Peters as promised in the May 19, 2021 meeting; and she never responded to his June 8, 2021 email, in which Peters reminded Dahl that he needed a report regarding the status of indictments. *Dahl depo., p. 30, lines 18 to p. 33 line 19; Peters Depo., Exhibit 6, June 8, 2021 email.* On the afternoon of June 9, 2021, Sgt. LeGault sent Captain Peters an email with copy to Chief Turner informing them that none of the cases on the list of cases prepared by Sgt. LeGault had been presented. The only case Ms. Dahl indicted was an old case of Demetrius Bolden.³ Captain Peters then forwarded that email to Chief Turner with the additional note: “Still haven’t heard anything from her. Don’t suspect that I will.” *Turner Decl., 30 and Exhibit H.*

Based on the foregoing, Chief Turner found himself in the following situation. At the June 9, 2021 Grand Jury, Ms. Dahl had not sought indictments for the five persons she represented she would seek indictments and she had not reported back to Captain Peters as she had promised to do. Her contract was set to expire at the end of June 2021. Notwithstanding the history of complaints from Sgt. LeGault (on behalf of himself and SIS investigators), and notwithstanding Ms. Dahl’s failure to (a) do what she said she would do or (b) at least report back to Captain Peters that she had not done what she said she was going to do, *Chief Turner’s preferred course of action was to recommend that the City renew Dahl’s contract for another year, but then if things continued to not improve, terminate her contract a few months down the road.* Chief Turner proposed this course of action to the City’s Attorney, Sunny Sandos. Attorney Sandos counseled him against this because it would be much easier to non-renew her contract as opposed to renewing

³ On June 9, 2021, Ms. Dahl did obtain an indictment as to Demetrius Bolden, who was not on the list of cases reviewed with Chief Turner and Captain Peters on May 19, 2021. *See USA v. Bolden, No. 2:21-CR-62 at Doc. 3: Indictment, PageID #: 3.*

her contract for another year and then attempt to terminate her contract. *Sandos Decl.*, ¶¶ 5-6 . Chief Turner did not want the City to be bound to having Ms. Dahl as SAUSA for another year (if things did not improve). Therefore, he decided to follow the City Attorney's advice -- recommending to City Manager Denis "Pete" Peterson (the person with ultimate authority for a non-renewal decision) that Ms. Dahl's contract not be renewed. City Manager Peterson agreed. Attorney Sandos advised Chief Turner that there was no need to advise the other parties to the MOU of the City's decision. Attorney Sandos prepared the non-renewal letter and presented it to Chief Turner for his signature. He signed it. *Turner Decl.*, ¶¶ 32, 33.

After AUSA Taylor learned of the non-renewal decision, he arranged with the City to place Ms. Dahl on the City's payroll for one month for the express purpose of allowing for the orderly transition of Ms. Dahl's files to other Assistant United States Attorneys in the Greeneville office. *Sandos Decl.*, ¶ 10, Exhibit "D"; *Peterson Decl.*, ¶ 6. City Attorney Sandos drew up a new contract between the City and Ms. Dahl allowing her to work an additional month. The one-month contract with the City to allow time to transfer files was different from the MOU, which was a multi-agency agreement with the United States Attorney's Office pursuant to a federal grant that could only be extended for a term "of no less than twelve months per extension." *Sandos Decl.*, ¶ 3, Exhibit "A" p. 3, § VI; and *Doc. 56-2: MOU*, PageID #: 818 at paragraph "VI."

iii. Analysis

Under the first prong of the qualified immunity test, Chief Turner had a sufficient basis to recommend the non-renewal of Ms. Dahl's contract for the following reasons:

1. Sometime in the latter part of 2020, Chief Turner and Captain Peters began hearing complaints from Sgt. LeGault, on behalf of himself and SIS

investigators, complaining about Ms. Dahl's work performance. Eventually, on two separate occasions (December 11, 2020 and March 23, 2021), Sgt. LeGault sent Chief Turner and Captain Peters lists of Ms. Dahl's cases – including cases that could have been sent to her, but had not been sent based on her lack of progress on cases that had been sent to her. Also, Sgt. LeGault sent two emails (April 22, 2021 and May 1, 2021) complaining about Ms. Dahl's lack of responsiveness on an important criminal matter. *Turner Decl.*, ¶¶ 12-21.

2. Based on the complaints, Chief Turner scheduled a meeting with Ms. Dahl for May 19, 2021 to review her list of cases. In that meeting, she identified the five persons for whom she would seek indictments at the June Grand Jury and she agreed to report back directly to Captain Peters regarding those persons indicted. During the meeting on May 19, 2021, Chief Turner was expecting Ms. Dahl to do what she said she was going to do and he expected to recommend the renewal of her MOU that was set to expire June 30, 2021 notwithstanding the history of complaints from Sgt. LeGault. *Turner Decl.*, ¶¶ 22-24, 27-28.

3. In June, Captain Peters reported back to Chief Turner that Ms. Dahl had not sought any of the indictments that she had said she would seek, and she had not reported back to Captain Peters as she had agreed. Ms. Dahl later testified that it was a mistake on her part not to report back to Captain Peters as she had agreed to do, including not responding to Captain Peters' email reminder about the need for an update. *Turner Decl.*, ¶¶ 25, 30-31; and *Dahl deposition*, p. 30, line 18 to p. 33, line 19.

4. Even then, Chief Turner inquired of the City Attorney whether it was possible to renew the MOU – *which was pursuant to an annual DOJ grant* – but then terminate the MOU early if Ms. Dahl's work performance did not improve. The City Attorney advised him that it would be simpler not to renew the contract as opposed to renewing a one-year contract and then seeking to terminate it early. Based upon this advice, Chief Turner recommended to the City Manager that the MOU not be renewed, and the City Manager followed that recommendation. *Sandos Decl.*, ¶ 6, *Turner Decl.*, ¶¶ 32-33, and *Peterson Decl.*, ¶ 5.

Based on these facts, under the first prong of the qualified immunity test, Chief Turner is entitled to summary judgment under the same action defense because he was clearly justified in recommending the nonrenewal of the MOU, and he had legitimate, non-retaliatory reasons to not renew the MOU. In fact, under these circumstances Ms. Dahl's failure to either do what she said

she would do -- *or at least report back to Chief Turner or Captain Peters as to why she could not achieve what she said she would do* – is shocking because: (1) her primary job duty was to assist Johnson City in the prosecution of federal cases, (2) she knew that on December 15, 2020 the Chief of Police had sent an email to her supervisor at the United States Attorney’s Office requesting a status report on her cases, (3) she knew that the May 19, 2021 meeting was at the request of the Chief of Police to go over her cases, (4) she knew that she had represented that she would indict five people who had been on the list of cases as far back as December 15, 2020, and she had not sought any of those indictments, and (5) she knew that she had represented she would report back to Captain Peters and she failed to do so.

Although unknown to Johnson City officials at the time of the non-renewal decision, Ms. Dahl’s supervisor, AUSA Wayne Taylor, was experiencing the same issues with Ms. Dahl regarding an inexplicable failure to respond to persons. For example, on February 18, 2021 Supervisory AUSA Wayne Taylor sent Ms. Dahl the following email:

Kat,

I understand from the Clerk’s Office that your complaint from yesterday did not have a cover sheet and did not have an arrest warrant. Then, on your superseding indictment, it did not get entered because it was to be sealed, and there was no motion or order to seal provided. I know you have been busy this week with teaching and getting these two things ready, but please make sure that you have everything in your packets to go to the clerk’s office or to the grand jury. And that you have allocated a sufficient amount of time to make sure you get everything done that you need to. If you are not sure, please ask me or anyone else here. Typically, those supporting documents are what our support staff does for you. I don’t know if an [USAO legal assistant] is not doing them for you or not. But regardless, as the SAUSA on the case, it is your responsibility.

These issues seem to fit the recent trend of not responding quickly enough to Probation, completing trainings at the last moment and often getting documents to

me for review very late in the game. I want your reputation and the reputation of this office to remain very high. I know there is a continued learning curve and that there is a lot to learn but if there is anything you would like to discuss with me, please feel free. As for now, if not done already, please make sure you rectify the issues on the complaint and superseding indictment. Thanks.

Wayne

See Exhibit 111 to deposition of Wayne Taylor. With respect to the “trend” of not responding quickly enough to Probation, AUSA Taylor testified as follows:

Q. ... do you recall getting complaints from probation?

A. Yes, I recall that very well.

Q. Any you recall getting more than one complaint from probation?

A. Numerous, repeated complaints.

Q. Repeated complaints from probation.

A. Yes.

...

A. ... the main complaint that I would get from probation would just be an overall lack of responsiveness that they would reach out to try to talk to Kat about a given case.

Taylor depo., Exhibit 111, page 31, lines 9-16; and page 32, lines 19-22. AUSA Taylor went on to explain that normally probation would reach out to Ms. Dahl regarding whether she had any additional information that would be relevant to sentencing. *Id. at p. 32, line 22 to p. 33, line 20.*

AUSA Taylor further testified:

I think it's those types of things that I heard from probation more often, that they would reach out to Kat and they were not getting a response ... by this point [as of February 18, 2021 email], I had been talked to by the supervisor at the probation office a number of times about the lack of responsiveness from Kat. And that's

where I felt – and although I had talked to her before, it took another notch up because the reputation of our office is paramount. And if nothing else, that's something I feel incredibly strong about is unresponsiveness. We all have smart phones. We're available all the time. And if we're not responding to probation, probation is also an arm of the court, and that just affects our overall credibility as an office. It hurts our reputation, and that's not something that I'm going to allow to continue to happen. So that's kind of the nature of what is going on here to address this and make sure this stops and that communication and responsiveness improves at that point.

Id. at p. 33, lines 14-16; and p. 33, line 20 to p. 34, line 10.

AUSA Wayne Taylor's February 18, 2021 email to Ms. Dahl also referenced a trend of completing mandatory trainings at the last minute. On that subject, AUSA Taylor testified:

A. We are given a lot of mandatory training, as you can imagine, and again, when I have reached this point to send this E-mail, it's not a first time having a conversation with Kat because we all have deadlines to complete those mandatory trainings, and if we get close to that deadline, oftentimes I'll get a call or notification, even from our U.S. Attorney, hey, can you talk to Kat or whoever the person would be that still hadn't completed the trainings, or sometimes I would get notifications, you know, this many people still haven't done their trainings. With Kat, unfortunately, that was a trend that I would need to talk to her, and remind her, and tell her often the day before, or things like that, that she still needed to do the training.

Q. And there's no reason that she could not have completed the training earlier?

A. No. These trainings were posted and notified many months ahead of time as to when their due date is.

Id., p. 37, line 20 to p. 38, line 12.

AUSA Taylor was asked about other instances of a lack of responsiveness:

Q. Did you receive complaints about Ms. Dahl's lack of responsiveness from other persons in the federal government that we haven't talked about?

A. I don't know in the federal government. We talked about probation, I guess, extensively. Certainly there were complaints from other defense attorneys, which

is definitely not a common occurrence that I would get complaints or comments from defense attorneys that would come to me. That did occur.

Q. Is that with respect to her producing documents she was required to produce or what would that be?

A. More on the lines of responsiveness as well. Most defense attorneys would couch it in the term of I don't want to get somebody in trouble and would feel very bad, I think, about doing it, but were having trouble reaching Kat.

Id., p. 47, lines 5-23.

At the time Johnson City made the decision not to renew Ms. Dahl's contract, no one with the City was aware of the February 18, 2021 email from AUSA Taylor to Ms. Dahl, taking her to task for her lack of timeliness/responsiveness. And obviously, no one was aware of the testimony that AUSA Wayne Taylor would later give in his October 18, 2023 deposition. But Ms. Dahl's failure to report back to Captain Peters regarding the results of the June 2021 Grand Jury is consistent with the "trend" of unresponsiveness identified by her supervisor, AUSA Taylor.

In summary, the undisputed evidence is:

1. On May 19, 2021 Ms. Dahl attended a meeting with Chief Turner and Captain Peters to review her list of cases. This was based on complaints from SIS investigators about Ms. Dahl's work performance coming through Sgt. LeGault. *Turner Decl.*, ¶ 22.

2. During that meeting, Ms. Dahl's own secret recording proves that *she selected* five cases that she would take to the June 2021 Grand Jury. *Exhibit to Motion for Summary Judgment, May 19, 2021 Transcript, p. 102, line 6 to p. 103, line 21.*

3. During that meeting, Captain Peters asked her to report directly back to him regarding the results of the June 2021 Grand Jury, and she agreed to do so. *Exhibit to Motion for Summary Judgment, May 19, 2021 Transcript p. 114, line 24 to p.115. Line 6.*

4. On June 8, 2021, Captain Peters also sent her an email requesting a report. *Dahl depo., p. 30 line 19, Exhibit 6, June 8 2021 email.*

5. The Grand Jury met on June 9, 2021. Ms. Dahl did not present any of the cases she had represented she would present, and she did not report back to Captain Peters. *Turner Decl., ¶ 30, Ex. H.*

6. On the afternoon of June 9, 2021, Chief Turner was informed that Ms. Dahl had not presented any of the cases that she said she would present and she had not reported back to Captain Peters. *Turner Decl., ¶ 30, Ex. H.*

7. Ms. Dahl never reported back to Captain Peters. Even Ms. Dahl has testified that it was a mistake on her part not to report back. *Dahl depo., p. 30, line 18 to p. 33, line 19.*

8. Ms. Dahl's contract was set to expire at the end of June 2021. *Sandos Decl., ¶ 3.*

9. Chief Turner went to City Attorney Sunny Sandos and inquired whether it would be possible for the City to renew the contract (which would be for another year), but then terminate the contract early if Ms. Dahl's work performance had still not improved. *Turner Decl., ¶ 32.*

10. Attorney Sandos advised that the better course of action would be to not renew the contract as opposed to attempting to terminate a contract early. *Sandos Decl., ¶ 6; Turner Decl., ¶ 33.*

11. Chief Turner followed Attorney Sandos' advice and presented that recommendation to the City Manager, who had the authority not to present Ms. Dahl's contract for renewal to the City Commission. *Peterson Decl.*, ¶¶ 4, 5, *Turner Decl.*, ¶ 33.

12. The City Manager followed Chief Turner's recommendation. *Peterson Decl.*, ¶ 5.

Based on the foregoing, the decision to recommend the nonrenewal of Ms. Dahl's contract was justified based upon the information known to Chief Turner. Alternatively, under the second prong, a reasonable police chief, following the advice of the City Attorney, "could have believed" that it was constitutional to recommend the nonrenewal of Ms. Dahl's MOU under the facts known to Chief Turner as described above.

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

A. Ms. Dahl's property interest claim

In Count II of her Complaint, Ms. Dahl alleges that she was entitled to due process because even though she was an employee at will, she had a limited property interest in her continued employment based on the Tennessee Public Protection Act ("TPPA"), Tennessee Code Annotated § 50-1-304. *Doc. 56, PageID #: 804 at ¶¶ 171-72*. The TPPA states in pertinent part as follows:

(b) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.

Furthermore, the statute defines "illegal activities":

(3) "Illegal activities":

(A) Means activities that are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety, or welfare; and

(B) Does not include activities prohibited under title 4, chapter 21, § 8-50-103, or federal laws prohibiting discrimination in employment.

See Tennessee Code Annotated § 50-1-304(a)(3).

B. Analysis of Ms. Dahl's due process claim based on an alleged property interest

With respect to the procedural due process claim based on an alleged property interest, Ms. Dahl's only argument is that as an at-will employee she possessed a limited property interest based upon Tennessee Code Annotated § 50-1-304(a)(3), which protects an employee who refuses to participate in or remain silent about illegal activities. If this Court grants Johnson City's Motion for Summary Judgment as to the Tennessee Public Protection Act claim, then any due process claim against Chief Turner fails because Ms. Dahl did not possess a property interest. Alternatively, Chief Turner is entitled to summary judgment based upon the first prong of the qualified immunity test because: (1) there is no proof that Ms. Dahl refused to participate in or remain silent about "illegal activities"; and/or (2) there is no proof that Chief Turner knew that Ms. Dahl had refused to participate in or remain silent about "illegal activities."

In the further alternative, Chief Turner is entitled to summary judgment under the second prong for the following reasons. First, Ms. Dahl cannot prove that every reasonable police chief would have known that Ms. Dahl was an employee of Johnson City under the MOU.⁴ In support

⁴ Under the first prong of the qualified immunity analysis, Chief Turner is assuming for purposes of this Motion for Summary Judgment only that Ms. Dahl was an employee. But under the second prong of the qualified immunity analysis, the question is whether *every reasonable police chief who read the MOU that expressly provided that Ms. Dahl was an independent contractor would have known that she was an employee*. Chief Turner's position is that a reasonable police chief "could have believed" she was not an employee – meaning a reasonable police chief could have believed she had no property interest.

of this position, Chief Turner adopts by reference the arguments made in Johnson City in its Memorandum Brief as to the City's position that Ms. Dahl was not an employee under the MOU. If a reasonable police chief could have believed she was not an employee, then a reasonable police chief could have believed that this on state statute did not apply to Ms. Dahl (and her only claim of a property interest is based on this state statute applying to her). Second, there is no clearly established law that would have placed every reasonable police chief on notice that this state statute created a property interest. And third, based on the information known to Chief Turner, a reasonable police chief could have believed that he was not aware that Ms. Dahl was purportedly refusing to participate in or remain silent about "illegal activities."

C. Analysis of her due process claim based on an alleged liberty interest

In paragraph 179 of Ms. Dahl's First Amended Complaint, there is reference to a "name-clearing hearing." The right to such a hearing exists when an employee has a "liberty interest" under the Fourteenth Amendment's Due Process Clause. However, when one reads paragraphs 179 and 180 together, it does not appear that Ms. Dahl is actually asserting a liberty interest claim. *Doc. 56, PageID #: 806 (footnotes omitted)*. But even if she were, such a claim would fail for two reasons under the first prong of the qualified immunity test. First, Chief Turner did not voluntarily publish any stigmatizing statement regarding Ms. Dahl. Second, she never requested a name-clearing hearing. *Turner Decl.*, ¶ 42, *Sandos Depo.*, p. 9, lines 13-18; *Peterson Depo.*, p. 9, lines 19-22. See *Smallwood v. Cocke Cnty. Gov't*, 290 F. Supp. 3d 755, 763 (E.D. Tenn.), *aff'd*, 754 F. App'x 310 (6th Cir. 2018). Alternatively, a liberty interest claim fails under the second prong because a reasonable police chief could have believed that he had not voluntarily published

anything that triggered a liberty interest, and/or he could have believed there was no obligation to provide a name-clearing hearing where one was not requested.

VII. CHIEF TURNER IS ENTITLED TO QUALIFIED IMMUNITY AS TO THE SUBSTANTIVE DUE PROCESS CLAIM

A. Dahl's constitutional claim

In Count III of her First Amended Complaint, Ms. Dahl concedes that there is no fundamental right to employment under the Due Process Clause, but she asserts a Substantive Due Process violation based on her theory that the action of Chief Turner allegedly “shocks the conscience.” *See Doc. 56, Complaint, PageID #: 807 at ¶ 184-188.*

B. Law on substantive due process

In *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 547-48 (6th Cir. 2012), the Sixth Circuit explained that a plaintiff may not pursue a Substantive Due Process claim where the alleged conduct that “shocks the conscience” is a termination based on the alleged exercise of free speech under the First Amendment. The reason for this is because the Supreme Court has held that where a specific amendment provides an explicit textual source of constitutional protection, a plaintiff cannot pursue the more generalized notion of substantive due process.

C. Analysis

Under the motion for judgment on the pleadings standard, Ms. Dahl has failed to state a claim upon which relief can be granted under generalized notions of Substantive Due Process since she has a particularized claim under the First Amendment. *See Handy-Clay, supra.* Alternatively, under the summary judgment standard, Chief Turner is entitled to qualified immunity under the first and/or second prongs of the qualified immunity test for the same reasons he is entitled to

qualified immunity as to the First Amendment retaliation claim. More specifically, under the facts of this case, Chief Turner’s conduct does not rise to the level of “shocks the conscience” as a matter of law; and/or a reasonable police chief under the facts of this case could have believed that he was not engaging in conduct that rises to the level of “shocks the conscience.” In support of these positions, Chief Turner adopts verbatim the arguments he made as to the First Amendment retaliation claim.

VIII. CONCLUSION

Police Chief Karl Turner, in his individual capacity, is entitled to judgment on the pleadings as to the Substantive Due Process claim and summary judgment as to all claims.

Respectfully submitted,

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