

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

**1. JARROD PROCTOR and** )  
**2. GWENDOLYN PROCTOR,** )  
 )  
**Plaintiffs,** )

**Case No. 21-CV-307-SPS**

**vs.** )

**1. THE UNITED STATES OF AMERICA,** )  
**2. UNITED STATES DEPARTMENT OF** )  
**INTERIOR, and** )  
**3. BUREAU OF INDIAN AFFAIRS,** )  
 )  
**Defendants.** )

**PLAINTIFFS JARROD AND GWENDOLYN PROCTOR’S PARTIAL  
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

Pursuant to Fed. R. Civ. P. 56, Plaintiffs Jarrod and Gwendolyn Proctor (“Plaintiffs”) move for partial summary judgment for their negligence claims against Defendants The United States of America, United States Department of Interior, and the Bureau of Indian Affairs (“BIA”) (collectively hereinafter, “Defendants”). It is undisputed that Plaintiff Gwendolyn Proctor was lawfully operating her vehicle in Tahlequah, Cherokee County, Oklahoma, on December 14, 2019, when BIA Deputy, Buddy Lee Clinton (“Clinton”) negligently collided with Plaintiffs’ vehicle. Plaintiff Jarrod Proctor was a front passenger in Plaintiffs’ vehicle at the time. It is also undisputed that Clinton was operating his BIA vehicle in the course and scope of his employment at the time of the subject accident. Finally, it is also undisputed that Clinton’s actions directly caused Plaintiffs’ alleged injuries and damages. For these reasons, explained more fully below, Plaintiffs are entitled to partial summary adjudication as to liability on all claims against Defendants with damages to be

determined at a later date.

### **BRIEF IN SUPPORT**

On December 14, 2019, Plaintiff Gwendolyn Proctor was driving on Stick-Ross Mountain Road with Plaintiff Jarrod Proctor as a front passenger. Plaintiffs' vehicle approached the intersection of State Highway 51 spur in Tahlequah, Cherokee County, Oklahoma, which is controlled with a 4-way traffic light. Plaintiffs' vehicle had a green light and thus proceeded through the intersection continuing in a northbound direction. As the vehicle proceeded through the intersection, BIA Deputy, Buddy Lee Clinton, Jr. ("Clinton"), negligently collided with the front passenger side door of Plaintiffs' vehicle at a high rate of speed. At all times pertinent, Clinton was operating the BIA vehicle within the course and scope of his employment with Defendants. As a result of Clinton's negligence, Plaintiffs sustained injuries and damages.

Defendants have failed to present any facts that would give rise to a genuine issue of any material fact. Thus, Plaintiffs are entitled to judgment as a matter of law on liability for the subject accident. Further, it is undisputed that Deputy Clinton was acting within the course and scope of his employment as a Cherokee Nation Deputy Marshal, and therefore, Defendants are vicariously liable for the negligent act of its employee.

### **SUMMARY JUDGMENT EVIDENCE**

In support of this Motion, Plaintiffs rely upon the following evidence which is attached hereto and incorporated by reference:

- Exhibit 1      Official Oklahoma Traffic Collision Report
- Exhibit 2      Deposition Transcript of Buddy Clinton, Jr. (designated pages only)
- Exhibit 3      CNMS Officer Report (Pltf\_Depo\_Exh 00045 – 00048).
- Exhibit 4      CNMS CAD Full Report (Pltf\_Depo\_Exh 00062, 00073, 00075 –

00080)

Exhibit 5 Non Position-Affecting Disciplinary Action

Exhibit 6 CNMS Vehicle Usage Agreement (70 - 73)

Exhibit 7 Cherokee Nation HR Job Description Marshal Service

**STATEMENT OF UNDISPUTED MATERIAL FACTS<sup>1</sup>**

In accordance with Fed. R. Civ. P. 56, Plaintiffs set forth the following material facts which, for the purposes of this Motion only, are not in dispute:

1. On December 14, 2019, at approximately 20:43, Plaintiff Gwendolyn Proctor was lawfully operating her vehicle and traveling on Stick-Cross Mountain Road in Tahlequah, Cherokee County, Oklahoma. Exh. 1. Plaintiff Jarrod Proctor was a front passenger in Plaintiffs' vehicle. *Id.*

2. Plaintiffs' vehicle was traveling northbound on Stick-Cross Mountain Road toward the intersection with State Highway 51 Spur. Exh. 1.

3. This intersection is controlled by a 4-way traffic light. Exh. 1.

4. Plaintiffs' vehicle approached the intersection and then lawfully traveled through with a green traffic light. Exh. 1.

5. On December 14, 2019, Buddy Lee Clinton, Jr. ("Clinton") was employed with the Cherokee Nation Marshal Service ("CNMS"), as a Deputy Marshal with the Bureau of Indian Affairs ("BIA"). Exh. 2, at 14:20-22. *See also*, Exh. 1. At the time of this collision, Clinton was operating a 2020 Chevrolet Tahoe owned by the BIA. Exh. 1.

6. On December 14, 2019, Clinton was scheduled for duty with the CNMS from 08:00 until 20:00. Exh. 2, at 36:15 – 19. He went on shift at 08:12. Exh. 4, at Plf Depo Exh

---

<sup>1</sup> In the Arguments & Authorities Section, Plaintiffs refer to these statements as "SOF ¶ \_\_\_\_\_".

00062.<sup>2</sup>

7. At 16:20, Clinton announced “10-12” to dispatch meaning he had a visitor or other occupant in his vehicle. Exh. 4, at Pltf Depo Exh 00073; Exh. 2, at 70:11-71:4. He had picked up two visitors in his BIA vehicle – Philippe Ayala (“Ayala”) and Wade Smittle (“Smittle”). Exh. 3, at pp. 2-3; Exh. 2, at 70:25-71:10.

8. Clinton was “10/45” (lunch or dinner break) and was on lunch break at 17:11. Exh. 2, at 47:5-9 and 76:23-77:1. Exh. 4, at Pltf Depo Exh 00075. He was returned on shift at 18:05 and then immediately “10/7” (off duty) at 18:05. Exh. 4, at Pltf Depo Exh 00076; Exh. 2, at 77:02-78:1.

9. After he was off duty, Clinton drove in the CNMS vehicle to NSU to play basketball with CNMS Sergeant Tony Asbill (“Asbill”) and Deputy Erik Fuson (“Fuson”). Exh. 2, at 70:11-18 and 82:15-20; Exh. 4, at Pltf Depo Exh 00073.

10. While playing basketball, a call from dispatch came over Deputy Fuson’s radio at 20:07. Exh. 2, 85:2-10; Exh. 4, at Pltf Depo Exh 00077. The dispatch call requested a license plate check of a suspicious vehicle at the John Ketcher Youth Shelter (“youth shelter”). Exh. 2, at 37:13-22, 84:7-21.

11. Sergeant Asbill and Deputy Fuson were not in uniform while playing basketball. Exh. 2, at 37:14-23, 40:4 – 12, 47:10-25. Deputy Clinton was still in his uniform despite being off duty. Exh. 2, at 36:20 – 37:24; 82:7-24.

12. Sergeant Asbill verbally cleared Deputy Clinton to respond to the youth shelter call. Exh. 2, at 53:21-54:1. As such, Clinton was back on shift at 20:10 and officially dispatched to the youth shelter at 20:17. Exh. 4, at Pltf Depo Exh 00077 – 00078.

---

<sup>2</sup> Clinton’s unit was labeled “45” and also referred to as “n45” in the CAD Full Report. Exh. 4, at Pltf Depo Exh 00062.

13. Ayala and Smittle left the NSU gym with Deputy Clinton to respond to the youth shelter call. Sergeant Asbill observed Clinton leave the gym with both visitors. Exh. 2, at 37:25 – 38:12.

14. Deputy Clinton arrived at the youth shelter at 20:28. Exh. 4, at Pltf Depo Exh 00077. He cleared the call to the youth shelter at 20:32 p.m., but his shift did not end. Exh. 2, at 38:12-20.

15. At 20:30, dispatch received a call for a robbery in progress. Exh. 4, at Pltf Depo Exh 00079. According to the CAD Full Report, Fuson (Unit N17) received the first dispatch assignment at 20:31 for this robbery. *Id.*

16. After the robbery call came over the radio, Deputy Clinton contacted Fuson and asked if he was needed at the robbery. Exh. 2, at 37:14 – 23, 38:24 – 39:24. Because Asbill and Fuson were not in uniform and the urgent situation, Clinton offered to take the dispatch call. *Id.* Fuson again verbally dispatched Clinton to the robbery at 20:32 from the youth shelter. Exh. 4, at Pltf Depo Exh 00079. *See also, Exh 2, at 38:24 – 39:24.*

17. According to the CAD report, Deputy Clinton was reassigned to the robbery call at 20:39, and he activated his lights and sirens. Exh. 4, at Pltf Depo Exh 00079. *See also, Exh. 2, at 22:21-25.*

18. Deputy Clinton was *en route* to the robbery and drop off the visitors at his apartment complex. Exh. 2, at 52:21-24.

19. Deputy Clinton was on duty with activated lights and sirens as he approached the intersection of Stick-Ross Mountain Road and State Highway 51 spur. Exh. 2, at 22:21-25. He was also speeding when he drove through the intersection. Exh. 2, at 101:4-7.

20. At approximately 20:42, Deputy Clinton drove the CNMS vehicle through a red light as he proceeded through the intersection. Exh. 2, at 62:14-23. As a result of

Clinton's actions, the CNMS vehicle struck the Plaintiffs' vehicle. Exh. 2, at 62:14-23.

21. Clinton remained on duty for the CNMS from the time he responded to the youth shelter call at 20:17 through the time of this accident. Exh. 2, at 53:9 – 14; Exh. 4, at Pltf Depo Exh 00080.

22. On January 14, 2021, Clinton was always operating his CNMS vehicle with the permission of the BIA. Exh. 2, at 53:16-20.

23. Deputy Clinton did not consume any alcohol while on duty. Exh. 3, at Pltf Depo Exh 00047.

24. Clinton was not required to track personal mileage for the CNMS vehicle. Exh. 2, at 54:2 – 16.

25. At the end of every shift, Deputy Clinton was allowed to drive his patrol car home which he did as a matter of routine. Exh. 2, at 54:17-25.

## **ARGUMENTS & AUTHORITIES**

### **I. Summary Judgment Standard.**

When “there is no genuine dispute as to any material fact...the movant is entitled to judgement as a matter of law.” Fed. R. Civ. P. 56(a). Although a court considering a motion for summary judgement must view the evidence in a light most favorable to the non-moving party, a “mere existence of a scintilla of evidence,” conclusory allegations, speculations, and unsubstantiated assertions cannot defeat summary judgement. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). In addition, Fed. R. Civ. P. 56 “mandates the entry of summary judgement,” against a party, such as the Defendants, “who [fail] to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “Summary judgement procedure is properly regarded not as a disfavored procedural

shortcut, but rather as an integral part of the Federal Rules as a whole,” which are designed “to secure the just, speedy and inexpensive determination of every action.” *Id.* at 327 (quoting Fed. R. Civ. P. 1).

## **II. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGEMENT ON THEIR LIABILITY CLAIMS.**

The Federal Tort Claims Act (“FTCA”) “is a limited waiver of sovereign immunity, making the Federal Government liable to the same extent as a private party for certain torts of federal employees acting within the scope of their employment.” *United States v. Orleans*, 425 U.S. 807, 813 (1976). Subject to the exceptions listed in the FTCA, civil actions are permitted against the United States in cases of:

injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1).

In the present case, Deputy Clinton, while acting within the course and scope of his employment of the government, caused a loss of property and personal injury due to his negligent and/or wrongful act. SOF ¶¶ 12, 16 – 21. Deputy Clinton was on duty and dispatched to a robbery when he was involved in this accident while operating his government supplied vehicle. SOF ¶¶ 17 and 21. Accordingly, sovereign immunity is waived under the FTCA and Oklahoma’s substantive law applies. *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1117 (10<sup>th</sup> Cir. 2004).

### **A. Deputy Clinton was Acting Within the Course and Scope of His Employment.**

In Oklahoma, an employee is acting within the course and scope of his or her employment so long as the actor is performing the job related duties in good faith within the

duties of his office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee.” 51 Okla. Stat. tit. §152(12). Oklahoma has also established that the employer is liable for its employee’s actions so long as those acts were within his or her authority. *DeCorte v. Robinson*, 1998 OK 87 ¶12. Oklahoma law is well-settled that an “‘employer can be held liable even if the employee acts beyond the given authority’ so long as the act was ‘incident to some service being performed for the employer.’” *Barnes v. United States*, 707 Fed. Appx. 512, 517 (citing *Rodebush v. Okla Nursing Homes, Ltd.*, 1993 OK 160, 867 P.2d 1241, 1245).

Deputy Clinton was unequivocally acting in his official capacity. He was dispatched to the robbery call as a deputy marshal with the BIA by his supervisor. SOF ¶¶ 16-17. Deputy Clinton had verbal permission from his supervisor to use the BIA vehicle for official purposes, including this robbery. SOF ¶16. As further confirmation, dispatch formally assigned Deputy Clinton as the responding officer for the robbery. SOF ¶¶ 14, 19. At the time of the accident, Deputy Clinton was officially on duty, with activated lights and sirens. SOF ¶¶ 19, 21-22. The accident occurred while Clinton was on his way to the robbery with a stop to drop off the two visitors at his nearby apartment. SOF ¶ 18. , Deputy Clinton’s emergency lights and sirens were engaged throughout the operation of his official vehicle and at all times prior to the subject accident. SOF ¶ 19. But for this accident, it was Deputy Clinton’s intention to respond to this robbery. Exh. 2, at 55:10-16.

Deputy Clinton’s essential job duties required him to perform law enforcement work, which necessarily includes responding to a robbery. Exh. 7, at Pltf Depo Exh 00040-00041. He was also expected to “apply common sense understanding” when carrying out his job duties. Exh. 7, at Pltf Depo Exh 00042. It is certainly reasonable for a deputy to avoid



bringing civilians to an unfolding crime scene. Exh. 2, at 94:17 – 95:16. Deputy Clinton made the decision to travel from the youth shelter to his apartment to drop off the civilians. Exh. 2, at 95:3 – 10. It was a decision made to ensure the safety of the civilians. Exh. 2, at 95:3 – 10. The CNMS job description requires deputies, such as Clinton, to provide for citizens, not merely address violators. Exh. 7. The job also provides a level of discretion, which Deputy Clinton exercised in determining to drop off the civilians before proceeding to the robbery for their safety.

Defendants have denied Deputy Clinton was operating the vehicle in the course and scope of his employment. [Dkt. No. 19, at ¶ 3]. This is based in part on Clinton’s decision to drop off his visitors before proceeding to the robbery. Exh. 5, at Pltf Depo Exh 00038. The reprimand cited Deputy Clinton’s decision to transport “two individuals in his patrol car while running lights and sirens” was in violation of the Cherokee Nation’s procedures. Exh. 5, at Pltf Depo Exh 00038. However, the Cherokee Nation does not prohibit the transportation of civilians in official vehicles. Exh. 6. See also, Exh. 2, at 120:7 – 22; 16:1 – 22. And no such policy was produced to Deputy Clinton during the internal investigation or as a part of his reprimand. Exh. 2, at 26:21-27:19. There was also no objection from dispatch when Clinton when “10/12” earlier in the day. SOF ¶12. If there was any policy against transporting civilians in a CNMS vehicle, it was unwritten and certainly not enforced. Regardless of whether the transportation of the civilians was expressly authorized, Deputy Clinton’s actions were clearly incidental, at a minimum, to the services performed for the benefit of CNMS.

Defendants have also cited the presence of alcohol in Deputy Clinton’s vehicle as further evidence that he was operating outside of his job duties. Exh. 5. The alcohol was purchased by the civilian visitors in the CNMS vehicle, but it was not consumed by Deputy

Clinton. Exh. 3, at Pltf Depo Exh 00047. *See also*, Exh. 2, at 46:13-18. Again, there is no policy prohibiting the transportation of alcohol in the CNMS vehicles; only the *consumption* of alcohol is prohibited. Exh. 6. In fact, alcohol is regularly transported in official vehicles. Exh. 2, at 104:4 – 105:1.

#### **B. PUBLIC POLICY MANDATES COVERAGE FOR THIS ACCIDENT.**

The Supreme Court of Oklahoma of Oklahoma has held “where the named insured gives permission to another to use the insured vehicle, Oklahoma’s Compulsory Insurance Law requires liability insurance must continue to cover this insured vehicle.” *O’Neill v. Long*, 2002 OK 63 at ¶ 18. (The court held even where the permittee exceeds the scope of the named insured’s consent, public policy dictates the vehicle must continue to be covered.). Also, the Compulsory Insurance Law indicates an “unmistakable intent to maximize insurance coverage for the greater protection of the public.” *Id.* (Emphasis added).

At the time of the accident, Deputy Clinton had permission from his supervisor and the CNMS to use his department issued vehicle. SOF ¶¶ 17, 21 - 22. Therefore, public policy mandates that Defendants should be liable for the harm to the innocent third parties caused by the negligent acts of its employee. Any other finding would offend Oklahoma’s express public policy to protect innocent third parties, such as Plaintiffs.

#### **CONCLUSION**

WHEREFORE Plaintiffs, Jarrod Proctor and Gwendolyn Proctor, pray this Court will enter partial summary judgment against the Defendants, The United States of America, United States Department of Interior, and Bureau of Indian Affairs for liability only with damages to be determined at a later date, and any such other and further relief as may be deemed just, equitable and fair.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

**SHERWOOD & ROBERT**

s/ Meredith Dibert Lindaman  
Hugh M. Robert, OBA #22441  
Meredith Dibert Lindaman, OBA #22209  
15 W. 6<sup>th</sup> St., Ste. 2800  
Tulsa, OK 74119  
(918) 592-1144  
(918) 576-6907 (Facsimile)  
[hugh@smr-law.com](mailto:hugh@smr-law.com)  
[meredith@smr-law.com](mailto:meredith@smr-law.com)

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of March 2024, I electronically filed the foregoing with the Clerk of Court using the ECF System and the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrant:

Susan Stidham Brandon, Esq.

[Susan.brandon@usdoj.gov](mailto:Susan.brandon@usdoj.gov)

Jason Poe, Esq.

[Jason.poe@usdoj.gov](mailto:Jason.poe@usdoj.gov)

Alexander Sisemore

[Alexander.sisemore@usdoj.gov](mailto:Alexander.sisemore@usdoj.gov)

*Attorneys for Defendant, United States of America*

s/ Meredith Dibert Lindaman