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

SHAWN WALDEN, Plaintiff, v. THE CITY OF DUNCAN, OKLAHOMA a municipal corporation; and CHRISTIAN ARCHER, in his official and individual capacity, Defendants.	)	Case No.: CIV-23-1075-PRW

MOTION FOR SUMMARY JUDGMENT & BRIEF IN SUPPORT OF DEFENDANT CITY OF DUNCAN

Robert S. Lafferrandre, OBA #11897
Charles A. Schreck, OBA #32863
Jessica James Curtis, OBA #35140
PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN, L.L.P.
1109 North Francis Avenue
Oklahoma City, Oklahoma 73106
Telephone: (405) 235-1611
Facsimile: (405) 235-2904
cschreck@piercecouch.com

Attorneys for Defendants
Christian Archer & City of Duncan

— January 31, 2025 —

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

INDEX OF EXHIBITS

DEFENDANT CITY'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and LCvR 56.1, the Defendant, the City of Duncan ("the City") hereby moves for an order from the Court granting summary judgment on claims asserted against it in the Plaintiff's Complaint (Doc. 1). In support, the City of Duncan offers the following brief.

STATEMENT OF FACTS

Pursuant to LCvR 56-1(b) the City asserts that there is no genuine dispute as to the following material facts:

1. At 1:08pm on Friday, December 30, 2022, Duncan Police Department Dispatch received a call from Lexy Livingston, who was the assistant manager at the Chisolm Corner Store, located at Highway 81. She told dispatch that they "have a gentleman in [the store] who has acted really suspicious, and we are afraid he is going to bolt with product in his hands… He has dropped his personal firearm about twice. He hasn't, like, tried to hurt anybody or anything. It's just, we wanted to be safe." This man was later identified as the Plaintiff, Shawn Walden (Ex. 1, Dispatch Call of Lexi Livingston; Ex. 2, Deposition of Livingston, pp. 19-21).

2. While Plaintiff was in the store, multiple store employees witnessed him drop his gun multiple times. His behavior led them all to believe that he was under the influence of something. One employee stated that Plaintiff was acting like he was "either drunk or high off of something." (Ex. 3, Deposition of Deante Fisher, pp. 10-11; Ex. 4, Deposition of Jas Fisher, pp. 21-24; Ex. 2, Deposition of Lexi Livingston, pp. 16-17; 19-

21).

3. Plaintiff's behavior also made multiple store employees uncomfortable and some even feared for the safety of themselves and the customers. (Ex. 4, Deposition of Jas Fisher, p. 20; Ex. 3, Deposition of Deante Fisher, p. 22; Ex. 2, Deposition of Lexi Livingston, p. 19-20, 28-29).

4. Shortly after Ms. Livingston called dispatch, Officer Christian Archer was dispatched to the Chisolm Corner Convenience Store. He was advised by dispatch prior to his arrival that there was a man inside of the convenience store who was "acting suspicious" and had dropped his firearm on the ground repeatedly. (Ex. 5, Probable Cause Affidavit; Ex. 6, Declaration of Archer; Ex. 7, Dispatch Call to Officer Archer).

5. When Officer Archer arrived on the scene, Plaintiff was backing out of a parking spot in front of the store. Officers Archer, Lard, and Aguilera approached Plaintiff's vehicle and observed that Plaintiff seemed lethargic. (Ex. 5, Probable Cause Affidavit; Ex. 8, Body Cam Footage of Officer Lard; Ex. 9, Body Cam Footage of Officer Archer; Ex. 10, Body Cam Footage of Officer Aguilera, Ex. 6, Declaration of Archer).

6. Due to Plaintiff's lethargic state and his reported actions inside the convenience store, officers asked Plaintiff to exit his vehicle and perform standardized field sobriety tests. (Ex. 5, Probable Cause Affidavit; Ex. 8, Body Cam Footage of Officer Lard; Ex. 9, Body Cam Footage of Officer Archer; Ex. 10, Body Cam Footage of Officer Aguilera; Ex. 6, Declaration of Archer).

7. Officers on the scene observed that Plaintiff had a circular swaying motion,

muscle tremors, and slurred speech. (Ex. 11, Declaration of Aguilera, Ex. 12, Declaration of Davidson).

8. While preparing to perform the standardized field sobriety tests, Officer Archer asked Plaintiff to turn his hat around. As Plaintiff did so, his sunglasses fell off the hat and hit the ground. Plaintiff proceeded to have a delayed response to this. (Ex. 9, Body Cam Footage of Officer Archer).

9. Officer Archer then performed the horizontal gaze nystagmus test, during which he observed that Plaintiff had a circular swaying motion, muscle tremors, and slurred speech. (Ex. 5, Probable Cause Affidavit; Ex. 9, Body Cam Footage of Officer Archer; Ex. 6, Declaration of Archer).

10. Officer Aguilera and Officer Davidson, who were also on the scene, also observed Plaintiff showing other signs of intoxication such as circular swaying and locked knees. (2 Declaration of Aguilera, Ex. 12, Declaration of Davidson).

11. Based on the outcome of the nystagmus test and the officers' other observations, Officer Archer then placed Walden in handcuffs and placed him in the back seat of his patrol vehicle. He did not perform additional Field Sobriety Testing due to safety concerns arising from a previous encounter with Walden. (Ex. 5, Probable Cause Affidavit; Ex. 6, Declaration of Archer).

12. Officer Archer then read Plaintiff the State's Implied Consent Test Request. Plaintiff refused to respond as to whether he wanted to take the implied consent test. The test was ultimately not performed due to safety concerns. (Ex. 13, Implied Consent Form; Ex. 9, Body Cam Video of Archer; Ex. 6, Declaration of Archer).

13. On the way to Stephens County Jail, Plaintiff told Officer Archer that he wished to take the Implied Consent test. Officer Archer drove Plaintiff to the hospital to take the test. However, when they arrived Plaintiff again was incoherent and was unclear as to whether he wished to take the test. (Ex. 9, Body Cam Video of Archer; Ex. 6, Declaration of Officer Archer).

14. Officer Archer then took Plaintiff to the Stephen County Jail where he was later booked in on charged of Actual Physical Control in violation of 47 O.S. § 11-902 and Carrying Firearms While Under the Influence in violation of 12 O.S. § 1289.9. He then was ultimately charged under the Chickasaw Nation Tribal Code. (Ex. 14, Duncan Police Department Report; Ex. 6, Declaration of Archer; Ex. 5, Probable Cause Affidavit).

15. The site of the incident, Duncan, is located within the jurisdiction of the Chickasaw Nation Tribe. On May 7, 2021, the Duncan Police Department entered into a Law Enforcement Commission Agreement with the Chickasaw Nation Tribe. This agreement authorizes the Duncan Police Department to provide law enforcement services and to make lawful arrests in Indian country within or near the jurisdiction of the Chickasaw Nation Tribe. Furthermore, Officer Archer has held a Chickasaw Lighthorse Special Law Enforcement Commission since December 7, 2017, which allowed him to react immediately to emergency situations in and outside of Chickasaw Nation Tribal boundaries. (Ex. 15, Law Enforcement Commission Agreement; Ex. 5, Probable Cause Affidavit; Ex. 16, Declaration of Chief Attaway).

16. Plaintiff, Shawn Walden, is a confirmed member of the Choctaw Tribe.

(Ex. 5, Probable Cause Affidavit; Ex. 17, Deposition of Walden, p 111:12-14).).

17. At all times relevant to this lawsuit, Officer Archer had completed the basic peace officer training and was CLEET certified. He was CLEET certification in 2014 and has over 700 hours of law enforcement training. (Ex. 6, Declaration of Archer).

18. Officer Archer, and all others officers on the scene had been trained on the proper procedure for a warrantless arrest. (Ex. 16, Declaration of Chief Attaway; Ex. 6, Declaration of Archer; Ex. 11, Declaration of Aguilera; Ex. 12, Declaration of Davidson).

19. Officer Archer has never been disciplined for improperly performing a warrantless arrest or for improperly performing a field sobriety test. (Ex. 16, Affidavit of Chief Attaway).

20. At the time of this incident the City of Duncan had a policy that required all officers to assure every person is afforded with the applicable Constitutional rights and safeguards to which they are entitled. (Ex. 18, Constitutional Compliance Policy; Ex. 16, Declaration of Chief Attaway).

21. The Duncan Police Department has a policy on warrantless arrests, which defines probable cause as "as that which would lead a reasonable and prudent person to believe that a crime has been or is about to be committed." (Ex. 19, Arrest Policy, Ex. 16, Declaration of Chief Attaway).

22. Officer Archer's shift supervisor was also on the scene of the incident and noted that Officer Archer followed all proper procedure. (3Declaration of Davidson).

23. Plaintiff was charged under the Chickasaw Nation Tribal code. Under *McGirt v. Oklahoma*, 591 U.S. 894 (2020) the Chickasaw Nation is the one who had to

power to charge him. His case was heard in the Chickasaw Nation District Court. (Ex. 20, Chickasaw Nation Docket).

24. The Chickasaw Nation requires that the law enforcement officer who made the arrest complete an affidavit of probable cause to make a warrantless arrest and present it to a judicial officer within forty-eight hours, which Officer Archer did in accordance with the Duncan Police Department policies. (Ex. 5, Probable Cause Affidavit; Ex. 21, Probable Cause Affidavit Policy; Ex. #, Declaration of Chief Attaway; Ex. 6, Declaration of Archer).

25. The Chickasaw Nation ultimately dismissed the charges against Plaintiff. (Ex. 20, Chickasaw Nation Docket).

ARGUMENTS & AUTHORITIES

Rule 56(a) of the Federal Rules of Civil Procedure provides that "[t]he court shall grant summary judgment if 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." Summary judgment is not a disfavored procedural shortcut, but an integral part of the federal rules as a whole. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986), the Supreme Court held that "there is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." The Court further held that "if the evidence is merely colorable, or not significantly probative, summary judgment may be granted." *Id.* In addition, the *Anderson* Court stated that "the mere existence of a scintilla of evidence in support of a plaintiff's position will be insufficient; there must be

evidence on which a jury could reasonably find for the plaintiff." *Id.*

Furthermore, as described by the court in *Cone v. Longmont United Hosp. Ass'n.*, 14 F.3d 526 (10th Cir. 1994), "[e]ven though all doubts must be resolved in (the nonmovant's) favor, allegations alone will not defeat summary judgment." *Cone* at 530 (citing *Celotex*, 477 U.S. at 324). *See also Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991); *Roemer v. Pub. Serv. Co. of Colo.*, 911 F. Supp. 464, 469 (D. Colo. 1996). Moreover, "(i)n response to a motion for summary judgment, a party cannot rely on ignorance of facts, on speculation, or on suspicion, and may not escape summary judgment in the mere hope that something will turn up at trial." *Conaway v. Smith*, 853 F.2d 789, 794 (10th Cir. 1988).

In this case, Plaintiff asserts that the City of Duncan is responsible for the alleged violation of his constitutional rights. As a preliminary matter, Plaintiff cannot even bring such claims against the City because Officer Archer was not acting under the color of state law. He was acting within his capacity of his Chickasaw Lighthorse Special Law Enforcement Commission. Even if this Court finds that Officer Archer was acting under the color of state law, Plaintiff cannot establish any underlying constitutional violation, much less any violation that was caused by any actions of the City.

I. DUNCAN POLICE OFFICERS WERE NOT ACTING UNDER THE COLOR OF STATE LAW

Claims brought "pursuant to 42 U.S.C. § 1983 require proof that officers were acting under color of state law at the time of the challenged conduct; if they were acting pursuant to tribal law, § 1983 does not apply because a § 1983 action 'is unavailable for

persons alleging deprivation of constitutional rights under color of tribal law.'" *Ouart v. Fleming*, 2010 WL 1257827, at *2 (W.D. Okla. Mar. 26, 2010). A defendant's actions pursuant to tribal authority are not actions taken "under color of state law" for the purpose of maintaining an individual capacity suit against that defendant under § 1983. *McKinney v. State of Oklahoma*, 925 F.2d 363, 365 (10th Cir.1991); *Chapoose v. Hodel*, 831 F.2d 931, 934 (10th Cir.1987); *Ouart, supra*, at *2; see also *Strange v. Kiowa Tribe of Oklahoma*, No. CIV-20-1155-J, 2021 WL 1095983, at *4 (W.D. Okla. Jan. 27, 2021), *report and recommendation adopted*, No. CIV-20-1155-J, 2021 WL 1097326 (W.D. Okla. Mar. 22, 2021) (because Tribal officials are not officers of the state, they are not state actors for purposes of a § 1983 action).

It is undisputed that the site of this incident, the City of Duncan, is located within the jurisdiction of the Chickasaw Nation. (Fact 15). It also is undisputed that Plaintiff is a citizen of the Choctaw Nation and that Officer Archer was a cross-commissioned tribal deputy for the Chickasaw nation pursuant to the Law Enforcement Commission Agreement between Duncan Police Department and the Chickasaw Nation. (Facts 16 & 17). As such, it is beyond any reasonable dispute that Officer Archer was acting in his capacity as a cross-commissioned Tribal Deputy for the Chickasaw Nation, not under the color of state law with regard to the arrest. In fact, pursuant to *McGirt v. Oklahoma*, 591 U.S. 894 (2020) and its progeny, Officer Archer would have no jurisdiction over Plaintiff if not for his commissioner status. Accordingly, the City is entitled to summary judgment with regard to Plaintiff's claims.

II. PLAINTIFF CANNOT ESTABLISH GOVERNMENTAL LIABILITY AGAINST THE CITY

In order to establish government liability against the City under 42 U.S.C. § 1983, Plaintiff must show that his constitutional rights were violated and that such violation was caused by a policy, practice or custom of the City of Duncan. *See Jensen v. West Jordan City,* 968 F.3d 1187, 1204 (10th Cir. 2020). Plaintiff cannot show that there was a constitutional violation in this case, and even if he could, he cannot show that such violation was caused by a policy, practice, or custom of the City of Duncan.

A. Plaintiff Cannot Establish Any Underlying Constitutional Violation

First and foremost, Plaintiff must show an underlying violation of his constitutional rights by an agent, employee or officer of the City of Duncan before municipal liability can be imposed against the Defendant. The Tenth Circuit Court of Appeals has held that "[a] municipality may not be held liable where there was no underlying constitutional violation by any of its officers." *Fenn v. City of Truth or Consequences*, 983 F.3d 1143, 1150 (10th Cir. 2020) (quoting *Hinton v. City of Elwood,* 997 F.2d 774, 782 (10th Cir. 1993). This is so "regardless of whether the municipality's policies might have 'authorized' such harm." *Hinton, supra.* (citing *City of Los Angeles v. Heller*, 475 U.S. 796, (1986)); *see also Walker v. City of Orem*, 451 F.3d 1139, 1152 (10th Cir. 2006 (a plaintiff suing a county under section 1983 for the actions of one of its officers must demonstrate that a municipal employee committed a constitutional violation); *Livsey v. Salt Lake County,* 275 F.3d 952, 958 (10th Cir. 2001) (defendants' actions did not violate constitutional rights and could not have caused the county to be

held liable based on their actions).

Plaintiff claims that Officer Archer, a City of Duncan police officer, falsely arrested him in violation of his constitutional rights under the Fourth, Fifth, and Fourteenth Amendments. In order to establish a false arrest claim, one must show that the officer did not have probable cause. "Probable cause to arrest exists only when the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *United States v. Valenzuela*, 365 F.3d 892, 896 (10th Cir.2004) (internal quotation marks omitted) As set forth in depth in Officer Archer's Motion for Summary Judgment, Officer Archer did have probable cause to arrest the Plaintiff. Officer Archer was told that the Plaintiff had a gun that he had dropped multiple times while in the Chisolm Corner Store. (Fact 4). Plaintiff's behavior was shady and incoherent to the point that employees of the store feared for their safety. (Fact 3). Additionally, he performed a field sobriety test which indicated to him that the Plaintiff was under the influence of some substance. (Facts 8-11). All officers on the scene agreed with this assessment. (Fact 10). There was no underlying violation of Plaintiff's constitutional rights. As such, the City is entitled to summary judgment with regard to Plaintiff's 42 U.S.C. § 1983 claims.

B. No Violations Were Caused by A Policy, Practice, Or Custom of The City

Even if Plaintiff could demonstrate an underlying violation of his constitutional rights by an agent, employee or officer of the City of Duncan, the City would still be entitled to summary judgment with regard to Plaintiff's § 1983 claims because Plaintiff

cannot demonstrate that any such violation was caused by a policy, practice or custom of the City of Duncan. It is well established that a municipality, such as the City of Duncan, cannot be held liable under § 1983 based on the doctrine of *respondeat superior* or vicarious liability. *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 694-95 (1978). In *Monell,* the Supreme Court held that a governmental entity is only liable under § 1983 when the constitutional injury can fairly be said to have been caused by that entity's own policies and customs. *Id.* at 694. The actions of the governmental entity must be the moving force behind the constitutional violation. *Id.* The Supreme Court has held that governmental liability for a constitutional violation "attaches where - and only where - the entity makes a deliberate choice to follow a course of action from among various alternatives." *Pembaur v. Cincinnati,* 475 U.S. 469, 483 (1986).

The City may not be held liable simply because they "employ[] a tortfeasor." *Board of County Commissioners of Bryan County, Oklahoma v. Brown,* 520 U.S. 397, 403 (1997). Additionally, "[t]hat a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee will not alone permit an inference of municipal culpability and causation." *Id.* at 406-07. Rather, *Monell* requires Plaintiff to establish that a policy or custom of the City caused the alleged constitutional violations. *See City of Oklahoma City v. Tuttle,* 471 U.S. 808, 821-22 (1985); *see also Hinton, supra.* (Plaintiff must show that there is a direct causal link between the policy or custom and the injury alleged).

There is no evidence that any policy, procedure, or custom of the City of Duncan caused the alleged constitutional violation. To the contrary, the City of Duncan had

implemented policies and practices aimed at preventing arrests without probable cause. (Facts 20-21). Plaintiff cannot point to any unconstitutional policy that would have caused Plaintiff's alleged false arrest. At the time of this incident, the City had policies which required officers to assure that every person is afforded all applicable constitutional rights and safeguards for which they are entitled, that outlined the scenarios in which an officer could perform a warrantless arrest; and instructed officers on the procedures for filling out a probable cause affidavit. (Facts 20, 21, 24). Officer Archer, along with the other officers on the scene, had been trained on the policies and procedures relevant to this arrest. (Fact 18).

Plaintiff cannot reasonably argue that the policies of the City of Duncan caused Officer Archer to improperly arrest him. Additionally, there is simply no evidence in this case that the City of Duncan had an unofficial custom of allowing officers to perform improper warrantless arrests. Accordingly, the City is entitled to summary judgment to the extent that Plaintiff's § 1983 claims against them are premised upon allegations of the existence of unconstitutional policies, practices, or customs.

C. Plaintiff's Claim Based on Any Alleged Failure to Train Must Also Fail

Plaintiff further contends that Officer Archer's actions were caused by inadequate training and supervision. (Doc. 1, ¶¶ 21-22). But yet again, Plaintiff has no factual support for this contention. There are limited circumstances where inadequacy in training can be a basis for § 1983 liability. *City of Canton v. Harris,* 489 U.S. 378, 387 (1989). "A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick v. Thompson* , 563 U.S. 51, 61 (2011). "[A] 'policy'

of 'inadequate training'" is "far more nebulous, and a good deal further removed from the constitutional violation, than was the policy in *Monell." Tuttle,* 471 U.S. at 822-23. Inadequacy in training may serve as the basis for municipal liability under § 1983 "only where the failure to train amounts to deliberate indifference..." *City of Canton,* 489 U.S. at 388. "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality...can a city be liable for such a failure under § 1983." *Id.* at 389.

To establish deliberate indifference to a need for training, Plaintiff must show that the City knew of and disregarded the substantial risk of inadequate training of their employees. *Canton,* 489 U.S. at 388. "It is not enough to allege 'general deficiencies' in a particular training program...Rather, a plaintiff 'must identify a specific deficiency in the [entity's] training program closely related to his ultimate injury, and must prove that the deficiency in training actually caused'" the alleged violation of his constitutional rights. *Keith v. Koerner,* 843 F.3d 833, 839 (10th Cir. 2016) (quoting *Lopez v. LeMaster,* 172 F.3d 756, 760 (10th Cir. 1999)). To establish deliberate indifference, Plaintiff must demonstrate that the Duncan Police Department had actual or constructive notice that its action or failure to act was substantially certain to result in a constitutional violation, and that Defendant Sheriff consciously or deliberately chose to disregard the risk of harm. *Quintana v. Santa Fe Cty. Bd. of Commissioners,* 973 F.3d 1022, 1056 (10th Cir. 2020).

> In most instances, notice can be established by proving the existence of a pattern of tortious conduct….In a "narrow range of circumstances," however, deliberate indifference may be found absent a pattern of unconstitutional behavior if a violation of federal rights is a "highly predictable" or "plainly obvious" consequence of a municipality's action or inaction, such as when a municipality fails to train an employee in specific skills needed to handle recurring situations, thus presenting an obvious

potential for constitutional violations.

Barney v. Pulsipher, 143 F.3d 1299, 1307-08 (10th Cir. 1998). (citations omitted).

At the time of this incident, Officer Archer was a CLEET certified law enforcement officer with over 700 hours of law enforcement training. (Fact No. #). His law enforcement training would have necessarily included training on warrantless arrests, reasonable suspicion, probable cause, and field sobriety testing. (Fact 17). He, as well as other officers present on the scene, were trained on all City of Duncan policies and procedures. (Fact 18). Plaintiff cannot establish any deficiency in the City of Duncan's training, much less a deficiency that was the result of a conscious choice of the City.

Moreover, Plaintiff cannot demonstrate that the City of Duncan was deliberately indifferent to a substantial risk that Officer Archer might improperly arrest a citizen. There is no evidence that Officer Archer had ever improperly arrested a citizen prior to the subject incident. (Fact 19). Officer Archer's shift supervisor was also on the scene and noted that Officer Archer followed all proper procedure. (Fact 22). Plaintiff cannot show that there was any deficiency in the training of Officer Archer which was obvious and closely related to the alleged violations of Plaintiff's constitutional rights. Plaintiff also cannot demonstrate that the City was deliberately indifferent to a substantial risk that Officer Archer might improperly perform a warrantless arrest. There is no evidence that Officer Archer had ever improperly arrested someone in the past and thus there is no evidence that would have placed the City on notice of any need for additional or different training that Officer Archer might need. The City is entitled to summary judgment on all claims premised on allegations of inadequate training.

III. PLAINTIFF CANNOT RECOVER DAMAGES FROM THE CITY UNDER THE OKLAHOMA GOVERNMENTAL TORTS CLAIMS ACT

Plaintiff also allege that the City is liable for the "negligent actions of its Officer including the false arrest and false imprisonment pursuant to the provisions of the [OGTCA]." (Doc. 1, ¶ 22). As a preliminary matter, Plaintiff cannot bring a false imprisonment claim against the City, because Oklahoma law only allows false imprisonment claims against private actors. *Mengert v. U.S.*, 120 F.4th 696, 715 (10th Cir. 2024). Thus, the Court need only address Plaintiff's false arrest claim. However, Plaintiff cannot even maintain a false arrest claim against the City as the City cannot be held liable for a failure to train or supervise under the OGTCA and Officer Archer did not commit any tortious act for which the City can be held liable. The GTCA is the exclusive remedy for an injured plaintiff to recover against a governmental entity in tort. *Id.* at 1163. The GTCA adopts the doctrine of sovereign immunity and sets out the specific circumstances under which the state waives its immunity and that of its political subdivisions. *See* 51 O.S. § 152.1; *see also Smith v. City of Stillwater*, 328 P.3d 1192, 1198 (Okla. 2014).

The City of Duncan is a political subdivision of the state of Oklahoma, and therefore, is entitled to immunity under the GTCA. *See* 51 O.S. §§ 152, 152.1. The state and its political subdivisions may waive immunity, and consent to suit, only to the extent and in the manner provided in the GTCA. 51 O.S. § 152.1(B). Pursuant to the GTCA,

> [t]he state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in the [GTCA] and only

> where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state.

51 O.S. § 153(A).

In addition to the specific circumstances under which the GTCA waives immunity, the GTCA also enumerates a list of specific acts for which sovereign immunity is **not waived**. 51 O.S. § 155, et seq. Section 155 explicitly enumerates those circumstances in which a state or political subdivision **shall not be liable** if the loss or claim results from the specific circumstances listed. Oklahoma law is clear that the state and its political subdivisions are immune from suit for torts committed in performance of an act or service which is in the discretion of the state or political subdivision or its employees, pursuant to the GTCA. *See* 51 O.S. §§ 152.1, 153 and 155.

A. City of Duncan Cannot Be Held Liable under the GTCA for any tort claims based on the failure to train or supervise its employees.

Plaintiff alleges that "Because the failure to train and supervise Officer Archer is, at the least, negligent, the City of Duncan is also liable for the negligent actions of its Officer including the false arrest and false imprisonment pursuant to the provisions of the Oklahoma Governmental Tort Claims Act (OGTCA)" (Doc. 1, ¶ 22). But the City of Duncan is immune from liability under the GTCA for any state law claim related to Plaintiff's alleged negligent training and supervision of its employees. Specifically, such governmental activity is considered a discretionary function under the GTCA; and thus, Defendant is specifically exempted from claims arising from such functions. The GTCA states at 51 O.S. §155(4), (5):

> The state or political subdivision shall not be liable if a loss or claim results from:
>
> …
>
> 4. adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;
>
> 5. performance of or failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;

An action of a political subdivision is discretionary when it is the result of judgment. *Robinson v. City of Bartlesville Board of Education* 700 P.2d 1013, 1017 (Okla. 1990). Both the language of the GTCA and Oklahoma case law construing these provisions make it clear that the state and/or a political subdivision is not subject to a suit for discretionary acts such as hiring, *supervising* and *training* employees, as well as enforcement or adoption of rules or policies. *See, e.g., Howard v. Baca,* No. CIV-22-00168-PRW, 2023 WL 2755308, at *9 (W.D. Okla. Mar. 31, 2023) (collecting Oklahoma cases that establish the discretionary function exemption to negligent supervision claims); *Burris v. Oklahoma, ex rel., Oklahoma Dep't of Corr.,* No. CIV-13-867-D, 2014 WL 442154, at *10 (W.D. Okla. Feb. 4, 2014) ("Defendant DOC is immune from the allegations . . . involving the alleged negligent hiring, training, supervision and retention of Defendant . . . [;][u]nder Oklahoma law, these acts were "discretionary" and exempt DOC from liability under the GTCA."); *Jackson v. Oklahoma City Pub. Sch.,* 2014 OK CIV APP 61, ¶ 9, 333 P.3d 975, 979 (finding that it is well settled that hiring, training,

and supervising decisions are discretionary and thus a political entity cannot be liable for damages resulting from those decisions.); *Burns v. Holcombe*, Case No. 09-CV-152-JHP, 2010 WL 2756954, *15 (E.D. Okla. July 12, 2010) (finding plaintiff's complaints of the Board of County Commissioners' failure to select and employ qualified officers, employees and failure to properly train its officers and failure to properly maintain and update its system of posting and removing arrest warrants falls within the Board's discretionary authority and policy making powers specifically exempted by the Oklahoma GTCA).

The City of Duncan's training and supervising of officers is clearly the sort of discretionary decisions that the City makes on a daily basis. The nature of hiring, training, and supervising officers is discretionary and involves the use of individual judgment in each case as no policy or rule can cover every situation which may arise in the hiring, training, and supervising or officers. Such discretionary decisions are exactly the sorts of acts which are to be protected and exempted from liability by the GTCA. Therefore, Plaintiff's claim regarding the City of Duncan's alleged failure to train and supervise its employees falls under discretionary decisions of the political subdivision and are thus exempt from liability under the GTCA.

B. The City Cannot be Held Liable for A False Arrest Because There Was Probable Cause For an Arrest

A "[f]alse arrest is an unlawful restraint of an individual's personal liberty or freedom of locomotion" or "an arrest without proper legal authority." *Overall v. State ex rel. Dept. of Pub. Safety*, 910 P.2d 1087, 1091 (Okla. App. Div. 4 1995). In order to maintain

a cause of action for false arrest, the Plaintiff must prove that his arrest lacked probable cause. *Roberts v. Goodner's Wholesale Foods, Inc*., 50 P.3d 1149, 1150 (Okla. App. Div. 1 2002). The existence of probable cause is a complete defense to a false arrest/false imprisonment claim. *Id*. "Probable cause for an arrest exists if the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person in believing an offense had been or was being committed." *State ex rel. Dept. of Pub. Safety v. Kelley*, 172 P.3d 231, 233 (Okla. App. Div. 3 2007).

Plaintiff argues that he was arrested without a warrant on a misdemeanor. (Doc. 1). However, an officer can make such an arrest for a misdemeanor based on his observations as long as the observations amount to probable cause of arrest. *State v. Ballenger*, 514 P.3d 478, 483 (Okla. Crim. App. 2022). Probable cause can also be established by circumstantial evidence. *Id.* As discussed in depth in Officer Archer's Motion for Summary Judgment, there was ample evidence which he personally observed that amounts to probable cause that Plaintiff was in physical control of a motor vehicle while intoxicated and was also in possession of a firearm while intoxicated. Officer Archer observed Plaintiff had a circular swaying motion, muscle tremors, and slurred speech. He also performed the nystagmus test. This is plainly probable cause. Thus, no false arrest occurred. The City of Duncan should be granted summary judgment on Plaintiff's state law claims.

CONCLUSION

For the reasons set forth in this brief, the Court should grant judgment to the City of Duncan.

Date: January 31, 2025

s/ Charlie Schreck
Robert S. Lafferrandre, OBA No. 11897
Charles A. Schreck, OBA No. 32863
PIERCE, COUCH, HENDRICKSON,
BAYSINGER & GREEN, L.L.P.
1109 N. Francis Ave.
Oklahoma City, OK 73106
(405) 235-1611 (O)
(405) 235-2904 (F)
rlafferrandre@piercecouch.com
cschreck@piercecouch.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Mark Hammons
Hammons, Hurt & Associates
325 Dean A. McGee Dr.
Oklahoma City, OK 73102
Attorney for Plaintiff

s/ Charlie Schreck
Charlie Schreck