

Appeal No. 25-6153

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SHAWN WALDEN,

Plaintiff/Appellant,

v.

THE CITY OF DUNCAN OKLAHOMA,
a municipal corporation,

CHRISTIAN ARCHER, in his official
capacity and individual capacity,

Defendant/Appellee.

Appeal No. 25-6153
23-cv-01075-PRW
(Western District of Oklahoma)

On Appeal from the United States District Court
for the Western District of Oklahoma
District Court Case No. 23-cv-01075-PRW
Honorable Patrick R. Wyrick
U.S. District Judge

APPELLANT'S OPENING BRIEF

RESPECTFULLY SUBMITTED THIS 10th DAY OF NOVEMBER, 2025.

s/ Mark Hammons

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ORAL ARGUMENT REQUESTED

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I. - PRIOR OR RELATED APPEALS

There are no prior or related appeals.

II. - STATEMENT OF INTERESTED PARTIES

There are no undisclosed or unlisted parties to this appeal. The Appellant (Plaintiff below) is Sean Walden. The Appellees (Defendants below) are Christian Archer and the City of Duncan.

III. - STATEMENT AS TO JURISDICTION

A. - The Basis For The Court's Jurisdiction

Mr. Walden's federal claim arose out of violations of his Fourth Amendment rights as made actionable by 42 U.S.C. § 1983. Mr. Walden also claimed false arrest and unlawful detention under Oklahoma's common law and made actionable through the Oklahoma Governmental Tort Claims Act (hereafter "OGTCA"). The OGTCA claim solely applied to the City of Duncan. The Sec. 1983 action was asserted against Officer Archer individually and in his official capacity as well.

Jurisdiction over those claims is vested pursuant to 28 U.S.C. §§ 1331, 1343(a)(3). Jurisdiction over the state law claims arose pursuant to 28 U.S.C. § 1367.

Prior to the Court's grant of summary judgment and its Order dismissing the claims, Mr. Walden conceded dismissal of his federal claims against the City of Duncan.

B. - The Dates Showing Timeliness Of The Appeal

The trial court's order granting summary judgment on Mr. Waldren's claims was entered on September 22, 2025, with judgment being entered on the same date of September 22, 2025. Appx 474-488 (Order), Appx 489 (Judgment).

The notice of appeal was filed on October 1, 2025, which is within the thirty

(30) day period following entry of judgment. Appx 490.

C. - The Appeal Is From A Final Order

The Order granting summary judgment and the judgment, Appx 474-488 (Order), Appx 489 (Judgment), disposed of all issues as to all parties and was final under 28 U.S.C. § 1291.

IV. - STATEMENT OF THE ISSUES

For his arguments and statement of the issues in this case, Mr. Walden shows this Court as follows:

1. The trial court erred in finding that Officer Archer was acting under tribal law rather than state law at the time Mr. Walden was arrested and taken into custody.
2. The trial court erred in finding that Officer Archer was not acting in his capacity as a City of Duncan police officer and dismissing the Governmental Tort Claim action against the City of Duncan.
3. The trial court erred in retaining jurisdiction and deciding the state law claims against the City of Duncan after finding it lacked jurisdiction over the federal claims.
4. The trial court erred by granting summary judgment to the City on the state law claims on a defense not factually supported or supported by legal authority.

V. - STATEMENT OF THE CASE

Shawn Walden was lawfully parked in his vehicle at the Chisholm Corner store located on Highway 81 and Plato Road in Duncan Oklahoma when, on December 30, 2022, some time prior to 1:12 p.m., Mr. Walden was approached by Officer Lard, a

police officer within the City of Duncan, and detained allegedly on the basis that he was intoxicated and had dropped his firearm while inside the store. Officer Archer then approached and detained Mr. Walden in order to administer a partial field sobriety test, which Mr. Walden objectively passed. Officer Archer refused to offer Mr. Walden a breath test admitting that Walden was not alcohol intoxicated. Officer Archer demanded Mr. Walden take a blood test to determine the presence of drugs. Mr. Walden initially agreed to take that test, but Officer Archer talked him out of consenting to a blood test. Officer Archer used the false claim of intoxication as the basis for arresting and charging Mr. Walden with possessing a weapon while intoxicated. Further, Officer Archer caused Mr. Walden to be arrested and transported to the Stephens County jail where Walden was incarcerated. At all times, Archer was acting in his role as a police officer for the City of Duncan.

After Mr. Walden was incarcerated, it was determined that he was a member of an Indian Tribe. The state charges were abandoned and the matter then transferred to Tribal Court, where a tribal judge reviewed the body cam footage and dismissed the charges against Mr. Walden because the video conclusively demonstrated that Mr. Walden exhibited no signs of intoxication. As a result of Officer Archer's actions, Mr. Walden was deprived of being with his daughter during the New Years holiday, he missed work, suffered lost earnings, and as a result of the time missed from work, Plaintiff, on July 10, 2023, lost his job.

Mr. Walden brought his claim for a Fourth Amendment violation made actionable by 42 U.S.C. § 1983. He also brought a state law claim under the Oklahoma Governmental Tort Claims Act (OGTCA) for false arrest and unlawful incarceration. The OGTCA claim was asserted solely against the City of Duncan.

Both Officer Archer and the City of Duncan filed motions for summary judgement primarily focused on whether there was probable cause on the part of Officer Archer to make the arrest. Officer Archer also argued that he was acting under a dual commission with the Indian Tribe and therefore was not acting under color of law. The City followed Archer's argument regarding probable cause to arrest, and did not deny that Archer was at all times acting in his capacity as a Duncan police officer. In its *Reply* brief, the City argued that its was not liable for Archer's actions as a Lighthorse Officer, but offered no facts regarding how the Lighthorse Commission altered his employment status with the City.

In responding to Archer's summary judgment, Mr. Walden addressed both the issue of probable cause and whether Archer was acting in his capacity as a City of Duncan police officer. In responding to the City's motion, Mr. Walden abandoned his civil rights claim and relied solely on the negligence claims under the OGTCa. Of course, how Archer's employment was affected when he acted as Lighthorse officer was not discussed, because it was not raised until the City's Reply Brief.

Prior to the issuance of summary judgment, the Defendant gave notice of a Magistrate's decision¹ holding that, in similar circumstances, a dual commissioned police officer would be considered to be acting under color of tribal law such that a Sec. 1983 claim would fail. Mr. Walden responded to that supplemental authority.

The trial court granted summary judgment to both Defendants finding that Archer was acting under the color of tribal law rather than state law.

From the entry of judgment Mr. Walden timely appealed.

¹ The Magistrate's Order was subsequently adopted by a different District Judge than the Judge hearing this action.

VI. - STATEMENT OF MATERIAL FACTS

Since the issues on appeal were decided pursuant to a summary judgment, the material facts are those set out by Mr. Walden in response to Archer's and the City of Duncan's motions for summary judgment.

The facts presented by the parties are found in City's and Archer's motions for summary judgment. See Appx 27-117 (City's motion) and Appx 118-204 (Archer's motion). The factual statements are found at Appx 33-38 (City's facts) and Appx 125-129 (Archer's facts). Walden's response to Archer's summary judgment is found at Appx 205-306 and Walden's response to the City's motion is found at Appx 307-405. Walden's facts in opposition to Archer's motion are found at Appx 209-220. Walden's facts in opposition to the City's motion are found at Appx 312-323.

Many of the facts offered by the City and Archer are identical and, as result, many of Walden's factual responses are identical. To avoid cumulative recitations, Walden will set out one set of facts and indicate where those facts are repeated in the respective briefs.

Most of the facts and arguments contained in the briefs involved issues related to probable cause for the arrest; however, the Court decided both motions based on the belief that Archer was acting under color of tribal law and only a few facts pertained to this issue. Only those facts and will be set out hereafter.

A. - FACTS PRESENTED IN THE SUMMARY JUDGMENT MOTIONS AND RESPONSES

In setting out the responses "CF" refers to "City's Facts." "RFP" refers to the "Response to City's Facts." The facts presented on the color of tribal law versus color of state issue are exactly the same for Archer's summary judgment motion and

in Mr. Walden's response to that motion. Accordingly, those duplicative facts are not set out in this statement.

CF 4: [Appx 34] 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'. . . (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 6, Declaration of Archer [Appx 76-78]; Ex 7, Dispatch Call to Officer Archer [Appx 79]²).

CF 5: [Appx 34] 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. . . (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 8, Body Cam Footage of Officer Lard [Appx 80]; Ex 9, Body Cam Footage of Officer Archer [Appx 81]; Ex 10, Body Cam Footage of Officer Aguilera [Appx 82], Ex 6, Declaration of Archer [Appx 76-78]).

CF 6: [Appx 34] . . . [O]fficers asked Plaintiff to exit his vehicle and perform standardized field sobriety tests. (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 8, Body Cam Footage of Officer Lard [Appx 80]; Ex 9, Body Cam Footage of Officer Archer [Appx 81]; Ex 10, Body Cam Footage of Officer Aguilera [Appx 82], Ex 6, Declaration of Archer [Appx 76-78]).

CF 8: [Appx 35] While preparing to perform the standardized field sobriety tests,

² The City's Exhibits 7-10, Appx 79-82, are audio or audio-visual recordings filed conventionally below. Because none of these exhibits pertains to the tribal law versus state law issue on which the case was decided, none of those conventional filings are included in this Appendix for this appeal.

Officer asked Plaintiff to turn his hat around. . . (Ex 9, Body Cam Footage of Officer Archer [Appx 81]).

CF 9: [Appx 35] Officer Archer then performed the horizontal gaze nystagmus test. . . (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 9, Cam Footage of Officer Archer [Appx 81]; Ex 6 Declaration of Archer [Appx 76-78]).

CF11: [Appx 35] Based on the outcome of the nystagmus test and the officers' other observations, Officer Archer then place Walden in handcuffs and placed him in the back seat of his patrol vehicle. . . (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 9, Cam Footage of Officer Archer [Appx 81]; Ex 6 Declaration of Archer [Appx 76-78]).

CF12: [Appx 35] Officer Archer then read Plaintiff the State's Implied Consent Test Request. . . (Ex 13, Implied Consent Form [Appx 89]; Ex. 9, Body Cam Video of Archer [Appx 81]; Ex. 6, Declaration of Archer [Appx 76-78]).

CF13: [Appx 36] On the way to Stephens County Jail, Plaintiff told Officer Archer that he wished the Implied Consent test. Officer Archer drove Plaintiff to the hospital to take the test. . . (Ex. 9, Body Cam Video of Archer [Appx 81]; Ex 6, Declaration of Officer Archer [Appx 76-78]).

CF14: [Appx 36] Officer Archer then took Plaintiff to the Stephens County Jail where he was later booked in on charged [sic] of Actual Physical Control in violaton of 47 O.S. § 1-902 and Carrying Firearms While Under the Influence in violation of 12 O.S. § 1289.9. He was then ultimately charged under the Chickasaw Nation Tribal Code. (Ex 14, Duncan Police Department Report [Appx 90-96]; Ex. 6, Declaration of Archer; Ex. 5, Probable Cause Affidavit [Appx 72-75]).

RESPONSE TO CF 4-6, 8-9, 11-13. The quoted portions of these facts were not contested below and are not contested here.

RDF14: [Appx 315] Admitted that Plaintiff's arrest by Archer was pursuant to his actions as municipal police officer purporting to enforce state laws. See RDF15.

CF15: [Appx 36] The site of 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 make lawful arrest 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 [Appx 97-100]; Ex. 5, Probable Cause Affidavit [Appx 72-75]; Ex. 16, Declaration of Chief Attaway [Appx 101-102]).

RDF15: [Appx 315]. Admitted. However, Officer Archer wore his Duncan Police Department uniform, arrived in a Duncan PD car, and carried Duncan PD equipment. Ex 5, Archer, p. 8, lns 2-23; p. 61, lns 23-25 [Appx 365, 379]. Archer never identified himself as a tribal officer, showed a tribal commission card, nor wore anything that would identify him as a tribal officer. Ex 5, *id.*, p. 62, lns 4-18 [Appx 379]. The paperwork Archer filled out was Duncan PD forms or State of Oklahoma forms, and the charges Walden was initially arrested for were State of Oklahoma charges—not tribal charges. Ex 5, *id.*, p.

64, ln 8 to p. 67, ln 4 [Appx 379-380]; Exs 6, 9-11 [Appx 383-384, 394-397, 398, 399-405]; Ex 3, Archer BC, p. 13, lns 12-17 [Appx 355]; p. 30, lns 3-4 [Appx 359]. No one even asked Walden if he was a tribal member until after Walden had been transported to the Stephens County jail. Ex 2, Walden, p. 269, ln 24 to p. 270, ln 20 [Appx 249]. Moreover, a reasonable jury could conclude that Officer Archer exhibited that his authority came from his role as an officer of the Duncan Police Department.

CF16: [Appx 36-37] Plaintiff, Shawn Walden, is a confirmed member of the Choctaw Tribe. (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex 17, Deposition of Walden, p. 111:12-14 [Appx 104].)

CF23: [Appx 37-38] Plaintiff was charged under the Chickasaw National Tribal code. Under *McGirt v. Oklahoma*, 591 U.S. 894 (2020) the Chickasaw Nation is the one who to power [sic] to charge him. His case was heard in the Chickasaw Nation District Court. (Ex. 20, Chickasaw Nation Docket [Appx 114-115]).

RDF23: [Appx 316] Admitted that following his arrest on state law charges, Plaintiff was later charged under the Chickasaw tribal code and that Archer later executed an affidavit for the tribal court. After viewing the body cam footage, the tribal prosecutor dismissed all charges against Mr. Walden. Ex 2, Walden, p. 270, ln 21 to p. 271, ln 10 [Appx 348-349]; Ex 5, Archer, p. 36, lns 2-8 [Appx 372].

CF24: [Appx 38] The Chickasaw Nation requires the law enforcement officer who made the arrest [sic] 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 in accordance with the Duncan Police Department policies. (Ex 5, Probable Cause Affidavit [Appx 72-75]; Ex. 21, Probable Cause Affidavit Policy [Appx 116117]; Ex # [sic], Declaration of Chief Attaway [Appx 101-102]; Ex. 6, Declaration of Archer [Appx 76-78]).

CF25: [Appx 38] The Chickasaw Nation ultimately dismissed the charges against Plaintiff. (Ex. 20, Chickasaw Nation Docket [Appx 114-115]).

RESPONSE TO CF 16, 24-25. The quoted portions of these facts were not contested below and are not contested here.

**B. - WALDEN'S STATEMENT OF FACTS AND INFERENCES
PRECLUDING JUDGMENT IN FAVOR OF ARCHER**

PF1: [Appx 316-317] Officer Archer is a police officer working for the City of Duncan, a governmental entity. Ex 5, Archer, p. 5, ln 9-11 [Appx 266]. Dkt # 6, City Answer p. 2, Pars 6, 7 (“Defendant [City] admits Archer approached Walden in his capacity as a police officer.”) [Appx 15-20, at 16]

PF2: [Appx 317] On or about December 30, 2022, Officer Archer arrested the Plaintiff with the charges being Actual Physical Control Refusal, and Carrying Firearms While Under the Influence. Ex 6, Booking/Arrest Report, p. 1-2 [Appx 284-285].

PF14: [Appx 319] Archer was the arresting officer for the arrest of Walden. Ex 3, Archer BC, p. 9, lns 9-14 [Appx 255]. Ex 5, Archer, p. 6, ln 24 [Appx 266].

PF32: [Appx 322-323] Archer's Answer to the Complaint, Dkt # 7, ¶¶ 6-7 [Appx 21-26], twice “admits he [Archer] approached Walden in his capacity as a police officer for the City of Duncan.” [Appx 22] Archer never identified himself as a tribal officer, showed a tribal commission card, nor wore anything that would

identify him as a tribal officer. Ex 5, Archer, p. 62, lns 4-18 [Appx 280]. The paperwork Archer filled out was Duncan PD forms or State of Oklahoma forms, and the charges Walden was initially arrested for were State of Oklahoma charges—not tribal charges. Ex 5, *id.*, p. 64, ln 8 to p. 67, ln 4 [Appx 280-281]; Exs 6, 9-11 [Appx 284-285, 295-298, 299, 300-306], ; Ex 3, Archer BC, p. 13, lns 12-17; p. 30, lns 3-4 [Appx 256, 260]. Walden understood that Archer was working for the Duncan Police Department and that the police department is an entity associated with the City of Duncan. Ex 2, Walden, p. 127, ln 17 to p. 128, ln 4 [Appx 237]. No one even asked Walden if he was a tribal member until after Walden was arrested and had been transported to the Stephens County jail. Ex 2, Walden, p. 269, ln 24 to p. 270, ln 20 [Appx 249]. Moreover, a reasonable jury could conclude that Officer Archer exhibited that his authority came from his role as an officer of the Duncan Police Department by arriving in a Duncan PD vehicle wearing a Duncan PD uniform and badge. Ex 5, Archer, p. 8, ln 2 to p. 9, ln 18 [Appx 266-267].

PF33: [Appx 323] The City’s Answer in this case, Dkt # 6, p. 4, ¶ 16 only asserts that “Defendant is entitled to immunity under the Oklahoma Governmental Tort Claims Act for any alleged violation of state law.” [Appx 15-20, at 18]. No specific exemption under the OGTCa is raised. *Id.*

VII. - SUMMARY OF THE ARGUMENTS

The trial court committed prejudicial error by entering judgment against Mr. Walden on his claims against Officer Archer and against the City of Duncan. In particular, the trial court erred by:

A. Dismissing the Sec. 1983 action due to the claim Archer was acting

under color tribal– not State– law.

B. Dismissing the state law claim against the City for the reasons that:

1. By Deciding The Merits Of The State Law Claim After Dismissal Of The Federal Claim.
2. The Trial Erred In Its Application Of State Law In Dismissing The State Law Claim On A Defense Not Factually Or Legally Supported.

VIII. - THE STANDARD FOR REVIEW

We review a grant of summary judgment *de novo*. ***Garrison v. Gambro, Inc.***, 428 F.3d 933, 935, 150 Fed. Appx. 819 (10th Cir. 2005). “[W]e will affirm the district court’s disposition *only if* our independent review of the record, viewing the facts in the light most favorable to [the nonmoving party], reveals that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” ***Johnson v. Weld Cnty., Colo.***, 594 F.3d 1202, 1207 (10th Cir. 2010) (citing Fed. R. Civ. P. 56).

Kramer v. Wasatch County Sheriff’s Office, 743 F.3d 726, 736 (10th Cir. 2014) (alterations by the Court, emphasis supplied). ***Accord Jenny v. L3Harris Techs., Inc.***, 144 F.4th 1194, 1197-98 (10th Cir. 2025).

“In reviewing such dispositions, this court repeatedly has emphasized that we must draw all inferences in favor of the party opposing summary judgment[,] [and] in this respect, we must view the evidence in context, not simply in its segmented parts.” ***Maldonado v. City of Altus***, 433 F.3d 1294, 1302 (10th Cir. 2006) (Quoting ***O’Shea v. Yellow Tech. Servs.***, 185 F.3d 1093, 1096 (10th Cir. 1999) (internal citations omitted)). “In our circuit, ‘[t]he moving party carries the burden of showing beyond a reasonable doubt that it is entitled to summary judgment.’” ***Pelt v. Utah***, 539 F.3d 1271, 1280 (10th Cir. 2008) (Quoting ***Trainor v. Apollo Metal Specialties, Inc.***,

318 F.3d 976, 979 (10th Cir. 2002), other quotations omitted).

WHEREFORE, with these standards in mind, Mr. Walden will address the trial court's opinion and judgment.

IX. - ARGUMENT AND AUTHORITY

In support of his appeal, Mr. Walden sets out the following arguments and authority.

A. - THE TRIAL COURT ERRED IN FINDING ARCHER WAS ACTING UNDER COLOR OF TRIBAL LAW IN ARRESTING AND DETAINING MR. WALDEN

In deciding that Officer Archer was not acting under color of state law, and therefore not subject to a Sec. 1983 action, the trial court explained its reasoning as follows:

. . . The whole ballgame on this question comes down to whether Officer Archer, clad in a Duncan Police Department uniform, driving a Duncan P.D. cruiser, responding to a dispatch from Duncan P.D. was acting under color of state law or tribal law when he arrested Walden.

The Court finds that Archer was incapable of wielding the power of state law against Walden. Archer's authority over Walden flowed from a grant from the Chickasaw Nation. . . .

Thus, the question then becomes one of determining whether Officer Archer's arrest of Walden was done under the color of state law, though he had no legal authority to arrest him under state law, or tribal law. "The traditional definition of acting under color state law requires that the defendant in a § 1983 action have exercise power possessed by virtue of state law and made possible only because the [defendant] is clothed with the authority of state law." Here, Officer Archer plainly fails to satisfy *both* prongs of this conjunctive test. Archer exercised tribal power when he effectuated the arrest of Walden, for he was only able to so by virtue of the Chickasaw Lighthorse Special Law Enforcement Commission. True enough that Officer Archer took Walden to the Stephens County Jail, where he was later charged with 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. But he was also charged under the Chickasaw Nation Tribal Code. A useful syllogism would be to consider whether Walden's arrest itself could be challenged in a criminal case as being invalid because it was made by a police officer clad in a Duncan Police Department uniform, driving a Duncan P.D. cruiser, arresting Walden for a violation of state law, all in Indian country. If that arresting officer was cross-deputized

by the appropriate tribal government, there is no question than any eventual conviction by the appropriate tribal court would be valid. Why? Because whether Walden— and the arresting officer— would have known it or not, the arrest would have been made under the auspices of a grant of authority by the tribal government. This retrospective analysis acknowledges a legal truth *at the time of the arrest*. There is no retrospective legal process that would need to be done to legitimize the original arrest. It was already legal under tribal law.

Order, p. 4-6, Appx 483-485 (footnotes omitted).

Respectfully, this analysis misses the mark in focusing on the actual authority of Officer Archer rather than his apparent authority. While actual authority is necessary for a valid arrest, the mere appearance of authority is sufficient for a Sec. 1983 claim. *See Dossett v. First State Bank*, 399 F.3d 940, 949 (8th Cir. 2005):

... ‘The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”’ *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). At the same time, however, the Supreme Court has made clear that even the ‘misuse of power’ possessed by virtue of state law is action taken ‘under color of state law.’ *Classic*, 313 U.S. at 326. Thus, ‘under “color” of law’ means ‘under “pretense” of law,’ and ‘acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it.’ *Screws v. United States*, 325 U.S. 91, 111 (1945) (plurality opinion) (emphasis added); *accord id.* at 115-16 (Rutledge, J., concurring in the result). Applying these principles, the Supreme Court in *Adickes* held that the involvement of a police officer in a conspiracy to deprive a citizen of equal protection of the laws ‘plainly provides the state action essential to show a direct violation of petitioner’s Fourteenth Amendment equal protection rights, *whether or not the actions of the police were officially authorized, or lawful.*’ 398 U.S. at 152 (emphasis added).

Underlining by counsel. *See Johnson v. Phillips*, 664 F.3d 232, 240 (8th Cir. 2011) (“The [color of law] element is satisfied if the defendant acts or purports to act in the performance of official duties, even if he oversteps his authority and misuses power.”)

The Tenth Circuit follows this well-established rule. *See Haines v. Fisher*, 82

F.3d 1503, 1508 (10th Cir. 1996):

Section 1983 was enacted ‘to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.’ *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). ‘The obvious purpose of . . . § 1983 was to provide a remedy to parties deprived of constitutional rights by a state official’s abuse of his position while acting under color of state law.’ *D.T. by M.T. v. Independent Sch. Dist. No. 16*, 894 F.2d 1176, 1187 (10th Cir.), *cert. denied*, 498 U.S. 879 (1990).

Thus, the proper question is: What authority was Archer purporting to use when he arrested Mr. Walden?

It seems clear—indeed the trial court appears to agree—that the stop, the sobriety test, the arrest, and the transportation to jail were all accomplished because Walden was clad in a Duncan police officer’s authority. There is nothing in the record to suggest that Archer’s undisclosed Lighthouse Commission had anything to do with causing Walden to submit to Archer’s authority. In other words, if we look at the arrest through the prism of the tribal commission, it could not be said that Archer accomplished the arrest because he “exercised power ‘possessed by virtue of [tribal] law and made possible only because the wrongdoer is clothed with the authority of [tribal] law,’” *West v. Atkins*, 487 U.S. 42, 49 (1988) (internal quotations omitted), until long after the arrest and incarceration.

Indeed, for the entirety of Archer’s contact with Walden, Archer did nothing but purport to act under state law. Only after Walden’s incarceration and the discovery of Walden’s tribal membership were tribal charges filed or a tribal probable cause affidavit created. Officer Archer may have had two sources of authority throughout his interactions, but the only authority he purported to exercise was that granted by state law.

Which leads to a second, salient point not addressed by the trial court: what in

Sec. 1983 prohibits liability when an actor is exercising dual authority? Officer Archer simultaneously held a tribal police commission and a municipal police commission; why would he not be simultaneously acting under color of both authorities? Mr. Walden pointed this out to the District Court (Appx 207, 229), citing **Bressi v. Ford**, 575 F.3d 891, 897 (9th Cir. 2009) (tribal officers who are “authorized to enforce state as well as tribal law, and proceed to exercise both powers[,]” are subject to liability under § 1983). In his response to Defendants’ supplemental authority, Walden showed that **Bressi** had been construed to support liability when an officer exercised dual state and tribal authority:

‘The Ninth Circuit has held that tribal officers who are ‘authorized to enforce state as well as tribal law, and proceed to exercise both powers[,]’ are subject to liability under § 1983.’ **Steiner v. Kempster**, No. C22-5526-RJB-SKV, 2023 U.S. Dist. LEXIS 109028, at *7 (W.D. Wash. May 10, 2023) (citing **Bressi v. Ford**, 575 F.3d 891, 897 (9th Cir. 2009)). In **Bressi**, the cross-deputized officials ‘were obviously acting in a state officer capacity, because they cited Bressi for violation of state law.’ **Washington v. Dir. of Dep’t of Licensing**, No. 75670-2-I, 2017 Wash. App. LEXIS 1487, at *9 (Ct. App. June 26, 2017).

Response to Supplemental Authority, Appx 472.

Moreover, the dual commission status held by Archer does not suggest that Archer is divested of his status as an Oklahoma Peace Officer when enforcing tribal law. The Chickasaw Nation Law Enforcement Commission Agreement states that it is advancing a shared interest—not the separate interest of the City and the Tribal Nation:

WHEREAS, issuing **Chickasaw Nation law enforcement commissions** to non-Chickasaw law enforcement officers acting within Chickasaw Nation Indian Country serves the shared government interest of the parties hereto to provide effective law enforcement throughout Chickasaw Nation Indian County in the interest of the general public’s safety.

Appx 195-198, emphasis in the document, at Appx 196.

There is nothing in the record which suggests that there is a bright-line division immunizing an officer from his use of state authority simply because the officer also committed those acts (from a retrospective vantage) under a tribal commission.

The trial judge discounted *Bressi* because “*Bressi* is a case about a *non*-Indian who was arrested by tribal officials authorized to exercise both tribal *and* state law.” Opinion, p. 7-8, Appx 486-487. While that factual difference is correct, it does not undermine the holding that officials can exercise tribal and state authority simultaneously, nor that when simultaneous authority is exercised, the actions can still be deemed under color of state law.

Further, at least a few points on this are incontestable: Archer was not acting under color of tribal law when he filed *state* charges against Walden, nor was Archer acting under tribal law when he enforced the *State*’s implied consent law, nor can Archer be considered acting under tribal law when he filed his *state law* probable cause affidavit. The affidavit of the Duncan police chief indicates that Archer’s actions for the Probable Cause Arrest Affidavit were pursuant to the City of Duncan’s policies. Aff Chief Attaway, pg 2, ¶ 7, Appx 199-200 at 200.

The trial court also framed the issue to be decided incorrectly. The trial court said: “The question here is whether an officer is acting under color of state law when the Plaintiff is *immune* to the particular exercise of state law in the situation in question.” Summary Judgment Order, pg. 8, Appx 487.

Respectfully, that analysis is incorrect. If Walden was immune from arrest and yet Archer arrested him, there would still be a § 1983 action. “Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it.” *Screws v. United States*, 325 U.S. 91, 111 (1945).

WHEREFORE, the reality is that Archer accomplished the arrest and

incarceration of Walden solely under the color of his municipal commission, and it was error to dismiss the § 1983 because of the later discovery that tribal law was in play.

B. - JUDGMENT IN FAVOR OF THE CITY WAS ERRONEOUS

Judgment in favor of the City on Mr. Walden’s state law claim was erroneously entered for two reasons:

First, the Court should not have exercised jurisdiction over the state law claim once the federal claim was dismissed.

Second, whether Archer was acting as a tribal official is irrelevant to OGTCA immunity.

1. - The District Court Should Not Have Retained Jurisdiction Over The State Law Claim

In *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n. 7 (1988), the Supreme Court stated that “in the usual case in which all federal-law claims are eliminated *before trial*, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise over the remaining state-law claims.” (emphasis added). In *Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011), this Court emphasized that “[w]hen all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.” (quoting *Smith v. City of Enid ex rel. Enid City Comm’n*, 149 F.3d 1151, 1156 (10th Cir. 1998)).

Mr. Walden abandoned his federal claims against the City in his response to the City’s Motion for Summary Judgment. See Ans Bf, Appx 308, 325. Thus, before the Court ruled on the City’s motion, the Court was on notice that there was no live

federal controversy involving the City.

Moreover, when the trial court entered judgment on Walden’s federal claim, it did so based on a lack of jurisdiction. “The Court will first determine if the jurisdiction requisite for the surviving § 1983 action has been met.” Order on Summary Judgment, pg. 4, Appx 483. The Court determined that because the color of state law requirement was not met, this was a “jurisdictional bar.” Order on Summary Judgment, p. 8, Appx 487.

Having determined it did not have *jurisdiction* over the federal claims, it seems to be mandatory that the Court should have stopped there, and not gone on to address the merits of the state law claims.

If a district court concludes it lacks subject matter jurisdiction but proceeds to the merits, we have jurisdiction only to correct ‘the error of the [district] court in entertaining the suit.’ *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998) (quoting *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 73 (1997)). As relevant here, the district court held it lacked subject matter jurisdiction over the ADA and Rehabilitation Act claims. The district court nevertheless reached the merits of those claims. Ms. Griffith has not challenged the district court’s Rule 12(b)(1) dismissal on appeal. Under these circumstances, we must conclude the district court erroneously reached the merits of claims already dismissed for lack of subject matter jurisdiction.

Griffith v. El Paso Cnty., 129 F.4th 790, 833-34 (10th Cir. 2025). *Griffith* is admittedly not on all fours because here the Court addressed the merits of the state law claim, and not the merits of the federal claim. Nonetheless, the fact that these are state law claims strengthens the conclusion that the Court should not have continued to exercise jurisdiction over them due to the relative novelty of the trial court’s rationale.

WHEREFORE, the Court should not have retained jurisdiction over the state law claims.

2. - When A City Employee Is Authorized By The City To Act Under A Tribal Commission, The City Remains Liable Under The OGTC

The trial court dismissed the OGTC claims against the City on the following grounds:

Further, because Officer Archer was acting under color of tribal law at the time of the arrest, his actions fall outside the reach of the Oklahoma Governmental Tort Claims Act, which provides that ‘[t]he state, only to the extent and manner provided in this act, waives its immunity and that of its political subdivisions.’ The Chickasaw Tribe not a ‘political subdivision’ of Oklahoma and thus Officer Archer’s actions are beyond the scope of the Governmental Tort Claims Act.

Summary Judgment Order, pg. 8, Appx 487 (footnotes omitted).

First, however, Mr. Walden would point out that the City did not raise this issue until its Reply Brief. See City Reply, Prop. III(A), pg 7-9, Appx. 413-415. Normally, this is a waiver of the argument. “Because these points weren’t raised until the reply brief, we deem them as waived for purposes of this appeal.” *Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975 (10th Cir. 2014) (citing *Hill v. Kemp*, 478 F.3d 1236, 1250-51 (10th Cir. 2007)).

The City argues that this is a jurisdictional matter which cannot be waived; however, that is not correct. See *Bird Constr. Co. v. Okla. City Hous. Auth.*, 2004 OK CIV APP 12, ¶ 13, 110 P.3d 560, 565 n. 1 (“[W]aiver can apply in the context of the Governmental Tort Claims Act” finding a particular exemption waived), *Boyd v. Tietze*, 2007 OK CIV APP 119, ¶20, 172 P.3d 639, 644 (“Defendant had the burden to demonstrate. . . immunity defense to liability.”), and *Bentley v. Cleveland County Bd. of County Comm’rs*, 41 F.3d 600, 605 (10th Cir. 1994)(governmental entity can waive GTCA’s application).

The City did plead sovereign immunity generally, but did not argue this issue until its Reply Brief and thus arguably waived that issue.

Nonetheless, if the matter was not waived, the Court erred in sustaining a defense without the proper factual predicate in the record. Summary judgment is improper if the movant's submissions are insufficient even when the responding party offers no contrary facts. *See Security Nat. Bank v. Belleville Livestock Com'n Co.*, 619 F.2d 840 (10th Cir.1979); *Stevens v. Barnard*, 512 F.2d 876 (10th Cir.1975); *Sterner v. Aero AB v. Page Airmotive, Inc.*, 499 F.2d 709 (10th Cir.1974), and *Lambertsen v. Utah Dep't of Corrections*, 922 F.Supp. 533, 535 (D.Utah 1995) *aff'd* 79 F.3d 1024 (10th Cir.1996). As explained in *Luckett v. Bethlehem Steel Corp.*, 618 F.2d 1373, 1383 (10th Cir.1980) (internal citations omitted):

. . .The burden on the motion for summary judgment rest[s] on. . . the movant. As to any issue where the movant's documents do not establish the absence of a genuine issue of fact, summary judgment must be denied, even if no opposing evidentiary matter is presented. . .

As stated above, the OGTCa premises liability on whether an employee is acting in good faith and within the scope of his or employment. See 51 O.S. § 152(13):

13. 'Scope of employment' means performance by an employee acting in good faith within the duties of the employee's 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, but shall not include corruption or fraud; . . .

Emphasis supplied.

This occurred when the City assigned Archer the duty of enforcing tribal law as well as state and municipal law. There is no rule of law cited by the Court or the Defendant stating that a municipal police officer is acting outside the scope of his employment by enforcing tribal law. Nor is there any evidentiary record stating that Archer is not acting as a municipal employee when enforcing tribal law.

To the contrary, the City's Answer stated: "10. Defendant was, at all relevant

times, acting within the scope of his employment.” See City’s Answer to the Complaint, pg 4, ¶ 10 Appx 15-20, at Appx 18. Defendant Archer’s Answer to the Complaint contains the same allegation: “10. Defendant was, at all relevant times, acting within the scope of his employment.” Archer’s Answer, p. 4, ¶ 10, Appx 21-26, at 24.

The Defendant City never retreated from that admission nor offered any contrary facts. Rather, the City’s summary judgment motion asserted that the Duncan Police Department had agreed to have its officers provide services to the Tribal Nation:

... [T]he Duncan Police Department entered into a Law Enforcement Commission Agreement with the Chickasaw Nation Tribe. This agreement authorized 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, Office Archer has held a Chickasaw Lighthouse 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. . .

City Sum Judg Mt, p. 4, ¶ 15 (City’s Statement of Facts), Appx 36.

The Chickasaw Nation Law Enforcement Commission Agreement referenced by the City was affixed to its summary judgment motion as Ex 15 and is located in the Appendix at Appx 97-100. To again repeat its central purpose, this agreement specifies that the Lighthouse Commissions are not merely for the benefit of the Tribe, but for the “shared governmental interest” of both the City of Duncan and the Chickasaw Nation and “in the interest of the general public’s safety.” Agreement, Appx 98, *id.* Nothing in the agreement suggests that Duncan police officers are not performing part of their municipal job when they act pursuant to this agreement. No evidence in the record suggests that Archer was paid by the Chickasaw Nation when acting as Lighthouse Officer or that this commission excluded his municipal

responsibilities. Rather, the most logical inference from the evidence is that when Archer served as Lighthouse Officer, he remained a municipal officer carrying out “tasks lawfully assigned by a competent authority.” 51 O.S. § 152(13). The competent authority being the Duncan police department, and the task being the concurrent enforcement of tribal law. On summary judgment courts must “constru[e] all evidence and draw[] any inferences in the light most favorable to the party opposing summary judgment.” *EagleMed LLC v. Cox*, 868 F.3d 893, 899 (10th Cir.2017).

The trial court failed to do this. Instead, the court drew the unreasonable inference that Archer ceased to be a municipal officer any time Archer performed as Lighthouse Officer, even though the City had agreed to him performing that service.

WHEREFORE, the trial court drew inferences *against* Mr. Walden, and unreasonable inferences at that, which is reversible error.

X. - CONCLUSION AND RELIEF SOUGHT

This Court should reverse the District Court’s Order granting summary judgment in its entirety, reverse the judgment, and remand the case to the District Court for trial on the merits, or, in the alternative, direct the Court to dismiss the state law claim without prejudice to be tried in state court.

XI. - STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested for the reason that this case presents an important and unsettled issue regarding how the color of law question is addressed in the case of a police officer acting pursuant to a dual state and tribal commission.

The issue also raises a novel question of state law regarding whether a dual commissioned municipal police officer is still acting in the course and scope of his employment when enforcing tribal laws.

XII. - CERTIFICATE AS TO THE WORD COUNT OF THE BRIEF

Pursuant to Fed.R.App.P. 32(a)(7)(B)(i), this brief contains 6940 words.

RESPECTFULLY SUBMITTED THIS 10th DAY OF NOVEMBER 2025.

s/Mark Hammons
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CERTIFICATE OF COMPLIANCE

Pursuant to 10TH Cir. R. 32, Appellant hereby certifies that on November 10th, 2025, the “Appellant’s Opening Brief” is being filed using the court’s CM/ECF system which will then send notification of such filing to the following parties listed on the Certificate of Service below. Additionally, Appellant certifies that (a) all required privacy redactions have been made, (b) that the hard copies to be submitted to the court are exact copies of the version submitted electronically and (c) that the electronic submission was scanned for viruses with the most recent version of a commercial virus scanning program, and is free of viruses.

s/Mark Hammons

CERTIFICATE OF SERVICE

A true copy of the foregoing filed electronically and delivered via court's CM/ECF to opposing counsel below listed on the 10th day of November, 2025:

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