

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

(1) BRIAN KINDLE,

Plaintiff,

v.

(1) BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY  
OF ROGERS COUNTY;  
(2) SCOTT WALTON, SHERIFF OF  
ROGERS COUNTY, in his individual  
and official capacities;  
(3) JOHN SAPPINTGON;  
(4) PAUL TUCKER; and  
(5) ADAM HULL,

Defendants.

Case No.: 14-CV-374-JHP-FHM

JURY TRIAL DEMANDED

ATTORNEY LIEN CLAIMED

**COMPLAINT**

COMES NOW the Plaintiff, Brian Kindle, by and through his undersigned counsel, and for his causes of action against Defendants Board of County Commissioners of the County of Rogers County (hereinafter, "Rogers County"), Sheriff Scott Walton, John Sappington, Paul Tucker, and Adam Hull, submits and sets forth as follows:

**Jurisdiction and Venue**

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1333 to secure protection of and to redress deprivations of rights secured by the First and Fourteenth Amendments to the United States Constitution as enforced by 42 U.S.C. § 1983, which provides for the protection of all persons in their civil rights and the redress of deprivation of rights under color of law.

2. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1331 to resolve a controversy arising under the Constitution and laws of the United States, particularly the First Amendment and Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

3. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1337, since the claims form part of the same case or controversy arising under the United States Constitution and federal law.

4. Venue is proper under 28 U.S.C. § 1331(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

### **Parties**

5. Paragraphs 1-4 are incorporated herein by reference.

6. Plaintiff is a citizen of Oklahoma residing in this judicial district.

7. Defendant Rogers County is a state governmental entity with its principal place of business in Rogers County, Oklahoma, within this judicial district.

8. Defendant Scott Walton, Sheriff of Rogers County, is a citizen of Oklahoma residing in Rogers County, Oklahoma, and is statutorily responsible for the acts of the Rogers County Sheriff's Office ("RCSO"). Sheriff Walton is being sued in both his individual and official capacities. Walton was, at all times pertinent hereto, responsible for creating, adopting, approving, ratifying and enforcing the rules, regulations, policies, practices, procedures, and/or customs of the RCSO and Rogers County, including the policies, practices, procedures and/or customs that violated Plaintiff's rights as set forth in this Complaint. Defendant Walton is also sued in his official capacity as being vicariously liable for the State law claims against the RCSO and

its employees as set forth herein. Defendant Walton is sued in his individual capacity under a supervisory liability theory and for his personal involvement and participation in the violation of Plaintiff's rights, while acting under color of State law, as set forth herein.

9. Defendant John Sappington, Undersheriff of Rogers County, was, at all times relevant hereto, acting under color of state law and within the scope of his employment with the RCSO.

10. Defendant Paul Tucker, RCSO Deputy, was, at all times relevant hereto, acting under color of state law and within the scope of his employment with the RCSO.

11. Defendant Adam Hull, RSCO Captain, was, at all times relevant hereto, acting under color of state law and within the scope of his employment with the RCSO.

**Compliance with the Oklahoma Government Tort Claim Act, 51 O.S. § 151, *et seq.***

12. Paragraphs 1-11 are incorporated herein by reference.

13. On October 29, 2013, Plaintiff sent, by and through his undersigned counsel, notice to the Rogers County Clerk and the RCSO of his intent to pursue the state law tort claims set forth herein pursuant to the Oklahoma Government Tort Claims Act ("The Act"). 51 O.S. § 151, *et seq.*

14. Said entities received Plaintiff's notice on October 30, 2013.

15. No response to Plaintiff's notice was sent or received and Plaintiff's claims were deemed denied pursuant to the Act on January 28, 2014.

16. The instant action is timely brought thereafter.

17. At all times relevant to this Petition, Defendants acted under color of state law.

### **Statement of Facts**

18. Paragraphs 1-17 are incorporated herein by reference.

19. In March of 2012, Plaintiff was employed as a deputy sheriff for the Rogers County Sheriff's Office ("RCSO"). Plaintiff's supervisors at this time were Undersheriff John Sappington and Captain Adam Hull.

20. Captain Hull called Plaintiff to assist in performing a so-called "knock and talk" at the residence of a suspected drug dealer, Ronald Sanders. Hull advised that the officers would knock on the door of the residence and enter and perform a search when the occupant answered.

21. Plaintiff asked Hull if he had a warrant to perform the search and Hull told Plaintiff that he did not need a warrant because he had cleared the search with the Rogers County District Attorney's Office.

22. Hull and Plaintiff knocked on the door of the Sanders' residence and a woman answered. The woman did not give consent to search but Hull entered the residence anyway. The officers discovered illegal drugs and other evidence indicating an intent to distribute.

23. Hull wrote a report of the search and evidence obtained and provided it to the District Attorney's Office.

24. In June of 2012, Plaintiff received a subpoena from the District Attorney's Office compelling him to appear and testify at the trial of Ronald Sanders. In preparation of his testimony, Plaintiff reviewed the report Captain Hull had prepared after the search. In reviewing Hull's report, Plaintiff discovered that Hull had told the District Attorney's

Office that the woman who had answered the door the day of the search had given *consent* for the officers to search the residence.

25. Plaintiff knew that to be false as the woman had *not* given consent for the search.

26. Plaintiff contacted the District Attorney's Office to advise that he could not testify in the case against Ronald Sanders because he did not want to perjure himself or interfere with the state's case.

27. In his conversation with an assistant district attorney, Plaintiff learned that Hull had spoken with the office prior to the search but had not been "cleared" for a warrantless search; rather, the office had specifically told him that a warrant was necessary.

28. After Plaintiff spoke with the district attorney's office regarding this matter, he later received a telephone call from Captain Hull, who was present in the district attorney's office with an assistant district attorney on speaker phone. Hull asked Plaintiff, very pointedly, "That woman [who answered the door at the Sanders' residence the day of the search] gave us consent, *didn't she?*" Plaintiff answered, "no," and Hull immediately hung up the phone.

29. On June 28, 2012, the state was forced to ask the court dismiss its case against Ronald Sanders.

30. The district attorney's office opened an investigation into Hull's actions.

31. At the request of the district attorney, Plaintiff wrote and signed an affidavit regarding the Sanders' search and Hull's actions.

32. Neither the writing of said affidavit nor his conversations with the district attorney's office were a part of Plaintiff's official duties as an RCSO deputy.

33. The contents of Plaintiff's affidavit and his conversations regarding Hull and the Sanders search with the District Attorney's Office were "citizen-speech" and dealt with a matter of obvious public concern.

34. The affidavit was supposed to be sealed but copies were provided to Hull, Sheriff Walton and other RCSO employees to ready anyway.

35. The contents of Plaintiff's affidavit and his conversations regarding Hull's conduct impacted other pending cases in which Hull was a witness.

36. In July of 2012, a defendant in a case brought by the state in Rogers County filed a motion to suppress evidence contending that Hull did not have probable cause or consent to detain, search and/or arrest the defendant.

37. After Plaintiff had submitted his affidavit to the district attorney's office, the state was forced to disclose the existence of the affidavit as potentially exculpatory or impeachment evidence under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

38. In January, 2013 the court ordered the state to disclose Plaintiff's affidavit to the defendant, whose motion to suppress was ultimately sustained and the case, like the Sanders' case, had to be dismissed.

39. Between June of 2012 and the spring of 2013, Hull and other members of the RCSO treated Plaintiff unfairly, in retaliation for his telling the truth about the Sanders' search and disagreeing with Hull's version of events. For example:

- a. Hull berated the Plaintiff over the radio for running with his lights and sirens on to an injury crash – something that was very embarrassing and never done to other officers;
- b. Hull ordered Plaintiff not to talk to a female dispatcher whom Plaintiff had been romantically involved with – something that was not against policy and not enforced against other officers;
- c. RCSO officers friendly with Hull constantly monitored and scrutinized Plaintiff's actions, both on and off duty;
- d. Officer Paul Tucker, a close friend of Hull, drove by Plaintiff's house while his ex-wife was present and tried to cause trouble with Plaintiff's friend, the female dispatcher by calling her out of the blue and telling her Plaintiff's ex-wife was at his house;
- e. When Plaintiff confronted Tucker about his actions, Tucker called Hull and Hull went to Sheriff Walton advising that Plaintiff was causing trouble and that his relationship was interfering with his work;
- f. Hull told the mother of the female dispatcher that Plaintiff was a liar and untrustworthy;
- g. Plaintiff was advised that RCSO officers began talking about Plaintiff constantly behind his back, calling him a liar;
- h. Officers accused Plaintiff of making up the fact that he was shot at while involved in a pursuit as an enforcement officer in Houston;
- i. Hull began following Plaintiff for no reason;
- j. Hull accused Plaintiff of lying regarding a blood draw taken during a DUI stop – Hull said Plaintiff had taken it on the side of the road when he had not;
- k. Hull and other RCSO officers unfairly berated Plaintiff for ticketing a woman for failing to signal a turn – a ticket officers routinely hand out; the only reason the officers berated Plaintiff was because the woman complained to the County – Hull called the ticket a “chicken-s\*\*\* ticket;”
- l. Hull and other RCSO officers unfairly berated Plaintiff for issuing tickets for failure to dim lights, tickets officers often hand out, accusing Plaintiff of writing “chicken-s\*\*\* tickets;”
- m. In January of 2013, Plaintiff wrote a report of a pursuit he was involved in and turned it in to RCSO Lieutenant Norman and Sergeant Mike Clark.

Two (2) weeks later, Plaintiff suffered an accidental on-the-job injury compensable under the Oklahoma Workers' Compensation Act. Norman contacted Plaintiff while he was off work because of his injuries to ask about the report and said the district attorney's office needed it. Plaintiff reminded Norman that he had turned it in. Norman said the report was nowhere to be found and the district attorney's office was forced to dismiss the case as a result. Thereafter, Hull "found" the report in Plaintiff's in-box. Plaintiff believes Hull took the report from Plaintiff's in-box and hid it in order to get Plaintiff disciplined.

- n. After Plaintiff's on-the-job injury, Hull accused Plaintiff of not really being hurt and not really being injured while working. Hull took it upon himself to investigate the circumstances of Plaintiff's injury, a task that is outside of his responsibilities as Plaintiff's supervising captain.
- o. In February of 2013, Plaintiff was ordered by Sheriff Walton to cooperate with a private investigator who was allegedly investigating the Sanders incident that had occurred the previous summer. The investigator asked Plaintiff few questions about Hull and spent the majority of the interview asking about Plaintiff's personal life and history. Plaintiff believes the investigator had been instructed by Sheriff Walton, who was good friends with Hull, to find out information that could be used to exonerate Hull so that other cases in which Hull was involved would not be negatively impacted by his actions in the Sanders matter.
- p. Hull advised other officers and RCSO staff members on numerous occasions that Plaintiff was lying about work-related matters, even after the matters at issue were independently verified.
- q. The abuse that Plaintiff was put through by his fellow officers and supervisors at the RCSO was so bad it caused him extreme distress and anxiety that affected his work.
- r. Plaintiff had numerous conversations with his supervisor, Undersheriff Jon Sappington, about the mistreatment he was receiving. Sappington acknowledged that Plaintiff was being treated unfairly but refused and failed to take any responsive measures.

40. The abuse escalated throughout 2012 and into 2013 as part of continuous chain of harassment in retaliation for Plaintiff's statements in June of 2012.

41. Plaintiff complained to his supervisors about his mistreatment and abuse by Hull and other RCSO officers. Nothing was done about the situation.

42. To the best of Plaintiff's knowledge and belief, during all times relevant hereto, Sheriff Walton was personally involved in all promotion, demotion and termination personnel decisions with respect to RCSO employees.

43. In March of 2013, Plaintiff was given a partial release from his doctor from the work-restrictions implemented as a result of Plaintiff's January 2013 on-the-job injury. The partial release allowed Plaintiff to return to work but seriously limited the use of his right arm and shoulder (the body parts he had injured when he had helped a young woman push her car off the roadway when it had stalled).

44. Plaintiff was placed on light duty and told that his responsibilities would include exclusively watching the security camera footage in the courthouse. He was told he could call other officers to investigate any incidents he observed. He was told he would be inside monitoring video in a private security office and to wear civilian dress

45. When Plaintiff arrived at the courthouse for his shift, he was ordered instead to guard an area, outside, where construction work was being performed. Plaintiff was hesitant to do so because if an incident arose, he would be obligated to handle it himself, which would require use of his injured arm and shoulder. Nonetheless, Plaintiff did as he was directed.

46. During Plaintiff's guard shift, an altercation arose wherein Plaintiff was forced to use his right arm and shoulder. Plaintiff complained to his supervisor that the work he was being directed to perform did not comply with his work restrictions. Plaintiff was told that he "needed to get back in a [patrol car], or else," meaning that Plaintiff needed to get a full release from his doctor or his job as a patrol officer was in jeopardy.

47. Plaintiff was released by his doctor within days thereafter and advised his supervisors of this fortuitous turn of events.

48. Instead of allowing Plaintiff to return to patrol, Plaintiff was advised that Undersheriff Sappington and Sheriff Walton had discussed Plaintiff's employment and that they had jointly decided that Plaintiff would not be permitted to return to patrol. Plaintiff was advised that he could go back to working detention in the jail but that he would *never* be allowed to return to patrol. Plaintiff asked why he was being demoted in this way but he was not provided with any explanation.

49. Plaintiff knew that if he accepted the demotion to detention, it would be very difficult for him to get a patrol job with another law enforcement agency and it was likely that, given the way he was being treated, the RCSO would continue to mistreat him and eventually find a reason to terminate him.

50. As such, Plaintiff was forced to constructively discharge on May 28, 2013.

51. Based upon information and belief, Walton, Sappington, Tucker and Hull conspired together for Plaintiff's demotion and constructive termination in retaliation for Plaintiff's reporting of Hull's illegal behavior and for Plaintiff's pursuance of the rights he is entitled to under the Oklahoma Workers' Compensation Act, 85 O.S. § 341, *et seq.*

### **Causes of Action**

#### **I. Violation of Plaintiff's Federal Civil Rights – 42 U.S.C. § 1983**

**(As to Defendants Walton, in his individual and official capacities,  
Sappington, Hull and Tucker)**

52. Paragraphs 1-51 are incorporated herein by reference.

53. Under the First Amendment to the United States Constitution, Plaintiff has a federally protected right of free speech.

54. Defendants violated and deprived Plaintiff of his rights under the First Amended to the United States Constitution by attempting to coerce him into lying about the Sanders search to protect Adam Hull and by retaliating against him for telling the truth.

55. The actions of Defendants in so violating and depriving Plaintiff of his rights were made under color of state law.

56. Plaintiff is entitled to actual damages for Defendants' violations, and for punitive damages from Defendants Walton, Sappington, Tucker and Hull.

## **II. Violation of Plaintiff's State Constitutional Rights**

### **(As to all Defendants)**

57. Paragraphs 1-56 are incorporated herein by reference.

58. Art. 2, § 22 of the Oklahoma Constitution grants Plaintiff the right to freely speak, write or publish his sentiments on all subjects.

59. Defendants violated and deprived Plaintiff of his rights conferred under the Oklahoma Constitution.

60. The actions of Defendants in so violating and depriving Plaintiff of his rights were made under color of state law.

61. Defendant Walton, in his official capacity, and/or Rogers County are vicariously liable for the violation of Plaintiff's rights under the Oklahoma Constitution by employees of the RCSO pursuant to *Bosh v. Cherokee County*, 2013 OK 9.

62. Plaintiff is entitled to actual damages for Defendants' violations, and for punitive damages from Defendants Walton, Sappington, Tucker and Hull.

### **III. Intentional Infliction of Emotional Distress**

#### **(As to all Defendants)**

63. Paragraphs 1-62 are incorporated herein by reference.
64. Defendants' above described actions in the setting in which they occurred were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in a civilized society.
65. Defendants' intentionally and/or recklessly caused severe emotional distress to Plaintiff beyond that which a reasonable person could be expected to endure.

66. As a result of Defendants' actions, Plaintiff has sustained personal injuries including mental and physical pain and suffering and other actual damages in excess of \$75,000.00.

### **IV. Wrongful Termination in Violation of Okla. Stat. tit. 74 § 840-2.5 – Whistleblower Act – under the *Burk* Public Policy Tort**

#### **(As to Defendant Rogers County and/or Defendant Walton in his Official Capacity)**

67. Paragraphs 1-66 are incorporated herein by reference.
68. Defendant's decision to terminate Plaintiff from his position as patrol officer and demote Plaintiff to detention officer was made on the basis of Plaintiff's reports of Defendant Hull's violation of Oklahoma law, and Defendants' Walton, Sappington, Tucker and Hull's mismanagement and abuse of authority.
69. As a result of Defendants' treatment of Plaintiff and the decision to demote Plaintiff to detention officer, Plaintiff was terminated from his position as patrol officer and constructively discharged from his employment with RCSO.

70. The purpose of Oklahoma's Whistleblower Act is to "encourage and protect the reporting of wrongful government activities and to deter retaliation against state employees for reporting those activities." Okla. Stat. tit. 74, § 840-2.5.

71. The Whistleblower Act does not create a private right of action on which to base a retaliatory discharge claim. As such, Plaintiff brings his claims under *Burk* for his wrongful discharge for reporting illegal behavior of his supervisor, as contemplated in the Whistlebower Act.

72. Oklahoma common law recognizes a clear public policy exception to the termination of an at will employee. Known as a *Burk* Tort, the Oklahoma Supreme Court recognized in *Burk v. K-Mart*, 770 P.2d 24 (Okla. 1989), that an employee who is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy may bring a tort claim for wrongful discharge. In recognizing and reporting his supervisor's illegal conduct, Plaintiff's actions were clear and consistent with compelling state public policies.

73. At all times relevant to this Petition, Plaintiff was an at-will state employee for RCSO.

74. The termination of an employee whose actions are consistent with the Whistleblower Act is a public policy concern upon which a *Burk* tort may be based.

**V. Wrongful Termination in Violation of the Oklahoma Workers' Compensation Act, 85 O.S. § 301, *et seq***

**(As to Defendant Rogers County and/or Defendant Walton in his Official Capacity)**

75. Paragraphs 1-74 are incorporated herein by reference.

76. Plaintiff sustained an accidental injury arising out of and in the course of his employment while working for Defendant RCSO.

77. Defendant RCSO subsequently discriminated against Plaintiff and terminated him from his position of employment for exercising the rights afforded to him under the Oklahoma Workers' Compensation Act, Okla. Stat. tit. 85, § 301, *et seq.*

78. The discrimination against and termination of Plaintiff was in direct violation of Oklahoma law. More specifically, said policy and act of termination violates 85 O.S. § 341.

79. As a result of this wrongful termination, Plaintiff has suffered considerable damages, including but not limited to lost wages and other actual damages in excess of \$75,000.00.

WHEREFORE, based on the foregoing, Plaintiff prays that this Court grant him the relief sought including, but not limited to, actual damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), with interest accruing from the date of filing suit, punitive damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), reasonable attorney fees, and all other relief deemed appropriate by this Court.

Respectfully submitted,

**SMOLEN, SMOLEN & ROYTMAN, PLLC**



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