

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3 SOUTHERN DIVISION

4 KARA LYNN McMURRAY, ) CIVIL ACTION  
5 Plaintiff, ) NO. PJM-20-919  
6 v. )  
7 LIEUTENANT RICHARD JOHN TALLANT )  
8 et al., )  
9 Defendants. )

10 TRANSCRIPT OF MOTIONS PROCEEDINGS - EXCERPT -  
11 JUDGE'S RULING  
12 BEFORE THE HONORABLE PETER J. MESSITTE  
13 UNITED STATES DISTRICT JUDGE  
14 TUESDAY, MARCH 28, 2023; 12:25 P.M.  
15 GREENBELT, MARYLAND

16 APPEARANCES:

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Renee A. Ewing, RPR, RMR, CRR - (301) 344-3227

\*\*\*COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES\*\*\*

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2 FOR THE DEFENDANT PRINCE GEORGE'S COUNTY, MARYLAND:

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1           THE COURT: All right. All right. Well, we revisit  
2 *McMurray vs. Tallant* once again. The essential facts don't  
3 need to be set forth in great detail, but the plaintiff,  
4 McMurray, was a police officer in the Prince George's County  
5 Department, and the individual defendant, Tallant, was her  
6 lieutenant there. And the allegation, essential allegation was  
7 that I believe in February of 2017, they were at the police --  
8 while off duty but still at a police -- a social center, that  
9 in the woods one night when the plaintiff went to relieve  
10 herself, Defendant Tallant went as well, and she has alleged  
11 that he sexually assaulted her.

12           The way she describes the assault is digital penetration  
13 on her genital area. That certainly would suffice as a sexual  
14 assault.

15           The fact that there may have been a criminal conviction  
16 based on that, of course, is essentially irrelevant. This is a  
17 civil case, so the Court need not carry on that.

18           So then the question is what happens in the period after,  
19 and there is some indication that the plaintiff did tell her  
20 then boyfriend, who was a sergeant also I think in her chain of  
21 command, or if not, even that might not be relevant, that she  
22 has been assaulted, but she does say, Don't say anything about  
23 it. I don't want to get -- essentially create a problem for  
24 myself.

25           Now, she says that, among other things, it's fear for her

1 career, if not shame and denial, which seems to be very  
2 characteristic of these sexual assaults in being reported. But  
3 eventually, the word gets out, and it's known fairly soon after  
4 that something has occurred between Tallant and plaintiff. And  
5 within a couple of years, despite the fact that there has been  
6 no formal complaint pursuant to the sexual harassment policy of  
7 the County, word gets out that this event took place, and there  
8 is a series of encounters that the plaintiff has with police  
9 administration.

10 All the while, plaintiff argues, although defendant now  
11 denies, but plaintiff argues that she's being ridiculed, she's  
12 being threatened, she's being humiliated, and she's fearful now  
13 for what the outcome might be as to her career.

14 And while she does have some response from the County,  
15 she eventually is transferred from Patrol to the Evidence Unit,  
16 she says not at her request, although defendant insists that's  
17 what it was. She says she was told that is where she was going  
18 to be. And the argument is the Evidence Unit is less -- while  
19 the salary might be the same, it's a less prestigious unit with  
20 different composition, with different responsibilities, and so  
21 on, and not really the opportunity for promotion that one would  
22 have if one stayed on Patrol and went through the other avenues  
23 of potential promotion.

24 And so that's how the case proceeded. Eventually, the  
25 things got bad enough that the plaintiff, while she was out at

1 various times for maternity leave and so on, came back and  
2 said, essentially, The hostility of the environment is such  
3 that I cannot go on and I am being forced to resign. That's  
4 the gist of what the case is about.

5 So there are a number of causes of action that the Court  
6 addresses in connection with the County. There is, first of  
7 all, the hostile work environment claim under Title VII, which  
8 is Count Five, and then retaliation under Count Six, and then  
9 to jump back to the federal constitutional claim under 42,  
10 Section 1983, which is Count Two.

11 To start with the sexual harassment claim, it is true  
12 that there was a policy in place, although there is some  
13 argument, I will perhaps take it as defendant argues -- I did  
14 not see much by way of argument on the defendant's side that  
15 the prima facie case had not been made here, but the argument  
16 that there was no adverse employment action would be part of  
17 the prima facie case under *McDonnell Douglas*, and clearly,  
18 there is a legitimate issue of material fact regarding whether  
19 there was an adverse employment action in being reassigned from  
20 Patrol to Evidence, and I have heard that, and that could be  
21 argument either way, but it is not meat for summary judgment in  
22 defendant's favor.

23 But in any event, the action that she did not follow the  
24 policy strictly speaking, the Court allows that, in these  
25 circumstances, the fear, shame, humiliation of the sexual

1 assault by the employer effectively -- by the supervisor could  
2 well justify delay in reporting formally under a sexual  
3 harassment policy.

4 I would add as well, the boyfriend was a sergeant. Where  
5 was he in terms of making a report? Even if she said to him,  
6 Don't say anything, is he discharging his duty by not saying  
7 anything? Does he have an obligation as a boyfriend that  
8 supersedes his duty as a police officer? Arguable that that is  
9 not a valid defense. And he knew right away. So the idea that  
10 she took some time before it all came to pass is not, in my  
11 view, dispositive in defendant's favor at this point.

12 So did she follow the policy or not? Arguably, she did,  
13 under the circumstances, appropriately so. Did the County act  
14 in any way immediately to assuage her concerns? To some  
15 extent, yes, there was an investigation, although, arguably,  
16 first by an investigator who had an alliance with the defendant  
17 who arguably told the plaintiff it's not important. That's not  
18 a very persuasive argument in favor of the County.

19 And then the other arguments along the way about what was  
20 done for her, again, when there was brought -- when it was  
21 brought to the attention of one of the officers, of one of the  
22 higher ups that she was fearful of what was going to happen on  
23 the street if she didn't get backup, an argument is made -- or  
24 the evidence suggests that a State's Attorney made the report  
25 to the officer, and what is done? Nothing, according to the

1 plaintiff.

2       So, again, the County is implicated at every level here  
3 about what they were doing. When she was reassigned, was it,  
4 in fact, retaliation for being reassigned? Arguably, yes.  
5 Perhaps not. But at least at this point, not really fit for  
6 summary judgment in favor of the defendant.

7       And so when you talk about the hostile work environment,  
8 certainly to the extent that a female officer in a presumably  
9 male-oriented police department is hearing these rumors and  
10 threats floating around sometimes directly, according to  
11 counsel, she's apt to be kind of nervous in terms of what the  
12 outcomes would be, and, therefore, unhappy in her work. And if  
13 she is assigned to a lesser prestigious department not at her  
14 request, she says, that's another way in which one could argue  
15 retaliation.

16       And, finally, on the 1983 claim, clearly, there are  
17 things that are arguably going on in the police department.  
18 Whether it's the culture, if you will, or the reasonable fear  
19 that a police officer who is a snitch is -- is not going to get  
20 backup on the street if she is a patrolman, that certainly is a  
21 concern that could arguably be laid at the doorstep of the  
22 County.

23       So did they do everything that they could reasonably have  
24 done? They did some things. Did they do enough? Arguably  
25 not. And, so, all the elements, it seems to me, are fairly

1 present that -- in favor of denying the motion for summary  
2 judgment on the County's part.

3 This case is ready for trial. It would be an interesting  
4 trial. There certainly are strong equities I think that the  
5 plaintiff can put forward here, but if the County and the  
6 police department feel that they -- they have something to say  
7 by way of their defense, and perhaps they do, then the time to  
8 do it is at the trial, but not here at summary judgment.

9 The motion is denied for the reasons the Court has just  
10 stated, and I will enter an order to that effect.

11 Now, what I'd like counsel to do is to get together and  
12 determine how much trial time you might need. It feels like  
13 maybe two weeks of trial, at a minimum, two to three weeks. We  
14 are talking the fall I think the soonest that we would do this,  
15 maybe toward the late fall, October, November, something like  
16 that to try it.

17 Does that sound about right for counsel?

18 MR. ROBERTS: I would say so, Your Honor.

19 THE COURT: Sorry.

20 MR. ROBERTS: I would agree.

21 MR. CORNBROOKS: Yes, Your Honor.

22 THE COURT: Yeah. Counsel, talk to each other and  
23 see where you are in terms of your own schedules, and then call  
24 chambers, and let's try and set up the -- the discussion.

25 If there is any -- I don't know whether you feel there is



1 -- I mean, I guess I got to hold open this possibility, if you  
2 feel that there is need for leave to take further discovery  
3 either based on what has been filed with the Circuit Court,  
4 okay, whether you have some issue about the psychological  
5 effect of being a victim of sexual assault, that's up to you,  
6 Mr. Roberts, to see whether that could be entertained or not.

7 Otherwise, we are ready to set the matter for trial  
8 unless we hear otherwise. Thank you, Counsel, for your  
9 arguments.

10 MR. ROBERTS: Your Honor, if I might, I want to send  
11 those documents to you.

12 THE COURT: Would you, please?

13 MR. ROBERTS: The email address?

14 THE COURT: Kim will give you hers.

15 MS. PLUMER: Yes. Yes. I will write it down for  
16 you.

17 MR. ROBERTS: Thank you. Thank you.

18 (The proceedings were concluded at 12:35 p.m.)  
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C E R T I F I C A T E

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Renee A Ewing

Renee A. Ewing, RPR, RMR, CRR  
Official Court Reporter  
April 4, 2023