Carey v. Clay County

Summary judgment (2020)

Minnesota District Court, Seventh Judicial District

14-CV-17-1687 (Minn. Dist. Ct. May 18, 2020)

IN THIS EDITION

Complete order and memorandum

Original collection page locators

The court's footnote and source quotations

The complete individual 19-page order and memorandum found at pages 37–55 of the 55-page original collection. This reading edition contains only the Carey decision; the original collection remains unchanged.

Source-page labels refer to the original court PDF. The numbered pages in this PDF belong to this independent reading edition. Administrative stamps, signature artwork and source-copy layout remain available in the original PDF.

Independent edition prepared October 29, 2026

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STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF OTTER TAIL — SEVENTH JUDICIAL DISTRICT

Ryan Carey,
Plaintiff,
vs.
Clay County, Minnesota,
Defendant.

ORDER AND MEMORANDUM GRANTING MOTION FOR SUMMARY JUDGMENT
Court File No. 14-CV-17-1687

On March 13, 2020, the above-entitled matter came on for hearing before the undersigned Judge of District Court, at the Otter Tail County Courthouse in Fergus Falls, Minnesota on Defendants' Motion for Summary Judgment. Attorney Isaac Kaufman appeared on behalf of Plaintiff Ryan. Attorney Joshua Heggem appeared on behalf of Defendant Clay County, Minnesota. Plaintiff submitted Exhibits A-K in response to Defendant's motion.

Based upon the entire file, the applicable law, the arguments of the parties, and for the reasoning set forth in the attached Memorandum, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment is **GRANTED**.

2. The attached Memorandum is incorporated by reference herein.

Dated: 5/18/20

BY THE COURT:
Kevin M. Miller
Judge of District Court

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MEMORANDUM

Factual and Procedural Background

Plaintiff, Sheriff's Deputy Ryan Carey (hereinafter "Deputy Carey") was hired by the Clay County Sheriff's Office in 2001. During this time, Deputy Carey worked both as a patrol officer and a canine handler. Compl. Ex. A, p. 1 (March 13, 2013) (Lundberg, Arb.). In June 2012, Deputy Carey was attending a training in Eden Prairie, Minnesota. Late at night at the hotel, Deputy Carey and other law enforcement officers who were attending the training were socializing by the pool. The group was being disruptive and the hotel's management called law enforcement (hereinafter "the incident"). *Id*. at 3.

Following the incident, there was an internal affairs investigation into Deputy Carey's involvement. *Id*. at 4. The investigators and Clay County Sheriff Bill Bergquist determined that Deputy Carey was being untruthful regarding communications he had with others regarding the incident. On July 25, 2012, the Clay County Sheriff terminated Deputy Carey's employment. Comp. ¶7.

Law Enforcement Labor Services, Inc. (hereinafter "the Union"), filed a grievance on behalf of Deputy Carey challenging his termination. The issue was arbitrated on January 15 and 16, 2013,

before arbitrator James Lundberg. Comp. ¶8. In his findings, Arbitrator Lundberg relied on the following facts. On June 21, 2012 Clay County Sheriff's Lieutenant Steve Todd was contacted by Eden Prairie Minnesota Police Department Lieutenant Morrow. Compl. Ex. A, p. 3 (March 13, 2013) (Lundberg, Arb.).

> Lt. Morrow was unhappy with an incident that occurred at the Residence Inn in Eden Prairie during the late hours of June 9, 2012 and the early hours of June 10, 2012. The grievant, Deputy Carey was staying with his wife at the Residence Inn at the time and attended a K-9 training session on June 10, 2012.
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> Lt. Todd was informed that Deputy Carey and Deputies from Wabasha County were in a group that was being loud and refused to leave the pool area of Source PDF page 39 the hotel, when asked by the manager. A call was made to the Eden Prairie Police and Officer Schmidt answered the call. According to the investigation notes of Lt. Todd and the e-mail from Lt. Morrow, Deputy Carey refused to leave the pool area. Deputy Carey only left, after being given several commands. The investigation report indicates that Deputy Carey was very intoxicated and argued with Officer Schmidt. It was reported that one of the K-9 officers was making his dog bark and a siren from one of the police cars had been activated.
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> Lt. Morrow was acting on hearsay information provided by Eden Prairie Officer Irmiter. Officer Irmiter was not called as a witness in this arbitration and the source or sources of Officer Irmiter's information is/are unknown.
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> In fact, most of the information that was given to Lt. Todd by Lt. Morrow, as obtained from Officer Irmiter, was either inaccurate or completely wrong based upon the direct testimony of witnesses who were present at the time of the incident in the early hours of June 10, 2012 at the Residence Inn in Eden Prairie Minnesota. However, Lt. Todd assumed that Lt. Morrow was providing him with an accurate picture of what happened prior to the K-9 trials on June 10, 2012 and he initiated an "Internal Complaint."
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> Lt. Todd initiated an Internal Investigation in Deputy Carey's conduct by calling Deputy Carey at 5:30 PM on June 21, 2012. Deputy Carey was on vacation at the time he took the phone call. He was attending a fishing tournament in Devils Lake, North Dakota. In a telephone conversation Lt. Todd informed Deputy Carey that allegations of misconduct had been made against him regarding [the incident]. Lt. Todd testified that he told Deputy Carey not to discuss the matter with anyone except his Union Representative and his Attorney. Lt. Todd also testified that he ordered Deputy Carey to see him when he returned from vacation.
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> . . .
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> Since Deputy Carey was on vacation, in the process of registering for a fishing tournament and was receiving oral notification by cell phone with considerable background noise and movement, it is reasonable to conclude that he was not completely focused on the conversation.

Id. at 3-4. After receiving the phone call Deputy Carey made some comments to fellow officers, but there is no evidence he violated a written non-disclosure order that was not served on him until June 30, 2012. *Id.* at 5. There is no evidence that any of these conversation interfered with or

corrupted the investigation. *Id*. Lt. Todd argued that Deputy Carey was supposed to see him as soon as he returned from vacation, but it was his job to serve Deputy Carey with the non-disclosure order and it was reasonable for Deputy Carey not to know whether he was to seek out Lt. Todd or just wait until they crossed paths. *Id*. at 5-6.

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Individuals who were present during the incident gave testimony indicating that it was not Deputy Carey's siren or dog barking and that Deputy Carey was the Deputy who stayed to talk to Eden Prairie Officers after the others had left. *Id*. at 7. Officers made these admissions against their own interests, making it clear that the allegations of dishonesty by Deputy Carey were based on inaccurate information. *Id*.

After Deputy Carey was given his Tennessen/Garrity warning, Deputy Carey recalled speaking to Deputy Steffes about the incident. *Id*. at 9.

> During the course of the investigation, Deputy Steffes found several text messages on his phone from Deputy Carey. The text messages were sent shortly after Lt. Todd ordered Deputy Carey not to talk to anyone about the incident . . . Deputy Carey inaccurately testified in his interview that he talked to Deputy Steffes but not that he sent text messages to Deputy Steffes. In fact, he vigorously denied sending text messages. Grievant testified at arbitration that he still had no recollection of the text messages. However, he did explain and support with data from his phone service that he sent and received approximately 16,000 text messages over a period of 8 months. Grievant's failure to recall a series of text messages sent on June 21, 2012 was deemed a lie by the Employer. However, Deputy Carey was asked to respond to questions about specific text messages on a specific day, when he sent and received an average of 67 messages each day. Deputy Carey's testimony that he did not and does not recall sending the text messages is credible in light of the number of text messages he routinely receives and transmits each day. *Id*.

Based on his findings of fact, Arbitrator Lundberg found that there was "insufficient evidence to establish that Deputy Carey made dishonest statements to the investigators" and that the employer did not have just cause to discharge Deputy Carey. Arbitrator Lundberg directed that Deputy Carey be reinstated with full back pay and benefits. Sheriff Bergquist reinstated Deputy Carey and assigned him to a courtroom security position. Comp. ¶13.

Since being reinstated, Deputy Carey has applied for approximately 12 different work assignments (Siiro Aff. ¶8). For each of these openings, the Sheriff chose another applicant. The Union challenged both Clay County's decision to reinstate Deputy Carey Source PDF page 41 with a courtroom security assignment and the subsequent decisions not to transfer Deputy Carey to one of the other work assignments that he applied for. Both challenges were submitted to an arbitrator. Both arbitrators determined the issues to be inarbitrable. Deputy Carey did not appeal either of these arbitration decisions.

In a letter to Attorney Kaufman and Attorney Rengel on April 25, 2013, Arbitrator Lundberg wrote,

> "[a]ssigning Deputy Ryan to courthouse duty prevents him from working the same level of overtime as is available for road duty officers and increases his expenses, because he is unable to

> use a squad car to travel to and from his home. Consequently, the assignment is a form of punishment and the employer did not have just cause to punish the grievant." (Doc. 5; May 15, 2017.)

Arbitrator Lundberg went on to state that he did not feel that Deputy Carey's reinstatement "conformed fully with the 'spirit' of the arbitration award but does follow the 'letter' of the award". Arbitrator Lundberg determined that "… management has the right to assign a deputy to any road or courthouse position" and that reinstatement of Deputy Carey to a specific assignment was beyond his jurisdiction. *Id.*

Regarding the grievance for being denied a change of assignment from courthouse to patrol/canine, Arbitrator Richard Beens found that Article 7.2.4 of the Collective Bargaining Agreement between the parties gave "the Employer the exclusive right to assign positions and duties within the sub-classification of Deputy. Compl. Ex. C, p. 9 (August 26, 2015) (Beens, Arb.). Arbitrator Beens found the grievance to have merit but ultimately found that the dispute was not arbitrable. *Id.* at 10.

Deputy Carey has since been passed over for other work assignment and for overtime patrol assignments. Deputy Carey's status as a "Brady Officer" is just one factor among many that he considers when making work assignments (Siiro Aff. ¶10). The Source PDF page 42 current Sheriff, Mark Empting, has experience working patrol assignments with Deputy Carey. Sheriff Empting has previously observed Deputy Carey playing videogames and sleeping while on patrol; neither of these incidences resulted in a report, investigation, or discipline (Empting Dep. 35, 37, 38). Sheriff Empting considers Deputy Carey a "Brady Officer" based, in part, on the opinion of Clay County Attorney Brian Melton. *Id.* at 24, 29. County Attorney Melton is aware of the situation surrounding Deputy Carey's termination and subsequent reinstatement (Melton Aff. ¶8). He thinks that the information will likely need to be disclosed in future criminal prosecutions. *Id.*

Plaintiff Ryan Carey is seeking the following relief:

1. Declaratory Judgment- finding that Plaintiff Carey does not have the status of a Brady Officer;

2. Permanent Injunction- enjoining Clay County from designating Plaintiff Carey as a Brady Officer and from denying him or refusing to consider him for assignments on that basis.

Defendant Clay County has previously made a motion for summary judgment (Doc. 36; December 21, 2017). The Court issued an Order Denying Summary Judgment finding that summary judgment was premature and additional discovery needed to be conducted to provide information necessary to Plaintiff's due process claims (Doc. 54; April 13, 2018). Such discovery has since concluded and Clay County now brings another motion for summary judgment (Doc. 73; January 15, 2020).

As a preliminary matter, as stated and analyzed in the Court's prior Order denying summary judgment, the issues before the Court are not suited to arbitration; therefore, Deputy Carey has exhausted his administrative remedies.

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Legal Analysis

Defendant Clay County is seeking an Order granting their motion for summary judgment. Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). For the sake of clarity, the Court will analyze whether the County is entitled to judgment as a matter of law first and then will analyze whether there are any genuine issues of material fact.

I. Declaratory Judgment

Deputy Carey is seeking an order of the Court finding that he does not have the status of a "Brady Officer".

In *Brady v. Maryland,* 373 U.S. 83, 87 (1963), the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution." *Id.* at 87; *See also, State v. Roan,* 532 N.W.2d 563, 571 (Minn. 1995).

Giglio v. U.S., 405 U.S. 150 (1972) provides further instruction on the prosecution's duty to disclose exculpatory information. The Supreme Court stated that "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within" the *Brady* rule. *Id.* at 154 (quoting *Napue v. Illinois,* 360 U.S. 264, 269 (1959)). Impeachment evidence (evidence adversely affecting credibility) about a state's witness falls within the *Brady* rule. *United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375 (1985).

Under *Brady,* the suppression by the State, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due process. *Brady v. Maryland,* Source PDF page 44 373 U.S. 83, 87 (1963). The United States Supreme Court has since defined the three elements of a *Brady* violation: (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant. *Pederson v. State,* 692 N.W.2d 452, 459 (Minn.2005) (citing *Strickler v. Greene,* 527 U.S. 263, 281–82 (1999)).

When determining whether impeachment evidence is material under *Brady,* the undisclosed impeachment evidence cannot be viewed in isolation. Rather, the impeachment evidence must be viewed in context, alongside the witness's testimony, in light of any other impeachment evidence, and in light of corroborating evidence that bears on the witness's credibility. *Youngblood v. West Virginia,* 547 U.S. 867, 870 (2006) ("[A]lthough a 'showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,' ... [t]he reversal of a conviction is required upon a 'showing that the favorable evidence could reasonably be taken to put the whole case in such a different light

as to undermine confidence in the verdict.' ") (quoting *Kyles v. Whitley,* 514 U.S. 419, 434 (1995)) (internal citations omitted). The *Kyles* Court instructs that "[t]he prudence of the careful prosecutor should not therefore be discouraged".

In addition to the prosecution's constitutional obligations, Minnesota Statutes also require disclosure of exculpatory information.

Prosecutors are required to disclose all exculpatory information or material in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt. Minn. R. Crim. P. 9.01 subd. 1(6) The prosecutor's obligations under this rule extend to material information in the possession or control of members of the prosecution staff and any others who have Source PDF page 45 participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office. Minn. R. Crim. P. 9.01 subd. 1a(1).

The prosecution is tasked by both the Constitution and Minnesota law with disclosing potentially exculpatory information. This information includes evidence of an officer's past dishonesty. Whether Deputy Carey's alleged dishonesty must be disclosed in a criminal prosecution depends on the context of the specific case. The entire case and the entirety of Deputy Carey's testimony would need to be looked at to determine if the allegation of dishonesty is material. It is impossible for this Court to know whether the information about Deputy Carey's alleged dishonesty will be material to a future criminal prosecution. The Court will not put future prosecutors in the position of deciding whether to violate an order of this Court or violate their constitutional obligations if they think that the information regarding Deputy Carey is material and requires disclosure.

Additionally, it is not the situation that the prosecution is unaware of the facts that lead to Deputy Carey's termination, subsequent reinstatement, and Sheriff Empting continuing to believe that he had been dishonest. The county attorney knows exactly what transpired that lead to Deputy Carey's "Brady" designation and despite the arbitrator's findings, County Attorney Melton still thinks that the information would likely need to be disclosed in a criminal prosecution.

In addition to interfering with the prosecution's constitutional and statutory obligations, a Declaratory Judgment would also impermissibly violate a criminal defendant's right to due process.

In a case out of Nevada, Officer Doe was placed on the equivalent of a "Brady list" after he returned a broken coffee pot while on duty and was found to have violated department policies Source PDF page 46 including "Neglect of Duty" and "Promotion of Integrity". *Sparks Police Protective Ass'n v. City of Sparks,* No. 3:16-cv-00681-MMD-WGC, 2016 LEXIS 176589 (D.Nev. Dec. 21, 2016). The Sparks Police Protective Association (SPPA) argued that no procedure exists to challenge whether the results of an internal investigation must be disclosed and therefore, the requirement to disclose policy violations is a "definite threat to Officer Doe's career which amounts to an unlawful taking of his property by a government agency." SPPA sought a temporary restraining order and the Court declined to issue the order, finding that there was no violation of Officer Doe's right to due process because he was not terminated or denied the right to be a police officer. The Court also found that it would be against public interest to issue a TRO because of the potential harm to criminal

defendants. The Court noted that SPPA's motion "asks the Court to withhold potential *Brady* material from criminal defendants- itself a constitutional violation- and will create potential rippling adverse effects on the prosecution of these criminal cases, including obtaining guilty verdicts that may be subsequently reversed on appeal." *Id.*

Deputy Carey relies heavily on a case from the New Hampshire Supreme Court, *Duchesne v. Hillsborough County Attorney*, 119 A.3d 188 (N.H. 2015). In that case, two officers were accused of using excessive force while off duty at a local bar. The police chief ordered both an internal affairs and criminal investigation into the incident. The internal affairs investigation found that the officers had violated several department policies and they were placed on leave. The criminal investigation found no violation of the law. The police chief reported to the County Attorney that the officers had violated department policy by using excessive force. The officers were placed on a "Laurie List" (the New Hampshire equivalent of a "Brady List") *State v. Laurie,* 139 N.H. 325, 329, 653 A.2d 549 (1995). Pursuant to the provisions of the Collective Bargaining Agreement, the officers filed a grievance regarding the discipline imposed by the chief. Source PDF page 47 The arbitrator found that the officers had not violated department policy and therefore, there was not cause to punish them.

After arbitration, the chief wrote to the county attorney requesting that the officers' names be removed from the "Laurie List", the county attorney declined to do so because there was a sustained complaint of excessive force. [1]

The officers filed suit seeking (1) declaratory judgment that the county attorney violated a state statute that provided a process for disclosure of police personnel files by refusing to remove their names from the "Laurie List"; (2) an injunction prohibiting the county attorney from designating the incident as a "Laurie Issue"; and (3) a writ of mandamus to compel the county attorney to remove their names from the "Laurie List". The officers also argued that the county attorney's refusal to remove their names from the list violated their constitutional rights to due process.

In analyzing their claim, the Court made a distinction between information that could be used to attack a witness's general credibility and evidence used to impeach specific testimony given by a witness, implying that the former would likely always require disclosure. The Court noted that had the officers lied or been dishonest, then the analysis about disclosure would be different.

> "[T]he only conduct at issue here is the petitioners' involvement in a single incident of alleged excessive use of force, and there is no suggestion that they attempted to lie about or cover up their conduct. Even if the accusation were true, this incident, without something more (such as evidence that the petitioners lied or misrepresented the facts) would not be admissible to impeach the petitioners' general credibility because an instance of excessive use of force is not probative of truthfulness or untruthfulness." *Duchesne v. Hillsborough County Attorney*, 119 A.3d 188, 197 (N.H. 2015).

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The Court ultimately found there was no reason that the information about the incident should be disclosed as part of a "Laurie" disclosure because the arbitrator and criminal investigation found no evidence of wrong doing.

The most important distinction between this case and *Duchesne* is that Deputy Carey has been accused of dishonesty. Under the *Duchesne* analysis, an allegation of dishonesty during an investigation would impact Deputy Carey's general credibility and therefore, would likely need to be disclosed.

There is no denying that this "Brady designation" has had a negative impact on Deputy Carey's reputation and work opportunities within the Sheriff's Department. However, the relief Deputy Carey is seeking puts the Court in the position of determining whether Deputy Carey's right to due process is more important than that of a criminal defendant. There is no indication that Deputy Carey's right to due process has actually been violated and there is no caselaw indicating that if they had been violated that his rights would trump those of a criminal defendant's.

Additionally, the Court shares the concerns outlined by the Nevada Court. There could certainly be a situation in a criminal prosecution where it could be relevant that Deputy Carey had been untruthful about sending text messages. If not relevant to impeach specific testimony, it could certainly be relevant as to Deputy Carey's general credibility. It would be contrary to the public interest for the Court to issue an Order that could have the future impact of violating criminal defendants' constitutional rights, resulting in reversal of convictions and wasted Court resources.

The Court is without precedent or compelling reason to grant the requested relief. The prosecution is tasked with disclosing exculpatory information to protect the rights of the criminal defendant. The Court cannot issue an Order declaring that this information will never be relevant or require disclosure in a criminal proceeding; and the Court will not issue an Order that could Source PDF page 49 violate a criminal defendant's right to due process. Therefore, the Court is unable to grant Deputy Carey his requested declaratory relief and Clay County is entitled to summary judgment on this claim.

II. Injunctive Relief

Deputy Carey is seeking an injunction enjoining Clay County from designating him a "Brady Officer" or from denying him or refusing him for work assignments on that basis. The question of injunctive relief ultimately hinges on the extent and parameters of the Clay County Sheriff's authority to determine deputy work assignments.

> "A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel." Minn. Stat. §179A.07 Subdivision 1 ("PELRA").

Minnesota caselaw has analyzed what decisions fall within the umbrella of "inherent managerial policy". Transfer of personnel is a matter of inherent managerial policy and therefore, not subject to negotiation; criteria for choosing personnel to transfer is negotiable under the Public Employment Labor Relations Act. *Minneapolis Federation of Teachers Local 59 v. Minneapolis Special School Dist. No. 1,* 258 N.W.2d 802 (Minn. 1977).

In *Minneapolis Association of Administrators and Consultants v. Minneapolis Special School Dist. No. 1,* 311 N.W.2d 474 (Minn. 1981), the Court found that removing certain Source PDF page 50 employees' administrative responsibilities and thus cutting their pay, concerned a matter of inherent managerial policy: the school district's organizational structure. The Court found that deciding which employees would have administrative responsibilities must be discretionary if the school district is to establish properly the school district's organizational structure. Therefore, the school district may not be required to meet and negotiate with plaintiff concerning the method of determining which positions to divest of administrative functions.

In *City of Winona, Minnesota Teamsters Public and Law Enforcement Employees Union Local 320 v. Law Enforcement Labor Services, Inc.,* WL 10880 (Minn.App. 1997) (unpublished), the Court found that restructuring the police department to eliminate certain positions and reassigning officers was a matter of inherent managerial policy.

State ex rel. Quiring v. Bd. of Educ. of Indep. Sch. Dist. No. 173, 623 N.W.2d 634, 637-39 (Minn. App. 2001) (determining that employer did not violate PELRA by eliminating school principal's position because restructuring was a matter of inherent managerial policy.)

These cases can be distinguished from *Firefighters Union Local 4725 v. City of Brainerd,* 920 N.W.2d 232 (Minn. Ct. App. 2018). In that case the city's decision to restructure effectively eliminated the union and therefore, violated PELRA.

All of the cases considering inherent managerial authority can be distinguished from this case. There is not a broad restructuring occurring in the Sheriff's Office and Deputy Carey's position has not been eliminated. However, the caselaw is instructive in that it shows that restructuring and personnel decisions are typically within the inherent managerial authority of the employer under PELRA and the applicable collective bargaining agreement.

For further instruction, the Court looks to the Clay County Collective Bargaining Agreement ("CBA").

ARTICLE 5. EMPLOYER AUTHORITY

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> 5.1 It is recognized that, except as expressly stated herein, the Employer will retain whatever rights and authority are necessary for it to operate and direct the affairs of Clay County in all of its various aspects including, but not limited to, the right to direct the working forces; to plan, direct and control all the operations and services of the County; to determine the methods, means, organization and number of personnel by which such operations and services are to be conducted; to assign and transfer employees; to schedule working hours and to assign overtime; to hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; to make and enforce rules and regulations; and to change or eliminate existing methods, equipment or facilities.
>
> **Article 7.2.4**
>
> Except as noted above, nothing in this section shall be construed to limit the Employer's right to assign or reassign employees to duties within a job classification.

The plain language of the statute and the collective bargaining agreement, clearly indicate that the Clay County Sheriff has the authority to determine the work assignments of the Clay County Sheriff's Deputies. Absent violation of the Public Employment Labor Relations Act or the Collective Bargaining Agreement the Court will not interfere with the Sheriff's authority.

It seems apparent that the real relief Deputy Carey seeks is being returned to a patrol assignment within the Sheriff's Office. The Court empathizes with Deputy Carey in that his alleged dishonesty seems relatively minor and occurred a significant amount time ago; however, that doesn't change the Clay County Sheriff's ability to choose Deputy Carey's work assignment.

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III. Summary Judgment Standard

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MINN. R. CIV. P. 56.01; *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005). The moving party bears the burden of showing the absence of an issue of material fact. *Stringer*, 705 N.W.2d at 754. A material fact is one whose resolution will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Affidavits supporting and opposing a motion for Summary Judgment must set forth facts as would be admissible in evidence. MINN. R. CIV. P. 56.03. "When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial." *In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004). On Summary Judgment, it is improper for the court to weigh facts or determine the credibility of affidavits and other evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Anderson*, 477 U.S. at 248.

If the moving party presents a prima facie case for Summary Judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific disputed facts that create a genuine issue

of material fact for trial. MINN. R. CIV. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). The nonmoving party must demonstrate a genuine issue of material fact by presenting "substantial evidence" that creates more than "a metaphysical doubt as to a factual issue" and that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH*, 566 N.W.2d at 70-71. This demonstration requires more than resting on the averments or denials of the party's pleading. MINN. R. CIV. 56.05; *Stringer*, 705 N.W.2d at 753. In other words, "[s]peculation, Source PDF page 53 general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

Further, Summary Judgment is appropriate when a non-moving party fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Bersch v. Rgnonti & Assocs.*, 584 N.W.2d 783, 786 (Minn. App. 1998).

Clay County has presented a prima facie case that there are no material facts in dispute. Therefore, the burden shifts to the Plaintiff to point to specific facts that are in dispute. The Plaintiff argues that the following facts are in dispute and preclude summary judgment.

i. Whether Deputy Carey was knowingly and deliberately untruthful.

ii. What role Deputy Carey's alleged untruthfulness and his designation as a Brady Officer, played in him being removed from patrol duties.

iii. What role Deputy Carey's alleged untruthfulness and his designation as a Brady Officer played in him being denied other assignments.

iv. Whether the other reasons the County provided to explain Deputy Carey's denial for reassignment were legitimate or fabricated.

v. Whether and to what extent Deputy Carey has been stigmatized and incurred damage to his reputation and professional standing as a result of the Brady designation.

vi. What role the County Attorney played in assigning Deputy Carey to court security and preventing him from obtaining other assignments.

It is not disputed that the arbitrator did not find that Deputy Carey had been untruthful or that certain county officials continue to believe that he was untruthful, despite the arbitrator's findings.

It is not disputed that county officials considered Deputy Carey's "untruthfulness" when determining his work assignment and his applications for reassignment. It's technically in dispute Source PDF page 54 the weight they gave his untruthfulness when making employment determinations, but resolution of that issue is not material because it will not affect the outcome of the case.

It is not material whether the various other reasons provided to explain Deputy Carey's denial for reassignment were legitimate or fabricated. There is testimony that there were other concerns with his performance and Deputy Carey did not deny that he had played video games or slept while on

duty in the past. Resolution of this issue will not affect the outcome of this case and therefore, is not material.

The harm to Deputy Carey's reputation and professional standing as a result of the Brady designation is not material to his claims for declaratory and equitable relief.

It is not disputed that Sheriff Empting spoke with the County Attorney about Deputy Carey. Whether the Sheriff consulted the County Attorney about Deputy Carey's work assignment is not material to his claims for declaratory and equitable relief.

Although it would likely be personally beneficial to Deputy Carey to learn the answers to these questions, they are not disputed facts that are material to the complaint. Resolution of these facts would not have impact on the outcome of this case and would not provide any clarification on whether Deputy Carey is entitled to relief.

Conclusion

There are no issues of material fact and the Court is unable to grant Deputy Carey the requested relief; therefore, Clay County is entitled to Judgment as a matter of law. For the above stated reasons,

1. Defendant's Motion for Summary Judgment is hereby **GRANTED**;

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Court's footnotes

1 Although not the case in *Duchesne*, it appears common in the State of New Hampshire for the prosecution to be unaware of why an Officer is on a "Laurie List". The Court reviews the officer's personnel files or other information for exculpatory information and ultimately decides if disclosure is necessary.