IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT IVORY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 00-3022-V
	)	
SHELBY COUNTY GOVERNMENT,	)	
A.C. GILLESS, individually,	)	
and MARRON HOPKINS,	)	
individually,	)	
	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

On October 26, 2000, the plaintiff, Robert Ivory, a former employee of the Shelby County Sheriff's Department, filed suit under 42 U.S.C. § 1983 against Shelby County, Shelby County Mayor A.C. Gilless, and Shelby County Chief Jailer Marron Hopkins, contending that he was wrongfully terminated in retaliation for the exercise of his right to free speech guaranteed by the First and Fourteenth Amendments of the United States Constitution and Article I, Section 19 of the Constitution of the State of Tennessee. His complaint also included a claim for violation of the Tennessee Public Protection Act, § 50-1-304 (commonly known as the Whistle Blower Statute), a common law civil conspiracy claim, and a claim for conspiracy under § 1983.

By order filed March 19, 2001, this court granted in part and

denied in part the defendants' Rule 12(b)(6) motions to dismiss, dismissing Ivory's claims against defendants Gilless and Hopkins individually under the Tennessee Public Protection Act; his claims against all the defendants for common law civil conspiracy; and all claims against all defendants under Article I, Section 19 of the Tennessee Constitution.

Presently before the court are the motions of all three defendants for summary judgment on the remaining claims, namely: (1) Ivory's claim pursuant to 42 U.S.C. § 1983 of wrongful retaliation by the County in violation of his First Amendment rights under the United States Constitution; (2) the identical claim against Gilless and Hopkins in their individual capacities; (3) Ivory's claim that the defendants collectively conspired to deprive him of his civil rights in violation of 42 U.S.C. § 1983; and (4) Ivory's claim against the County for violation of the Tennessee Public Protection Act.

Because Ivory's termination did not flow from a policy or custom of the County, the County's motion for summary judgment on Ivory's § 1983 claim against the County is granted, and because Ivory cannot show that Gilless was cognizant of Hopkins' alleged unconstitutional reasons for recommending Ivory's termination, Gilless' motion for summary judgment on Ivory's § 1983 claim against Gilless in his individual capacity is granted as well. In

addition, Ivory has failed to assert any factual basis to support a finding of a civil conspiracy between any two defendants to violate his civil rights under § 1983, and therefore all the defendants' motions for summary judgment on the civil conspiracy claim is granted. For the reasons that follow, however, Hopkins' motion for summary judgment on Ivory's § 1983 claim against Hopkins in his individual capacity is denied as is the County's motion for summary judgment on Ivory's claim against the County for violation of the Tennessee Public Protection Act.

UNDISPUTED FACTS

In his complaint, Ivory alleges that on September 28, 2000, he was fired from his job as Environmental Health Officer at the Shelby County Jail in retaliation for cooperating with Curtis Shumpert, the court-appointed assistant Special Master in charge of overseeing improvements in the conditions at the Jail. (Compl. ¶ ¶ 14, 15, and Ex. D; Shelby County's Material Facts 1, 4; Hopkins' Facts, 1, 3; Gilless' Undisputed Material Facts 1, 4.)

On August 11, 2000, Shumpert was appointed assistant Special Master by Judge Jon P. McCalla, the presiding judge in the jail conditions case,[1] and ordered to conduct an investigation to determine the status of disciplinary write-ups during the period of July 1, 2000, through mid-September 2000. (Compl. ¶ 10; Defs.'

[1] *Little v. Shelby County*, Civ. No. 96-2520.

Answer ¶ 10.) After Shumpert was appointed as an assistant Special Master, he was provided with an office in the Jail. (Pl.'s Resp. to Mot. for Summ. J., Shumpert Aff. ¶ 4.) Ivory and Shumpert both aver that Ivory helped Shumpert on numerous occasions in his duties in improving the conditions at the Jail and that Hopkins was aware that Ivory was assisting Shumpert in his duties. (Pl.'s Resp. to Mot. for Summ. J., Ivory Aff. ¶ 12, Shumpert Aff. ¶ 4.) On September 25, 2000, Hopkins called a meeting of the Jail's senior management including Ivory. (Compl. ¶ 12; Defs.' Answer ¶ 12.) At the meeting, Hopkins allegedly informed the senior management that Shumpert was "the enemy" and that anyone who helped him would need to "update" his resume. (Compl. ¶ 12; Ivory Aff. ¶ 10.) That same day, Ivory allegedly met with Shumpert and informed him of this meeting. (Compl. ¶ 13.) This led to an application to Judge McCalla on September 28, 2000, for injunctive relief based on information provided by a confidential informant to prevent further harassment of Jail employees. (First Stipulation of the Parties ¶ 1.) This in turn led to a reference on October 5, 2000 to United States Magistrate Judge James H. Allen to conduct an evidentiary hearing. Following an evidentiary hearing in November, 2000, Judge Allen found, in his proposed findings of fact filed November 21, 2000, that though Hopkins denied the allegations, Hopkins had in fact made the statements alleged by Ivory. (Pl.'s Resp. to Mot.

for Summ. J., Ex. C.)

On September 29, 2000, Ivory was informed by a letter dated September 28, 2000, from the Sheriff's office, that he was terminated from his position at the Jail. (Compl. ¶ ¶ 14, 15, and Ex. D; Shelby County's Material Facts 1, 4; Hopkins' Facts, 1, 3; Gilless' Undisputed Material Facts 1, 4.) Prior to the notification of termination, Ivory alleges, he had no indication, aside from Hopkins' remarks in the September 25th meeting, that his job performance had been unsatisfactory. During his tenure at the Jail, Ivory received two "above average" evaluations, and Hopkins had informed Ivory that his performance would be gauged by his ability to elevate the health inspection score. (Compl. ¶ 9; Defs.' Answer ¶ 9.) During his watch, the Jail's health inspection score improved by twenty-nine points.[2]

Gilless and Hopkins both state under oath that Hopkins had decided to terminate Ivory from his position some four days prior to the September 25, 2000 meeting and that neither of them were aware before September 28, 2000, the date of the termination letter, that Ivory was the "confidential informant" referred to in the application for injunctive relief.

ANALYSIS

Under Rule 56(c) of the Federal Rules of Civil Procedure,

[2] The score increased from 57 to 86. (See Pl.'s Resp. to Mot. for Summ. J., Exs. A, B, C.)

summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *LaPointe v. United Autoworkers Local 600*, 8 F.3d 376, 378 (6th Cir. 1993); *see also Osborn v. Ashland County Bd. of Alcohol, Drug Addiction and Mental Health Servs.*, 979 F.2d 1131, 1133 (6th Cir. 1992) (per curiam). The party moving for summary judgment has the burden of showing that there are no genuine issues of material fact at issue in the case. *LaPointe*, 8 F.3d at 378. This may be accomplished by demonstrating to the court that the nonmoving party lacks evidence to support an essential element of its case. *Barnhart v. Pickrel, Schaeffer & Ebeling Co.*, 12 F.3d 1382, 1389 (6th Cir. 1993).

In response, the nonmoving party must present "significant probative evidence" to demonstrate that "there is [more than] some metaphysical doubt as to the material facts." *Moore v. Phillip Morris Co.*, 8 F.3d 335, 339-40 (6th Cir. 1993). When a summary judgment motion has been properly made and supported, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but . . . by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

"[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

In deciding a motion for summary judgment, "this court must determine whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Patton v. Bearden*, 8 F.3d 343, 346 (6th Cir. 1993) (quoting *Anderson*, 477 U.S. at 251-52). The evidence, all facts, and any inferences that permissibly may be drawn from the facts must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). However, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for plaintiff." *Anderson*, 477 U.S. at 252.

A. <u>Ivory's Claims under 42 U.S.C. § 1983</u>

Ivory has asserted claims under § 1983 against all three defendants - Shelby County and the two individual defendants, Sheriff Gilless and Chief Jailer Hopkins. All three defendants have moved for summary judgment on Ivory's § 1983 claims.

To prevail on a claim for a violation of civil rights under 42 U.S.C. § 1983, a plaintiff must show: 1) he was deprived of a right secured by the Federal Constitution or laws of the United States and 2) that the deprivation was caused by a person acting under color of state law. *Flagg Bros., Inc v. Brooks*, 436 U.S. 149, 155-57 (1978). A plaintiff seeking to prove retaliation under § 1983 for speech protected by the First Amendment must point to evidence sufficient to establish: 1) he engaged in constitutionally protected speech; 2) he was subjected to adverse action or was deprived of some benefit; and 3) the protected speech was a substantial or a motivating factor in the adverse action. *Brandenburg v. Housing Authority of Irvine*, 253 F.3d 891, 897 (6th Cir. 2001).

To determine whether speech is protected, the Supreme Court in *Pickering v. Board of Education*, 391 U.S. 563 (1968) developed a two-part test: (1) the speech must address a matter of public concern; and (2) the interest of the employee as a citizen must outweigh the interest of the public employer in the employee's function and efficiency at the workplace. Whether a public employee's speech is protected under the First Amendment is a question of law for the court to decide. *Connick v. Myers*, 461 U.S. 138, 148 n. 7 (1983). Such matters of public concern are very narrow, and personnel decisions and other work-related employer

decisions do not fall into this category. *Connick*, 461 U.S. at 148.

In the present case, none of the three defendants contest whether Ivory's speech was protected under the First Amendment or whether Ivory was subjected to an adverse employment action, and for purposes of ruling on these summary judgment motions, the court will treat these two elements of a retaliation claim as satisfied. The only issue is whether Ivory can satisfy the last element of a retaliation claim, that is, whether his protected speech was a substantial or motivating factor in his termination. The last element of Ivory's retaliation claim and other § 1983 issues are addressed in the subsections below as it relates to each named defendant.

1. Ivory's § 1983 Claim Against Shelby County

With respect to Shelby County, Ivory alleges that through Gilless and Hopkins, acting in their official capacities, the County retaliated against him for facilitating Shumpert's information-gathering process to improve the jail.[3]

To impose liability on a governmental entity under 42 U.S.C. § 1983, a plaintiff must show that there was some official governmental policy or custom in place that violated his

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[3] **This Court already has noted that a suit against Gilless and Hopkins in their official capacity is essentially a suit against the municipality alone. (*See* Order on Defs.' Mot. for Partial Dismissal, March 19, 2001, pp. 11-12.)**

constitutional rights; a governmental entity cannot be liable under § 1983 for the acts of its employees under a theory of *respondeat superior*. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978). However, if an act is performed by an employee who is the final policymaker for the governmental entity with respect to that particular subject matter, it may constitute an official policy or custom. *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483-484 (1986). But, if a decision, such as an employment decision, is merely the unauthorized act of a particular person who lacks final policymaking authority, the action does not rise to the level of a policy or custom. Whether an employee has been given final policymaking authority is determined by state law, and it is a question of law for the judge to decide. *Jett v. Dallas Independent School District*, 491 U.S. 701, 737 (1989).

Here, Ivory has failed to identify in his complaint the official County policy that allegedly caused him to be deprived of his constitutional rights. The burden is on the plaintiff to identify the policy he claims caused his injury. *Coogan v. City of Wixom*, 820 F. 2d 170, (6th Cir. 1987). Nor has Ivory alleged in his complaint that Gilless or Hopkins was the final policymaker for Shelby County on employment issues for Jail employees.

The County insists in its motion that Gilless and Hopkins are not final policymaking officials as to county employment matters.

In support of its position, the County points to an October 26, 1987 resolution of the Board Commissioners adopting the Personnel Management System of Shelby County. The County has attached copies of excerpts from the Personnel Policy Manual which was adopted pursuant to Chapter 110 of the 1971 Tenn. Priv. Acts, which manual dictates such issues as leave, sick pay and other employment policies. (County's Mem. in Supp. of Mot. for Summ. J., Ex.A.) The policy manuals were initially created and updated by the Board of Commissioners of Shelby County.

In response to the summary judgment motions, Ivory argues for the first time that Gilless and Hopkins are final policymakers for Shelby County for Jail policies. Ivory argues that as to matters at the Jail "there is no higher ranking official or policymaker in this sphere of Shelby County Government." (Pl.'s Resp. to Mot. for Summ. J. at 17.) There is no proffer of evidence by Ivory, however, that the Board of Commissioners has delegated its overarching authority on employment policy to the Sheriff or any other official within the County.

Although the Supreme Court has had many plurality decisions in this area of law, the following footnote to *Pembaur* in which the Supreme Court addresses a hypothetical situation in which a county sheriff hires and fires employees in an unconstitutional manner is particularly enlightening:

> **Thus, for example, the County Sheriff may have discretion to hire and fire employees without also being the county official responsible for establishing the county employment policy. If this were the case, the Sheriff's decisions respecting employment would not give rise to municipal liability, although similar decisions with respect to law enforcement practices, over which the Sheriff *is* the official policymaker, *would* give rise to municipal liability. Instead, if County employment policy was set by the Board of County Commissioners, only that body's decisions would provide a basis for county liability. This would be true even if the Board left the Sheriff discretion to hire and fire employees and the Sheriff exercised that discretion in an unconstitutional manner; the decision to act unlawfully would not be an act of the Board. However, if the Board delegated its power to establish final employment policy to the Sheriff, the Sheriff's decisions *would* represent county policy and could give rise to municipal liability.**

***Pembaur*, 475 U.S. at 483 n.12 (emphasis in original). This enunciation by the Supreme Court speaks to the very issue at hand. The present situation fits squarely within the above footnoted explanation in *Pembaur* and also conforms to later Supreme Court precedent.[4] In Shelby County, the Sheriff has discretionary authority to hire and fire Jail employees. Even though the Sheriff may be the policymaker for the County in certain matters concerning**

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[4] In *Brown*, a majority of the Supreme Court found that where a Sheriff was negligent in hiring a deputy with a past criminal record, his mistake alone was not enough to constitute a policy of the municipality. 520 U.S. 397, 404 (1997).

operation of the Jail,[5] Ivory has failed to adduce evidence that the Sheriff's ability to hire and fire employees, or the chief jailer's for that matter, is tantamount to final policymaking authority for the County on the matter of employment for purposes of § 1983 liability.

Thus, Ivory has failed to show an official policy or custom on the part of the County or one imputed to the County through the actions of the Sheriff, and therefore § 1983 liability on the part of the County does not exist. For this reason, the County's motion for summary judgment on this issue is granted.

2. Ivory's § 1983 Claim Against Gilless in his Individual Capacity

Ivory contends that based on his protected communications with Shumpert, Gilless retaliated against him under § 1983 when he terminated his employment with the Jail, thereby violating his First Amendment right to free speech. As noted earlier, Gilless does not dispute that Ivory engaged in protected speech with Shumpert or that ivory suffered an adverse employment action. He

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[5] For example, in ruling on a motion for judgment notwithstanding the verdict in another § 1983 case, Judge McCalla held that a jury could reasonably conclude that "Sheriff Gilless, in his official capacity as policy maker and/or supervisor of the Shelby County Jail, was deliberately indifferent to the constitutional rights of plaintiff." *Pulliam v. Shelby County*, 902 F. Supp. 797, 801 (W.D. Tenn. 1995). *Pulliam* involved the Sheriff's deliberate indifference to the unconstitutional policy of the Jail which allowed pre- and post-trial detainees to remain together in the same cell, not employment decisions.

alleges simply that he was unaware of Ivory's constitutionally protected communications with Shumpert during the week of September 25, 2000 until the hearing before Judge Allen later in October, 2000. Therefore, he alleges, Ivory cannot satisfy the last element of his retaliation claim, namely that Ivory's protected speech was a substantial or motivating factor in his termination.

While Ivory's termination letter was generated from Gilless's office, Ivory has no further evidence that Gilless was aware that by terminating him, he was doing anything more than following the recommendations of Hopkins, Ivory's head supervisor. If a plaintiff fails to show that a defendant knowingly participated in unconstitutional conduct, the claim asserted becomes nothing more than *respondeat superior*, which is not recognized under § 1983. *Street v. Corrections Corp. of America*, 102 F.3d 810, 818 (6th Cir. 1996); *see Jones v. St. Tammany Parrish Jail*, 4 F. Supp. 2d 606, 612-13 (E.D. La. 1998).

Although the September 25, 2000 meeting in which Hopkins allegedly made derogatory statements regarding Shumpert occurred just three days before Ivory was fired on September 28, 2000, the temporal proximity, standing alone, is not enough evidence to support a contention that Gilless actively participated in violating Ivory's civil rights under § 1983, and there is no other evidence of Gilless' involvement proffered by Ivory. None of the

parties have even suggested that Gilless was present at the September 25th meeting. Neither Ivory nor Shumpert allege in their affidavits that Gilless walked by Shumpert's office and witnessed Ivory speaking with Shumpert or that Gilless had any personal knowledge whatsoever that Ivory was assisting Shumpert. Ivory has not come forward with any evidence that Hopkins ever discussed with Gilless his position with regard to Ivory or his dislike for anyone assisting Shumpert. Aside from the letter that Hopkins sent to Chief Deputy Sheriff Don Wright, which allegedly made its way to Gilless's desk, there is no evidence in either the pleadings or supporting documents that Gilless was aware of Hopkins' feelings regarding Ivory or that he shared those same feelings.

Gilless asserts that he followed Hopkins' recommendation that Ivory should be terminated based on Hopkins' view that Ivory "has shown a lack of ability" and a need for "intense supervision." (Gilless Mem. in Sup. of Mot. for Summ. J., Ex. A.). Gilless states in his affidavit that he relied upon the letter from Hopkins to terminate Ivory. (Gilless Aff. ¶ 2.) There is no evidence to the contrary even after drawing all reasonable inferences in favor of Ivory.

This court finds therefore that there is no material issue of fact to submit to a jury. Accordingly, Gilless' motion for summary judgment on the § 1983 claim against him in his individual capacity

is granted.

3. Ivory's § 1983 Claim Against Hopkins in his Individual Capacity

Ivory alleges that Hopkins in his individual capacity violated his First Amendment right to engage in constitutionally protected speech without retaliation. As stated earlier, Hopkins does not dispute that Ivory engaged in constitutionally protected speech by helping Shumpert or that Ivory suffered an adverse employment action; rather, Hopkins, like Gilless, pleads ignorance of Ivory's protected communications with Shumpert, specifically Ivory's status as the "confidential informant" with Shumpert at the time he read the application for injunction on September 29, 2000, and any time before. He asserts that because Ivory has no evidence that Hopkins knew about Ivory's conversations with Shumpert, Ivory has failed to satisfy the last element of his retaliation claim.

In his response to the defendants' motions for summary judgment, Ivory contends that Hopkins was aware that Ivory engaged in constitutionally protected speech with Shumpert long before the meeting of Jail management on September 25, 2000, and that his complaint is not simply based on one protected communication to Shumpert on September 25, 2000, but on his continual support of Shumpert preceding the date of the meeting. To support this contention, Ivory explains in his affidavit that it was common

knowledge that he was helping Shumpert. Ivory recalls a specific occasion when he stopped Hopkins in the hall to ask if he could give Shumpert floor plans of the Jail to aid Shumpert in his duties. (Ivory Aff. ¶ 12.) Additionally, the door to Shumpert's office in the Jail is glass and anyone walking by could see the presence or absence of anyone in the office. (Ivory Aff. ¶ 12; Shumpert Aff. p.2.) Both Shumpert and Ivory recall seeing Hopkins walk by Shumpert's office on several occasions while Ivory was present in the office. (Ivory Aff. ¶ 12; Shumpert Aff. p.2.) Also, they both aver that Hopkins did not like Shumpert and did not want any of the Jail staff to help him. (Ivory Aff. ¶ 9; Shumpert Aff. p.2-3.)

Most importantly, assuming Hopkins made the statements in issue at the September 25, 2000 meeting of Jail management, the statements would be indicative of Hopkins' animosity toward Shumpert. There, Hopkins allegedly referred to Shumpert as an "enemy of the jail" and anyone caught helping Shumpert should clean up his or her resume, presumably in preparation for termination and a subsequent job search. After the district court was informed of the statements Hopkins allegedly made at the September 25, 2000 meeting, Judge Allen held a hearing to determine the veracity of Hopkins' statements. At the hearing, Judge Allen found that Hopkins had indeed made the statements in question, that he had an

ongoing dislike for Shumpert, and that he discouraged fellow Jail employees from aiding Shumpert in his court-ordered duties. (Order, November 21, 2000.)

Additionally, Ivory submitted credible evidence that he had received above-average ratings on his two evaluations in his tenure at the Jail and had raised the health inspection score by twenty-nine points. When Ivory arrived, the score was fifty-seven; at last inspection, the score was eighty-six.[6] Ivory was informed by a letter from Hopkins that "it's my intent to use inspection reports from the Health Department to gauge your performance." (Compl., Ex. C.). Hopkins admitted in his deposition testimony that he did not refer to any of Ivory's past work records in reaching his decision to terminate him. (Hopkins Dep. at 32-33.)

Based on the aforementioned evidence adduced by Ivory in response to Hopkins' motion for summary judgment and Hopkins' questionable credibility in this matter, there is a genuine, material factual issue regarding Hopkins' motivation in writing the September 21, 2000 memo to Wright regarding Ivory's further employment. Whether Hopkins was retaliating against Ivory for his communications and assistance to Shumpert is a question for a jury to determine. Therefore, Hopkins' motion for summary judgment on this claim is denied.

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[6] The health inspection score is based on a 100-point scale, with 100 being the highest and most desirable score.

B. Ivory's § 1983 Civil Conspiracy Claim Against the County, Gilless and Hopkins

Ivory asserts that the defendants conspired against him to violate his civil rights as set forth in § 1983. To establish a civil conspiracy, a plaintiff must show: 1) there was a single plan; 2) the alleged coconspirators shared in the general conspiratorial objective; and 3) that an overt act was committed in furtherance of the conspiracy. *Hooks v. Hooks*, 771 F.2d 935, 944 (6th Cir. 1985). The plaintiff need not show that the conspirators were aware of every aspect of the plan, or even the identities of all of the conspirators who might be involved. *Hooks*, 771 F.2d at 944.

In the present case, Ivory has not presented any evidence which would lead this court to believe that Gilless or the County were aware of any unconstitutional basis for terminating Ivory. According to Gilless, he received a copy of a memorandum generated by Hopkins to Chief Deputy Sheriff Don Wright, which contained Hopkins' opinion that Ivory should be terminated. (Gilless Aff. ¶ 2.) Ivory has not submitted any evidence with regard to how Gilless or the County might be involved in a conspiracy with Hopkins to deprive Ivory of his constitutional right to free speech in violation of 42 U.S.C. § 1983. Thus, he has failed to offer evidence in support of the first two elements in a civil conspiracy, namely, a common plan and that the "coconspirators" had

the same objective. Construing the facts in a light most favorable to the nonmoving party, the court still finds no genuine issue of material fact. Gilless' claim of ignorance of any other reasons for firing Ivory aside from those in the letter to Wright is not refuted by Ivory with any substantive evidence. Without more, this court must grant all of the defendants' motions for summary judgment on the issue of conspiracy in contravention of Ivory's civil rights.

D. Ivory's Whistle Blower Claim Against the County

Ivory argues that the County is liable under Tenn. Code Ann. § 50-1-304, commonly known as the Tennessee Whistle Blower Statute, for terminating him in retaliation for his assistance to Shumpert. The following elements must be shown to establish a claim under the Whistle Blower Statute:

> **1) plaintiff's status as an employee of the defendant; 2) the plaintiff's refusal to participate in, or to remain silent about, illegal activities; 3) the employer's discharge of the employee; and 4) an exclusive causal relationship between the plaintiff's refusal to participate in or to remain silent about illegal activities and the employer's termination of the employee.**

***Pannell v. The Future Now*, 895 F. Supp. 196, 200 (W.D. Tenn. 1995). The County disputes the element of causation in Ivory's case. It asserts that Ivory was to be terminated long before the September 25th meeting took place. The defendants fail to address, however,**

the assertions of Ivory and Shumpert that Hopkins was aware of Ivory's ongoing assistance to Shumpert and disapproved of Shumpert's presence in the Jail. Both men state that on one occasion Ivory approached Hopkins with the request for floor plans for the Jail to help Shumpert. Both men also recall several occasions when Hopkins walked past Shumpert's office when Ivory was present. (Ivory Aff. ¶ 12, Shumpert Aff. ¶ 4.) Ivory and Hopkins also agree that Hopkins did not wish to assist Shumpert. Therefore, Ivory argues that his termination was based on his cooperation with Shumpert and his refusal to subvert the court's order in improving conditions at the Jail.

Hopkins' motivations for terminating Ivory are unclear. His September 21st letter to Wright simply stated that Ivory was not a "team player" and tried to be a "good guy." He further stated that Ivory did not finish projects and needed to be closely supervised, yet he referred to no specific occurrences of this conduct. None of Ivory's evaluations indicate this level of dissatisfaction by his supervisors with the quality of his work. Additionally, there is evidence which suggests that Hopkins sought to deter other jail employees from helping Shumpert in performing his court-ordered duties, perhaps prior to the September 25th meeting. (Order, Nov. 21, 2000.)

The basis for Ivory's termination is not discernable from the

relevant facts, many of which contradict Hopkins' negative opinion of Ivory's performance. Hence, these unresolved issues demonstrate that there is a genuine issue of material fact regarding Ivory's termination and whether it was linked to Ivory's meetings with Shumpert and Ivory's assistance to Shumpert. Therefore, the County's motion for summary judgment on this issue is denied.

CONCLUSION

For the foregoing reasons, the defendants' motions for summary judgement are granted as to all claims except for Ivory's § 1983 claim against Hopkins in his individual capacity and Ivory's claim against the County under the Tennessee Public Protection Act.

IT IS SO ORDERED this 1st day of November, 2001.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE