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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1427

[Filed December 16, 2022]

AKIEL MCKNIGHT,	)
	)
Plaintiff – Appellant,	)
	)
v.	)
	)
THE PICKENS POLICE DEPARTMENT; THE CITY OF PICKENS; TRAVIS RIGGS; DENNIS HARMON,	)
	)
Defendants – Appellees.	)
	)

Appeal from the United States District Court for the District of South Carolina, at Anderson. Joseph Dawson, III, District Judge. (8:18-cv-03277-JD)

Submitted: October 28, 2022
Decided: December 16, 2022

Before WYNN and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Joshua Thomas Hawkins, Helena LeeAnn Jedziniak, HAWKINS & JEDZINIAK, LLC, Greenville, South Carolina, for Appellant. Charles F. Thompson, Jr., Lake Summers, Michael D. Malone, MALONE, THOMPSON, SUMMERS & OTT, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Akiel McKnight appeals the district court's order granting summary judgment to the Pickens Police Department ("Department"), the City of Pickens, Travis Riggs, and Dennis Harmon, in McKnight's action for unlawful termination based on his sexual orientation, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1983, and South Carolina law. We affirm.

We "review de novo a district court's grant or denial of a motion for summary judgment, construing all facts and reasonable inferences therefrom in favor of the nonmoving party." *Gen. Ins. Co. of Am. v. U.S. Fire Ins. Co.*, 886 F.3d 346, 353 (4th Cir. 2018). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine dispute of material fact exists 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 423 (4th Cir. 2018) (quoting *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). "To create a genuine issue for trial, 'the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence.'" *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015) (quoting *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013)).

Upon review of the parties' briefs and the record, we find no reversible error in the district court's determination that (1) McKnight failed to establish through direct or circumstantial evidence that his sexual orientation was a motivating factor in the Department's decision and (2) McKnight failed to establish that the Department's legitimate, nondiscriminatory reason for his termination was a pretext for discrimination.

Accordingly, because there is no genuine dispute of material fact, we affirm the district court's order granting summary judgment to Defendants. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Case No.: 8:18-cv-03277-JD-JDA

[Filed March 17, 2022]

Akiel McKnight,	)
	)
Plaintiff,	)
	)
vs.	)
	)
The Pickens Police Department, The City of Pickens, Travis Riggs, Dennis Harmon,	)
	)
Defendants.	)

OPINION & ORDER

This matter is before the Court with the Report and Recommendation of United States Magistrate Jacquelyn D. Austin ("Report and Recommendation" or "Report"), made in accordance with 28 U.S.C. § 636(b)(1)(A) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.[1] Akiel McKnight ("Plaintiff"

[1] The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the

or "McKnight") filed this action alleging claims for wrongful and retaliatory discharge in violation of public policy, race and sex discrimination in violation of the South Carolina Human Affairs Law, race discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), sexual orientation discrimination in violation of Title VII, and violation of constitutional rights under 42 U.S.C. § 1983. (DE 1-1.) On December 12, 2021, Defendants The Pickens Police Department, The City of Pickens, Travis Riggs, and Dennis Harmon (collectively "Defendants") filed a Motion for Summary Judgment. (DE 63). On December 14, 2021, Plaintiff filed a Motion for Summary Judgment. (DE 65.) The parties filed responses and replies thereto.

On February 11, 2022, the magistrate judge issued the Report, recommending that Plaintiff's motion be denied and Defendants' Motion for Summary Judgment be granted and that the case be dismissed. For the reasons stated below, the Court adopts the Report and Recommendation and grants Defendants' Motion for Summary Judgment.

United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report and Recommendation sets forth the relevant facts and legal standards, which this Court incorporates herein without a full recitation. However, as a brief background relating to the objections raised by McKnight, the Court provides this summary. In 2018, Plaintiff, an African-American bisexual male, was a patrol officer with the Defendant Pickens Police Department ("the Department"). (DE 1-1 ¶ 9; 9 ¶ 9; 10 ¶ 9; 72-3 at 19.) In April 2018, a parent complained that Plaintiff was sending sexual solicitations to underage males via Snapchat. (DE 63-3; 72-3 at 44.) Upon learning of the allegations, Chief Riggs met with Plaintiff on April 20, 2018. (DE 63-9 at 2–3; 72-3 at 44, 46.) Plaintiff admitted sending the message but maintained that he had done nothing wrong because the subject student was at least 16 years old, and thus had the legal capacity to consent to sex in South Carolina. (DE 63-9 at 3.)

Chief Riggs suspended him as of April 23, 2018, for two weeks without pay. (DE 63-12 at 8–10; 63-4 at 1; 63-6; 72-3 at 44–45.) Plaintiff subsequently sent an email to Dennis Harmon, who was the Interim City Administrator for Defendant the City of Pickens ("the City"), challenging the suspension and maintaining that because the Student was over 16 years old, Plaintiff had done nothing wrong in sending the sexual solicitation. (DE 63-4 at 1; 63-6.) On May 3, 2008, Chief Riggs and Harmon met with Plaintiff concerning his grievance. (DE 63-6 at 2.) Harmon reduced Plaintiff's

discipline to a one-week suspension without pay. (DE 63-6 at 2; 72-1 at 13; 72-2 at 33.)

On May 7, 2018, Chief Riggs received a direct complaint from a parent asking that Plaintiff no longer be allowed around school children. (DE 63-5 at 1.) The next day, the Pickens County School District ("the District") itself also requested that Chief Riggs not allow Plaintiff back into any of its schools while the District considered the issue further. (DE 63-5 at 2.) Due to these new requests, Chief Riggs took Plaintiff off the School Resource Officer ("SRO") list, so he was no longer authorized to work in the schools and placed Plaintiff on suspension with pay while he decided how to respond. (DE 63-5 at 2 and DE 63-6.) In a letter dated May 30, 2018, Harmon informed Plaintiff that the City was "terminating [his] employment, effective immediately, for (1) exercising poor judgment as a police officer, and (2) breaching protocol and the City's policy and procedure for the citizen 'ride along' program."[1] (DE 63-6 at 2.) Plaintiff's law enforcement certification has also been suspended. [(DE 72-1 at 23.)

At some point in May 2018, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). (DE 1-1 ¶ 17; 9

[1] The subject student first met Plaintiff when Plaintiff pulled him over for speeding. (DE 63-12 at 1.) The student was interested in law enforcement, and he ended up going on multiple "ride-alongs" with Plaintiff. (DE 63-12 at 1, 13.) In their memorandum supporting their summary judgment motion, Defendants state that Plaintiff had obtained only one authorization for the ride-alongs when "Policy requires a new [authorization form] for each ride-along." (DE 63-1 at 4.)

¶ 17; 10 ¶ 17.) Plaintiff alleges that on September 29, 2018, the EEOC issued a right-to-sue letter to him. (DE 1-1, ¶ 19.)

On February 11, 2022, the magistrate judge issued a Report and Recommendation, recommending that Plaintiff's Motion for Summary Judgment be denied and Defendants' Motion for Summary Judgment be granted and that the action be dismissed. Plaintiff filed objections to the Report and Recommendation alleging, *inter alia*, that the magistrate erred in three respects: (1) the Report does not weigh all facts and inferences in favor of the Plaintiff; (2) the Report rests on the Magistrate's determination of fact questions, which is unconstitutional and invades the jury's province; and (3) the Report applies the wrong summary judgment standard to the state law claims. (DE 78.) Defendants filed a reply in opposition. (DE 80.) This matter is now ripe for review.

II. DISCUSSION

Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). "The Supreme Court has expressly upheld the validity of such a waiver rule, explaining that 'the filing of objections to a magistrate's report enables the district judge to focus attention on those issues -- factual and legal -- *that are at the heart of the parties' dispute.*'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (2005) (citing Thomas v. Arn, 474 U.S. 140

(1985) (emphasis added)). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the Court addresses McKnight's specific objections *seriatim*. First, McKnight contends the Report does not weigh all facts and inferences in favor of the Plaintiff. (DE 78.) McKnight states he submitted voluminous pieces of evidence, including sworn affidavit and deposition testimony along with a verified complaint. However, McKnight fails to address his admission that he actually sent sexual solicitations to an underage student. Regardless of whether a claim is brought under Title VII or § 1983, a plaintiff may establish liability for employment discrimination under two methods of proof: (1) "demonstrating through direct or circumstantial evidence that his race [and sexual orientation] was a motivating factor in the employer's adverse employment action"; or (2) relying on the McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), burden shifting framework. Holland v. Washington Homes, Inc., 487 F.3d 208, 213–14 (4th Cir. 2007); see also Love-Lane v. Martin, 355 F.3d 766, 786 (4th Cir. 2004) ("[T]he McDonnell Douglas framework, developed for Title VII, has been used to evaluate . . . discrimination claims under [Section 1983 as well].") Plaintiff argues that statements from Mayor Fletcher Perry, Police Commissioner Donnie McKinney, and others constitute direct or circumstantial evidence of sexual orientation discrimination that could at least create a genuine dispute of material fact as to whether he suffered such

discrimination. (DE 65 at 2; 72 at 1–3; 74 at 5–6.) The Court disagrees. Although McKnight believes that comments made by Police Commissioner McKinney and Mayor Perry insinuated "no one is openly gay or openly bisexual in this community" (DE 63-10 at 14), that fact would not be sufficient to create a genuine factual dispute as to what *Chief Riggs or Harmon* believed. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151–52 (2000) (focusing analysis of an employment discrimination claim on the "actual decisionmaker" behind a termination). Therefore, Plaintiff has not forecasted evidence that Chief Riggs or Harmon were aware that Perry or McKinney made these statements, or any evidence that Chief Riggs or Harmon agreed with them. Therefore, the Court overrules this objection.

Next, McKnight contends the Report rests on the Magistrate's determination of fact questions, which is unconstitutional and invades the jury's province. (DE 78.) Plaintiff claims he is entitled to a jury trial to determine the reason for his firing. However, an employer could be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred. See Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 148 (2000). Given Plaintiff's own admission as to the conduct that, at best, is incredibly poor judgment, the Court finds summary judgment as to Defendants' claims is justified.

Finally, McKnight objects on the basis that the Report applies the wrong summary judgment standard to the state law claims. (DE 78.) This Court disagrees. Applying the summary judgment standard to state law negligence claims, the Court of Appeals for the Fourth Circuit has held:

> Under the federal standard, applied alike at trial and on review, the evidence and all reasonable inferences from it are assessed in the light most favorable to the non-moving party, Lovelace v. Sherwin–Williams Co., 681 F.2d 230, 243 n. 14 (4th Cir.1982), and the credibility of all evidence favoring the non-moving party is assumed. Tights, Inc. v. Acme–McCrary Corp., 541 F.2d 1047, 1055 (4th Cir.1976). Assessed in this way, the evidence must then be "of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment could reasonably return a verdict for the non-moving party...." Wyatt v. Interstate & Ocean Transp. Co., 623 F.2d 888, 891 (4th Cir.1980). A "mere scintilla of evidence" is not sufficient to withstand the challenge, Gairola v. Virginia Dept. of Gen. Services, 753 F.2d 1281, 1285 (4th Cir.1985) (citation omitted).

Crinkley v. Holiday Inns, Inc., 844 F.2d 156, 160 (4th Cir. 1988). Therefore, the Court overrules McKnight's objection on this basis.

Notwithstanding these reasons for McKnight's objections, Defendants have proffered legitimate, nondiscriminatory reasons for McKnight's discharge—exercising poor judgment as a police officer, and

breaching protocol and the City's policy and procedure for the citizen 'ride along' program.

Having reviewed the evidence in the record and the respective arguments raised by the parties, McKnight has not forecasted sufficient evidence of a pretextual termination. Accordingly, summary judgment is appropriate as to McKnights's federal and state law claims.

It is, therefore, **ORDERED** that Defendants' Motion for Summary Judgment is granted and that Plaintiff's Complaint is dismissed.

IT IS SO ORDERED.

/s/ Joseph Dawson III
Joseph Dawson, III
United States District Judge

March 17, 2022
Greenville, South Carolina

APPENDIX C

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of South Carolina

Civil Action No. 8:18-CV-3277-JD

[Filed March 17, 2022]

Akiel McKnight,	)
Plaintiff	)
v.	)
The Pickens Police Department,	)
The City of Pickens, Travis Riggs, and	)
Dennis Harmon,	)
Defendant	)
	)

SUMMARY JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

■ other: Summary Judgment is entered on behalf of Defendants The Pickens Police Department, The City of Pickens, Travis Riggs, and Dennis Harmon and this case is dismissed.

This action was *(check one)*:

□ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

□ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Joseph Dawson, III, United States District Judge, who adopted the Report and Recommendation of the Honorable Jacquelyn D. Austin, United States Magistrate Judge, which granted Defendants' Motion for Summary Judgment.

Robin L. Blume
CLERK OF COURT

Date: March 17, 2022

s/ Penelope W. Roulston
Signature of Clerk or Deputy Clerk

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Civil Action No. 8:18-cv-03277-JD-JDA

[Filed February 11, 2022]

Akiel McKnight,	)
	)
Plaintiff,	)
	)
v.	)
	)
The Pickens Police Department, The City of Pickens, Travis Riggs, Dennis Harmon,	)
	)
Defendants.	)

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

This matter is before the Court on the parties' cross-motions for summary judgment. [Docs. 63; 65.] Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(g), D.S.C., all pretrial matters in employment discrimination cases are referred to a United States Magistrate Judge for consideration.

Plaintiff filed this action in the Pickens County Court of Common Pleas on November 13, 2018, asserting claims for wrongful and retaliatory discharge in violation of public policy, race and sex discrimination in violation of the South Carolina Human Affairs Law, race discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), sexual orientation discrimination in violation of Title VII, and violation of constitutional rights under 42 U.S.C. § 1983. [Doc. 1-1.] Defendants removed the action to this Court on December 4, 2018. [Doc. 1.] On December 12, 2021, Defendants filed a motion for summary judgment. [Doc. 63.] Plaintiff filed a motion for summary judgment on December 14, 2021.[1] [Doc. 65.] The parties have filed responses opposing each other's summary judgment motions, and Plaintiff filed a reply. [Docs. 68; 72; 74.] The motions are now ripe for review.

BACKGROUND

In 2018, Plaintiff was a patrol officer with the Defendant Pickens Police Department ("the Department"). [Docs. 1-1 ¶ 9; 9 ¶ 9; 10 ¶ 9; 72-3 at 19.] Plaintiff is an African-American, bisexual male. [Docs. 63-4 at 1; 65-3 at 28, 30.] In April 2018, the Department's Chief of Police, Defendant Travis Riggs, was informed by Pickens County Sheriff Rick Clark that a parent had complained that Plaintiff was sending sexual solicitations to underage males via

[1] Plaintiff filed an earlier summary judgment on June 17, 2019 [Doc. 18], which was denied on September 23, 2019 [Doc. 28; *see* Doc. 23]. This case was also stayed from April 21, 2020, until July 12, 2021, based on the pendency of criminal charges against Plaintiff that are related to this case. [Docs. 35; 36; 55.]

Snapchat. [Docs. 63-3; 72-3 at 44.] In particular, Sheriff Clark provided Chief Riggs a photograph of a message from "AJ MCKNIGHT" to a 17-year-old male ("the Student") that referenced sexual activity ("the Message"). [Doc. 63-3.] At the same time, Chief Riggs also learned that Plaintiff had been seeking out social-media information on youth in a church program. [*Id.*]

The Student had first met Plaintiff when Plaintiff pulled him over for speeding. [Doc. 63-12 at 1.] The Student was interested in law enforcement, and he ended up going on multiple "ride-alongs" with Plaintiff. [*Id.* at 1, 13.] It was after the last such ride-along that Plaintiff sent the Student the Message.[2] [*Id.* at 10.] Upon receiving it, the Student showed the Message to another person, who took a picture of the Student's phone screen displaying the Message and showed it to his father. [*Id.* at 4.] The father made the complaint to the Sheriff's Department. [*Id.*]

Upon learning of the allegations, Chief Riggs met with Plaintiff on April 20, 2018. [Docs. 63-9 at 2–3; 72-3 at 44, 46.] Plaintiff admitted sending the Message but insisted that he had done nothing wrong because the Student was at least 16 years old, and thus had the legal capacity to consent to sex in South Carolina. [Doc. 63-9 at 3.] Chief Riggs responded that, regardless of whether the Student had the legal capacity to consent, sending such a message to a high school student was immoral. [*Id.*] Plaintiff continued to argue the issue,

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[2] This was not the only Snapchat message Plaintiff sent to the Student that included sexual content or solicitations. [Doc. 63-12 at 8–10.]

however, and Chief Riggs suspended him as of April 23, 2018, for two weeks without pay. [*Id.*; Docs. 63-4 at 1; 63-6; 72-3 at 44–45.]

Plaintiff subsequently sent an email to Dennis Harmon, who was the Interim City Administrator for Defendant the City of Pickens ("the City"), challenging the suspension and repeating his assertion that, because the Student was over 16 years old, Plaintiff had done nothing wrong in sending the sexual solicitation. [Docs. 63-4 at 1; 63-6.] Plaintiff added that Plaintiff was bisexual and although Chief Riggs had told Plaintiff that his sexual orientation had nothing to do with the suspension, Plaintiff did not believe him. [Doc. 63-4 at 1.] On May 3, 2008, Chief Riggs and Harmon met with Plaintiff concerning his grievance. [Doc. 63-6 at 2.] Harmon reduced Plaintiff's discipline to a one-week suspension without pay. [*Id.*; Doc. 72-1 at 13; 72-2 at 33.]

On May 7, 2018, Chief Riggs received a direct complaint from a parent asking that Plaintiff no longer be allowed around school children. [Doc. 63-5 at 1.] The next day, the Pickens County School District ("the District") itself also requested that Chief Riggs not allow Plaintiff back into any of its schools while the District considered the issue further. [*Id.* at 2.] Due to these new requests, Chief Riggs placed Plaintiff on suspension with pay while he decided how to respond.[3] [Doc. 63-6.] In a letter dated May 30, 2018, Harmon

[3] Additionally, on May 15, 2018, Chief Riggs contacted South Carolina Law Enforcement Division ("SLED") to have SLED conduct an investigation. [Doc. 72-3 at 45–47.]

informed Plaintiff that the City was "terminating [his] employment, effective immediately, for (1) exercising poor judgment as a police officer, and (2) breaching protocol and the City's policy and procedure for the citizen 'ride along' program."[4] [*Id.* at 2.] Plaintiff's law enforcement certification has also been suspended. [Doc. 72-1 at 23.]

At some point in May 2018, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). [Docs. 1-1 ¶ 17; 9 ¶ 17; 10 ¶ 17.] Plaintiff alleges that on September 29, 2018, the EEOC issued a right-to-sue letter to him. [Doc. 1-1 ¶ 19.]

As noted, Plaintiff filed his Complaint in this case in late 2018. As relief, he requests actual and punitive damages, court costs, and attorneys' fees. [*Id.* at 7.]

APPLICABLE LAW

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

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[4] In their memorandum supporting their summary judgment motion, Defendants explain that Plaintiff had obtained only one authorization for the ride-alongs when "Policy requires a new [authorization form] for each ride-along." [Doc. 63-1 at 4.]

Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Id.* at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* Further, Rule 56 provides in pertinent part:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> > (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> >
> > (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits.

DISCUSSION

Defendants argue that they are entitled to summary judgment on all of Plaintiff's claims. [Doc. 63-1.]

Federal Claims

Defendants first argue that they are entitled to summary judgment on Plaintiff's claims in his third, fourth, and fifth causes of action that he was terminated on the basis of his race and sexual orientation in violation of Title VII, 42 U.S.C. § 1983,

and the United States Constitution.[5] [Doc. 63-1 at 9–16.] The Court agrees.

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to . . . compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). The Supreme Court has also held that discrimination based on sexual orientation violates Title VII "because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex." *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1742 (2020). Generally speaking, "an unlawful employment practice is established when the complaining party demonstrates that [race or sexual orientation] was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U.S.C. § 2000e-2(m); *see Bostock*, 140 S. Ct. at 1739. Section 1983 provides, in relevant part,

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

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[5] Defendants interpret Plaintiff as asserting a claim under 42 U.S.C. § 1981. [Doc. 63-1 at 10.] The Court does not read the Complaint as asserting such a claim, however. Although Plaintiff makes multiple references to "42 U.S.C. § 1981(a)," it is apparent from the context that he meant to reference 42 U.S.C. § 1981a, concerning availability of compensatory and punitive damages in a Title VII action. [*See, e.g.*, Doc. 1-1 ¶ 45 (in section of the Complaint pertaining to a Title VII claim for race discrimination, alleging entitlement to "compensatory damages pursuant to 42 U.S.C. § 1981(a)").]

> State . . . subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

42 U.S.C. § 1983.

Regardless of whether a claim is brought under Title VII or § 1983, a plaintiff may establish liability for employment discrimination under two methods of proof: (1) "demonstrating through direct or circumstantial evidence that his race [and sexual orientation] was a motivating factor in the employer's adverse employment action"; or (2) relying on the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), burden-shifting framework. *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 213–14 (4th Cir. 2007); *see also Love-Lane v. Martin*, 355 F.3d 766, 786 (4th Cir. 2004) ("[T]he *McDonnell Douglas* framework, developed for Title VII, has been used to evaluate . . . discrimination claims under [Section 1983 as well].").

In this case, Plaintiff was terminated for conduct that showed remarkably bad judgment and may have amounted to a crime.[6] Regardless of whether the

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[6] For example, South Carolina Code § 16-15-342 provides:

> A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of

conduct amounted to a crime, it was certainly understandable that Chief Riggs would be extremely troubled by of one of his officers soliciting sex from an underage student at the local high school.[7] That Plaintiff continued to argue with Chief Riggs about whether it is wrong to solicit sex from 16- and 17-year-old high school students, even in the face of Chief Riggs's admonishment, gave Chief Riggs even more cause for concern. Thus, once Chief Riggs received

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> eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

S.C. Code § 16-15-342(A). The offense established by this statute "is complete when the defendant knowingly contacts or communicates with the minor . . . with the intent to entice [the minor] to engage in sexual activity." *State v. Harris*, 776 S.E.2d 365, 366 (S.C. 2015). If the person solicited is age 16 or older, that person's consent to be solicited is a defense to prosecution. S.C. Code § 16-15-342(B).

[7] Plaintiff argues that "there is a fact question surrounding whether" the Student sent Plaintiff an unsolicited nude photograph before Plaintiff sent the Message to the Student. [Doc. 74 at 6; *see* Doc. 1-1 ¶ 10.] However, whether the Student initiated the exchange does not affect Chief Riggs's stated concern that it is immoral for a police officer to solicit sex from an underage high school student. In any event, Plaintiff has not forecasted any evidence that Chief Riggs or Harmon, when they decided to discharge Plaintiff, knew of any allegation that the Student had initiated the exchange.

another parent complaint and a specific request from the District that Plaintiff not be allowed in their schools, it was entirely understandable that Chief Riggs suspended Plaintiff with pay as he decided how to respond, and nothing seems unreasonable about his final decision that discharge was warranted.

Despite the facial reasonableness of Chief Riggs's actions, Plaintiff argues that he has forecasted direct or indirect evidence of sexual orientation discrimination and that he has forecasted sufficient evidence to establish a prima facie case of both race and sexual orientation discrimination with direct and circumstantial evidence of discrimination and under the *McDonnell Douglas* framework. [Docs. 65; 72; 74 at 4–12.]

Direct or Circumstantial Evidence of Sexual Orientation Discrimination

Plaintiff argues that statements from Mayor Fletcher Perry, Police Commissioner Donnie McKinney, and others constitute direct or circumstantial evidence of sexual orientation discrimination that could at least create a genuine dispute of material fact as to whether he suffered such discrimination.[8]

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[8] Plaintiff has also submitted an affidavit from Renee Elrod, who represents that she was employed by the Department during the same time as Plaintiff. [Doc. 65-1.] She claims that she "personally observed what [she] believe[d] to be discrimination against [Plaintiff] by the Department based upon [Plaintiff's] sexual orientation." [*Id.* ¶ 3.] However, she bases her conclusion that such discrimination occurred on the fact that Plaintiff was treated more harshly than the other officers that Plaintiff identifies as comparators. [*Id.* ¶¶ 6–7.] As the Court will discuss, Plaintiff has

[Docs. 65 at 2; 72 at 1–3; 74 at 5–6.] The Court disagrees.

Initially, the Court emphasizes that, in the employment discrimination context, what matters for purposes of proving discrimination is the decision makers' perception of the facts. *See King v. Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003) ("It is the perception of the decision maker which is relevant." (internal quotation marks omitted)). Here, it appears the decision makers were Chief Riggs and Harmon.[9] [*See* Docs. 63-6 at 2; 63-11 at 11; 72-2 at 17–18.] Plaintiff identifies statements of Perry and McKinney as supporting the case for discrimination, but he has forecasted no evidence linking these statements to the discharge decision.

Perry, when asked whether he believed that Plaintiff's "sexual orientation had anything to do with

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not forecasted evidence that these officers were valid comparators to Plaintiff.

[9] In their memorandum supporting their summary judgment motion, Defendants state that Chief Riggs recommended discharge and that Harmon agreed. [Doc. 63-1 at 5 (citing Doc. 63-7).] Indeed, Mayor Perry testified that the decision "was basically left up to [Chief Riggs]." [Doc. 63-11 at 11.] Plaintiff appears to accept that Chief Riggs and Harmon were the decision makers. [*See, e.g.*, Doc. 74 at 12 (Plaintiff's argument that he "has adduced and submitted evidence that Harmon and Riggs were deliberately indifferent to and participated in the deprivation of his constitutional rights.")] And Plaintiff has not forecasted any evidence that anyone else even had any influence on the discharge decision. The Court notes, however, that Harmon testified that, at least as a technical matter, it was the City Council who determined that Plaintiff should be terminated and directed Harmon to do so. [Doc. 72-2 at 34.]

his termination at all," testified that he thought that "[Plaintiff] being bisexual in conjunction with the person being a student played a part in it." [Doc. 63-11 at 1–2.] Upon further questioning, Perry clarified that he thought "the major factor was that [Plaintiff] was involved with a student." [*Id.* at 3.] Regardless of what Perry believed about the motivation for Chief Riggs's and Harmon's decisions, however, Plaintiff has not forecasted any evidence that Perry had any first-hand knowledge of what factors motivated them or that Perry had any input in the decision. In fact, Perry testified that he did not give Chief Riggs or Harmon an opinion as to whether Plaintiff should be fired and that, when Plaintiff's situation was discussed in executive session at a City Council meeting, the decision "was basically left up to [Chief Riggs]." [*Id.* at 11.] In the absence of evidence that Perry had a basis for believing that Plaintiff's sexual orientation played a role in Chief Riggs's or Harmon's decisions, Perry's opinion on the subject is nothing more than rank speculation, and "[m]ere unsupported speculation . . . is not enough to defeat a summary judgment motion." *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995); *cf. Huggins v. Roach*, No. 5:15-CT-03002, 2016 WL 11430726, at *6 (E.D.N.C. Aug. 1, 2016) ("Without explaining the basis of his knowledge of the operation of the doors, the court must conclude that this statement is merely speculation."), *Report and Recommendation adopted by* 2016 WL 5106984 (E.D.N.C. Sept. 19, 2016), *aff'd*, 678 F. App'x 153 (4th Cir. Mar. 1 2017).

Plaintiff also points to his own testimony about statements that were made to him that he contends

suggest he was terminated for being bisexual. [Docs. 72 at 2–3; 74 at 4–6.] Plaintiff testified that the same day he first spoke with Chief Riggs about the Message, either Chief Riggs or the sheriff asked him "to resign because of the morals of the situation."[10] [Doc. 63-10 at 14.] Plaintiff testified that Perry and McKinney, discussing his actions in the wake of the first suspension, "both stated that [the City] was a small-town, biblical community" and "that this action is not acceptable here." [*Id.*] First of all, on the face of the statements, neither is in tension with Chief Riggs's position that the victim's status as a student was the critical factor and that Plaintiff's sexual orientation was beside the point. However, Plaintiff had his own take on Perry and McKinney's statements, and he testified that he believed they "were pretty much stating that no one is openly gay or openly bisexual in this community" and thus, that "they felt the need for [Plaintiff] to either resign or leave the city." [*Id.; see also id.* at 15–16 (Plaintiff's testimony that McKinney

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[10] In memoranda to the Court, Plaintiff attributes the statement to Chief Riggs [Docs. 72 at 3; 74 at 5], but Plaintiff's testimony is not clear on that point. His testimony, describing why he believed that the initial suspension was because of his sexual orientation, was as follows: "I even got a phone call from the sheriff the day I spoke with Chief Riggs, asking me to resign because of the morals of the situation. And I asked him, 'Is it fair for me to be in hiding that I'm bisexual or gay?' And I pretty much couldn't get a clear answer on that." [Doc. 63-10 at 14.] It is not clear to the Court whether it was the sheriff or Chief Riggs who Plaintiff was saying he could not get a clear answer from. In any event, Plaintiff has not forecasted any evidence that the sheriff played a role in discharging Plaintiff, and Plaintiff has admitted that Chief Riggs told him plainly that his sexual orientation had nothing to do with his initial suspension. [*Id.* at 13; Doc. 63-4 at 1.]

used a word like "homosexual, gay, or bisexual" and "was beating around the bush of homosexuals are not accepted here").] Putting aside the issue of whether Plaintiff was merely speculating as to what Perry and McKinney meant, even assuming that Perry and McKinney believed that bisexuality was wrong and that many in the City would agree and would like Plaintiff to resign because of his sexual orientation, that fact would not be sufficient to create a genuine factual dispute as to what *Chief Riggs or Harmon* believed. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151–52 (2000) (focusing analysis of an employment discrimination claim on the "actual decisionmaker" behind a termination). After all, Plaintiff did not forecast evidence that Chief Riggs or Harmon were aware that Perry or McKinney made these statements, let alone evidence that Chief Riggs or Harmon agreed with them. And even assuming arguendo that Perry's and McKinney's statements were evidence that Chief Riggs and Harmon personally believed that bisexuality was morally wrong, that would still leave the issue of whether Chief Riggs or Harmon chose to terminate Plaintiff based in part on those personal beliefs even though doing so would have been illegal. Plaintiff has forecasted no direct or circumstantial evidence creating a reasonable inference that Chief Riggs or Harmon did that. Indeed, nothing in these statements casts any doubt on the genuineness of Chief Riggs's stated concern about the immorality of an officer soliciting sex from a high school student.

For all of these reasons, the Court concludes that Plaintiff has not forecasted either direct or circumstantial evidence that creates a genuine dispute

of material fact as to whether Plaintiff's sexual orientation was a motivating factor in the discharge decision.

McDonnell Douglas Framework

Plaintiff also argues that he has forecasted sufficient evidence to survive summary judgment under the *McDonnell Douglas* framework. [Doc. 74 at 6–11.] The Court disagrees.

Under the burden-shifting framework, an employee must first prove a prima facie case of discrimination. *McDonnell Douglas*, 411 U.S. at 802. To establish a prima facie case of discrimination, a plaintiff must demonstrate "(1) he is a member of a protected class; (2) he was qualified for his job and his job performance was satisfactory; (3) he was fired; and (4) other employees who are not members of the protected class were retained under apparently similar circumstances." *Bryant v. Bell Atl. Md., Inc.*, 288 F.3d 124, 133 (4th Cir. 2002). Alternatively, the fourth element can be satisfied with a showing that the plaintiff "was terminated under circumstances which give rise to an inference of unlawful discrimination." *Ndjofang v. Wal-Mart*, No. 7:17-cv-01504-AMQ-JDA, 2018 WL 4573092, at *8 n.7 (D.S.C. June 28, 2018), *Report and Recommendation adopted by* 2018 WL 3738002 (D.S.C. Aug. 7, 2018).[11] Here, even assuming

[11] If the plaintiff succeeds in establishing a prima facie case, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse employment action. *Bryant*, 288 F.3d at 133. By providing such an explanation, the employer rebuts the presumption of discrimination created by the

that Plaintiff could establish the first three elements, he has not forecasted evidence that could satisfy the fourth.

Plaintiff argues that the fact that Plaintiff was terminated for soliciting an underage high school student creates a reasonable inference of illegal discrimination because his conduct did not violate any specific, existing Department policy. [Doc. 72 at 1; 74 at 7, 10.] Plaintiff also argues that the fact that Chief Riggs and Harmon did not terminate him for several weeks after learning of the accusations creates the inference that their eventual termination decision was based on illegal discrimination. [Docs. 72 at 4; 74 at 7.] He maintains that if soliciting sex with a high school student were the true reason for his discharge, Chief Riggs would have discharged him immediately upon learning about the solicitation. [Doc. 72 at 4.] The Court does not find these arguments persuasive. Chief Riggs certainly did not need to find that Plaintiff violated a specific, existing policy to terminate him for exercising poor judgment. *Cf. Cosby v. S.C. Probation Parole and Pardon Servs.*, No. 6:20-cv-00655-HMH-JDA, 2021 WL 5311324, at *12 n.16 (D.S.C. Aug. 26, 2021) (noting that the absence of a policy specifically prohibiting sexual relationships between subordinate and supervisor did not cast doubt on a supervisor's

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prima facie case, and "[t]he presumption, having fulfilled its role of forcing the [employer] to come forward with some response, simply drops out of the picture." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510–11 (1993). If the employer articulates a legitimate, nondiscriminatory reason, the burden shifts back to the employee to show that the articulated reason was actually a pretext for discrimination. *McDonnell Douglas*, 411 U.S. at 804.

statement that he believed refraining from having sex with subordinates was a very important issue of professionalism and encompassed by the agency's policy providing that agents will act in a professional manner), *Report and Recommendation adopted by* 2021 WL 4772094 (D.S.C. Oct. 13, 2021), *appeal filed*, No. 21-2275 (4th Cir. Nov. 12, 2021). And there is nothing suspicious about Chief Riggs taking time to consider how to respond, reconsidering the issue after requests and input from the community, or finally deciding that discharge was warranted.[12]

Plaintiff also argues that he has forecasted evidence sufficient to satisfy the fourth element of the prima facie case by forecasting evidence that Chief Riggs treated Plaintiff more harshly than other officers who he asserts engaged in conduct similar to Plaintiff's. [Docs. 65 at 2; 72 at 3–8; 74 at 6–11.] However, "[t]he similarity between comparators and the seriousness of their respective offenses must be clearly established in order to be meaningful." *Lightner v. City of Wilmington*, 545 F.3d 260, 265 (4th Cir. 2008). Here,

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[12] Plaintiff also argues Chief Riggs told Plaintiff that his actions were conduct unbecoming of an officer, later told him that his actions constituted contributing to the delinquency of a minor, and then subsequently told Plaintiff that he believed he had violated the Department's General Order 1.1. [Doc. 74 at 2.] Plaintiff contends that these different statements tend to show that Chief Riggs was being disingenuous regarding the true reason for punishing Plaintiff. [*Id.* at 2, 7.] However, Chief Riggs's told Plaintiff from the beginning was that the main problem with his actions was that it was immoral for an officer to solicit sex from a high school student. Exactly which laws or policies that conduct may have violated was largely beside the point.

the conduct of the officers Plaintiff identifies was not comparable to Plaintiff's. Plaintiff points to two officers who had sex with a woman who was younger than they were. [Doc. 65-2 at 10–14, 19, 31.] In both cases, though, the woman—it was the same woman in both cases—was already 18 and no longer a student at the time that the sex occurred.[13] [*Id.* at 14, 19.] Given that critical difference, no reasonable factfinder could

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[13] Plaintiff argues that the woman was no longer in high school at the time because she had dropped out but that if she had stayed in school, "it is possible she would have been a student" during at least one of her sexual relationships. [Docs. 72 at 6; 74 at 9.] However, the woman testified that she would have already graduated before both of the relationships even had she stayed in school. [Doc. 65-2 at 6–7, 10–11, 14, 19.] She was at least half a year past her eighteenth birthday when she had sex with the first of the two officers. [*Id.* at 14, 19.] Plaintiff testified that he discussed these officers with Chief Riggs, and Plaintiff understood that the woman was 17 when she and one of the two officers were "a couple." [Doc. 63-10 at 9.] However, Plaintiff also testified that Chief Riggs never mentioned the woman's age. [*Id.* at 10–11.] In any event, the woman testified in detail about the timeline of events, and nothing in the record indicates that Plaintiff had any basis for disagreeing with her testimony.

Plaintiff also notes that some Department officers consumed alcohol with the woman in question while she was a minor, and another officer "'would drink and drive' and 'did a lot of questionable things'" [Docs. 72 at 5–6; 74 at 8–9], and yet none were disciplined. However, this conduct bears little resemblance to Plaintiff's conduct, and Plaintiff has not forecasted evidence that Chief Riggs or Harmon were aware of the conduct in question in any event.

conclude that either of these two officers were valid comparators.[14]

Accordingly, for the reasons discussed, the Court concludes that Plaintiff has not established a genuine dispute of material fact regarding whether his termination was based on either his race or his sexual orientation, and the Court therefore recommends that Defendants' summary judgment motion be granted as to all of Plaintiff's federal claims.

State Law Claims

Supplemental Jurisdiction

Plaintiffs' state-law claims can be heard by this Court through the exercise of supplemental jurisdiction, which allows federal courts to hear and decide state-law claims along with federal law claims.[15]

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[14] For similar reasons, even assuming that Plaintiff has forecasted evidence that could support a prima facie case, Defendants articulated in their termination letter a legitimate, nondiscriminatory reason for the adverse employment action, and Plaintiff has not forecasted evidence that the reason was pretextual. *See Westmoreland v. TWC Admin. LLC*, 924 F.3d 718, 725 (4th Cir. 2019) ("At the [pretext] stage, . . . the employee must prove by a preponderance of the evidence that the legitimate reasons offered by the defendant-employer were not its true reasons, but were a pretext for discrimination." (alteration and internal quotation marks omitted)).

[15] A civil action for Plaintiffs' state-law claims could be cognizable in this Court under the diversity statute, if that statute's requirements are satisfied. However, this Court does not have diversity jurisdiction in this case because the Complaint does not allege the required complete diversity of citizenship of the parties. [*See* Doc. 1-1]; *see also* 28 U.S.C. § 1332. Further, as stated,

Federal courts are permitted to decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c)(3) if "the district court has dismissed all claims over which it has original jurisdiction." In deciding whether to exercise supplemental jurisdiction, courts look at "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995). Further, the Supreme Court has warned that "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. . . . [I]f the federal claims are dismissed before trial . . . the state law claims should be dismissed as well." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

Applying these factors, the Court concludes that the factors counsel in favor of the Court retaining jurisdiction over Plaintiffs' state-law claims. This case has been pending since November 2018 and has been pending in this Court since December 2018. Discovery has concluded. Remanding these claims to state court would cause needless delay as the state court took the steps necessary to acquaint itself with issues with which this Court is already familiar. The Court concludes that these factors outweigh the fact that Plaintiffs filed this case in state court. *See Battle v. S.C. Dep't of Corr.*, No. 9:19-cv-1739-TMC, 2021 WL 4167509, at *13 (D.S.C. Sept. 14, 2021); *Ray v. S.C.*

Defendants removed the action to this Court based solely on federal question jurisdiction. [Doc. 1 at 1.]

Dep't of Corr., No. 9:19-cv-147-TMC, 2021 WL 1540928, at *9 (D.S.C. Apr. 20, 2021).

Plaintiff Has not Created a Genuine Factual Dispute as to His State Law Claims

Plaintiff's claim for wrongful discharge in violation of public policy [Doc. 1-1 ¶¶ 28–34] and his claims brought under the South Carolina Human Affairs Law, S.C. Code § 1-13-80 [Doc. 1-1 ¶¶ 35–40] and under the South Carolina Constitution [*id.* ¶¶ 55–65], like Plaintiff's federal claims, are based on the premise that he was terminated based on his sexual orientation or race. For the reasons explained, however, Plaintiff has not forecasted evidence that creates a genuine dispute of material fact regarding whether such discrimination occurred.[16] Accordingly, the Court recommends that Defendants' summary judgment motion be granted as to the state claims as well.[17]

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[16] The Court notes that claims brought under the South Carolina Human Affairs Law are analyzed under the same framework as applies to claims under Title VII. *See Ferguson v. Waffle House, Inc.*, 18 F. Supp. 3d 705, 717 n.6 (D.S.C. 2014); *Orr v. Clyburn*, 290 S.E.2d 804, 806 (S.C. 1982) ("Human Affairs Law creates no cause of action which would not attach to an employer under Title VII of the Civil Rights Act of 1964, as amended").

[17] Additionally, under South Carolina's "public policy exception" to the at-will employment doctrine, an at-will employee has a cause of action in tort for wrongful termination when "the retaliatory discharge of [the] at-will employee constitutes violation of a clear mandate of public policy." *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E.2d 213, 216 (S.C. 1985). However, the common law claim for termination in violation of public policy is only available when there is no corresponding statutory remedy. *Barron v. Labor Finders of S.C.*, 713 S.E.2d 634, 637 (S.C. 2011); *Dockins v. Ingles*

RECOMMENDATION

Wherefore, based upon the foregoing, the undersigned recommends that Defendants' motion for summary judgment [Doc. 63] be GRANTED and that Plaintiff's motion for summary judgment [Doc. 65] be DENIED.[18]

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

February 11, 2022
Greenville, South Carolina

Markets, Inc., 413 S.E.2d 18, 19 (S.C. 1992). As a statutory remedy, Title VII exists for Plaintiff's claims of wrongful termination based on sexual orientation and race. Accordingly, the existence of this remedy provides another basis for granting summary judgment to Defendants on Plaintiff's public policy claim.

[18] Because the Court recommends granting Defendants' summary judgment motion for the reasons stated, the Court declines to address Defendants' alternative arguments. The Court recommends denying Plaintiff's summary judgment motion for the reasons discussed in regard to Defendants' motion.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1427
(8:18-cv-03277-JD)

[Filed January 17, 2023]

AKIEL MCKNIGHT	)
	)
Plaintiff - Appellant	)
	)
v.	)
	)
THE PICKENS POLICE DEPARTMENT; THE CITY OF PICKENS; TRAVIS RIGGS; DENNIS HARMON	)
	)
Defendants - Appellees	)

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wynn, Judge Richardson, and Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk