THE SUPREME COURT OF NEW HAMPSHIRE

Merrimack
Case No. 2024-0180
Citation: Doe v. Concord Police Department & a., 2025 N.H. 48

JANE DOE

v.

CONCORD POLICE DEPARTMENT & a.

Submitted: September 16, 2025
Opinion Issued: November 19, 2025

Krupski & Beaudoin, PLLC, of Concord (Marc G. Beaudoin on the brief), for the plaintiff.

City Solicitor's Office, of Concord (Danielle L. Pacik, city solicitor, on the memorandum of law), for defendant City of Concord Police Department.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Samuel R.V. Garland, senior assistant attorney general, and Brandon F. Chase on the memorandum of law), for defendant New Hampshire Department of Justice.

DONOVAN, J.

[¶1] The plaintiff, Jane Doe, appeals an order of the Superior Court (Tucker, J.) granting a motion for summary judgment filed by defendant New Hampshire Department of Justice (DOJ) and joined by defendant City of Concord (City) Police Department. The plaintiff sought an order requiring that her name be removed from the Exculpatory Evidence Schedule (EES). See RSA 105:13-d (2023). On appeal, she argues that the trial court erred by granting the defendants' motion because: (1) her "alleged misstatement of fact" was immaterial to the misconduct being investigated; and (2) the records pertaining to the misconduct and termination of her employment were removed from her personnel file. Alternatively, she argues that the summary judgment order should be reversed and the case remanded following this court's decision in Doe v. New Hampshire Attorney General (Activity Logs), 176 N.H. 806 (2024), 2024 N.H. 50, because there is no reasonably foreseeable case in which information pertaining to her misconduct would be admissible. We affirm.

I. Facts

[¶2] The following facts are taken from the trial court's summary judgment order or are otherwise established by the record. In 2013, a Concord police officer discovered that her firearm was missing from the firearms lockers at the police station. The officer had the key to her locker, and she noticed that only one other locker was closed and locked. She recalled that the plaintiff, who was also a Concord police officer, had recently been in the booking area but had left to transport a prisoner to a local hospital. Each locker could be opened only with an individual key or with a master key kept in the watch commander's office.

[¶3] The officer reported her missing firearm to her supervisors. A Concord police sergeant called the plaintiff, who was still at the hospital, and asked her for the serial number of the firearm in her possession. The sergeant confirmed that the plaintiff had the other officer's firearm. According to the sergeant, the plaintiff told him that she realized she had forgotten her firearm while she was still at the police station, and she asked another officer to retrieve it for her. The plaintiff told the sergeant that the officer must have inadvertently taken the wrong firearm.

[¶4] Upon returning to the police station, the plaintiff spoke with the sergeant and a lieutenant about the incident. She maintained that she first realized she had forgotten her firearm while she was still at the police station and that another officer retrieved the firearm for her while she was still at the station. The plaintiff's partner, however, told the officer whose firearm was missing that the plaintiff did not notice that her firearm was missing until she was at the hospital. Upon learning what the plaintiff had told her supervisors,

the officer then informed the sergeant and the lieutenant that the plaintiff had lied about when she realized that she had forgotten her firearm.

[¶5] The Concord Police Department opened an internal affairs investigation into the allegation that the plaintiff was untruthful during her conversations with her colleague and supervisors regarding the firearm. The plaintiff claimed that, when the sergeant first contacted her, she told him that she realized that she forgot her firearm while at the hospital and that "he was mistaken or confused" in remembering otherwise. The investigators found that the plaintiff struggled to answer specific questions during the investigation and that her statements lacked credibility. They concluded that it was "more likely that [the plaintiff was] lying about this incident because she believed she would have been in trouble if she properly reported this to the on-duty supervisor." They further determined that the plaintiff "had ample opportunities to have reported the incident the way it transpired but went to great lengths to cover up the facts" and that she "circumvent[ed] the chain of command . . . in order to skirt detection."

[¶6] The investigators recommended that the allegations be sustained. They recommended finding that the plaintiff: (1) lied to a colleague and her supervisors about when she first knew that she had forgotten her firearm; (2) "failed to answer questions truthfully to her superior officers during the investigation"; (3) falsely stated that she had not spoken to the lieutenant and the sergeant about the incident when she had; and (4) offered facts to another lieutenant that were inconsistent with the statement she provided to the sergeant.

[¶7] The police chief sustained the allegations, and the City terminated the plaintiff's employment. The chief also sent a letter to the City prosecutor and county attorneys submitting the plaintiff's name for inclusion on the "Laurie List," see State v. Laurie, 139 N.H. 325 (1995), which was subsequently renamed as the EES, see N.H. Ctr. for Pub. Interest Journalism v. N.H. Dep't of Justice, 173 N.H. 648, 651 (2020); RSA 105:13-d, I. The plaintiff appealed the termination decision to the City's Personnel Appeals Board (PAB), which also found that the plaintiff lacked credibility and upheld the decision.

[¶8] The plaintiff subsequently filed a complaint against the City in superior court alleging, among other things, gender discrimination and wrongful termination. The parties reached a settlement agreement, which included a provision requiring the City to remove documents relating to the firearm incident and termination of the plaintiff's employment from the plaintiff's personnel file and maintain those documents "in a separate investigative file." The City also agreed to notify the police standards and training council that the plaintiff's "departure from the police department was a negotiated resignation."

[¶9] Years later, the plaintiff filed a complaint in superior court, naming the City and the DOJ as defendants, seeking the removal of her name from the EES pursuant to RSA 105:13-d. She argued that the City erred in recommending her name for inclusion on the list, that "the underlying conduct is not potentially exculpatory," and that keeping her name on the list would serve little purpose given the passage of time. The DOJ filed a motion for summary judgment, which the City joined. The trial court granted the defendants' motion. The plaintiff unsuccessfully moved for reconsideration. This appeal followed.

II. Analysis

[¶10] When reviewing a trial court's grant of summary judgment, we consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party. Troy v. Bishop Guertin High Sch., 176 N.H. 131, 135 (2023). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. Id. We review the trial court's application of the law to the facts de novo. Id.

[¶11] The plaintiff first argues that her "alleged misstatement of fact" was immaterial to the internal investigation and therefore does not constitute misconduct as defined by RSA chapter 106-L. See RSA 106-L:2, V (2023) (defining "misconduct" as, inter alia, a "sustained finding that the officer has engaged in conduct negatively reflecting on the officer's trustworthiness or credibility, including but not limited to" a "deliberate and material lie during a civil, administrative, or criminal proceeding, in a police report, an internal investigation, or an investigation conducted by the New Hampshire police standards and training council" (emphasis added)). More specifically, she maintains that the moment at which she "first realized that she left her firearm in the lockbox at the police station" is "immaterial to any policy violation."

[¶12] The defendants assert that the definition of misconduct set forth in RSA chapter 106-L is inapplicable in this case, which is instead governed by RSA 105:13-d. We agree with the defendants. The definition upon which the plaintiff relies applies only to proceedings under RSA chapter 106-L. See RSA 106-L:2 (2023) (enumerating definitions applicable "[i]n this chapter"). RSA chapter 106-L pertains to the police standards and training council, which may, among other things, "[e]stablish minimum educational and training standards for employment as a police officer," "[c]ertify persons as being qualified under the provisions of this chapter to be police officers," conduct disciplinary hearings, and impose "sanctions on a law enforcement officer's certification." RSA 106-L:5, III-V, XXV (2023). RSA chapter 106-L does not set forth the standard applicable to determining whether a law enforcement officer's name should be included on the EES.

[¶13] That standard, as the defendants observe, is set forth in RSA 105:13-d. See RSA 105:13-d, I ("The [EES] shall consist of a list of all current or former law enforcement officers whose personnel information contain potentially exculpatory evidence."). RSA 105:13-d does not refer to the definitions set forth in RSA chapter 106-L, nor does it identify what conduct may constitute "potentially exculpatory evidence." Id. Moreover, RSA chapter 106-L acknowledges that a prosecutor's duty to disclose "potentially exculpatory materials" in a criminal proceeding is governed by a separate statutory section, RSA 105:13-b. See RSA 106-L:22 (2023).

[¶14] Therefore, the definition of misconduct set forth in RSA 106-L:2 is inapplicable to the determination of whether an officer's placement on the EES is appropriate pursuant to RSA 105:13-d.[1] We conclude that the trial court applied the proper standard, RSA 105:13-d, in addressing the plaintiff's arguments regarding her placement on the EES.

[¶15] The plaintiff next argues that the trial court erred by granting summary judgment in favor of the defendants because the documents pertaining to her misconduct and the termination of her employment were removed from her personnel file and maintained in a separate file pursuant to a negotiated settlement agreement with the City. She reasons that because "the alleged misconduct is no longer in [her] official police personnel file," her "name should no longer be included on the EES pursuant to RSA 105:13-d, I." We are not persuaded.

[¶16] The plaintiff's argument equates the removal of documents from her "personnel file" with the absence of those documents from her "personnel information," RSA 105:13-d, I. In New Hampshire Center for Public Interest Journalism, we examined the language of RSA 105:13-b and observed that "[t]he express focus of RSA 105:13-b is on information maintained in the personnel file of a specific police officer." N.H. Ctr. for Pub. Interest Journalism, 173 N.H. at 656; see RSA 105:13-b, I (2023) ("Exculpatory evidence in a police personnel file of a police officer who is serving as a witness in any criminal case shall be disclosed to the defendant."). We explained that "[h]ad the legislature intended RSA 105:13-b to apply more broadly to personnel information, regardless of where it is maintained, it would have so stated." N.H. Ctr. for Pub. Interest Journalism, 173 N.H. at 656.

[¶17] Shortly after our decision in New Hampshire Center for Public Interest Journalism, the legislature enacted RSA 105:13-d, which, as we have

[1] Even if RSA chapter 106-L were controlling here, we could not agree that the timing of the plaintiff's realization that she had forgotten her firearm is immaterial. The record establishes that it is a more egregious breach of policy for an officer to transport a prisoner to a hospital without a firearm than it is to discover being unarmed before leaving the police station.

noted, provides that "[t]he [EES] shall consist of a list of all current or former law enforcement officers whose personnel information contain potentially exculpatory evidence." RSA 105:13-d, I (emphasis added). The language "personnel information" evidences the legislature's intent for RSA 105:13-d to apply to a broader category of files kept by law enforcement agencies. See id.; N.H. Ctr. for Pub. Interest Journalism, 173 N.H. at 656. This conclusion is consistent with the purpose of the EES, which is used by the State as "a tool to identify information about police officers . . . that is subject to possible disclosure." Doe (Activity Logs), 176 N.H. at 811, 2024 N.H. 50, ¶10.

[¶18] Here, pursuant to the settlement agreement between the plaintiff and the City, the documents relating to the "incident and/or investigation into the incident" must be "maintained solely by the Concord Police Department and Human Resources Department in a separate investigative file." Although these documents are no longer kept in the plaintiff's "permanent personnel files," we agree with the trial court that they nonetheless constitute "personnel information for purposes of the EES." See RSA 105:13-d, I.

[¶19] Finally, the plaintiff argues that her name should be removed from the EES because "there are no reasonably foreseeable criminal cases where she would be a witness." Relying upon our decision in Doe (Activity Logs), the plaintiff asserts that because she is retired and has not been a police officer for more than 10 years, "[t]he likelihood that [she] would be required to testify as a former police officer for a criminal case is essentially zero," and her placement on the EES "would serve no purpose other than to publicly embarrass her." The plaintiff reads Doe (Activity Logs) as standing for the proposition that an officer's inclusion on the EES would be inappropriate simply because it is unlikely that he or she will be called as a witness at a future criminal case. This reading, however, misapprehends Doe (Activity Logs).

[¶20] In Doe (Activity Logs), we explained that "considerations made to determine the admissibility of evidence, such as the age of the conduct and its materiality to an officer's general credibility, should factor into the determination of whether information in an officer's personnel file warrants his or her inclusion on the EES." Doe (Activity Logs), 176 N.H. at 815, 2024 N.H. 50, ¶20. We further stated that "[i]f there is no reasonably foreseeable case in which 'potentially exculpatory evidence' relating to an officer's conduct would be admissible, due to the passage of a significant length of time or some other factor weighing on the conduct's relevance, an officer's inclusion on the EES would be inappropriate." Id.

[¶21] We take this opportunity to clarify the standard set forth in Doe (Activity Logs). Our explanation in Doe (Activity Logs) was informed by our Laurie List jurisprudence. See id. at 815-16, 2024 N.H. 50, ¶¶21-22. In Duchesne v. Hillsborough County Attorney, for example, we determined that even if the allegations of "excessive use of force" against the plaintiffs were true,

evidence of that alleged misconduct, "without something more (such as evidence that [they] lied or misrepresented the facts) would not be admissible" to impeach the plaintiffs' general credibility. Duchesne v. Hillsborough County Attorney, 167 N.H. 774, 784 (2015). We explained that "even if a future case were to arise" involving the plaintiffs' conduct, "the prior incident would not be admissible simply to show [their] propensity to engage in such conduct." Id. (emphasis added). We therefore concluded that "the fact that adverse information regarding a police officer's background is not of the type usually admissible to attack the officer's general credibility has a strong bearing on the propriety of maintaining the officer's name on" the Laurie List. Id. By contrast, we observed that in Laurie, where "the adverse information . . . was probative of [the officer's] general credibility as a witness, and, as such, would likely have been admissible in any case in which [he] testified," maintaining the officer's name on a list to be disclosed to the court "makes sense and upholds the prosecutor's legal and ethical responsibility." Id. at 783-84.

[¶22] Guided by Doe (Activity Logs), Duchesne, and Laurie, the proper inquiry in this context is whether, assuming "a future case were to arise," it is reasonably foreseeable that evidence of the plaintiff's misconduct would be admissible. Id. at 784 (recognizing that admissibility "has a strong bearing on the propriety of maintaining the officer's name on a list that is used as the basis for automatically disclosing the information to the trial court or the defendant in any case in which the officer may testify"); Doe (Activity Logs), 176 N.H. at 815, 2024 N.H. 50, ¶20. If it is not reasonably foreseeable that an officer's prior misconduct would be admissible if he or she is called to testify in a future case, then the officer's inclusion on the EES would be inappropriate. Doe (Activity Logs), 176 N.H. at 815, 2024 N.H. 50, ¶20. Contrary to the plaintiff's interpretation of Doe (Activity Logs), this standard does not require courts to assess the likelihood that a criminal case would be brought at which the officer would be called as a witness.

[¶23] In this case, we cannot conclude that there is no reasonably foreseeable case in which evidence of the plaintiff's misconduct would be admissible. See id. There is no dispute that, after multiple proceedings, the plaintiff was found to have been untruthful. The sustained findings that the plaintiff lied to her colleagues and supervisors could be admissible to impeach her credibility if, in the future, there arises a criminal case at which she is called as a witness. See N.H. R. Ev. 608(b). Therefore, we cannot conclude that maintaining the plaintiff's name on the EES would be inappropriate. See Doe (Activity Logs), 176 N.H. at 815, 2024 N.H. 50, ¶20.

[¶24] We note that the underlying conduct in this case, the plaintiff's untruthful statements, is dissimilar to the underlying conduct in Duchesne, "excessive use of force." See Duchesne, 167 N.H. at 784; cf. Doe v. Salem Police Dep't (Off-duty Speeding), 177 N.H. 20, 27 (2024), 2024 N.H. 54, ¶¶20-21 (concluding that removal from EES was warranted because "nothing in the

complaint or accompanying documentation suggest[ed] that the plaintiff acted dishonestly or attempted to conceal his conduct," and conduct was over ten years old). Here, the plaintiff's misconduct relates to her credibility and is "reasonably capable of being material to guilt or to punishment." Doe (Activity Logs), 176 N.H. at 814, 2024 N.H. 50, ¶18; see also Laurie, 139 N.H. at 327 ("[T]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." (quotation omitted)).

[¶25] Although the trial court's decision preceded our articulation of the applicable standard in Doe (Activity Logs), its reasoning is consistent with that standard. See Doe (Activity Logs), 176 N.H. at 815, 2024 N.H. 50, ¶20. In its order, the trial court considered the age of the misconduct and the misconduct's materiality to the plaintiff's general credibility, and the court explained that "[d]epending on the case, a trial court might admit the findings of untruthfulness as acts probative of [the plaintiff's] general credibility and character for truthfulness or untruthfulness." It concluded that "the law is not such that use of the information would be barred necessarily at a trial in which [the plaintiff] served as a witness" and "[w]hether a trier of fact that learned of the nature of the falsehoods and the surrounding circumstances would attach less significance to the credibility challenge, would go to the weight of the evidence, but not its admissibility."

[¶26] Therefore, we conclude that the trial court correctly determined that the plaintiff's personnel information contains "potentially exculpatory evidence" and correctly granted summary judgment in favor of the defendants. Accordingly, we affirm.

Affirmed.

MACDONALD, C.J., and COUNTWAY and GOULD, JJ., concurred.