

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRIAN HUSSEY,

Plaintiff,

v.

CITY OF CAMBRIDGE and
BRANVILLE BARD, in his capacity as
Commissioner of the Cambridge Police
Department

Defendants.

Civil Action No. 1:21-CV-11868-AK

**MEMORANDUM AND ORDER
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

ANGEL KELLEY, D.J.

On February 25, 2021, nine months after George Floyd’s murder by a police officer, while the nation was still in a heated debate over racism and police brutality, Cambridge Police Officer Brian Hussey (“Hussey”) reposted an article about a police reform bill called “the George Floyd Act” on his personal Facebook page. His comment accompanying the post said: “This is what its come to ‘honoring’ a career criminal, a thief and druggie . . . the future of this country is bleak at best.” [Dkt. 1 (“Compl.”) at ¶ 11]. Despite the post being deleted shortly thereafter, it was brought to the attention of then Police Commissioner Branville Bard (“Bard”) by officers of the local National Association of Advancement of Colored People (“NAACP”) chapter and a local community activist. Hussey was then placed on leave.

After being disciplined, Plaintiff Hussey brought this action pursuant to 42 U.S.C. § 1983, against the City of Cambridge and Bard (together “the Defendants”), alleging that the

Defendants retaliated against him in violation of his First Amendment right to freedom of speech. [Compl.]. The Defendants then filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). [Dkt. 9]. This Court denied the Defendants' Motion to Dismiss, except as to the claim brought against Commissioner Bard in his individual capacity. [Dkt. 25]. While the Court found that Hussey's post could have had a detrimental impact on the perception of the Cambridge Police Department internally and in the community, the Court could not dismiss the case on the question of whether the department's interest outweighed Hussey's interests without a more developed factual record. [Id. at 13]. The Court therefore allowed Hussey's claims to proceed against the City of Cambridge and Commissioner Bard in his official capacity.¹ [Id.].

On June 8, 2023, the City of Cambridge filed their Motion for Summary Judgment. [Dkt. 37]. The same day, Plaintiff filed his Motion for Partial Summary Judgment on the question of the Defendants' liability for violating his First Amendment right to free speech. [Dkt. 41]. The Court heard oral argument on January 29, 2024 and took the matter under advisement. [Dkt. 60]. The Court, having considered both of these motions, the parties' oppositions, and reply briefs, finds that Plaintiff has failed to create a material dispute of fact to survive Defendants' Motion for Summary Judgment. The Court also finds that because it has determined that Hussey's speech was not protected and because there is no factual dispute for a jury to resolve, the Defendants' Motion for Summary Judgment [Dkt. 37] is **GRANTED**, Plaintiff's Partial Motion for Summary Judgment [Dkt. 41] is **DENIED**, and his case is accordingly **DISMISSED**.

¹ In August 2022, after this lawsuit had already commenced, Hussey was promoted to the rank of Sergeant. [Dkt. 54 at II at ¶ 5]. The Court therefore denied as moot Plaintiff's request to amend his complaint to add a retaliation claim related to his denial of a promotion, after counsel reported his intentions to withdraw the motion. [Dkts. 14, 24].

I. BACKGROUND

In evaluating the cross-motions for summary judgment, the Court relies on the parties' statements of material facts, responses thereto, and any attached exhibits the parties have submitted. [See Dkts. 39, 43, 52, 54, 58-1]. The Court accepts as true each material fact to the extent it has not been disputed by the opposing party and considers contested each material fact that either party has disputed. Unless otherwise noted, the facts below are undisputed.

Giving due respect to George Floyd, the Court notes he was born in North Carolina in 1973 and moved to Houston shortly thereafter. [Dkt. 43 at ¶ 53]. He grew up in the Third Ward—one of Houston's most economically disadvantaged neighborhoods. [Dkt. 44-10 at 2-3]. Floyd was a star athlete, briefly playing collegiate basketball at Texas A&M University-Kingsville, but returned to his old neighborhood in Houston without completing his degree. [*Id.* at 3]. Thereafter, Floyd experienced a string of arrests and periods of incarceration. Between 1997 and 2005, he served eight jail terms on charges that included drug possession, theft, and trespass. [Dkt. 43 at ¶ 54]. In 2007, he was charged with aggravated robbery with a deadly weapon and was sentenced to five years in prison. [*Id.* at ¶ 55]. He was released on parole in 2013. [*Id.*]. Floyd thereafter turned his life around and appeared to live a law-abiding life. [Dkt. 44-10 at 4]. In 2014, he had a daughter. [Dkt. 44-12 at 9]. He became more involved in his church's program, which took men from Houston's Third Ward neighborhood to Minnesota to provide them with drug rehabilitation and job placement services. [Dkt. 44-10 at 4].

Floyd soon made the permanent move to Minneapolis, Minnesota. [Dkt. 44-11 at 8]. He found work first as a security guard for the Salvation Army and later as a bouncer for a nightclub. [*Id.*]. When the pandemic forced the nightclub to close, Floyd was out of work. [*Id.* at 9]. On Memorial Day 2020, Floyd was at a convenience store when one of the store

employees thought he had paid for cigarettes with a counterfeit \$20 bill and called the police. [Id.]. The events that followed are known to all due to the widely circulated cellphone video capturing Minneapolis Police Officer Derek Chauvin kneeling on Floyd's neck for 8 minutes and 46 seconds, Floyd's pleas that he could not breathe, and his body eventually going limp. [Dkt. 44-12 at 3]. Floyd's last words "I can't breathe" echoed those of Eric Garner and the Black Lives Matter movement's call to action. [Dkt. 44-9 at 4]. His killing ignited a national reckoning on issues of racism, police brutality, and accountability for police misconduct, in addition to local, national and global protests. [Id.]. Officer Chauvin was subsequently convicted of second-degree murder; the three other officers who participated in the arrest were likewise convicted on related charges.²

The National Climate

The impact of Floyd's death was felt here in Massachusetts where, as in the rest of the country, protesters filled the streets by the thousands demanding an end to such violence. The City of Cambridge saw over 3,500 people in the streets in one such protest.³ In the neighboring City of Boston, the alleged wanton use of pepper spray and riot batons against protesters led to a

² Kiara Alfonseca, Derek Chauvin sentenced to 21 years on federal charges for violating George Floyd's civil rights, ABC news (July 7, 2022), <https://abcnews.go.com/US/derek-chauvin-sentenced-federal-charges-violating-george-floyds/story?id=86366456>. The Court takes judicial notice of the updated details of the criminal trial following Floyd's murder under Fed. R. Evid. 201(b).

³ Marc Levy, Protest draws thousands to hear the challenges of reforming police, education, other institutions, Cambridge Day (June 7, 2020), <https://www.cambridgeday.com/2020/06/07/protest-draws-thousands-to-hear-the-challenges-of-reforming-police-education-other-institutions/>. The Court takes here and elsewhere judicial notice under Fed. R. Evid. 201(b) of articles describing the unrest that occurred in the aftermath of George Floyd's killing within Massachusetts between May 2020 and March 2021. See United States v. Griffin, 525 F.2d 710 (1st Cir. 1975) (taking judicial notice of the fact that forced busing in Boston "received substantial publicity and aroused widespread resentment.").

lawsuit accusing the Boston Police Department of using excessive force.⁴ Protests were ongoing when Hussey made his Facebook post, and many continued for months thereafter.⁵

Officer Brian Hussey

Plaintiff Brian Hussey began working as a Cambridge police officer in 1998 and spent 10 years in the Special Investigations Unit (SIU) where he conducted roughly “a couple hundred” drug crime investigations. [Dkt. 43 at ¶ 4]. For the first decade of his career, he worked as a patrol officer in lower Cambridge. [Dkt. 39 at ¶ 12]. In June 2009, he applied to and joined the SIU where he investigated drug and vice crimes. [*Id.* at ¶ 14]. Hussey worked in the SIU for ten years, taking part in hundreds of drug crime investigations, where he worked with confidential informants and spoke to drug users throughout the City of Cambridge. [*Id.* at ¶¶ 15-16]. To secure the cooperation of these informants, Plaintiff had to reassure them that the police were “going to protect them” and that “the police would do whatever [they] could to help them.” [*Id.* at ¶ 17]. Much of Hussey’s time in the SIU was spent convincing drug users to trust him. [*Id.* at ¶ 18].

The Facebook Post

On February 25, 2021, Hussey shared on his Facebook page a WHDH news article titled, “House Democrats reintroduce police reform bill in honor of George Floyd.” [Dkt. 43 at ¶ 5]. In a comment he shared alongside the article, Hussey wrote, “This is what its [sic] come to ‘honoring’ a career criminal, a thief and druggie . . . the future of this country is bleak at best.”

⁴ *Huffman v. City of Bos.*, No. 21-CV-10986-ADB, 2022 WL 2308937 (D. Mass. June 27, 2022).

⁵ Associated Press, *Protesters at Boston Rallies Call for Justice for George Floyd, Action on Police Killing Cases* (Mar. 6, 2021), <https://www.nbcboston.com/news/local/rally-in-boston-to-call-for-action-on-police-killing-cases/2321508/>.

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