

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

FEPA

EEOC

430-2019-01407

and EEOC

_____ and EEOC
State or local Agency, if any

"just let it go".

I believe that I have been discriminated against because of my race (Black), in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Apr 22, 2019

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)



**U.S. Equal Employment Opportunity Commission
Charlotte District Office**

129 W. Trade Street
Suite 400
Charlotte, NC 28202

NOTICE OF CHARGE OF DISCRIMINATION

(This Notice replaces EEOC FORM 131)

DIGITAL CHARGE SYSTEM

April 23, 2019

To: Ms. Deborah Jolly
HR Director
CITY OF SHELBY
deborah.jolly@cityofshelby.com

**1 LINE REDACTED FROM
ENTIRE PAGE.
DISCLOSURE WOULD
INVADE PERSONAL
PRIVACY.**

This is notice that a charge of employment discrimination has been filed with the EEOC against your organization by Nivilla R. Campbell, under: Title VII of the Civil Rights Act (Title VII). The circumstances of the alleged discrimination are based on Race, and involve issues of Harassment that are alleged to have occurred on or about Mar 11, 2019 through Apr 22, 2019 and may be continuing.

The Digital Charge System makes investigations and communications with charging parties and respondents more efficient by digitizing charge documents. The charge is available for you to download from the EEOC Respondent Portal, EEOC's secure online system.

Please follow these instructions to view the charge within ten (10) days of receiving this Notice:

1. Access EEOC's secure online system: <https://nxdg.eeoc.gov/rsp/login.jsf>
2. Enter this EEOC Charge No.: **430-2019-01407**
3. Enter this temporary password: **(b)(6),(b)(7)(C)**

Once you log into the system, you can view and download the charge, and electronically submit documents to EEOC. The system will also advise you of possible actions or responses, and identify your EEOC point of contact for this charge.

If you are unable to log into the EEOC Respondent Portal or have any questions regarding the Digital Charge System, you can send an email to chargov@eeoc.gov.

Preservation of Records Requirement

EEOC regulations require respondents to preserve all payroll and personnel records relevant to the charge until final disposition of the charge or litigation. 29 CFR §1602.14. For more information on your obligation to preserve records, see <http://eoc.gov/employers/recordkeeping.cfm>.

Non-Retaliation Requirements

The laws enforced by the EEOC prohibit retaliation against any individual because s/he has filed a charge, testified, assisted or participated in an investigation, proceeding or hearing under these laws. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. For more information, see <http://www.eoc.gov/laws/types/facts-retal.cfm>.

Legal Representation

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please provide the attorney's contact information when you log in to the online system.

Please retain this notice for your records.



U.S. Equal Employment Opportunity Commission

FEDERAL INVESTIGATION: REQUEST FOR POSITION STATEMENT AND SUPPORTING DOCUMENTARY EVIDENCE

EEOC hereby requests that your organization submit within 30 days a Position Statement setting forth all facts which pertain to the allegations in the charge of discrimination under investigation, as well as any other facts which you deem relevant for EEOC's consideration.

We recommend you review EEOC's resource guide on "[Effective Position Statements](#)" as you prepare your response to this request.

Fact-Based Position Statement

This is your opportunity to raise any and all defenses, legal or factual, in response to each of the allegations of the charge. The position statement should set forth all of the facts relevant to respond to the allegations in the charge, as well as any other facts the Respondent deems pertinent to EEOC's consideration. The position statement should only refer to, but not identify, information that the Respondent asserts is sensitive medical information, or confidential commercial or financial information.

EEOC also requests that you submit all documentary evidence you believe is responsive to the allegations of the charge. If you submit only an advocacy statement, unsupported by documentary evidence, EEOC may conclude that Respondent has no evidence to support its defense to the allegations of the charge.

EEOC may release your position statement and non-confidential attachments to the Charging Party and her representative and allow them to respond to enable the EEOC to assess the credibility of the information provided by both parties. It is in the Respondent's interest to provide an effective position statement that focuses on the facts. EEOC will not release the Charging Party's response, if any, to the Respondent.

If no response is received to this request, EEOC may proceed directly to a determination on the merits of the charge based on the information at its disposal.

Signed by an Authorized Representative

The Position Statement should be signed by an officer, agent, or representative of Respondent authorized to speak officially on its behalf in this federal investigation.

Segregate Confidential Information into Separately Designated Attachments

If you rely on confidential medical or commercial information in the position statement, you should provide such information in separate attachments to the position statement labeled "Sensitive Medical Information," "Confidential Commercial or Financial Information," or "Trade Secret Information" as applicable. Provide an explanation justifying the confidential nature of the information contained in the attachments. Medical information about the

Charging Party is not sensitive or confidential medical information in relation to EEOC's investigation.

Segregate the following information into separate attachments and designate them as follows:

- a. Sensitive medical information (except for the Charging Party's medical information).
- b. Social Security Numbers
- c. Confidential commercial or financial information.
- d. Trade secrets information.
- e. Non-relevant personally identifiable information of witnesses, comparators or third parties, for example, social security numbers, dates of birth in non-age cases, home addresses, personal phone numbers and email addresses, etc.
- f. Any reference to charges filed against the Respondent by other charging parties.

Requests for an Extension

If Respondent believes it requires additional time to respond, it must, at the *earliest possible time* in advance of the due date, make a written request for extension, explain why an extension is necessary, and specify the amount of additional time needed to reply. Submitting a written request for extension of time does not automatically extend the deadline for providing the position statement.

Upload the Position Statement and Attachments into the Respondent Portal

You can upload your position statement and attachments into the Respondent Portal using the **+ Upload Documents** button. Select the "Position Statement" Document Type and click the **Save Upload** button to send the Position Statement and attachments to EEOC. Once the Position Statement has been submitted, you will not be able to retract it via the Portal.

CHARLOTTE OFFICE

2907 PROVIDENCE RD., SUITE 200 (28211)
POST OFFICE BOX 30787
CHARLOTTE, NORTH CAROLINA 28230
TELEPHONE (704) 332-8300
FAX (704) 332-9994



CRANFILL SUMNER & HARTZOG^{LLP}

June 20, 2019

PATRICK H. FLANAGAN
MEREDITH FITZGIBBON HAMILTON
ATTORNEY AT LAW
DIRECT DIAL #: (704) 940-3419
DIRECT FAX #: (704) 831-5522
EMAIL: PHF@CSHLAW.COM
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VIA EEOC RESPONDENT PORTAL

Karen Rossello-Martinez, Investigator
U.S. Equal Employment Opportunity Commission
Karen.rossello-martinez@eeoc.gov

Re: *Nivilla R. Campbell v. CITY OF SHELBY*
EEOC Charge No.: 430-2019-01407
CSH File No.: 00538.0994587

Dear Investigator Rossello-Martinez:

As you know, our firm has been retained to represent the Respondent City of Shelby with respect to the above-referenced EEOC Charge of Discrimination (hereinafter referred to as the "Charge") filed by the Charging Party, Nivilla R. Campbell. Please accept this letter as the Respondent's Position Statement in response to the allegations contained in the Charge. Thank you for the extension of time in which to respond to this Charge.

This position statement is made without waiving any objection that the Respondent may have, both procedural and substantive, over the allegations the Charging Party has made. This information is being provided to you upon the express understanding and belief that, while the information may be used in the EEOC's investigation of the Charge, it is subject to the confidentiality provisions of 42 USC §§ 2000E-5(b) and 2000E-8(b), 5 USC § 552(b) and 18 USC § 1905.

Respondent expressly reserves and does not waive any and all defenses to the above Charge, including but not limited to any defense based on the Charging Party's failure to timely file, ratify, verify, or execute the Charge. To the extent such defenses are applicable, Respondent expressly asserts these defenses and requests timely compliance prior to the further processing of this Charge by the EEOC.

Accordingly, other than for review and use by the Commission as part of its endeavor to resolve this Charge, the information may not be used without express written consent of the Respondent. We respectfully ask that these items not be disclosed to or examined by the Charging Party and, if for some reason you believe that disclosure is warranted, we respectfully ask to be consulted with prior to the dissemination of these items to the Charging Party. Further, this response is based upon our current understanding of the facts and the information received thus far and the Respondents reserve the right to modify or amend this response if and when necessary and appropriate. This response, while we believe it to be accurate, does not constitute an affidavit or binding statement of the Respondent's legal position, nor is it intended to be used as evidence of any kind in an administrative or court proceeding.

Upon investigation, we understand that Ms. Campbell believes she was discriminated against because of her race (African-American) in violation of Title VII of the Civil Rights Act of 1964.

We would like to share with you the facts and legal authorities that pertain to Ms. Campbell's Charge. After you have had an opportunity to review these materials, we respectfully request that you dismiss this Charge with a no-cause finding.

I. FACTUAL BACKGROUND

A. City of Shelby

The City of Shelby (the "City") is located in Cleveland County, North Carolina. As of the middle of May 2019, the City had 382 active full time and part time employees including 52 Black/African-American employees.

The City is an **Equal Opportunity Employer**. The City's policy of non-discrimination must apply throughout every aspect of the employer-employee relationship and extends through equal employment, training, transfers and promotion opportunities to all persons regardless of sex, age, race, religious beliefs, political affiliations, or national origin. It is also the City's policy to investigate and satisfactorily resolve all complaints alleging discrimination. **Exhibit 1, *City of Shelby Equal Employment Opportunity Personnel Policy***.

B. Factual Summary

Ms. Campbell was hired at the City in February 2016 as a Utility Compliance Coordinator. In July 2018, Ms. Campbell became a Natural Gas Compliance Coordinator. As of the submission of this Position Statement, Ms. Campbell is still employed by the City in the same position.

On March 11, 2019, Ms. Campbell was having lunch in the crew room with three other employees including Austin Seagle, Travis Blanton, and Chris Childers. The group was talking about basketball and the upcoming NCAA basketball tournament. Scott Huffstetler, a Natural Gas Supervisor, joined the conversation and proceeded to make racially insensitive and inappropriate remarks about African-Americans. See **Exhibit 2, *Client Docs*** at p. 1 and p. 5-10 for Statements from the employees who witnessed the exchange.

Later that afternoon, consistent with the City's reporting policy in the City's Personnel Policy and Procedure Manual, Ms. Campbell reported the incident to Julie McMurry, her direct supervisor and Energy Service Director (a Department Director).¹ See **Exhibit 3, *City of Shelby Personnel Policy and Procedure Manual – Duty to Report Violations*** and **Exhibit 2, *Client Docs*** for Ms. Campbell's Employee Complaint at p. 1. Ms. McMurry found Mr. Huffstetler's comments inappropriate. Ms. McMurry told Ms. Campbell that she planned to address the incident with Mr. Huffstetler the next day.

¹ Mr. Huffstetler is not Ms. Campbell's Supervisor.

Ms. McMurry immediately initiated an investigation into the incident in accordance with the City's Personnel Policy and Procedure Manual. **Exhibit 3, City of Shelby Personnel Policy and Procedure Manual – Duty to Report Violations** and **Exhibit 4, City of Shelby Personnel Policy and Procedure Manual – Grievance Procedure**. That same afternoon, Ms. McMurry called Austin Seagle, Travis Blanton, and Chris Childers, who were present in the breakroom, and asked them about what they heard and observed at lunch. They each provided a written statement. See **Exhibit 2, Client Docs** for Austin Seagle's Statement at p. 5; Travis Blanton's Statement at p. 6; and Chris Childers' Statement at p. 10. Ms. McMurry called Mr. Huffstetler to discuss the incident with him. Mr. Huffstetler also provided a written statement. **Exhibit 2, Client Docs**, p. 8-9. Ms. McMurry then met with Ms. Campbell in person to inform her that she had spoken with Mr. Huffstetler and to discuss the incident. Ms. Campbell also provided a written statement. **Exhibit 2, Client Docs** at p. 7. Ms. McMurry told Ms. Campbell that she would be submitting the complaint and her findings to Human Resources.

Thereafter, Ms. McMurry promptly notified Deborah Jolly in Human Resources about the incident and her initial investigation. **Exhibit 2, Client Docs** at p. 1. Within less than two days of the incident, Ms. Campbell's supervisors had spoken with Ms. Campbell, Mr. Huffstetler, and the three witnesses to the incident about what happened, and had reported the entire incident to and shared her investigations with Human Resources. The City Manager also was informed of the incident and Mr. Huffstetler's action.

Throughout the process from the time of the incident, Ms. McMurry acted to the best of her ability to inform, listen to and counsel Ms. Campbell. **Exhibit 2, Client Docs** for a Timeline of Ms. McMurry's Interactions with Ms. Campbell at p. 2-4.

The City determined that Mr. Huffstetler's actions amounted to harassment and Mr. Huffstetler was suspended without pay for eight hours on March 14, 2019. **Exhibit 2, Client Docs** for an Employee Communication Report at p. 11-12. Ms. Huffstetler was given an Employee Communication Report, identifying his actions as harassment. Ms. Huffstetler, his supervisor, Ms. McMurry, Ms. Jolly, and the City Manager all signed the Employee Communication Report.

Ms. Huffstetler's suspension without pay for eight hours is the appropriate disciplinary action for a first-time harassment offense as was the case here. The City's Personnel Policy and Procedure Manual clearly sets forth the recommended appropriate disciplinary action for a number of offenses including harassment. For a first-time harassment offense, the recommended disciplinary action is either suspension or discharge. A second-time harassment offense will result in discharge. **Exhibit 2, Client Docs** for the City's Personnel Policy and Procedure Manual Disciplinary Policy Grid at p. 14.

Personnel actions regarding other employees are confidential. Employees who make complaints about violations are not informed about any disciplinary action that may result against the people they complain. Therefore, consistent with the City's policies, Ms. Campbell was not informed about disciplinary action taken against Mr. Huffstetler. **Exhibit 3, City of Shelby Personnel Policy and Procedure Manual – Duty to Report Violations**.

II. LEGAL ARGUMENTS

Under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e, et seq., it is unlawful for any covered employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race [or] color” 42 U.S.C. § 2000e-2(a)(1).

A. Ms. Campbell’s race discrimination claim fails.

To establish an actionable claim for discrimination on the basis of race under Title VII, Ms. Campbell may present evidence of a policy of race discrimination, or she may present direct evidence of discriminatory intent by the City, or she may attempt to establish a claim through circumstantial evidence. In her Charge, Ms. Campbell does not allege evidence of a policy of race discrimination, nor does she include allegations sufficient to qualify as direct evidence of discrimination by the City. Therefore, presumably, Ms. Campbell is attempting to establish her claim through circumstantial evidence.

In order to present a legitimate claim of race discrimination through circumstantial evidence under Title VII when no direct evidence of discrimination is present, as in this case, Ms. Campbell must meet her legal burden of showing that she was discriminated against on the basis of her race.

In order to establish a *prima facie* case of race discrimination, Ms. Campbell must produce evidence sufficient to persuade a reasonable fact-finder that it is more likely true than not that: (1) she is a member of a protected class; (2) her employer took an adverse employment action against her; (3) at the time of the adverse action, she was performing her job at a level that met her employer’s legitimate job expectation; and (4) she was replaced by a person outside of her protected class who was similarly qualified or less qualified and/or that she was disciplined more severely for conduct similar to that for which a non-protected employee received more lenient treatment. *See e.g., Dugan v. Albemarle County Sch. Bd.*, 293 F.3d 716, 721 (4th Cir. 2002); *McNairn v. Sullivan*, 929 F.2d 974, 977 (4th Cir. 1991); *Spencer v. Byrd*, 917 F.Supp. 368, 373 (M.D.N.C. 1995).

If such *prima facie* evidence is shown, the burden then shifts to the City to show that there was a legitimate, non-discriminatory reason for Ms. Campbell’s termination. Finally, if a legitimate, non-discriminatory reason is given by City, then Ms. Campbell again bears the burden of showing that the City’s proffered legitimate, non-discriminatory reason is simply a “pretext” for unlawful discrimination.

Here, Ms. Campbell’s Charge of race discrimination fails because she cannot make out a *prima facie* case of race discrimination and therefore her charge should be dismissed. While Ms. Campbell is a member of the protected class of race as an African-American woman, her ability to establish a *prima facie* case of race discrimination ends there. Ms. Campbell still works for the City in the same position and has not been subject to any adverse employment action. Ms. Campbell cannot show that she was replaced by some outside of her protected class. It is the City’s

policy not to retaliate against an employee who makes a complaint and Ms. Campbell was not subjected to any disciplinary or retaliatory action. Therefore, she cannot establish a *prima facie* case of race discrimination and her Charge fails as the first set of the *McDonnell Douglas* burden-shifting framework.

B. Ms. Campbell's hostile work environment fails.

To the extent Ms. Campbell seeks to establish that she was subjected to a hostile work environment based on her race arising out of the March 11, 2019 incident, her Charge also fails. To state an actionable hostile work environment claim, Ms. Campbell must describe conduct that is severe or pervasive enough to create an objectively hostile or abusive work environment for liability to arise under Title VII. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993). To determine whether harassment is sufficiently pervasive to create an objectively hostile and abusive work environment, courts must consider the totality of circumstances including: “(1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with [the] employee’s work performance.” *Smith v. First Union Nat’l Bank*, 202 F.3d 234, 242 (4th Cir. 2000). In order to be actionable, the harassing ‘conduct must be [so] extreme [as] to amount to a change in the terms and conditions of employment.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998). Additionally, “mere utterance of an ... epithet which engenders offensive feelings in an employee’ does not sufficiently affect the conditions of employment to implicate Title VII.” *Harris*, 510 U.S. at 21.

Here, the sole March 11, 2019 incident about with Ms. Campbell complains, that the City promptly addressed, is insufficient to establish a hostile work environment claim. Mr. Huffstetler’s conduct during the March 11, 2019 incident was not severe or pervasive enough to create an objectively hostile or abusive work environment for liability to arise under Title VII considering the totality of the circumstances. The incident on March 11, 2019, was a one-time incident. Mr. Huffstetler’s conduct while distasteful was not physically threatening. While the City is sensitive to the inappropriate comments by Mr. Huffstetler, his comments on that sole instance were nothing more than one employee’s inappropriate comments. Mr. Huffstetler’s conduct on that one instance is not at all representative of Ms. Campbell’s work environment. During the City’s investigation and in the weeks after, Ms. Campbell denied that anyone else has made racially inappropriate comments to her or around her and said Mr. Huffstetler had not made any further comments. Ms. Campbell’s employment conditions have not been altered by this incident. Ms. Campbell is still working for the City in the same position. It has not interfered with her work performance as she continues to be a good employee. Therefore, considering the totality of the circumstances, Mr. Huffstetler’s conduct was not severe or pervasive enough to create an objectively hostile or abusive work environment to support a valid claim and Ms. Campbell Charge should be dismissed.

Most importantly, the City cannot be found liable for any racially harassing behavior of Mr. Huffstetler because no adverse tangible employment action was taken by the company and the City exercised reasonable care in preventing and promptly correcting the harassing behavior. *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 186 (4th Cir. 2001); *Faragher v. City of Boca Raton*, 524 U.S. 775, 807, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998). The City has an anti-harassment policy in place which amounts to “compelling proof” that the City exercised reasonable

care in preventing and promptly correcting the harassment. Ms. Campbell took advantage of the City's reporting policy and the City immediately investigated and addressed Mr. Huffstetler's conduct. The City acted reasonably in that it followed its policies upon notice of Ms. Campbell's complaint about Mr. Huffstetler's conduct. Ms. McMurry conducted an investigation into the complaint immediately and contacted Human Resources. The City Manager was also informed of the incident. Most notably, the City took prompt action to discipline Mr. Huffstetler for his inappropriate conduct. The City determined that Mr. Huffstetler's actions amounted to harassment and he was suspended for eight hours without pay which was the appropriate disciplinary action for first harassment offense pursuant to the City's established Personnel Policy and Procedure Manual. Ms. Campbell complains that no disciplinary action was taken against Mr. Huffstetler; however, that is simply not true. Rather, Ms. Campbell was not specifically informed about Mr. Huffstetler's suspension because personnel matters are confidential and not shared with the reporting employee per the City's policies.

III. CONCLUSION

Pursuant to the relevant facts, supporting documentation and applicable law, we trust that the information provided above is sufficient to allow you to dismiss Ms. Campbell's EEOC Charge of Discrimination. If you require any further information or explanation, please do not hesitate to contact me.

With best regards, I am

Very truly yours,

Meredith F. Hamilton

Patrick H. Flanagan
Meredith F. Hamilton

PHF/MFH

Enclosures

Julie McMurry

From: Julie McMurry
Sent: Wednesday, March 13, 2019 1:17 PM
To: Deborah Jolly (deborah.jolly@cityofshelby.com)
Subject: Employee Complaint
Attachments: 1197_001.pdf

On Monday afternoon, March 11 I was having my monthly meeting with Chip that is scheduled from 3:30 -4:30. Nivilla must have come by my office and seen the door closed, so she sent me a text and asked me to call her. I noticed the text around 4:40 and gave her call. She wanted to tell me about what had happened at lunch that day. She said that her, Austin Seagle, Travis Blanton and Chris Childers were sitting around the table at lunch talking about basketball and how GWU was going to be in the upcoming tournament. She said during this time Scott Huffstetler came into the room and joined the conversation. She said He asked about another the other tournament that the "colored" people played. She said she asked him what he said? And he said the "colored tournament". She said she told him they preferred to be called black. He said "I wasn't sure and was trying to be politically correct." She told him that "colored" was not politically correct and he said we "I could have called you what they called you back in the day when they picked cotton" She got upset at this point and fired back at him, he made another comment about I could call you the other name and she said "Go ahead and call me that we we can got to Julie's office."

I told Nivilla I was sorry that she had this encounter and that I would speak to Scott on Tuesday.

After I got off the phone I called Travis Blanton to have him share what he had heard and observed, he did not answer his phone. I then called Chris Childers and he did not answer his phone. I called Austin Seagle and he answered and shared a similar story. On Tuesday morning, I went to see Travis and he shared what he had heard and did the same with Chris Childers.

I later met with Jeff to let him know what was going on and called Scott in to discuss with him. I told him that I had received a complaint regarding some things he had said and that I needed him to tell me what happened. After he told me I explained that I was investigating and that I would get back to him. He seemed surprised by the complaint, said they joke around all the time and that after it happened they continued to talk about where Nivilla went to college, etc.

I have asked all of them to write down what they told me (I have attached to this email)

Let me know how we need to proceed.

Thank you

Julie R. McMurry
Energy Services Director

City of Shelby Utilities
PO Box 207

EXHIBIT

1
2

- Monday, March 11 Nivilla Requested off the following times:
3/12 1:30-4:40 for eye appt.
3/14 7:30-4:00 sick time
3/15 2-4 comp/vacation time
The requests were placed in my mailbox sometime during that day. This is normal procedure.
- Tuesday, March 12 After meeting with Jeff and Scott to let Scott know of the complaint I had received against him, I met with Nivilla briefly. I told her that I had spoken to Scott and was conducting an investigation and once I was finished I would be submitting to HR. She was very upset during our conversation to the point of crying. I let her share her feelings and again told her I was sorry that this had happened to her. She mentioned she didn't feel she could talk with the guys anymore, and I told her that she should feel that she could talk to them and if at any point she felt uncomfortable or mistreated to make it known to whoever and also let me know. I also told her that if she felt there was any retaliation toward her during my investigation to let me know. She said she did not want an apology from Scott because she felt he would be made to apologize. I told her that I was not going to tell him to apologize, that if he apologized he would be doing it on his own free will.
- Wednesday, March 13 Late in the afternoon I went by Nivilla's office to remind her that I would be in Raleigh in Fayetteville on Thursday and Raleigh on Friday, she had previously requested Thursday off and Friday afternoon. I told her I had completed my investigation on the situation she had encountered on Monday and submitted everything to Human Resources and would be receiving direction on the action that would be taken once it had been reviewed by the Director and the City Manager. We also discussed the travel arrangements to the SGA Conference the next week, as we were driving down together on Sunday evening. She still seemed very upset about everything so I told her if she needed me to call me on my cell and if she felt like she wanted to talk to Deb, to give her a call.
- Thursday, March 14 I was out of town, we did not have our monthly meeting. Since we would be traveling together on Sunday, we would discuss items then.
- Sunday, March 15 I picked Nivilla up at approx. 7:15 pm to drive to Columbia for the SGA Conference. At first she was very quiet. I tried small talk and it was just awkward, but as time went on she became talkative and more like herself. She shared with me during our drive that she had gone to the eye doctor and he had told her she had swollen veins in her eyes, he recommended her to a neurologist. This was upsetting to her, as it would be anyone.
- Sunday, March 15- Wednesday, March 18 – We were at the SGA Conference, we were in some meetings together and others we were not. We talked business mostly and everything seemed very normal. She rode back with some of our guys on Tuesday night, because she did not have a class on Wednesday.

- Thursday, March 21 – 7:14 AM received a text from Nivilla that she was not feeling well and had stomach pains, may come in after lunch. – She did come in after lunch. She came in my office mid- afternoon, we talked about work things and she seemed down. I asked if she was ok and she got emotional she said she was having a hard time dealing with “this” I asked her what “this” was and she said the whole thing with Scott. I asked her what she would like to see happen, and she said I don’t know. There isn’t anything that would make it better. She felt she couldn’t work here anymore. I told her that she was doing a great job and to not give up on that.
- Monday, March 25 Requested off the following times:
4/1 1 pm – 4 pm Dr. appt.
4/5 vacation day
4/22 1 pm – 4 pm Dr. appt.
4/25 8:30-10:30 neurologist appt.
- Thursday, March 28 Nivilla was very quiet at our weekly DIMP meeting. I stopped by her office later in the day and asked if she was ok, because she seemed quiet in the meeting. She said she was fine.
- Thursday, April 4 Due to conflicts we canceled our DIMP meeting.
- Wednesday, April 10 Monthly Cut line review
- Thursday, April 11 Weekly DIMP meeting – all were in attendance (Jeff, Chris, and Scott) I did most of the talking with everyone else only interjecting when asked. Not totally unusual.
- Nivilla and I had our monthly 1 on 1 meeting, just the two of us. We discussed upcoming events that she and Chris Childers were participating in – Merry Go Round Festival and Safe Digging Event. We discussed the Emergency Plan, Shrimp Update and Public Awareness plan and discussed upcoming training that needed to be scheduled. She has been very busy with all of this in the past weeks. I always ask at the end of this meeting if there is anything she needs or wants to discuss, today she said no.
- Wednesday, April 17 I emailed Nivilla and requested her to cancel our weekly meeting on Thursday due to Jeff on vacation and me having a conflict. I gave her a few items to prepare for next week’s meeting and let her know I was going to send Jeff, Chris and Scott the same type list so that moving forward we could have a more structured meeting and everyone have input instead of me steering it. She canceled the meeting.
- Monday, April 22 Nivilla emailed me and said that I had not signed her Leave request that she had sent on 3/25. I had scanned them and sent them back, but failed to sign for approval. I signed them and scanned them back to her.

- Wednesday, April 24 I asked Nivilla to move our weekly meeting to Friday, April 26, 2019. She sent the updated meeting request.
- Thursday, April 25 Nivilla let me know that Chris had declined the meeting for Friday. I thanked her for letting me know, because this allowed me to let Jeff know to get Chris' updates and be prepared to share them at the meeting.
- Friday, April 26 Jeff, Nivilla and I were the only ones in attendance. Chris was in CPR/First Aid Training and Scott was out with his back.

Submitted
by Julie McMurry,
Director of Energy Services

Austin Seagle

3-11-19

On Monday the 11th; Nivilla, Travis, and myself were talking about Gardner-Webb University (GWU) making the NCAA tournament, when Scott walked into the crew room during lunch. He over heard our conversation and proceeded to ask everyone collectively, "where did GWU play their Big South Tournament?" No one was exactly sure, so Scott then tried to look it up on his phone. Somehow Scott got sidetracked and asked Nivilla, "what was the name of an all-colored person college down there?" Nivilla, looking confused, paused for a moment and then said, "why would you say an all-colored person college? Why wouldn't you just say an all-black college?" Scott then replied, "I am just trying to say the politically correct term." Nivilla then said, "That isn't the politically correct term. Next time just say an all-black college." Scott then answered, "Well back when y'all picked cotton, y'all were called a lot worse than that." At this point you could tell it was starting to bother Nivilla. I can't remember what she then said, but she started to cuss and pretty much tell him that, that has nothing to do with anything. Scott and her then started going back and forth just arguing. Then I remember him telling her something like, "I could call you the word that I'm not allowed to say!" Nivilla then said, "No don't say that. Actually, as a matter of fact, please say it and me and you will be sitting in Julie's office for the rest of the day!" Scott and Nivilla then kept on arguing back and forth. At this point, both were yelling loud and Nivilla started to cuss a little more frequently. Scott then said, "Just like all women, everyone of you has to get the last word in." Nivilla then told him, "I not your wife. You aren't going to talk to me any which way." After this point, both quit arguing and Nivilla, Travis, and myself went outside and started talking about something else. All of this is to the best of recollection.



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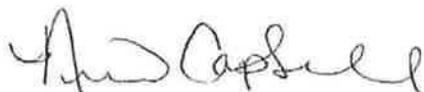
Lunch 3-11-19

We were talking about basketball me, Chris Childers, Austin, and Navilla . Scott come in and was wanting to know where the big south tournament was played then Scott and Navilla started talking about colleges Scott made a comment about a "colored" college Navilla said not to say that but to call it a "black college" . Scott then asked Navilla why they could call each other words but we could not .but no word was said or letter of any word was used in his statement . In my opinion it was asked with no militias intent or no intent to offend anyone.

3/13/19

(Incident Occurred 3/11/19)

Chris Childers, Travis Blanton, and Austin Seagle and myself were sitting in the gas crew room talking about the basketball (GWU) making it to the tournament. Scott Huffstetler walks in the crew room and eventually joins in the conversation. He starts talking about the ACC tournament being held in Charlotte and he keeps saying it then out of nowhere he says no maybe it's the coloreds' tournament I'm thinking about. I then respond saying coloreds? No it black people not coloreds. Scott then says hell I don't know yall change from week to week. I said no the f**k we don't, it's being black for a while. At least 50-60 years now. Scott then says oh back when yall was picking cotton? I then say hell no, he then says well do you want me to call you by the other name we called yall? I said no, then I said matter of fact yes say it so we can go to the front of the building and talk to Julie about it. Scott then says oh what you think she's gonna say about you cursing? I'm like yeah whatever and he then tells me to just shut up, you're just like my wife always have to get the last word. I said no I won't shut up, I'm not your wife you can't talk to me any kind of way and disrespect me. I then said what the f**k is wrong with you? He says (In a sarcastic way) oh nothing on crack. He then calms down. That was the end of the incident.



Nivilla Campbell

Julie ,

While at lunch Monday Travis , Chris Childers , Austin , Nivilla and Myself were sitting at the table . To my memory we were talking about where Gardner Webb played the Championship Game at Sunday . I can't remember how it came up but seems like we were talking about a girl that played basketball and I said something about a " Colored " girl . And she started laughing and said " Lord we haven't been called Colored in along time " something to that effect. She said " We are Black " . Then I said " Well I didn't know what I us supposed to say , cause I never know if you would get bad or upset if I said it the wrong way " . And then I went on and said " At least I didn't say the other word " . I mean we were all laughing and cutting up . Or at least I thought. Then she started saying the F word like 4 times and I said " Dang you've dropped the F word 4 times . She must have gotten offended by that because her attitude changed just like that . Saying " That I don't tell her what she can say and what she can't say " . Seems like I said something like " Pam would kill me if I was to say that word so many times " I can't really remember what was said but Nivilla said " I ain't your wife " . Then I said " why is it alright for you to say that word to each other but if we were to is not right " Sometime during all of her being upset she said " You much be on something " and " We can go to Julie right now about it and I get your Butt or Ass Fired " I really didn't say anything during all of this cause I had realized how mad she was . It all calmed down and nothing else about it was said .

We were talking about girls basketball again and I couldn't remember that girls name that played for She **l**by High School and she told me her name Charlotte something I can't re**m**ember what she said her last name was . Somewhere in the conversati**o**n I ask her what college she went to and she answered me and said Bel**m**ont Abby . So I left thinking that everything was ok . Cause we all talked a **l**ittle about different stuff . Then we left after lunch was over . But I'm **g**oing to tell you that I did think A LOT about that yesterday afternoon and last night just wondering why she got so upset . I didn't mean a thing about what I said . I never meant to get her she upset and mad . I thought we were somewhat friends and that we could pick with each other . Again I Didn't mean for it to make mad or upset her !!! We were **a**ll in there joking around and cutting up talking about basketball . I can't stand for anyone to be mad at me or anything like that . I'm sorry that this got brought up I didn't mean to cause any trouble .

Scott Huffstetter
3/12/19

I Chris Childers On the day of 3/11/19 at lunch break in the gas crew room there was a conversation about basketball and some of the players. I was not paying too much attention to the conversation and looking at my phone. The conversation came up about the n word and how is it that one race could say it and it was wrong for another race to say it. The conversation was mainly between Nivilla and Scott. I didn't think too much about it and shortly after went outside.

Chris Childers 3-12-19

Confidential documentation for the file of: Nivilla Campbell

4/23/19 – I received an email at 7:39am from Nivilla asking to get a copy of her Personnel File. I emailed her back letting her know that it would be later in the week which was OK with her.

4/26/19 – Nivilla came at the scheduled time of 8:00am to pick up a copy of her Personnel File. I asked her to come in my office and have a seat and showed her what I had copied. I started out by telling her in a joking matter that most of the time when employees requested a copy of their Personnel File it was because they were looking for a job. I told her if she was looking for a job that I wasn't going to give it to her and we both smiled but she didn't comment. So I went on to say...no comment tells me that you are looking and she said, "Yes, I can't continue to work here." She asked if I was aware of the situation that happened with Scott Huffstetler and I told her yes that Julie brought it to my attention immediately after it occurred. She said that she had not heard from me. I told Nivilla that Julie had informed her to contact me when and if she wanted to talk and that I had not received a call or visit from her so I assumed things were OK. Nivilla confirmed that Julie had told her that. Nivilla said that the "guys witnessed it" and that since "Scott was not disciplined" she felt that the "City didn't have her back." I asked Nivilla what made her think that Scott had not been disciplined and she stated, "Scott told the guys that he was not disciplined." I told Nivilla that Julie promptly contacted me and then Julie stopped what she was doing and completed a timely and thorough investigation so that appropriate action could be taken. I assured Nivilla that the City Manager was notified immediately and that the investigation and appropriate course of action was taken during the same week that she had gone to Julie. I told Nivilla that disciplinary actions were confidential in nature and that it wasn't fair for us to tell her what specific course of action was taken but we followed the Personnel Policy. I apologize if she wasn't happy with the outcome and reminded her about the City's grievance process. Nivilla said, "I don't want anything from the City. The City can't do anything now. They have already made their decision." Nivilla said that "Julie had asked her what she wanted to see happen and that upset her because the City should know what to do and should do it. Scott said those things because of my color and not because I am a women." Nivilla said that "she didn't want an apology because it would be forced." Nivilla said, "you and Julie don't know how I feel." I apologized again and agreed with her. I told her I didn't know how she feels nor did Julie and that was the reason that Julie asked that question...what do you want to see happen? Sometimes employees are looking for an apology, sometimes they want a face-to-face meeting to tell the other individual how their words/actions made them feel. Neither Julie nor I knows how she feels so asking "what you want" is a way to try and help you. I expressed to Nivilla that she was a good employee and in my opinion she came here and adapted very quickly. I told her that she was part of the City and I would hate to see her leave but her happiness was most important. I asked Nivilla if Scott or anyone else had done or said anything inappropriate since March 11th and she responded "no". She told me that she had been having some health problems before the incident and since the incident they had gotten worse. She said that Julie was aware of them and now she was also having to go to counseling. I reminded her about EAP. I asked her if there was anything that I could do to help and she responded no. After a few moments of silence, I referred back to the copies I had made from her Personnel File. I asked her to look over the file to make sure I had supplied everything she needed. After a brief time, she said that she had all she needed. Again, I asked if there was anything that I could do to help her and she said no. I reminded her that she knew where my office is located and has phone numbers to reach me 24/7 and she confirmed. I gave her a hug and told her again that I hoped she would stay at the City.





D. Andrade, Esq.
D. Camm, Esq.
G. Cousins, Esq.
B. Parker, Esq.

January 29, 2020

Philippe G. Felsenhardt
EEOC Federal Investigator
CDO Office – 129 West Trade St. Ste. 400
Charlotte, NC 28202

Via EEOC PORTAL

RE: *Nivilla Campbell vs. City of Shelby*
EEOC Ch. No. 430-2019-01407

Mr. Felsenhardt:

Our firm has been retained to represent the interests of Nivilla Campbell in the above-referenced matter. This letter is intended to provide additional information for the purposes of furthering your investigation. Submission of this letter is not a waiver of any rights or objections, nor shall it be construed to serve as a verified statement of testimony or affidavit in any future proceedings.

Title VII of the Civil Rights of 1964 protects employees from harassment based on their race, providing, “It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his 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). City of Shelby has engaged in such unlawful practice against Ms. Campbell by allowing hostile racial epithets and conduct by its employees to occur with little to no consequence, and by not offering Ms. Campbell any relief via its policies from having the privileges of her employment interrupted.

As has previously been summarized, Ms. Campbell’s charge derives from an incident on or about March 11 in which she and other employees, including Austin Seagle, Travis Blanton, Chris Childers, and Scott Huffstetler were having a conversation about the NCAA Basketball Tournament. During that conversation, Mr. Huffstetler, who is also a National Gas Supervisor, used a racial epithet when referring to African Americans and made other racially insensitive comments towards Ms. Campbell when she addressed his use of the epithet. Statements from

Ms. Campbell, Mr. Huffstetler, and the other employees either witnessing the incident or involved in its investigation have been submitted and filed with your department.

Subject to City of Shelby's reporting policy, Ms. Campbell reported the incident to her direct supervisor, Julie McMurry, who is employed as Energy Service Director. Ms. McMurry initiated an investigation and submitted the complaint to Deborah Jolly in Human Resources. Although this eventually culminated in Mr. Huffstetler being disciplined for using harassing words, no actions were taken in consideration of Ms. Campbell's mental health and well-being, nor were any actions taken to address the culture of bullying and harassment that Ms. Campbell experienced during her employment.

Ms. Campbell, who was the only African American woman in her department, was unfortunately, subjected to more than just the harassing behavior central to this Charge during her three years employed with City of Shelby. Ms. Campbell, per the reporting policy, has previously reported incidents in which she was victimized by co-workers to Ms. McMurry, including being called a "bitch" on one occasion, and having a co-worker pull her hair, using its unique texture to wipe pipe cleaner off his hand on another. She was made to have to work closely with the same co-worker who pulled her hair, which resulted in another incident in which he referred to a potential new hire as a queer and discriminating against him as a result. Ms. Campbell reported this incident and was subject to the investigation.

The lack of action taken regarding each of these reported incidents speak to the culture Ms. Campbell was subjected to while employed with City of Shelby. The effect of such culture placed such a strain on Ms. Campbell's mental health, that she has had to request days off to seek the assistance of professional counseling and determined that it was no longer healthy to be employed there. Considering such, City of Shelby's current anti-harassing policy is not sufficient enough to protect its minority employees from harassment, nor provide them with relief and support thereafter.

Citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21-22 (1993), Respondent's Position Statement points out that Ms. Campbell must show that the conduct she was subjected to was severe or pervasive enough to create an objectively hostile or abusive work environment. It is Ms. Campbell's position under this Charge that such standard is met. Among the factors considered in determining severe or pervasive conduct include, "(1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating or a mere offensive utterance; and (4) whether it unreasonably interferes with the employee's work performance." *Smith v. First Union Nat. Bank*, 202 F.3d 234, 242 (4th Cir.2000) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993)).

The incident central to this Charge is just the last of a pattern of reported incidents of racially charged harassing conduct and bullying Ms. Campbell endured before resigning from her position. Suffering through comments recalling slavery by a supervisor in front of her co-

workers coupled with dealing with having the texture of her hair being used as a cleaning tool is both severe and humiliating. Breaking down to the point of tears in front of her supervisor while on the job, as recalled by Ms. McMurry in her statement filed with your office, and having to request days off to seek professional counseling are clear indicators that her work performance was being impacted.

Ms. Campbell is disappointed that City of Shelby has little to no support for its minority employees who are victims of workplace harassment in their aftermath. As the only African American employed, she was subjected racially charged epithets and conduct, leaving her feeling isolated and without a voice. Had she been offered helpful literature, or had City of Shelby instituted conduct and sensitivity trainings into their current policy, she may have felt supported enough to continue her duties with confidence. Instead, she was made to feel as if she should just get over it and move on. Therefore, Ms. Campbell does not feel as if this Charge should be dismissed.

Please contact our office for any further discussion or information. Ms. Campbell is willing to allow her therapist's clinical summation of the effects of the conduct she experienced while employed with City of Shelby, subject to your office's agreement to keep its contents, which include sensitive medical information, confidential and not disclosed to the Respondent or any other party.

Respectfully,



Bryan Parker, Esq.

Partner

The Freedmen Law Group

(T) 704-271-2048

(E) parker@freedmenlawgroup.com

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Nivilla Campbell