AFFIRMED and Opinion Filed June 18, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00652-CV

CITY OF FORT WORTH, TEXAS, Appellant
V.
ABDUL PRIDGEN AND VANCE KEYES, Appellees

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-15279

MEMORANDUM OPINION

Before Justices Myers, Osborne, and Nowell
Opinion by Justice Osborne

The City of Fort Worth, Texas, moved for summary judgment alleging that it had not waived its governmental immunity for the claims of appellees Abdul Pridgen and Vance Keyes under the Texas Whistleblower Act. *See* TEX. GOV'T CODE § 554.002(a). The City now appeals the trial court's denial of its motion. Because there were genuine issues of material fact on each element of Pridgen's and Keyes's claims, we affirm the trial court's order. The facts are well-known to the parties, and we do not recite them here except as necessary "to advise the parties of the court's decision and the basic reasons for it." TEX. R. APP. P. 47.4.

BACKGROUND

Appellees Abdul Pridgen and Vance Keyes were veteran officers in the Fort Worth Police Department (the "Department"), serving as Assistant Police Chief and Deputy Chief, respectively, before they were demoted in the events giving rise to this lawsuit. Serving in these capacities, both officers supervised the Department's Internal Affairs ("IA") and Special Investigations Unit ("SIU") divisions.

Pridgen and Keyes participated in the internal department investigation of a December 21, 2016 arrest by Officer William Martin. On that date, Jacqueline Craig called 911 to report that her seven-year-old son had been choked by an adult neighbor. Martin arrived at the scene to investigate, but soon engaged in an argument with Craig, subsequently arresting Craig and her daughter Brea Hymond. Chief of Police Joel Fitzgerald described the incident in a subsequent report:

> On Wednesday, December 21, 2016, [Officer Martin] was dispatched on a disturbance call to a residence in Fort Worth. According to the first caller (a male), multiple subjects purposely threw trash in his yard. The subjects were arguing with him and refused to leave. A short time later, a second person (a female), called to report her eight-year-old brother had been grabbed by a man because the child threw trash. A third caller (a second female), called and informed the dispatcher she was in front of the male's home and asked why officers were taking so long to respond.
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> After a brief conversation with the male, Officer Martin approached the female who was the mother of the young child accused of throwing trash. During the conversation, Officer Martin asked the female why she had not taught her son to not litter. The female stated even if her son did litter it did not make the male's conduct of touching her son

> acceptable. Officer Martin responded, "Why not?" Officer Martin then told her that if she "pissed" him off, he would take her to jail. After this statement, the female's 15-year-old daughter, stepped between Officer Martin and the female. Officer Martin pulled the daughter away and pushed the female to the ground, unholstered his Taser from his gun belt, and placed it on the female's back. Officer Martin and [sic] pointed his Taser at the female's 15-year-old daughter, ordered her to the ground, and then placed the mother under arrest, securing her in handcuffs.
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> . . .
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> Officer Martin approached the female's 19-year-old daughter who was nearby recording the incident with her cell phone, grabbed her, placed her under arrest, and confiscated her cell phone. After securing her in handcuffs, Officer Martin raised the 19-year-old daughter's arms above her head while her hands were handcuffed behind her back.

The encounter—shown by live stream on Facebook—led to allegations of racism against Martin by many members of the public, as Craig and Hymond are African American and Martin is Caucasian. The incident gained national attention and media coverage.

In the subsequent investigation by the Department, both Pridgen and Keyes recommended that Martin should be fired. Instead, Fitzgerald suspended Martin for ten days. Pridgen and Keyes, however, were both demoted based on the Department's contention that they had disseminated confidential documents without Department authorization. The demotions were based on the Department's allegation that Pridgen and Keyes gave Craig's lawyer a copy of a thumb drive with a video recording of Craig's arrest from Martin's body camera and information from Martin's confidential personnel file.

Pridgen and Keyes sued the City alleging violations of the Texas Whistleblower Act. *See* TEX. GOV'T CODE §§ 554.001–554.010 (Chapter 554, Protection for Reporting Violations of Law) ("Whistleblower Act"). The City moved for summary judgment on two grounds. First, the City argued that Pridgen and Keyes were not whistleblowers because they did not make a good faith report of a violation of law. Instead, the City argued, Pridgen and Keyes "merely had a conversation with the Chief voicing their opinions about the consequences a fellow officer should face for his misconduct and their opinions were not reasonable in light of their careers in law enforcement."

Second, the City argued that Pridgen and Keyes lacked evidence of causation because they were disciplined "some five months after their alleged 'reports' and only after forensic evidence connected them to the unauthorized release of confidential police department files, which was a violation of State law." The City concluded that its immunity had not been waived, and the trial court should dismiss the suit for lack of jurisdiction.

The trial court denied the City's motion. This appeal followed.

APPLICABLE LAW AND STANDARD OF REVIEW

Governmental immunity from suit is jurisdictional and properly raised by a plea to the jurisdiction. *See State v. Lueck,* 290 S.W.3d 876, 880–81 (Tex. 2009). Lack of subject matter jurisdiction may also be raised by a motion for summary judgment. *Id.* at 884; *Bland Indep. Sch. Dist. v. Blue,* 34 S.W.3d 547, 554 (Tex.

2000). Section 554.0035 of the Whistleblower Act waives governmental immunity when a public employee properly alleges a violation of the Act. TEX. GOV'T CODE § 554.0035. Thus, the elements of a whistleblower claim under section 554.002(a) are jurisdictional facts necessary to determine whether a plaintiff has alleged a violation of the Whistleblower Act. *Lueck,* 290 S.W.3d at 881.

A plea to the jurisdiction is a dilatory plea that challenges the trial court's subject matter jurisdiction. *Heckman v. Williamson Cty.,* 369 S.W.3d 137, 149 (Tex. 2012); *Blue,* 34 S.W.3d at 554. Whether a court has subject matter jurisdiction is a question of law that we review de novo. *Frost Nat'l Bank v. Fernandez,* 315 S.W.3d 494, 502 (Tex. 2010). The plea to the jurisdiction standard generally mirrors that of a traditional motion for summary judgment. *See Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 228 (Tex. 2004). The plaintiff has the burden to affirmatively demonstrate the trial court has subject matter jurisdiction. *Heckman,* 369 S.W.3d at 150; *Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 446 (Tex. 1993). Although we begin our analysis with the live pleadings, we may also consider evidence relevant to the jurisdictional inquiry and must consider such evidence when it is necessary to resolve the jurisdictional issue. *Heckman,* 369 S.W.3d at 150.

We review the trial court's summary judgment de novo. *Provident Life & Accident Ins. Co. v. Knott,* 128 S.W.3d 211, 215 (Tex. 2003). We apply the well-established standards for reviewing summary judgments. *See* TEX. R. CIV. P.

166a(c), (i); *Timpte Indus., Inc. v. Gish,* 286 S.W.3d 306, 310–11 (Tex. 2009) (no-evidence summary judgment standards of review); *Nixon v. Mr. Property Mgmt. Co.,* 690 S.W.2d 546, 548–49 (Tex.1985) (traditional summary judgment standards of review). We take as true all evidence favorable to the nonmovant and "indulge every reasonable inference and resolve any doubts in the nonmovant's favor." *Miranda*, 133 S.W.3d at 228.

Pridgen and Keyes allege that the City violated the Whistleblower Act. It provides:

> A state or local government entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who **in good faith reports a violation of law** by the employing governmental entity or another public employee to an appropriate law enforcement authority.

TEX. GOV'T CODE § 554.002(a) (emphasis added). As this Court has explained, the elements of a Whistleblower Act claim are:

> (1) that the plaintiff was a public employee, (2) that the defendant was a state agency or local government, (3) that the plaintiff reported in good faith a violation of law (4) to an appropriate law enforcement agency, and (5) that the plaintiff's report was the but-for cause of the defendant's suspending, firing, or otherwise discriminating against the plaintiff at the time the defendant took that action.

Guillaume v. City of Greenville, 247 S.W.3d 457, 461 (Tex. App.—Dallas 2008, no pet.); *see also Dallas Cty. v. Logan*, 420 S.W.3d 412, 426–27 (Tex. App.—Dallas 2014, pet. denied) (for the government's immunity to be waived on a Whistleblower

Act claim, the plaintiff must be a public employee and allege a violation of Government Code Chapter 554).

To balance the interests of public employees who attempt to report illegal activity with the right of public employers to discipline employees who make either intentionally false or objectively unreasonable reports, the supreme court has adopted the following definition of good faith on the part of the employee:

> "Good faith" means that (1) the employee believed that the conduct reported was a violation of law and (2) the employee's belief was reasonable in light of the employee's training and experience. The first part of the definition embodies the "honesty in fact" part of the trial court's definition in this case. This element ensures that employees seeking a remedy under the Whistleblower Act must have believed that they were reporting an actual violation of law. The second part of the definition ensures that, even if the reporting employee honestly believed that the reported act was a violation of law, an employer that takes prohibited action against the employee violates the Whistleblower Act only if a reasonably prudent employee in similar circumstances would have believed that the facts as reported were a violation of law.

Wichita Cty. v. Hart, 917 S.W.2d 779, 784–85 (Tex. 1996); *see also Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 320 (Tex. 2002) (confirming standard).

The employee bears the burden of proving his Whistleblower Act claim unless the adverse personnel action occurs not later than the 90th day after the date of the employee's report of a violation of law. TEX. GOV'T CODE § 554.004(a). If the adverse personnel action is within the 90-day period, it is presumed, subject to rebuttal, to have been taken because the employee made the report. *Id.* It is an affirmative defense if the employing entity would have taken the action against the

employee "based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under this chapter of a violation of law." *Id.* § 554.004(b).

DISCUSSION

The City asserts three issues on appeal, arguing that the trial court erred by (1) expanding the Whistleblower Act to Pridgen's and Keyes's statements of opinion rather than reports of violations of law; (2) denying summary judgment when it was not objectively reasonable for Pridgen and Keyes to refuse to consider all of the available evidence in forming their opinions about consequences for Martin; and (3) denying summary judgment when evidence conclusively linked Pridgen and Keyes to a leak of confidential information from Martin's employment file, defeating causation. We consider each issue in turn.

1. Reports of violations of law

The City argues that Pridgen and Keyes did not "report" a violation of law because Fitzgerald (1) already knew about Martin's arrest of Craig from another source; (2) had already viewed the Facebook video, which had already gone viral on the internet; and (3) had already ordered a full Internal Affairs investigation of the incident. The City also argues that Pridgen and Keyes did not report a violation of law, but only expressed their "opinions about discipline and the consequences of Martin's conduct," which "are simply not the types of 'reports' the Whistleblower Act protects."

Pridgen and Keyes, however, offered summary judgment evidence that they did more than offer their opinions to Chief Fitzgerald. Both testified in their depositions that after viewing Martin's body camera video (in addition to the Facebook video, taken by Hymond) and Martin's arrest affidavits, they concluded that Martin had used excessive force, falsely arrested Hymond on the ground that she had pushed him, assaulted Hymond and used excessive force when he "torqued" her handcuffed arms above her head, and committed perjury by stating in the affidavits that Hymond pushed him and Craig failed to identify herself. They point out that even though Martin was permitted to view his body camera video before completing his affidavit, and thus could have seen that Hymond did not push him and that Craig did identify herself, he still stated to the contrary in his affidavits.

Next, the City contends that because Fitzgerald already knew about Martin's conduct, there could be no "report" by Pridgen or Keyes. The City argues that "well before any opinions were expressed to the Chief, video of the arrest was posted on Facebook and was seen by thousands of people. There simply was nothing about which the whistle could have been blown." The City argues that a "disclosure" of information is required, citing our opinion in *Barfield v. Dallas Independent School District,* No. 05-04-00374-CV, 2004 WL 2804861, at *3 (Tex. App.—Dallas Dec. 3, 2004, no pet.) (mem. op.). In *Barfield*, we used the word "disclosure" in a parenthetical citation to support our conclusion that Barfield "did provide summary judgment evidence that he reported a violation of the law." *See id.*

But we had already explained the showing required of Barfield to prevail on his whistleblower claim, including a showing that he made a good faith report of a violation of law to an appropriate authority. *See id.* at *2. Neither in those requirements nor in our subsequent discussion did we conclude that the "appropriate authority" must be unaware of the violation at the time the report is made. *Cf. id.* at *3–4; *see also Rogers v. City of Fort Worth*, 89 S.W.3d 265, 273, 277 (Tex. App.—Fort Worth 2002, no pet.) (report was made at request of plaintiff's supervisor who was already aware of alleged violation).

The City responds that in both *Barfield* and *Rogers*, the plaintiffs "disclosed more than just an opinion," instead providing factual information to their supervisors. But as we have already discussed, Pridgen and Keyes did more than offer "just an opinion" regarding Martin's conduct. They offered evidence that they reported crimes including assault, official oppression, and perjury, based on their viewing of Martin's body camera video and arrest affidavits and on what Martin did and said. "The key question is not so much how the whistleblower plaintiff worded [his] report, but whether there was in fact some law prohibiting the complained-of conduct described in the report." *Connally v. Dallas Indep. Sch. Dist.*, 506 S.W.3d 767, 785 (Tex. App.—El Paso 2016, no pet.). Pridgen and Keyes assert that they relied on the facts revealed in the videos and affidavits as the basis for their reports that Martin violated the law.

We conclude that Pridgen and Keyes offered evidence raising a fact issue on whether the Whistleblower Act applies to their reports to Fitzgerald about Martin's conduct. We decide the City's first issue against it.

2. Objectively reasonable conduct

The City also sought summary judgment on the ground that Pridgen and Keyes failed to consider all of the available information in making determinations about Martin's conduct "because they failed to consider the evidence showing that Martin's conduct was based on a mistake but not intentional," and this failure was not reasonable in light of their experience as career peace officers. In its second issue, the City contends the trial court should have granted summary judgment on the ground that Pridgen's and Keyes's reports were not made in objective good faith. *See Logan*, 420 S.W.3d at 424 ("'Good faith' in the Whistleblower Act context has both objective and subjective elements. Thus, with respect to a report of a violation of law, the employee must have believed he was reporting conduct that constituted a violation of law and his belief must have been reasonable based on his training and experience.") (internal citations and quotation omitted).

Quoting *Logan*, the City argues that because Pridgen and Keyes were veteran police officers, the reasonableness of their belief that a law has been violated "will be examined more closely than will the belief of one in another, non-law enforcement profession." *See id.* The City contends that although Pridgen and Keyes reviewed Martin's affidavits and both videos before making their reports to

Fitzgerald, they failed to view Martin's videotaped interviews in which Martin gave an explanation for his conduct during the arrests. The City argues that every officer who did review Martin's interviews reached the conclusion that Martin "simply made a mistake" and "determined that Martin's conduct was not criminal." The City also argues that because neither Pridgen nor Keyes referred Martin to the SIU for a criminal investigation, they did not actually believe that Martin's actions were criminal.

Citing *Texas Department of Criminal Justice v. McElyea*, 239 S.W.3d 842 (Tex. App.—Austin 2007, pet. denied), Pridgen and Keyes argue they were not required to undertake further investigation in order to make their report in objective good faith. In *McElyea*, McElyea was an internal affairs investigator in the Texas Department of Criminal Justice. *Id.* at 844. He reported to his superiors that a Department peace officer had violated Department policies concerning approval of off-duty jobs and also "potentially violated the Private Security Act and state law governing the use of state vehicles." *Id.* at 845. McElyea became aware of the potential misconduct through a conversation with another officer. *See id.* at 844–45. The Department contended that because McElyea did not conduct an investigation into the alleged misuse of a state vehicle, he did not have sufficient facts to make a good-faith allegation of a violation of law. *Id.* at 852. The court rejected this argument. *Id.* at 854. Although McElyea's knowledge of the alleged violation was based on hearsay, he had been involved in many investigations of misuse of state

vehicles and had access to mileage logs and time records. *See id.* at 852–53. Further, he pointed to a specific law he believed had been violated. *Id.* at 853. The court rejected the Department's "attempt[ ] to impose a duty to investigate and to penalize McElyea for failing to investigate further," *id.* at 853, and concluded there was sufficient evidence to support the jury's finding that McElyea had a good faith belief that a law had been violated. *Id.* at 854.

Pridgen and Keyes argue that the videos and arrest affidavits provided them with an objectively reasonable basis for their report. They point out that the two videos were recorded from different perspectives and thus included unique information about Martin's communications and interactions with Craig, Hymond, and others at the scene. They argue that the two videos "reflect Martin's emotional, angry, and frustrated response to his encounter with Craig, Hymond, and other bystanders." They contend that "[b]ased on their years of training and experience of investigating police officers, [they] concluded that Martin acted intentionally in committing the wrongful acts reported," and "Martin's self-serving statements and explanations denying wrong doing would be expected by a law enforcement official, including Fitzgerald." They also respond that they did not pursue a referral to SIU because Fitzgerald rejected the idea, and "[r]ather than commit insubordination," they complied with Fitzgerald's decision.

We conclude that Pridgen and Keyes raised a fact issue as to their objective good faith in reporting Martin's violations of law. We decide the City's second issue against it.

3. Causation

The City also sought summary judgment on the ground that Pridgen and Keyes were disciplined only for the leak of confidential documents, not for reporting Martin's illegal conduct. In its third issue, the City argues that Pridgen and Keyes did not raise a fact issue on causation because evidence "conclusively linked" them to a leak of confidential information from Martin's employment file.

The City argues:

- A computer forensic examiner established that the files posted by Craig's attorney on Facebook were "the exact files" that Pridgen acknowledged downloading onto a thumb drive in his office, in Keyes's presence;
- Pridgen made inconsistent statements about downloading the documents and could not explain the missing thumb drive, and Fitzgerald concluded he was "dishonest with investigators and failed to provide candid answers to investigators' questions";
- Pridgen and Keyes were disciplined only after "conclusive evidence implicated them in the leak";
- Fitzgerald's "single retort" to Pridgen in an Internal Affairs meeting that he did not want to hear what Pridgen thought about appropriate consequences for Martin's conduct in the arrests of Craig and Hymond is insufficient to establish that Fitzgerald disciplined Pridgen and Keyes "because of [their] opinions about Martin"; and
- Pridgen's and Keyes's arguments do not raise a fact issue on causation.

"[T]he standard of causation in whistleblower and similar cases should be that the employee's protected conduct must be such that, without it, the employer's prohibited conduct would not have occurred when it did." *Texas Dep't of Human Servs. v. Hinds*, 904 S.W.2d 629, 636 (Tex. 1995). The employee's report need not be the sole reason for the adverse employment action, however. *Hackbarth v. Univ. of Tex. at Dallas*, No. 05-16-01250-CV, 2018 WL 286406, at *5 (Tex. App.—Dallas Jan. 4, 2018, no pet.) (mem. op.). Circumstantial evidence may be sufficient to establish a causal link between the adverse employment action and the report of illegal conduct. *City of Fort Worth v. Zimlich*, 29 S.W.3d 62, 69 (Tex. 2000); *see also Office of Attorney Gen. v. Rodriguez*, No. 17-0970, 2020 WL 3114683, at *7–8 (Tex. June 12, 2020) (quoting *Zimlich* and discussing use of circumstantial evidence to establish causation). "Such evidence includes: (1) knowledge of the report of illegal conduct, (2) expression of a negative attitude toward the employee's report of the conduct, (3) failure to adhere to established company policies regarding employment decisions, (4) discriminatory treatment in comparison to similarly situated employees, and (5) evidence that the stated reason for the adverse employment action was false." *Id.* Evidence that an adverse employment action was preceded by a superior's negative attitude toward an employee's report of illegal conduct is not enough, standing alone, to show a causal connection between the two events. *Id.* But a plaintiff need not present evidence involving all five categories to prove causation. *Hackbarth*, 2018 WL 286406, at *5.

Pridgen and Keyes were demoted in May 2017, more than 90 days after their December 2016 or January 2017 reports about Martin.[1] Consequently, there is no presumption that their reports caused their demotions. *See* TEX. GOV'T CODE § 554.004(a). Nonetheless, Pridgen and Keyes offered some evidence that their demotions would not have occurred absent their reports. *See Hinds*, 904 S.W.2d at 636.

The City does not dispute Fitzgerald's knowledge of Pridgen's and Keyes's reports, or that Fitzgerald responded negatively to Pridgen's statement that Martin should be fired. During a command staff meeting, Fitzgerald told Pridgen that "you're right I don't want to know what you're thinking" about consequences for Martin when Pridgen told him Martin should be fired. *Cf. Rodriguez*, 2020 WL 3114683, at *9 (supervisor making termination decision was unaware of plaintiff's report of illegal conduct). The City responds that the real reason for Fitzgerald's hostility was Pridgen's "flippant delivery," but Pridgen and Keyes reply that if that were the case, Fitzgerald should have employed the Department's coaching policy to correct Pridgen's behavior. There was additional evidence of Fitzgerald's negative attitude, including Keyes's testimony that Fitzgerald no longer replied to his texts, used an accusatory tone when speaking to Keyes, and refused to follow up

[1] Before their demotions in May, Pridgen and Keyes were placed on "detached duty," confined to their homes for eight hours each day. The exact date when Pridgen's and Keyes's detached duty began is not clear from the record. Keyes testified that his detached duty had begun by "early March." Pridgen thought February 21 "might be accurate" as the date his detached duty began.

on a personnel complaint after Keyes's report. Pridgen and Keyes both testified to good relationships with Fitzgerald before their reports.

Pridgen and Keyes also offered evidence that the City did not follow its regular policies in the leak investigation. There was evidence that Pridgen and Keyes—the two highest-ranking Internal Affairs officers—were removed from the leak investigation the same day the leak was discovered, contrary to the Department's normal practice. Pridgen and Keyes testified they were told that it was Assistant City Manager Valerie Washington's decision to remove them from the investigation, and Fitzgerald confirmed in his deposition that Washington made the decision. In her own deposition, however, Washington unequivocally denied doing so. She testified that Fitzgerald made the decision. In addition, Pridgen and Keyes testified that separate personnel complaints were normally made when an officer was accused of lying or insubordination, and poor performance or conduct issues were documented, but none of these policies were followed in their discipline.

Pridgen and Keyes also testified that they were questioned repeatedly and at length in several different sessions about the leak, while Martin's interviews about the arrests were short and non-adversarial. Pridgen testified that Martin "was interviewed and I was interrogated" during their respective internal affairs investigations. Keyes was interviewed three times for a total of nine hours and testified that the "entire basis for the investigation" was "that I was in Abdul Pridgen's office during a 20-minute window when he downloaded files." He

explained that in his "history as a commander of internal affairs," even when officers were involved in shootings, driving while intoxicated, drug use, or other serious offenses, "there has never been" a three-session, nine-hour interview.

Pridgen and Keyes also offered evidence that the Martin investigation was rushed because of the negative publicity that accompanied the Craig and Hymond arrests. They argue they received more severe discipline than Martin "despite Officer Martin's actions being captured on video while no evidence directly revealed any involvement" by either of them in the leak. Martin was placed on restrictive duty, allowing him to go to work, while Pridgen and Keyes were placed on detached duty, restricting them to their residences for eight hours a day. Both Pridgen and Keyes offered to take polygraph tests, and Fitzgerald confirmed that such tests were "at times" used in Internal Affairs investigations, but none were administered.

We conclude that Pridgen and Keyes offered evidence from which a jury could conclude that their protected activity—reporting that Martin violated the law in the Craig and Hymond arrests and recommending that Martin be fired—at least partially motivated Fitzgerald to demote them, and that Fitzgerald would have reached a different decision in the absence of their protected activity. *See Torres v. City of San Antonio*, No. 04-15-00664-CV, 2016 WL 7119056, at *4 (Tex. App.—San Antonio Dec. 7, 2016, no pet.) (causation standard "requires conclusive proof" that employee's report "did not play a role, however small," in employer's adverse action). The leak investigation, which the City argues was the sole cause of the

demotions, was a product of Martin's arrests of Craig and Hymond and the resulting negative publicity. *Cf.* TEX. GOV'T CODE § 554.004(b) (it is affirmative defense to Whistleblower Act claim if employer would have taken same action against employee "based solely" on evidence "that is *not related*" to employee's report) (emphasis added). Pridgen and Keyes presented evidence that their recommendations to Fitzgerald about appropriate discipline for Martin were unwelcome and that they were removed from the leak investigation at its outset and given contradictory information about who decided to remove them. Although the City argues it conclusively established that Pridgen and Keyes were the source of the leak, there is no evidence that either Pridgen or Keyes gave the flash drive to Craig's attorney.[2] The City's basis for concluding that Keyes was involved in the leak was his presence in Pridgen's office when Pridgen downloaded the files on a flash drive, not any evidence that Keyes created the flash drive or took possession of it.

In sum, there is conflicting evidence regarding the City's reasons for demoting Pridgen and Keyes, much of it dependent on the witnesses' credibility. Credibility

[2] Although Pridgen does not contest the City's evidence that he downloaded the files on a flash drive, he denies that he was the source of the leak to Craig's attorney Lee Merritt. Pridgen testified that he downloaded the information on the flash drive after a conversation with a City attorney. He explained that he thought Fitzgerald would need to see Martin's body camera recording and disciplinary history because of the "severity of the incident" of Craig's arrest. The record includes Merritt's deposition, in which he testified: "Q. Okay. Did you receive the body cam recording from someone within the Fort Worth Police Department? A. Not to my knowledge." Merritt also testified, "Q. Okay. Did you receive documents from anyone within the Fort Worth Police Department about Officer Martin's prior disciplinary history? A. Not to my knowledge."

determinations are the sole province of the fact finder. *See City of Houston v. Levingston*, 221 S.W.3d 204, 229 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (jury was sole judge of witnesses' credibility where parties presented conflicting evidence regarding employer's reasons for firing employee).

We conclude the trial court did not err in denying summary judgment to the City on the issue of causation. We decide the City's third issue against it.

CONCLUSION

We affirm the trial court's order denying the City's motion for summary judgment.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CITY OF FORT WORTH, TEXAS,
Appellant

No. 05-19-00652-CV V.

ABDUL PRIDGEN AND
VANCE KEYES, Appellees

On Appeal from the 44th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-17-15279.
Opinion delivered by Justice Osborne; Justices Myers and Nowell participating.

In accordance with this Court's opinion of this date, the trial court's order dated May 24, 2019 denying appellant's motion for summary judgment is **AFFIRMED**.

It is **ORDERED** that appellees Abdul Pridgen and Vance Keyes recover their costs of this appeal from appellant City of Fort Worth, Texas.

Judgment entered June 18, 2020