

IN THE DISTRICT COURT IN AND FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 JARRON DEAJON PRIDGEON,)
)
 Defendant.)

Case No. CF-2021-98

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
2021 MAY 28 AM 3:33
PUNYA SECTION
COURT CLERK

**MEMORANDUM OF LAW IN SUPPORT OF MAKING
BODY CAMERA FOOTAGE AVAILABLE TO THE PUBLIC**

The Muskogee Phoenix, by and through counsel, respectfully submits this memorandum of law in support of making body camera footage available to the public pursuant to the Oklahoma Open Records Act (“ORA”) and other relevant law.

BACKGROUND

In this matter, the State originally filed a motion to prevent release of body camera footage and a 911 call. The Muskogee Phoenix filed an objection to the State’s request to protect the public’s interest in maintaining access to these open records. After a hearing in February, at which the Defense joined the State’s motion, this Court ordered the 911 call be released to the public. The question of whether the body camera footage should also be released to the public is still under advisement by this Court.

The City of Muskogee (the “City”) has body camera footage related to this matter and has prepared it for public release in compliance with the ORA.¹ Specifically, the City has already redacted and/or obscured footage from inside the home (*i.e.*, the alleged crime scene) in its entirety so that no victims in this matter will be shown. But the body camera footage also is

¹ Based on a conversation between the Deputy City Attorney for the City of Muskogee, Counsel for the State, Counsel for the Defendant, and undersigned counsel.

likely to show a sequence of events leading up to the police entering the home that is critical to the public's understanding of this matter. For example, it has been widely reported based on information from the Muskogee Police Department that when police arrived at the scene, the Defendant allegedly came out of the home with a weapon, was confronted by police, and refused to follow orders including to drop a weapon.² It has also been reported that the Defendant then ran from the home on foot and that police fired a gun at the Defendant before catching him and arresting him.³ The body camera footage of this sequence of events falls squarely within the parameters of the ORA and would shed light on many matters of public concern such as the use of physical force by the police and the pursuit and arrest of the Defendant. This Court should therefore deny the opposing parties' request and issue an order making the body camera footage available for immediate public inspection and copying.

ARGUMENT AND AUTHORITY

The ORA ensures and facilitates “the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power”—including verifying accountability and monitoring the manner in which public officers, such as the police, discharge their public duties. Okla. Stat. tit. 51, § 24A.2; *see also Okla. Assoc. of Broadcasters, Inc. v. City of Norman*, 2016 OK 119, ¶17, 390 P.3d 689. This is one reason law enforcement agencies are required under the ORA to make body camera footage available for public inspection and copying. *See* Okla. Stat. tit. 51, § 24A.8(A)(10).

But in this matter, the State has asked the Court—supposedly pursuant to the ORA—to

² *See, e.g.,* Ronn Rowland & D.E. Smoot, *Mass Murder Suspect Charged*, Muskogee Phoenix (Feb. 4, 2021), https://www.muskogee phoenix.com/news/mass-murder-suspect-charged/article_625f9b40-668c-11eb-8fed-7b8b197c1a1b.html.

³ *See, e.g.,* *Suspect Jailed on First-Degree Murder Complaint*, Muskogee Phoenix (Feb. 2, 2021), https://www.muskogee phoenix.com/news/suspect-jailed-on-first-degree-murder-complaint/article_ae40a366-6591-11eb-a061-677a2f053370.html.

prohibit the public release of body camera footage on that grounds that its release will “likely materially compromise an ongoing criminal investigation and/or prosecution, and will likely materially compromise the right of the defendant to receive a fair trial.” *State’s Motion to Prevent Release of Video Evidence and 911 Calls*. There is no legitimate basis for such an order under the ORA. While the ORA permits redaction of specific information that would materially compromise an ongoing investigation or criminal prosecution in narrow circumstances, agencies must make body camera footage available in its entirety ten days following the initial appearance of a defendant in a relevant criminal case. Okla. Stat. tit. 51, § 24A.8(A)(10)(b)(12)(a). Any request to extend this time frame is only permitted if release of the specific portions will “materially compromise an ongoing criminal investigation or criminal prosecution or . . . the right of an accused to a fair trial that has yet to begin,” but should be denied where the interests of the public outweigh the parties’ interests. *Id.* The time frame for withholding specific portions of body camera footage cannot exceed a total of 18 months and cannot be ordered for more than six months at a time. *Id.* This narrow exception for temporarily redacting specific information in body camera footage does not provide a basis for the opposing parties to ask this Court to prohibit the release of body camera footage altogether.

Further, neither the State nor the Defense can specifically demonstrate how release of the body camera footage will materially compromise an ongoing criminal investigation, prosecution, or right of the Defendant to a fair trial. This case is already being widely discussed in the public sphere,⁴ and the State (despite moving to prohibit the release of the presumptively available body

⁴ See, e.g., *Man charged with 6 counts of murder in deaths of children, his brother in Muskogee, DA announces*, KOCO News 5 (Feb. 3, 2021, 5:25 P.M.), <https://www.koco.com/article/man-charged-with-6-counts-of-murder-in-deaths-of-brother-5-children-in-muskogee-da-announces/35410878>; Jenna L. Smith, *Funeral services announced for Muskogee shooting victims*, 2 News (Feb. 9, 2021, 10:41 P.M.), <https://www.kjrh.com/news/local-news/funeral-services-announced-for-muskogee-shooting-victims>; *Muskogee Police Release 911 Call From Deadly Mass Shooting*, News On 6 (Mar. 12, 2021, 9:16 P.M.),

camera footage) has participated freely in that dialogue.⁵ Releasing the body camera footage would allow the press to provide a fuller narrative of the events, instead of relying almost exclusively on statements made by District Attorney Loge and police spokespeople. As the Supreme Court has recognized, the press specifically is the primary conduit for the public to learn about government activities. *See Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) (stating that an “untrammelled press [is] a vital source of public information”); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (“Instead of acquiring information [] by firsthand observation or by word of mouth [], people now acquire it chiefly through the print and electronic media.”). The public’s interest in being able to access information through the news media is best served when reporting can be as accurate as possible by relying on access to primary sources of information such as body camera footage. *See Victoria Knott, Reconsidering the Use of the Grand Jury: Eliminating Prosecutorial Discretion to Indict Law Enforcement Officers*, 38 T. Jefferson L. Rev. 202, 217 (2016) (describing body camera footage as “an objective video record of [an] incident, which is the best evidence”).

Even if the State or Defense could specifically demonstrate how release of the body camera footage would materially compromise an ongoing criminal investigation, prosecution, or right of the Defendant to a fair trial—which it cannot—it would still be outweighed by the public’s interest in this matter. The public interest in the body camera footage at issue is recognized by the ORA. For example, the ORA specifically makes provision for the public to

<https://www.newson6.com/story/604c03ff3afe100c0ee96d11/police-release-graphic-911-call-from-muskogee-mass-shooting->

⁵ *See, e.g.,* Amelia Mugavero, *Muskogee County DA Explains Next Steps In Mass Murder Case*, News On 6 (Feb. 19, 2021, 6:18 P.M.), <https://www.newson6.com/story/60305561b392e60bd764ccae/muskogee-county-da-explains-next-steps-in-mass-murder-case->; Nolan Clay, *Muskogee shooting: Suspect charged with 6 counts of first-degree murder*, The Oklahoman (Feb. 4, 2021, 1:04 A.M.), <https://www.oklahoman.com/story/news/columns/2021/02/04/muskogee-shooting-suspect-charged-with-6-counts-of-first-degree-murder/325801007/>.

have access to body camera footage that depicts “the use of any physical force or violence” by police, “pursuits of any kind,” “any person being arrested,” “events that directly led to any person being arrested,” “detentions of any length for the purpose of investigation,” “any exercise of authority by a law enforcement officer that deprives a citizen of his or her liberty,” and “recordings in the public interest that may materially aid a determination of whether law enforcement officers are appropriately performing their duties as public servants.” Okla. Stat. tit. 51, § 24A.8(A)(10)(a). The body camera footage at issue depicts all of these, and its release would facilitate the public’s understanding of law enforcement and the criminal legal system, especially as it relates to this specific case.

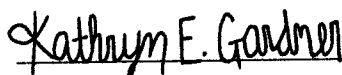
Any possible interest in prohibiting disclosure of the body camera footage is not strong enough to overcome the presumption of release in this case. It is not presumptively prejudicial for a criminal case to receive media coverage. Even a showing that pre-trial publicity is adverse to a defendant is not prejudicial enough to warrant a change of venue. *Bear v. State*, 1988 OK CR 181, ¶4, 762 P.2d 950. Rather, in Oklahoma, pre-trial publicity is only prejudicial when the influence of the news media *pervades* a proceeding. *Hain v. State*, 1996 OK CR 26, ¶9, 919 P.2d 1130. Pre-trial publicity that includes articles in local newspapers that are factual accounts and are not invidious or inflammatory in nature does not meet this rigorous standard. *Id.* ¶11. Finally, even in the unlikely scenario that publicity surrounding this matter rose to such a pervasive level, this Court would have other remedies at its disposal such as voir dire that would not harm the public’s interest in the ways that prohibiting release of body camera footage would. *See Sheppard v. Maxwell*, 384 U.S. 333, 352-60 (1966) (suggesting additional remedies including: change of venue, jury sequestration, clear instruction to jurors not to read news reports,

restricting access to the jury, bar, witnesses, and evidence by reporters during trial, and controlling statements made to the media by counsel and law enforcement officers).

CONCLUSION

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980). The press plays a crucial role in facilitating the public monitoring of the criminal justice system by communicating relevant information to the public. In Oklahoma, the ORA facilitates the right of access to government records, including body camera footage, for the people and the press. It does not provide a mechanism for courts to prohibit the release of body camera footage. This Court should therefore deny the opposing parties’ request and issue an order making the body camera footage available for immediate public inspection and copying.

Respectfully submitted,

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CERTIFICATE OF DELIVERY

I do hereby certify that on the date of filing, the undersigned mailed a full, true and correct copy of the above Memorandum of Law to the following parties:

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