

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

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CF-2021-98
)	
JARRON DEAJON PRIDGEON,)	
)	
Defendant.)	

**SPECIAL ENTRY OF APPEARANCE ON BEHALF OF THE MUSKOGEE PHOENIX
TO RESPOND TO THE STATE’S MOTION TO PREVENT RELEASE OF VIDEO
EVIDENCE AND 911 CALLS**

The Muskogee Phoenix, by and through counsel, respectfully submits this special entry of appearance to respond to the State’s Motion to Prevent Release of Video Evidence and 911 Calls. The Court should deny the State’s request as the State failed to meet the required showing under the Oklahoma Open Records Act (“ORA”) to withhold the video evidence from release to the public and is without a proper basis in law to ask this Court to withhold the 911 calls.

INTRODUCTION

1. The Oklahoma Open Records Act

The Oklahoma Constitution recognizes and guarantees all political power is inherent in the people. Okla. Const. art. 2, § 1. It is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. 51. O.S. § 24A.2. The purpose of the ORA is to “ensure and facilitate 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 police officers, discharge their public duties. *Id.*; *see also Okla.*

Assoc. of Broadcasters, Inc. v. City of Norman, 2016 OK 119, ¶17, 390 P.3d 689. Unless otherwise specifically excluded, the public must have prompt and reasonable access to records. See *Fabian & Assocs. v. State ex rel. Dep't of Pub. Safety*, 2004 OK 67, ¶¶11-12, 100 P.3d 703, 705; *City of Lawton v. Moore*, 1993 OK 168, ¶¶ 5-6 , 868 P.2d 690, 704-05.

2. Interest of the Muskogee Phoenix

Since its inception in 1888, the Muskogee Phoenix newspaper has focused on providing localized, award-winning coverage for the community of Muskogee. The Muskogee Phoenix has continued this commitment to the community by providing leading coverage of the events surrounding the above-captioned matter. To date, the Muskogee Phoenix has published at least 17 stories regarding the matter and plans to continue its coverage. At the same time, this case has attracted considerable attention from the public and press beyond the immediate community of Muskogee. The public relies on the Muskogee Phoenix and the press to inform their understanding of these events. It is vital that the Muskogee Phoenix have access to the video evidence and 911 calls related to the above-captioned matter to more accurately inform the public's understanding. The Muskogee Phoenix has previously requested release of the video evidence and 911 calls at issue pursuant to the ORA.

ARGUMENT AND AUTHORITY

1. The court should order the video evidence at issue be immediately made available for public inspection and copying in accordance with 51 O.S. § 24A.8(A)(10)(b).

Under the ORA, law enforcement agencies shall make available for public inspection and copying “audio and video recordings from recording equipment attached to the person of a law enforcement officer.” *Id.* § 24A.8(A)(10). Before releasing any such audio or video recording, law enforcement agencies may “*redact or obscure specific portions* of the recording” for a variety of reasons laid out in the ORA. *Id.* § 24A.8(A)(10)(b) (*emphasis added*). For example,

law enforcement agencies may redact or obscure specific portions of the recording that contain “information that would materially compromise an ongoing criminal investigation or ongoing criminal prosecution.” *Id.* § 24A.8(A)(10)(b)(12). However, in line with this specific rationale, ten days following the formal arraignment or initial appearance, whichever occurs first, of a person charged in the case in question, “the recording shall be made available for public inspection and copying *with no redaction of the portions that were temporarily withheld* by reliance on this division.” *Id.* § 24A.8(A)(10)(b)(12)(a) (*emphasis added*). A prosecutor or legal representative of the person charged may request an extension of time during which the recording may be withheld on the grounds that release of the recording 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.” *Id.*

Courts considering such requests “shall conduct a hearing and consider whether the interests of the public outweigh the interests asserted by the parties.” *Id.* The court “shall order that the recording be made available for public inspection and copying with no redaction of the portions that were temporarily withheld by reliance on this division,” or alternatively, “order an extension of time during which the recording may be withheld under the provisions of this division.” *Id.* Each extension shall only be ordered for an additional six-month period of time or less and shall not add up to more than 18 months. *Id.*

The video evidence at issue here is body camera footage captured by officers of the Muskogee Police Department related to the above-captioned matter. Body camera footage is an audio and video recording that comes from recording equipment attached to the person of a law enforcement officer and should therefore be made available for public inspection and copying under the ORA. *Id.* § 24A.8(A)(10). As more than ten days have passed since the defendant’s

initial appearance on February 3, 2021, in the above-captioned matter, the body camera footage should be made available for public inspection and copying in its entirety as it concerns 51 O.S. § 24A.8(A)(10)(b)(12)(a).

The State argues that release of the body camera footage 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,” but fails to articulate any specific reasons for this assertion beyond characterizing the footage as graphic and disturbing. *State’s Motion to Prevent Release of Video Evidence and 911 Calls*. Most cases where allegations of first degree murder are at issue involve evidence that may be graphic and disturbing. That viewers may find body camera footage to be graphic and disturbing is not a reason that release of the footage would materially compromise an ongoing criminal investigation, criminal prosecution or the right of an accused to a fair trial. 51. O.S. § 24A.8(A)(10)(b)(12)(a). Even if it was an acceptable rationale, the ORA already makes separate provision for recordings that may be explicit. For example, law enforcement agencies may redact or obscure specific portions of recordings that depict the death of a person or a dead body. *Id.* § 24A.8(A)(10)(b)(1). Instead, the State merely asserts that the body camera footage at issue may be used in the prosecution of this case. The State offers no further explanation as to how this potential use of the body camera footage would likely materially compromise their prosecution—the relevant standard at issue.

The State recognizes the public’s “clear interest” in this case and acknowledges the immediate, broad, and overwhelming publicity the incident has already received. The case will surely continue to command the attention of the public and the press, rightfully so. This tragic series of events has deeply affected the community and sent shockwaves far beyond. Spurred to action, the community has come together to organize fundraising efforts, vigils, and memorials.

The public has a right to information, such as the body camera footage, that would better inform their understanding of what took place on February 2, 2021. That right is guaranteed by the ORA. The public's clear interest is not outweighed by the interests of the party in this matter, especially where the parties have failed to articulate their interests. The court should therefore order that pursuant to § 24A.8(A)(10)(b)(12)(a) of the ORA, the body camera footage shall be immediately made available for public inspection and copying with no redactions or obfuscations of specific portions related to ongoing criminal investigations or this prosecution.

2. The court should deny the State's request to withhold the 911 calls as such a request by the State is without a proper basis in law.

The State cites 51 O.S. § 24A.8(A)(10)(b)(12) as authority for its request of this Court to approve an order prohibiting the public release of 911 calls regarding the above-captioned matter. However, the authority cited by the State deals only with “audio and video recordings from recording equipment attached to the person of a law enforcement officer.” *Id.* § 24A.8(A)(10). This provision of the ORA is relevant for recordings like body camera footage and does not apply to 911 calls. Other provisions of the ORA would likely require law enforcement agencies to make available for public inspection and copying 911 calls as “radio logs” or “facts concerning the arrest.” *Id.* §§ 24A.8(A)(2), 24A.8(A)(4). These provisions concerning 911 calls are separate from the portion of the ORA that deals with things like body camera footage. *Id.* § 24A.8(A). Accordingly, the procedure contemplated in 51 O.S. § 24A.8(A)(10)(b)(12) regarding redacting or obfuscating specific portions of body camera footage that contain information that would materially compromise an ongoing criminal investigation or prosecution do not apply to 911 calls. The Court should therefore deny the State's request to withhold the 911 calls from public release as the State's request is before the Court without a proper basis under the ORA.

CONCLUSION

For the aforementioned reasons, the Court should deny the State's Motion to Prevent Release of Video Evidence and 911 Calls.

Respectfully submitted,



Kathryn E. Gardner, OBA #33509
Reporters Committee for Freedom of the Press
110 S. Hartford Ave., Ste. 2526
Tulsa, OK 74120
T: (918) 255-0060
kgardner@rcfp.org
Counsel for Muskogee Phoenix

CERTIFICATE OF DELIVERY

I do hereby certify that on the date of filing, I delivered a full, true and correct copy of the above motion to Orvil Loge, counsel for the state, and Gretchen Mosley and Ben Hilfiger, counsel for the defendant.

_____ KG