

**IN THE DISTRICT COURT IN AND FOR CARTER COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,)
)
)
)
Plaintiff,)
)
vs.)
)
BRANDON DINGMAN,)
)
)
)
Defendant.)

**Case No. CF-2020-222
CF-2020-221**

**MOTION TO DISQUALIFY CARTER COUNTY DISTRICT ATTORNEY’S OFFICE
AND FOR OTHER RELIEF INCLUDING DISMISSAL OF THE INFORMATION**

COME NOW Defendants Brandon Dingman (“Dingman”) and Joshua Taylor (“Taylor”), by and through undersigned counsel, Shannon McMurray and Warren Gotcher, pursuant to Rules 1.8(b), 3.7 and 3.8(a), *Oklahoma Rules of Professional Conduct*, 5 OKL. ST. APPX. 3-A, the Fifth Amendment of the United States Constitution under the authority of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), . In the present matter the newly discovered evidence amounts not only to a Brady violation and under *Giglio v. United States*, 405 U.S. 150 (1972). In *Giglio* the State never reveals a benefit for testifying the alleged affiant was to receive, an issue worthy of dismissal. Defendant would also point to constitutional rights violations under the Fourth, Fifth, Sixth Amendment as incorporated into the States by the Fourteenth Amendment, Brady and Giglio violations, violations to ethical rule 3.8 (a), (d) and (h) by the state

In the present matter the State endorses David Duggan (‘Officer Duggan’) due to his “. . . recollection of the events of the night in question. . .” but has failed to disclose that that the prosecutor in this matter, Craig Ladd (‘DA Ladd’), failed to disclose that if Officer Duggan resigned his job DA Ladd would agree not to charge Officer Duggan as a co-Defendant for the

murder of alleged victim Jared Lakey ('alleged victim Lakey'). Oklahoma common law, as well as the inherent supervisory powers of this Court, to file their First Motion to Disqualify Prosecutor.

In support thereof, Defendants Dingman and Taylor state as follows:

1. On July 1, 2020, the State of Oklahoma, by and through the Carter County District Attorney's Office, filed its Information charging Defendants Dingman and Taylor with Murder in the Second Degree.
2. Prior to the date of the filing of the Information, a meeting was held among Carter County District Attorney Craig Ladd ("Ladd"), Assistant District Attorney Mark Saunders ("Saunders"), and David Duggan ("Duggan"), a Carter County Deputy Sheriff who was involved in the incident leading to the filing of the instant matter.
3. This meeting was surreptitiously recorded by Duggan; the recording has been transcribed and the transcription thereof is attached to this Motion. *Df's Ex. No. 1.*
4. At that meeting, Ladd, Saunders and Duggan discussed the use of force incident which is the subject of this case.

I. Undisclosed Plea Bargain in Violation of *Brady*.

5. During the exchange, Ladd stated to Duggan Ladd's willingness to enter into a plea deal with Duggan stating, "That you were, you know, unknowingly a participant in this deal." *Df's Ex. No. 1, Ts., 5:24-25.*
6. Ladd further stated, "I know I can look at them (family of decedent) and say, hey, I'm going to cut Duggan a break, but if you were to resign from the Sheriff's Department. . . I know I could do that." *Df's Ex. No. 1, Ts., 6:5-7.*
7. This conversation, as recorded by Duggan, was not provided to counsel for Defendants Dingman and Taylor until it was revealed pursuant to a discovery request in a parallel civil

case filed in the Eastern District of Oklahoma Federal District Court, Case No. 20-cv-00152-RAW; the existence of this conversation, which included Ladd's stated misgivings (to Duggan) regarding probable cause pertaining to the Second Degree Murder charge, was unknown to Defendants until the substance thereof was provided in the civil case.

8. Counsel for Defendants requested Ladd turn over his copy of the recording in a July 7, 2021 motion for specific discovery; Ladd did not provide the recording, as requested, until August 13, 2021 to provide said recording, leading to the inference that Ladd would not have revealed his communication with Duggan without it being made available by Duggan.
9. In *Brady v. Maryland, supra*, the Supreme Court held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. at 87.
10. The 10th Circuit in *U.S. v. Burke* 571 F.3d 1048, 1054 (10th Cir. 2009), stated, "It would eviscerate the purpose of the *Brady* rule and encourage gamesmanship were we to allow the government to postpone disclosures to the last minute, during trial." Additionally, the court added "the belated disclosure of *Brady* material 'tend[s] to throw existing strategies and [trial] preparation into disarray.' It becomes 'difficult [to] assimilate new information, however favorable, when a trial already has been prepared on the basis of the best opportunities and choices then available.'" *Id.* (citing *Leka v. Portuondo*, 257 F.3d 89, 101 (2d Cir. 2001)). The court also noted, "If a defendant could never make out a *Brady* violation on the basis of the effect of delay on his trial preparation and strategy, this would create dangerous incentives for prosecutors to withhold impeachment or

exculpatory information until after the defense has committed itself to a particular strategy.” *Burke*, 571 F.3d at 1054.

11. Ladd’s refusal to comply with the *Brady* rule has substantially impaired counsel’s ability to adequately prepare their defense, with disclosure of this new and highly relevant material coming to light only as a result of an ongoing civil case around the same issues presented to this Court. This delay falls squarely within the reasoning for the trial court’s discretion to remedy such flagrant usurpations of well-established law.
12. The 10th Circuit notes the trial court has broad discretion in remedy for such a delay as in Ladd’s intentional withholding of relevant information from the Court, stating, “ Where the district court concludes that the government was dilatory in its compliance with Brady, to the prejudice of the defendant, the district court has discretion to determine an appropriate remedy. . . The choice of remedy is in the sound discretion of the district court.” *Burke*, 571 F.3d at 1054. The court should find that the Mr. Ladd’s intentional withholding of *Brady* material deprived the Defendants of due process and that such misconduct warrants disqualification of Ladd and Saunders, as well as any other member of the Carter County District Attorney’s Office; the appropriate remedy is the appointment a special prosecutor to the case.

II. Admission by Ladd of Lack of Probable Cause in Violation of RPC 3.8 (a).¹

¹ The Court set bond at \$250,000 and placed the Defendants on house arrest as well as an ankle monitor severely infringing on their liberty. Had the Court known of this under the table agreement and Ladd’s own questioning of his charging decision most certainly the bond and restrictions would have been much different.

13. Later in the conversation Ladd, in speaking about Mr. Dingman and the other involved officer stated, "I don't know that these guys were trying to be malicious, they are very poorly trained." *Df's Ex. No. 1, Ts., 6:5-7.*
14. OUJI-CR 4-91 (Murder in the Second Degree), defines the required element of "depraved mind" as "engag[ing] in imminently dangerous conduct with **contemptuous** (emphasis added) and reckless disregard of, and in total indifference to, the life and safety of another."
15. In admitting he doesn't know whether they were trying to be "malicious," Ladd uses language synonymous with the jury instruction definition of Depraved Mind: "contemptuous." The words "contemptuous" and "malicious" are so similar as to show the state of mind of Ladd as lacking the belief that there was probable cause to charge Defendants Dingman and Taylor with the crime alleged in this case. This is a rare circumstance where the Court is able to hear the lack of confidence that there is probable cause to charge the alleged crime, and directly from the District Attorney himself, who, while verbalizing his lack of conviction regarding the charge, wishes to try law enforcement officers for murder. The court should find that Ladd lacked probable cause to charge the Defendants with the crime alleged, in derogation of his obligations under RPC 3.8 (a).²

III. Ladd Makes Himself a Material Witness to the Case Barring Him from Representing a Party in the Case Under RPC 3.7(a).

² Rule 3.8(a) asserts, "The prosecutor in a criminal case shall . . . (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."

16. By the admission of his belief, "I don't know that these guys were trying to be malicious, they are very poorly trained," Ladd makes himself a material witness to the case. *Df's Ex. No. 1, Ts., 6:5-7.*

17. OK ST RPC 3.7(a):

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

18. Ladd has described the actions of Defendants Dingman and Taylor as not being "malicious." The word "malicious" and "contemptuous" have such similar meaning that Merriam Webster lists them as synonyms. As previously stated OUJI-CR 4-91 defines the "depraved mind" element with such similar language to Ladd's as to lead a reasonable person to believe he lacked the belief there was probable cause for the alleged crime to be charged. It stands to reason that it is a vital fact for the jury that the District Attorney prosecuting this case did not have probable cause to charge Defendants Dingman and Taylor with the alleged crime to begin with. Thus, he is a necessary witness under RPC 3.7 and should be disqualified.

19. Both Defendants have Craig Ladd listed as a witness for the upcoming trial. Further, Duggan's civil attorneys have identified Ladd as a witness in the civil matter now pending before United States Judge Ron White in the Eastern District of Oklahoma, a matter in which the underlying facts will have a more than substantial relationship with the instant criminal case.

IV. The Implication of Representation of Duggan by District Attorney Ladd Creates a Conflict under RPC 1.8 (b) or alternatively RPC 1.18 (b) for Ladd's Entire Office.

20. Subsequently, Ladd acknowledged the implication that he represents Duggan in the current case when he stated, "And their (family of decedent) lawyer is going to be with them today. But I can look him in the eye – he's going to say, well, wait a minute? Aren't you Chris Bryant's legal advisor? So, essentially, you're a lawyer for David Duggan in a sense, because he works under Chris Bryant, and so, that's where it gets a little muddled." *Df's Ex. No. 1, Ts., 6:25-27; 7:1-3.*
21. District Attorney Ladd does not comprehend that the relationship he has impliedly created by the language, "that's where it gets a little muddled," leaves a non-lawyer, Duggan, to decipher whether Ladd does or does not represent him after he (Ladd) represented that it would be the view of another lawyer (lawyer of the family of decedent) that Ladd *does* represent Duggan.
22. Additionally, Ladd goes on to discuss the medical examiner's report, which implicates Duggan's use of force as a potential cause of death. During the exchange, Ladd further solidifies the lawyer-client relationship by using cohesive language which combines himself and Duggan into one party stating ". . . I'm telling you, you know, the M.E. ain't helping *us* (emphasis added) out a whole lot." *Df's Ex. No. 1, Ts., 6:12-13.*
23. The use of "us" clearly implies Duggan and Ladd are on the same side, as opposed to Ladd being impartial as should be the case, because Duggan is in no jeopardy regardless of the medical examiner's position on the cause of death.
24. Under RPC 1.8 (b):

“A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.”

25. Ladd clearly implied he was representing Duggan in this matter by leading a non-lawyer (Duggan), by the aforementioned statements, to believe such was the case. Because Ladd has made himself a witness to the case and will potentially, or even necessarily, be required to “use information to the detriment of” Duggan, Ladd should be disqualified from the case.

26. However, even if the Court disagrees that an official lawyer-client relationship was properly formed triggering rule 1.8 (b) the Court should find, in the alternative, and at a minimum, that a prospective client relationship was formed under RPC 1.18 (b):

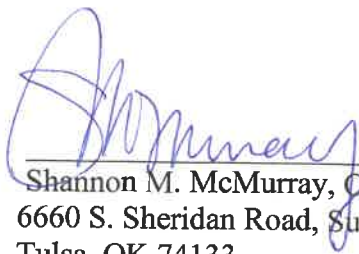
“Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.”

27. For the reasons stated for disqualification under rule 1.8(b) above, Ladd and his entire office should be disqualified on this basis.

PRAYER FOR RELIEF

WHEREFORE premises considered the Defendants pray the Court grant the requested relief and any and all further relief deemed fair and just, including but not limited to disqualification of Craig Ladd and the entire Carter County District Attorney’s Office, as well as dismissal of the Information.

Respectfully Submitted,



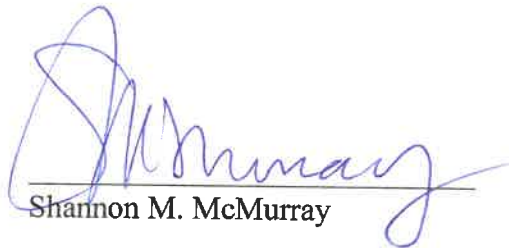
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CERTIFICATE OF MAILING

I, Shannon McMurray, hereby certify that on the 29 day of sept, 2021, a true and correct copy of the foregoing document was hand-delivered, filed, and/or mailed via U.S. mail to the following:

Craig Ladd
Clerk of the Court
Judge Morris



Shannon M. McMurray

TRANSCRIPT OF CONVERSATION

BETWEEN DAVID DUGGAN AND CRAIG LADD

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DD: David Duggan, Carter County Deputy Sheriff

CL: Craig Ladd, Carter County District Attorney

MS: Mark Saunders

[Recording begins with talk between David Duggan and office staff
- not transcribed]

[0:01:50.2]

CL: Hey, David.

DD: Hey.

CL: what do you say, man? You doing all right?

DD: Oh, yeah. How are you?

**CL: Doing all right. Mark Saunders (phonetic) will sit in with
us.**

DD: Oh. (laughing)

MS: Hey, buddy, what's up?

CL: Always like having a witness.

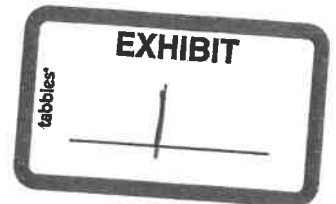
DD: Oh, yeah.

MS: If you hear me coughing, I'm not --

DD: Hey, I'm the same way. I've got allergies.

MS: Oh, is that --

DD: Yeah. That's what mine is.



1 MS: By the way, I've got the COVID-19 antibodies in my blood, so
2 I've had that shit.

3 CL: He's already had that shit. I was in the room with him and
4 he was coughing, like, incessantly. Its like, kind of making
5 me nervous back before COVID.

6 DD: Yeah.

7 CL: I thought, golly --

8 MS: I'm pretty sure that's what, I remember there were two other
9 times I had some stomach issues.

10 CL: Yeah.

11 MS: One time, a fever, one night, and then, I told you it was
12 after I had done my homemade stir fry each time.

13 CL: Yeah.

14 MS: Couldn't have been that. I'm thinking it's the COVID.

15 CL: Those antibodies, only that stir fry would cause antibodies.

16 MS: Well, no.

17 DD: well, you know, stir fry is kind of Chinese.

18 CL: That's true.

19 MS: Mine is kind of shitty. It made me sick both times.

20 (laughter)

21 CL: You told me last night that you had read the M.E.'s report?

22 DD: I have not read the M.E.'s report.

23 CL: Okay. well, shit, I've got it in here somewhere.

24 DD: I haven't seen anything on the whole -

25 CL: You haven't seen dash cam or body cam?

26 DD: No.

27 MS: Oh, wow.

- 1 DD: I haven't seen body cam, none of that. And once, talking to
2 Chris and stuff about him, I told him I didn't want to see
3 it until all this come out and everything because I didn't
4 want him to construe my memory of what happened or anything
5 like that.
- 6 CL: Okay. What do you think of the probable cause of death down
7 there (phonetic)?
- 8 DD: Okay.
- 9 CL: So, I called - okay, here's what's coming. Its taking forever
10 because, like I was telling you last night, OSBI took seven
11 months and we had to get a use of force expert to look at
12 everything.
- 13 DD: Uh-huh (indicating affirmatively).
- 14 CL: And it took me a while to get Dr. Pfeiffer on the phone, and
15 I said, what do you mean by neck restraint - because what the
16 video would show, the dash cam and body cam, is that they lit
17 him up like a Christmas tree. They hit him about fifty times
18 with a taser.
- 19 DD: I didn't know how many, but, I've heard it was a lot.
- 20 CL: Its horrible.
- 21 DD: Yeah.
- 22 CL: Its hard to watch. And then you get there and you did what
23 you did. But, then, I don't know if you remember this or
24 not, but, after he is breathing, after you, he kind of wakes
25 up after you choke him out and they get him handcuffed, and
26 he's sitting there on the ground with his feet out here
27 (indicating) and even for me, I'm five foot nine, weigh about

- 1 two hundred pounds, if I had my feet out and I was bent over,
2 it would be hard to breathe, but this guy, he's so big --
- 3 DD: Uh-huh (indicating affirmatively).
- 4 CL: --he's having labored breathing and I think its Dingman that
5 keeps putting his hand on the back of his neck, you know,
6 until he kind of quits breathing (phonetic) --
- 7 DD: See, I didn't see any of that, because right after I get him
8 woke up and everything and make sure he's fine, I go to my
9 car --
- 10 CL: Right.
- 11 DD: --and I call in to dispatch and let them know everything -
- 12 CL: Right.
- 13 DD: --to log that I had used a neck restraint on him, log
14 everything, and then that's, I was sitting in my car when
15 they came and told me he quit breathing.
- 16 CL: Well, and that's what I was wondering. I asked Dr. Pfeiffer,
17 have you seen the body cam and dash cam? He said, yes, I
18 have.
- 19 DD: Uh-huh (indicating affirmatively).
- 20 CL: And so, I said, so, that factored into your findings? He
21 said, yeah. I said, when you say neck restraint, what exactly
22 are you talking about, because its kind of a --
- 23 DD: Yeah, because it doesn't say neck restraint, but it just
24 says, uh, of course, the taser and restraint.
- 25 CL: Yeah.
- 26 DD: And its --
- 27 CL: Which is kind of ambiguous.

- 1 DD: Its fraught (phonetic).
- 2 CL: I said, what does that mean? He said, well, I'm talking
3 about the neck restraint. I said, specifically, what? He
4 said, I'm talking about the choke hold that the deputy did.
5 I said, okay. And, I, he didn't mention Dingman doing that.
6 I thought maybe he was talking about that or he was just
7 rolling restraint in with the tasing.
- 8 DD: Uh-huh (indicating affirmatively).
- 9 CL: Because that's a form of restraint, I would say.
- 10 DD: Yeah.
- 11 CL: But, no, he said, there's two, there's two things. He said,
12 the tasing and the choke hold. I said, okay. But, I'm in a
13 little bit of a predicament because I don't - the smart thing
14 for me to do politically would be just to punt it to some
15 other DA, say it's too close to home. But, I hate dumping
16 my stuff that happens in my jurisdiction on somebody else.
17 I want to be the one --
- 18 DD: Yes.
- 19 CL: --to take care of it. I think, you know, to me, there's some
20 extenuating circumstances on behalf of you, because I feel
21 like you were misled and if you saw the tape, you would be
22 pissed.
- 23 DD: That's what I've heard.
- 24 CL: You would be. That you were, you know, unknowingly a
25 participant in this deal and --
- 26 DD: Uh-huh (indicating affirmatively).

1 CL: --but, Dingman and Josh were not honest with you, in my
2 opinion, and I think that's enough to, to kind of get you off
3 the hook criminally. But, I know I can say that, and I'm
4 meeting with the decedent's family at five this afternoon.
5 I know I can look at them and say, hey, I'm going to cut
6 Duggan a break, but, if you were to resign from the Sheriff's
7 Department --

8 DD: Uh-huh (indicating affirmatively).

9 CL: --I know I could do that.

10 DD: Yeah.

11 CL: And I could say, hey, look, he's already, he's said, you know
12 what, I'm resigning, I'm moving on, but, I'm telling you, you
13 know, the M.E. ain't helping us out a whole lot.

14 DD: No, it don't sound like it.

15 CL: (laughs) And so, but, I, I don't mind, I've got a lot of
16 discretion here, David --

17 DD: Uh-huh (indicating affirmatively).

18 CL: --putting it in the gray areas, to say, you know what? David
19 is no longer with the Sheriff's Department, I can look at
20 them and say --

21 DD: Yeah.

22 CL: --hey, look, he's resigned the spot and if you all want to
23 sue him civilly, sue him civilly, but --

24 DD: They already are.

25 CL: I know they are. I know they are. And their lawyer is going
26 to be with them today. But, I can look him in the eye - he's
27 going to say, well, wait a minute? Aren't you Chris Bryant's

- 1 legal advisor? So, essentially, you're a lawyer for David
2 Duggan in a sense, because he works under Chris Bryant, and
3 so, that's where it gets a little muddled.
- 4 DD: Yeah.
- 5 CL: And I'm just going to say, hey, look, if you've got a problem
6 with it, oh, well. He's resigned, I think that's sufficient,
7 and I think that - and I've already hinted to him that, you
8 know, I think if David just walks away, then, if the other
9 two guys, David --
- 10 DD: Uh-huh (indicating affirmatively).
- 11 CL: --and don't tell anybody, but, I mean, its coming.
- 12 DD: Yeah.
- 13 CL: They've put me in a spot where I've got to do something to
14 them.
- 15 DD: I understand that.
- 16 CL: And frankly, after watching the video, I don't really have a
17 problem doing something to them. But, you --
- 18 DD: That's why I haven't watched the video yet because I didn't
19 want to --
- 20 CL: You don't, it, I wouldn't want to watch it.
- 21 DD: I'm going to have to --
- 22 CL: You will.
- 23 DD: --because I've already had a lawyer, you know, appointed to
24 me by the county for the lawsuit that I knew nothing about
25 until they called me.
- 26 CL: You will, you will in the civil suit, you'll have to watch
27 it, and I'm just telling you, its going to piss you off.

- 1 DD: That's what I've been told.
- 2 CL: They drew you into that.
- 3 DD: Yeah, that's what I've been told is that they, there was a
4 lot of stuff that happened that I knew nothing about.
- 5 CL: Yeah.
- 6 DD: Like I said, I don't know the, all the details, but, that's,
7 that's what I've been told by people, that there is a lot of
8 stuff that happened that you didn't know anything about when
9 you showed up, and I'm like, okay.
- 10 MS: Did you believe he was combative when you got there?
- 11 DD: What - in my mind, what had, when I sat there and heard the
12 whole thing, I mean, I was, I was going home. I got off at
13 midnight, or was supposed to. I was a mile and a half from
14 my house.
- 15 MS: Oh, man.
- 16 CL: (Unintelligible)
- 17 DD: Yeah. I was a mile and a half from the house when they start
18 yelling, you know, for help. And what I'm thinking the whole
19 time as I'm headed that way is, the way they sound, they were
20 in a fight for their life, you know? And, of course, I hear
21 on the radio, I hear them, that they, you know, they deployed
22 the taser twice is all I heard on the radio.
- 23 CL: They were winded, I think, from pulling the trigger so many
24 times.
- 25 DD: And see, they kind of sounded like it, but, I mean, that's
26 what I heard was, you know, they had tased him twice, and
27 then they were still calling for help. So, I'm thinking,

1 okay, they're in a fight. Well, when I get there, you know,
2 I come running up and I see they've got, I mean, he's sitting
3 on the ground, but they've got their tasers on him and I
4 didn't know what had happened.

5 CL: Right.

6 DD: And they're, they, uh, I can't remember exactly what they
7 said, something to me.

8 CL: They said he was being combative or had been fighting or -

9 DD: Yeah, it was something. I can't remember exactly what, so,
10 that's when I seen the opportunity, because when I first run
11 up there, I had my PR24, uh, you know, baton.

12 MS: Night stick.

13 CL: Yeah.

14 DD: And I had run up there with it because I thought they were
15 in a fight, and then, I see it that, and I'm like, okay, I'm
16 not going to go beating on him right now with this. There's
17 no point in hitting him, you know?

18 CL: He was seated, yeah.

19 DD: Yeah, and so, I went and threw that back in the car real
20 quick and then that's when I come up behind him and I figure,
21 well, you know, if I can sneak up behind him, because he had
22 the headlights of that one unit right here (indicating) where
23 he couldn't see behind him. I mean, he was kind of facing
24 catty-cornered away from it, so the lights are right here so
25 he wasn't seeing anything behind him. That's when I thought,
26 you know, I can just run up right quick and grab him, we'll
27 get him cuffed up and it'll be over with. You know? Four

- 1 or five seconds and we're done as opposed to - I was worried
2 when I got there that if I just went up and tried to grab him
3 or jump on him to cuff him or do anything that it would be a
4 fight, would be on, because he was big. He's a big boy.
- 5 CL: Yeah, he was five foot nine, three and a half.
- 6 DD: Yeah. He was a pretty big boy.
- 7 MS: Uh-huh (indicating affirmatively).
- 8 DD: But.
- 9 MS: What a stroke of luck, huh?
- 10 DD: It --
- 11 MS: A mile from your house.
- 12 DD: That's what I, I go back every day and I'm like, you know, I
13 wish I'd just kept going to the house.
- 14 MS: You can't do that, though.
- 15 DD: No, and that's when I tell myself, you know, every, I've
16 never been one that's done that. Every time I've ever heard
17 an officer hollering for help, you know, or anything, I'm
18 always the first, you know, to try and go help.
- 19 MS: Even off-duty, I've done it.
- 20 DD: I have, too.
- 21 MS: And I've had my cars damaged. (unintelligible). Leroy got
22 in a bind, I went to back him up. I was off duty with my
23 then-wife. I had bought a brand-new car and that fat bitch
24 ran off the yard down an incline and into the back of my car,
25 just (makes smashing noise).
- 26 CL: Oh, no.
- 27 DD: Oh.

- 1 CL: You were the first person to put a hand on him.
- 2 DD: Yes. As far as I know. That's what I've been told. I didn't
3 - I thought -
- 4 CL: Its true.
- 5 DD: And see, that's what -
- 6 CL: They didn't put hands on him.
- 7 DD: They told me that I was the first one that put hands on him.
- 8 MS: Yeah.
- 9 DD: And I've also heard that its in the body cam footage, that
10 they're sitting there, when they hear me go en route, they're
11 sitting there the whole time going, wait on him to get here,
12 wait on him to get here. I've heard that. I don't know if
13 that's true or not, but -
- 14 CL: I don't remember but that wouldn't surprise me.
- 15 DD: But, that's, somebody told me that they had heard that in the
16 body cam. They kept saying, wait on Duggan to get here, wait
17 on Duggan to get here. And when I heard that, I'm like --
- 18 MS: That was setting you up to fail, bro.
- 19 DD: Yeah, and then I didn't realize - after I got done and got
20 him woke up is when they told me they'd used four cartridges
21 on him. So, I'm thinking, at this point, okay, they went
22 from two tasings to now they've tased him four times. I
23 didn't realize it was as much as what you said.
- 24 CL: Yeah, almost, almost four minutes' worth.
- 25 MS: 55 tases, wasn't it?
- 26 CL: I think it was 52.
- 27 MS: 52, okay.

- 1 DD: Gah.
- 2 CL: One had 20 on it and one had 32.
- 3 DD: Holy shit.
- 4 CL: It is hard to watch.
- 5 DD: I don't understand tasing - which, I don't have a taser, I'm
6 not certified on a taser or anything like that, so, but, I
7 never have had one.
- 8 CL: I don't know that these guys were trying to be malicious,
9 they are very poorly trained but -
- 10 DD: They are. I'll give them, I will say that.
- 11 CL: But, golly, I mean, I just don't, I mean, it is, its offensive
12 to your sense of humanity to see them treat a human being
13 like that. I would, I would assume after, you know, three
14 or four tases, that even if your brain is trying to send a
15 signal to your hands to put them behind your back, it might
16 be hard to do that.
- 17 DD: It may. Like I said, I, I've been tased once, but I've never
18 -- not 52 times, which, 52 times would kill me and I'm not
19 5-9, 350.
- 20 CL: If you'll, if you'll give me your word you'll resign, I will
21 just say no, no, nothing filed on him. Are you comfortable
22 doing that?
- 23 DD: I am. Could I have a day to think about it and talk about
24 it to my wife and everything and then --
- 25 CL: You can.
- 26 DD: That way I'm not --
- 27 CL: You got my cell phone?

1 DD: Yeah.

2 CL: And I hate to put you in that position, but, really, I'm
3 trying to help you out.

4 DD: Oh, I understand.

5 CL: Because the M.E. ain't trying to help us.

6 DD: No, it doesn't look like it.

7 CL: And society, I mean, I think down here we're in pretty good
8 shape in law enforcement, but --

9 DD: But, its, its kind of one of those things, honestly, I've
10 been kind of thinking about that with everything going on,
11 too, its kind of getting to the point its not really worth
12 it anymore, hardly.

13 CL: No.

14 MS: No shit. I've got about a year and a half left, maybe two.

15 CL: It is so frustrating.

16 MS: Unless he threatens to file charges on me and makes me stay
17 for a couple more years, but -

18 CL: (laughs) I think I can explain --

19 DD: Yeah.

20 CL: I think I can explain to the family and to the public. You
21 know, I just think Duggan's part, there were a lot of
22 extenuating circumstances for Duggan that are not present for
23 Dingman and Taylor. Its just, I've been in situations, not
24 completely analogous to this, but, I just know that sometimes
25 when a police officer is accused of doing something, if they
26 just walk away, it's a lot easier to explain, hey, there's
27 been remedial measures taken or whatever.

1 DD: Yeah.

2 CL: If you, if you decide something before 5:00, send me a text.

3 DD: Okay.

4 CL: Because I'm meeting with them at five.

5 DD: Okay. Yeah.

6 CL: That would make it a little easier for me. And I hated, I
7 didn't, we've been, I've been trying to meet with the
8 decedent's family and I had this in mind about doing it this
9 way, but I didn't want to burden you too far in advance.

10 DD: Uh-huh (indicating affirmatively).

11 CL: And then we had some last-minute changes on Friday, so how
12 about Monday at 5, and I was like, crap, I've got to talk to
13 David first.

14 DD: Yeah. That's why it kind of threw me off last night when you
15 texted me. I was like, okay.

16 CL: Well, all day yesterday, I kept thinking, I've got to let
17 Duggan know I need to meet him tomorrow.

18 DD: Yeah.

19 CL: And I looked up and its 9:15. I was like, crap.

20 DD: I was awake.

21 MS: How old are you?

22 DD: 36.

23 MS: Good Lord. You're young, dude.

24 DD: I know.

25 MS: If you want to do another, like me, I'm starting year 38. I
26 can't imagine being a cop --

- 1 CL: Well, I'm not saying, Dave, you can't be serving somewhere
2 else. These other two guys, I'm going to try to make sure
3 they're never cops again.
- 4 DD: Yeah.
- 5 MS: Yeah, and I just can't imagine why, you know, if I was your
6 age, I could find a lot of career choices that -
- 7 DD: Well, I, you know, I started doing this, technically, I guess,
8 when I was 21 is when I got into law enforcement.
- 9 MS: Did you?
- 10 DD: I went to the Highway Patrol.
- 11 MS: Yeah, I remember you were a Trooper.
- 12 DD: So, that's what I started then and its just always been
13 something.
- 14 MS: Yeah. That's the way I was. I was 21 when I started.
- 15 DD: Yeah.
- 16 MS: And I'm, I'm glad I did, but if I was a young man, I wouldn't
17 get back in it, because -
- 18 DD: Oh, yeah.
- 19 MS: --God, things are so - I've never seen things like this.
- 20 DD: I got out of it for four years -
- 21 MS: Yeah, you went into the oilfields, didn't you?
- 22 DD: I went to the oilfield for a little bit and then did some
23 other stuff once it crashed, but, and then, I decided back
24 in 2017 is when I decided I was going to -
- 25 MS: Get back.

1 DD: You know, I'm going to go back, and that's when I went to
2 Lone Grove for about four months and then Chris hired me.
3 So.

4 MS: Wow.

5 DD: Yeah, I'll let you, I'll probably let you know something by
6 five today. Okay.

7 CL: I'm sorry.

8 DD: Hey, it is what it is. I mean --

9 CL: Have you ever noticed when somebody says it is what it is,
10 its never a good thing?

11 (laughter)

12 MS: Best of luck to you, bro, with whatever happens.

13 DD: I appreciate it. Yep. Thank you all.

14 CL: All right, David. Just hit that green button to the left.

15 DD: Okay, thank you.

16 [0:17:23.8]

17 [0:17:42.1]

18

19 END OF RECORDING

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C E R T I F I C A T E

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STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

SS:

I, SUSAN M. HOLLAND, Certified Legal Transcriptionist, do hereby certify that the foregoing audiotaped recording was transcribed by me and that the typewritten transcript is a full, complete and verbatim transcription of the audio recording, to the best of my ability.

I further certify that I am not of counsel or attorney for any of the said parties in the foregoing proceedings, nor otherwise interested in said action.

WITNESS my hand this 8th day of September, 2021.

/s/ Susan M. Holland

SUSAN M. HOLLAND, CLT



**IN THE DISTRICT COURT IN AND FOR CARTER COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CF-2020-222
)	CF-2020-221
BRANDON DINGMAN,)	
JOSHUA TAYLOR,)	
Defendants.)	

**DEFENDANTS RESPONSE TO STATE’S MOTION FOR LEAVE TO AMEND
INFORMATION AND COMBINED MOTION TO DISMISS**

COMES NOW, the Defendants, Brandon Dingman and Joshua Taylor by and through their attorneys of record Shannon M. McMurray and Warren Gotcher in the above styled and numbered case, pursuant to law, and moves the Court to Dismiss this matter as an issue at law.

STATEMENT OF FACTS

In the present matter Officer Dingman is alleged to use a taser in the line of duty and exceed the amount of force necessary to subdue the Defendant. Officer Dingman and another Defendants are alleged to both deploy their taser which if believed would violate the Department’s use of force allowed. That said, after the deployment of the two Taser’s alleged victim Lakey is still alive. That is until former officer Duggan put alleged victim Lakey in a restraint hold thereby by fact or belief killing alleged victim Lakey who succumbs within a couple of minutes following the approximately forty-two (42) second choke hold.

Defendant’s expert will testify that in his opinion and to a reasonable degree of medical certainty the Taser’s did not cause Lakey’s death. District Attorney Craig Ladd’s (“Ladd”) own expert opinion states that Lakey’s death could have already been in progress when officers arrived

and encountered Lakey, or it “could” have been brought on by tasing, neck restraint or both. This proves that alleged victim Lakey died of on or a combination of any of the following, but none can make a causal link proper for proof beyond a reasonable. The State’s own expert agrees he cannot say to a reasonable degree of medical certainty what triggered Lakey’s death. Whether it be Lakey’s already extremely fragile health, the taser or the neck restraint or a combination of both or all three.

ARGUMENT

Defendant’s expert and the State’s expert both agree that it is not possible to determine beyond a reasonable doubt that the taser was the cause of Lakey’s death. As such it is not possible to say that the probable cause of the alleged victim Lakey’s death is a result of the Defendants, conduct. Ladd knows well from his own experts opinion that he is “. . .prosecuting a charge that the prosecutor knows is not supported by probable cause. . .”5 O.S. (1-a)(3.8)(a). see email from the State’s expert attached as *exhibit “1”*

This fact is made more obvious as Ladd has on his own motion moved to ‘Amend’ the information post Preliminary Hearing and just weeks before trial to what he calls a ‘lesser included.’ It should be noted that currently Defendants are charged with Murder 2nd Degree and Ladd wishes now on his own motion past District Court Arraignment to amend/add alternate charges of ‘Assault and Battery with a Dangerous Weapon: to wit a taser. Ladd erroneously calls the charge a ‘lesser included.’ In fact, none of the elements of the crimes are the same, by committing the greater one does not necessarily commit the lesser, and as such Defendants should be entitled to a new preliminary hearing if not straight outright dismissal based on these facts.

The State wishes to now allege a 'lesser included' but in fact matches no, zero elements to the charge presented at Preliminary Hearing. As such the State may dismiss the charges and refile under the 'correct' statute. Without such a determination by the State the Court only has two viable options 1) outright dismissal or 2) remanding for a new Preliminary Hearing.

The elements of Second Degree Murder require:

First, the death of a human;

Second, caused by conduct which was imminently dangerous to another/other person(s);

Third, the conduct was that of the defendant(s);

Fourth, the conduct evinced a depraved mind in extreme disregard of human life;

Fifth, the conduct is not done with the intention of taking the life of any particular individual.OUJI-CR 4-91

Distinguishably different from this instruction are those for the crime of assault or battery or assault and battery with a dangerous or sharp weapon **without justifiable or excusable** cause with the intent to do bodily harm. Assault and battery with a dangerous weapon requires the State prove:

First, (an assault)/(a battery)/(an assault and battery);

Second, upon another person;

Third, with a sharp/dangerous weapon;

Fourth, without justifiable or excusable cause;

Fifth, with intent to do bodily harm.

.OUJI-CR 4-12

Notice here the State now must prove intent to do bodily harm instead of intent to take a life, an intent never proven at Preliminary Hearing.

Likewise, the new non-conforming statute requires not a “. . . depraved mind in extreme disregard of human life. . .” but instead no “. . . justifiable or excusable cause. . .” Id and OUJI-CR 4-12. The third element requires in the current charges “conduct. . .” whereas the new alleged

offense requires the state instead prove the alleged taser “dangerous.” Id. Lastly charges one and two are most distinguishably different as well as previously all that was required was a “death” and “. . .imminently dangerous conduct. . .” Assault is imminent fear or imminent contact, and a battery is harmful or offensive touching. Neither element was required to be determined at Preliminary Hearing previously, denying Defendant Due Process and Equal Protection.

Further,, 21 O.S. §631 states: Lawful Use of Force Upon Another - Circumstances
To use or to attempt to offer to use force or violence upon or toward the person of another is **not** unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting such officer or acting by such officer's direction;

It is undisputed that Dingman and Taylor were acting under the color of law when they encountered completely naked and non-compliant Lakey on July 4, 2019.

Admission by Ladd of Lack of Probable Cause in Violation of RPC 3.8 (a).

In a recorded conversation between Ladd and Duggan along with ADA Saunders Ladd admits in speaking about Dingman and Taylor, “I don’t know that these guys were trying to be malicious, they are very poorly trained.” Df’s Ex. No. 1, Ts., 6:5-7. OUJI-CR 4-91 (Murder in the Second Degree), defines the required element of “depraved mind” as “engag[ing] in imminently dangerous conduct with contemptuous (emphasis added) and reckless disregard of, and in total indifference to, the life and safety of another.” In admitting he doesn’t know whether they were trying to be “malicious,” Ladd uses language synonymous with the jury instruction definition of Depraved Mind: “contemptuous.”

The words “contemptuous” and “malicious” are so similar as to show the state of mind of Ladd as lacking the belief that there was probable cause to charge Defendants Dingman and Taylor

with the crime alleged in this case. This is a rare circumstance where the Court is able to hear the lack of confidence that there is probable cause to charge the alleged crime, and directly from the District Attorney himself, who, while verbalizing his lack of conviction regarding the charge, wishes to try two law enforcement officers for murder letting a third go uncharged. The court should find that Ladd lacked probable cause to charge the Defendants with the crime alleged, in derogation of his obligations under RPC 3.8 (a).

Ladd goes on in the conversation to offer Duggan the benefit of escaping prosecution promising no charges if Duggan resigns and then endorses Duggan as a witness without disclosing the agreement to the Defendant's in violation of their constitutional rights. *See transcript attached hereto as exhibit "2"*

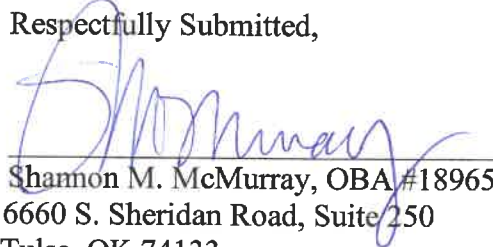
CONCLUSION

Defendants in the above matter has referenced facts worthy of dismissal. Ladd knows from expert opinion that it is not probable that Defendants committed the crime of Murder in the Second Degree with a 'Depraved mind. District Attorney Craig Ladd knows this and instead still wishes to proceed in violation of his own ethical obligations. Likewise, Ladd has violated his obligations as a witness/lawyer as he wishes to tamper with witness testimony by inducing or harassing witnesses to say as he wishes. DA Ladd has offered a 'deal' to a witness and failed to disclose such a 'benefit' to the defendant in violation of Giglio v. United States, 405 U.S. 150 (1972). The State has hidden this 'benefit' which is exculpatory evidence to the Defendant under Brady v. Maryland, 373 U.S. 83 (1963).

Based on the above-mentioned facts dismissal is the only proper remedy. As argued even the DA does not believe there is probable cause to allege the crime he is alleging and that is why

he is erroneously attempting to amend the information, a power he does not have the ability to undertake. Defendants pray the Court dismiss as a matter of law and any other relief that this Court should deem just and proper.

Respectfully Submitted,



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Shannon@klgattorneys.com
Attorney for Brandon Dingman

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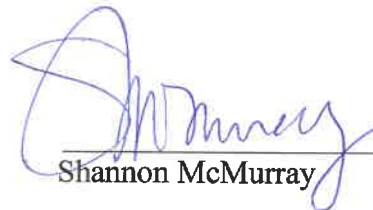
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the DAY OF FILING, a true and correct copy of the within and foregoing instrument, Motion for Discovery was mailed by first class mail, postage prepaid, faxed or hand-delivered to the following persons:

DA Craig Ladd

Carter County DA Office

Judge Morris



Shannon McMurray

RE: FW: [EXTERNAL] the materials on the tasing case

From: shannon@klgattorneys.com <shannon@klgattorneys.com>

Sent: Fri, Sep 24, 2021 at 7:17 pm

To: Ladd, Craig

Cc: warren@gotcher-beaver.com

I have discussed with Warren and we both object

Shannon McMurray

-----Original Message-----

From: "Ladd, Craig" <Craig.Ladd@dac.state.ok.us>

Sent: Friday, September 24, 2021 2:05pm

To: "shannon@klgattorneys.com" <shannon@klgattorneys.com>, "shelley@gotcher-beaver.com" <shelley@gotcher-beaver.com>

Cc: "Boone, Pamela" <Pamela.Boone@dac.state.ok.us>

Subject: FW: [EXTERNAL] the materials on the tasing case

Shannon and Warren,

Please see below for a summary of Dr. Paul Garabelli's thoughts as they pertain to the tasing incident central to the upcoming Dingman/Taylor jury trial. He will be listed as a potential witness for the State. After gaining a greater appreciation for some of the difficulties in proving causation of death given Lakey's pre-existing conditions, I am seriously contemplating seeking leave of court to file an Amended Information in the form of what is commonly referred to as "Alternate Counts". Specifically I would allege the Murder II charge as it is currently pled and add the alternative charge of "Assault and Battery with a Dangerous Weapon". I presume that neither of you would object to such an amendment but would appreciate you letting me know for sure.

Craig Ladd

District Attorney

District 20, State of Oklahoma

Carter, Johnston, Love, Marshall and Murray Counties

Carter County Annex #1

107 1st Street SW, Suite 1

Ardmore, OK 73401

580-223-9674

From: Garabelli, M.D., Paul J. <pgarabelli@okheart.com>

Sent: Wednesday, September 22, 2021 6:42 PM

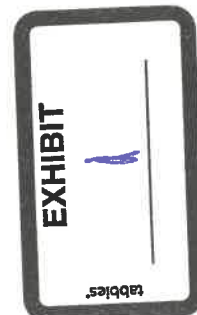
To: Ladd, Craig <Craig.Ladd@dac.state.ok.us>

Subject: RE: [EXTERNAL] the materials on the tasing case

Craig,

Thank you for providing me with the video and records for review. The video was disturbing to watch. The video shows Mr. Lakey with altered mental status. He was subdued by law-enforcement with multiple taser discharges and with a neck restraint. Several minutes after the neck restraint, he lost consciousness with respiratory arrest. CPR was initiated, asystole was noted on EMSA monitors, he was intubated, and he had return of spontaneous circulation with epinephrine. He developed bradycardia and then asystole for a second time, again responding to epinephrine. Upon arrival to the hospital, he had evidence of a specific type of a myocardial infarction for which a higher level of care was pursued. This type of myocardial infarction is called an ST-elevation MI for which very specific clot busting treatments can be delivered. Inclement weather limited medical care escalation and Mr. Lakey passed.

Asystole has multiple causes - affectionately called "The H's and T's" (hypovolemia, hypoxemia, hydrogen ions (acidosis), hypothermia, hyperkalemia, hypoglycemia, tablets (overdose), tamponade, tension pneumothorax, thrombosis (STEMI), thrombosis (pulmonary embolism), and trauma). I crossed out those that were excluded by information in the ME report or by ECG evidence. The remaining causes are those that were not crossed-out. These include either ingestion of a toxin, buildup of carbon dioxide (respiratory acidosis), low glucose (really unlikely), or STEMI (confirmed). A ST-elevation MI is the "coronary attack" that most people understand.



Mr. Lakey was altered when law enforcement arrived. It is possible that his medical condition was already deteriorating causing his altered mental condition. Mr. Lakey had ME evidence of "critical coronary atherosclerosis with approximately 75% stenosis of the distal LAD" and ECG evidence of an evolving myocardial infarction by both EMSA and hospital ECGs. The calcified description of the LAD lesion by the medical examiner suggests this was pre-existing. The excessive muscle in the left ventricle suggests this was also pre-existing, probably from high blood pressure and obesity. As in all STEMIs, something triggers the pre-existing lesion to "erupt" and cause a complete occlusion of the distal blood supply. A rise in normal stress hormones in the body can be this trigger. A stimulant or other toxin could have been his trigger leading to his MI, but the toxicology report on Mr. Lakey did not show the presence of any illicit substances.

Based on Mr. Lakey's weight and evidence of changes in the heart from hypertension, he was already at risk for a heart attack. However, assuming the toxicology report was normal, some combination of the events with law enforcement (tasing, neck restraint, or both) could have been enough of a stressor to trigger Mr. Lakey's STEMI and ultimate demise.

Paul

TRANSCRIPT OF CONVERSATION

BETWEEN DAVID DUGGAN AND CRAIG LADD

1

2

3

4 DD: David Duggan, Carter County Deputy Sheriff

5 CL: Craig Ladd, Carter County District Attorney

6 MS: Mark Saunders

7

8 [Recording begins with talk between David Duggan and office staff

9 - not transcribed]

10 [0:01:50.2]

11

12 CL: Hey, David.

13 DD: Hey.

14 CL: what do you say, man? You doing all right?

15 DD: Oh, yeah. How are you?

16 CL: Doing all right. Mark Saunders (phonetic) will sit in with
17 us.

18 DD: Oh. (laughing)

19 MS: Hey, buddy, what's up?

20 CL: Always like having a witness.

21 DD: Oh, yeah.

22 MS: If you hear me coughing, I'm not --

23 DD: Hey, I'm the same way. I've got allergies.

24 MS: Oh, is that --

25 DD: Yeah. That's what mine is.



- 1 MS: By the way, I've got the COVID-19 antibodies in my blood, so
2 I've had that shit.
- 3 CL: He's already had that shit. I was in the room with him and
4 he was coughing, like, incessantly. Its like, kind of making
5 me nervous back before COVID.
- 6 DD: Yeah.
- 7 CL: I thought, golly --
- 8 MS: I'm pretty sure that's what, I remember there were two other
9 times I had some stomach issues.
- 10 CL: Yeah.
- 11 MS: One time, a fever, one night, and then, I told you it was
12 after I had done my homemade stir fry each time.
- 13 CL: Yeah.
- 14 MS: Couldn't have been that. I'm thinking it's the COVID.
- 15 CL: Those antibodies, only that stir fry would cause antibodies.
- 16 MS: Well, no.
- 17 DD: Well, you know, stir fry is kind of Chinese.
- 18 CL: That's true.
- 19 MS: Mine is kind of shitty. It made me sick both times.
- 20 (laughter)
- 21 CL: You told me last night that you had read the M.E.'s report?
- 22 DD: I have not read the M.E.'s report.
- 23 CL: Okay. Well, shit, I've got it in here somewhere.
- 24 DD: I haven't seen anything on the whole -
- 25 CL: You haven't seen dash cam or body cam?
- 26 DD: No.
- 27 MS: Oh, wow.

1 DD: I haven't seen body cam, none of that. And once, talking to
2 Chris and stuff about him, I told him I didn't want to see
3 it until all this come out and everything because I didn't
4 want him to construe my memory of what happened or anything
5 like that.

6 CL: Okay. What do you think of the probable cause of death down
7 there (phonetic)?

8 DD: Okay.

9 CL: So, I called - okay, here's what's coming. Its taking forever
10 because, like I was telling you last night, OSBI took seven
11 months and we had to get a use of force expert to look at
12 everything.

13 DD: Uh-huh (indicating affirmatively).

14 CL: And it took me a while to get Dr. Pfeiffer on the phone, and
15 I said, what do you mean by neck restraint - because what the
16 video would show, the dash cam and body cam, is that they lit
17 him up like a Christmas tree. They hit him about fifty times
18 with a taser.

19 DD: I didn't know how many, but, I've heard it was a lot.

20 CL: Its horrible.

21 DD: Yeah.

22 CL: Its hard to watch. And then you get there and you did what
23 you did. But, then, I don't know if you remember this or
24 not, but, after he is breathing, after you, he kind of wakes
25 up after you choke him out and they get him handcuffed, and
26 he's sitting there on the ground with his feet out here
27 (indicating) and even for me, I'm five foot nine, weigh about

1 two hundred pounds, if I had my feet out and I was bent over,
2 it would be hard to breathe, but this guy, he's so big --
3 DD: Uh-huh (indicating affirmatively).
4 CL: --he's having labored breathing and I think its Dingman that
5 keeps putting his hand on the back of his neck, you know,
6 until he kind of quits breathing (phonetic) --
7 DD: See, I didn't see any of that, because right after I get him
8 woke up and everything and make sure he's fine, I go to my
9 car --
10 CL: Right.
11 DD: --and I call in to dispatch and let them know everything -
12 CL: Right.
13 DD: --to log that I had used a neck restraint on him, log
14 everything, and then that's, I was sitting in my car when
15 they came and told me he quit breathing.
16 CL: Well, and that's what I was wondering. I asked Dr. Pfeiffer,
17 have you seen the body cam and dash cam? He said, yes, I
18 have.
19 DD: Uh-huh (indicating affirmatively).
20 CL: And so, I said, so, that factored into your findings? He
21 said, yeah. I said, when you say neck restraint, what exactly
22 are you talking about, because its kind of a --
23 DD: Yeah, because it doesn't say neck restraint, but it just
24 says, uh, of course, the taser and restraint.
25 CL: Yeah.
26 DD: And its --
27 CL: Which is kind of ambiguous.

- 1 DD: Its fraught (phonetic).
- 2 CL: I said, what does that mean? He said, well, I'm talking
3 about the neck restraint. I said, specifically, what? He
4 said, I'm talking about the choke hold that the deputy did.
5 I said, okay. And, I, he didn't mention Dingman doing that.
6 I thought maybe he was talking about that or he was just
7 rolling restraint in with the tasing.
- 8 DD: Uh-huh (indicating affirmatively).
- 9 CL: Because that's a form of restraint, I would say.
- 10 DD: Yeah.
- 11 CL: But, no, he said, there's two, there's two things. He said,
12 the tasing and the choke hold. I said, okay. But, I'm in a
13 little bit of a predicament because I don't - the smart thing
14 for me to do politically would be just to punt it to some
15 other DA, say it's too close to home. But, I hate dumping
16 my stuff that happens in my jurisdiction on somebody else.
17 I want to be the one --
- 18 DD: Yes.
- 19 CL: --to take care of it. I think, you know, to me, there's some
20 extenuating circumstances on behalf of you, because I feel
21 like you were misled and if you saw the tape, you would be
22 pissed.
- 23 DD: That's what I've heard.
- 24 CL: You would be. That you were, you know, unknowingly a
25 participant in this deal and --
- 26 DD: Uh-huh (indicating affirmatively).

1 CL: --but, Dingman and Josh were not honest with you, in my
2 opinion, and I think that's enough to, to kind of get you off
3 the hook criminally. But, I know I can say that, and I'm
4 meeting with the decedent's family at five this afternoon.
5 I know I can look at them and say, hey, I'm going to cut
6 Duggan a break, but, if you were to resign from the Sheriff's
7 Department --

8 DD: Uh-huh (indicating affirmatively).

9 CL: --I know I could do that.

10 DD: Yeah.

11 CL: And I could say, hey, look, he's already, he's said, you know
12 what, I'm resigning, I'm moving on, but, I'm telling you, you
13 know, the M.E. ain't helping us out a whole lot.

14 DD: No, it don't sound like it.

15 CL: (laughs) And so, but, I, I don't mind, I've got a lot of
16 discretion here, David --

17 DD: Uh-huh (indicating affirmatively).

18 CL: --putting it in the gray areas, to say, you know what? David
19 is no longer with the Sheriff's Department, I can look at
20 them and say --

21 DD: Yeah.

22 CL: --hey, look, he's resigned the spot and if you all want to
23 sue him civilly, sue him civilly, but --

24 DD: They already are.

25 CL: I know they are. I know they are. And their lawyer is going
26 to be with them today. But, I can look him in the eye - he's
27 going to say, well, wait a minute? Aren't you Chris Bryant's

- 1 Legal advisor? So, essentially, you're a lawyer for David
2 Duggan in a sense, because he works under Chris Bryant, and
3 so, that's where it gets a little muddled.
- 4 DD: Yeah.
- 5 CL: And I'm just going to say, hey, look, if you've got a problem
6 with it, oh, well. He's resigned, I think that's sufficient,
7 and I think that - and I've already hinted to him that, you
8 know, I think if David just walks away, then, if the other
9 two guys, David --
- 10 DD: Uh-huh (indicating affirmatively).
- 11 CL: --and don't tell anybody, but, I mean, its coming.
- 12 DD: Yeah.
- 13 CL: They've put me in a spot where I've got to do something to
14 them.
- 15 DD: I understand that.
- 16 CL: And frankly, after watching the video, I don't really have a
17 problem doing something to them. But, you --
- 18 DD: That's why I haven't watched the video yet because I didn't
19 want to --
- 20 CL: You don't, it, I wouldn't want to watch it.
- 21 DD: I'm going to have to --
- 22 CL: You will.
- 23 DD: --because I've already had a lawyer, you know, appointed to
24 me by the county for the lawsuit that I knew nothing about
25 until they called me.
- 26 CL: You will, you will in the civil suit, you'll have to watch
27 it, and I'm just telling you, its going to piss you off.

- 1 DD: That's what I've been told.
- 2 CL: They drew you into that.
- 3 DD: Yeah, that's what I've been told is that they, there was a
4 lot of stuff that happened that I knew nothing about.
- 5 CL: Yeah.
- 6 DD: Like I said, I don't know the, all the details, but, that's,
7 that's what I've been told by people, that there is a lot of
8 stuff that happened that you didn't know anything about when
9 you showed up, and I'm like, okay.
- 10 MS: Did you believe he was combative when you got there?
- 11 DD: What - in my mind, what had, when I sat there and heard the
12 whole thing, I mean, I was, I was going home. I got off at
13 midnight, or was supposed to. I was a mile and a half from
14 my house.
- 15 MS: Oh, man.
- 16 CL: (Unintelligible)
- 17 DD: Yeah. I was a mile and a half from the house when they start
18 yelling, you know, for help. And what I'm thinking the whole
19 time as I'm headed that way is, the way they sound, they were
20 in a fight for their life, you know? And, of course, I hear
21 on the radio, I hear them, that they, you know, they deployed
22 the taser twice is all I heard on the radio.
- 23 CL: They were winded, I think, from pulling the trigger so many
24 times.
- 25 DD: And see, they kind of sounded like it, but, I mean, that's
26 what I heard was, you know, they had tased him twice, and
27 then they were still calling for help. So, I'm thinking,

1 okay, they're in a fight. Well, when I get there, you know,
2 I come running up and I see they've got, I mean, he's sitting
3 on the ground, but they've got their tasers on him and I
4 didn't know what had happened.

5 CL: Right.

6 DD: And they're, they, uh, I can't remember exactly what they
7 said, something to me.

8 CL: They said he was being combative or had been fighting or -

9 DD: Yeah, it was something. I can't remember exactly what, so,
10 that's when I seen the opportunity, because when I first run
11 up there, I had my PR24, uh, you know, baton.

12 MS: Night stick.

13 CL: Yeah.

14 DD: And I had run up there with it because I thought they were
15 in a fight, and then, I see it that, and I'm like, okay, I'm
16 not going to go beating on him right now with this. There's
17 no point in hitting him, you know?

18 CL: He was seated, yeah.

19 DD: Yeah, and so, I went and threw that back in the car real
20 quick and then that's when I come up behind him and I figure,
21 well, you know, if I can sneak up behind him, because he had
22 the headlights of that one unit right here (indicating) where
23 he couldn't see behind him. I mean, he was kind of facing
24 catty-cornered away from it, so the lights are right here so
25 he wasn't seeing anything behind him. That's when I thought,
26 you know, I can just run up right quick and grab him, we'll
27 get him cuffed up and it'll be over with. You know? Four

- 1 or five seconds and we're done as opposed to - I was worried
2 when I got there that if I just went up and tried to grab him
3 or jump on him to cuff him or do anything that it would be a
4 fight, would be on, because he was big. He's a big boy.
- 5 CL: Yeah, he was five foot nine, three and a half.
- 6 DD: Yeah. He was a pretty big boy.
- 7 MS: Uh-huh (indicating affirmatively).
- 8 DD: But.
- 9 MS: What a stroke of luck, huh?
- 10 DD: It --
- 11 MS: A mile from your house.
- 12 DD: That's what I, I go back every day and I'm like, you know, I
13 wish I'd just kept going to the house.
- 14 MS: You can't do that, though.
- 15 DD: No, and that's when I tell myself, you know, every, I've
16 never been one that's done that. Every time I've ever heard
17 an officer hollering for help, you know, or anything, I'm
18 always the first, you know, to try and go help.
- 19 MS: Even off-duty, I've done it.
- 20 DD: I have, too.
- 21 MS: And I've had my cars damaged. (unintelligible). Leroy got
22 in a bind, I went to back him up. I was off duty with my
23 then-wife. I had bought a brand-new car and that fat bitch
24 ran off the yard down an incline and into the back of my car,
25 just (makes smashing noise).
- 26 CL: Oh, no.
- 27 DD: Oh.

- 1 CL: You were the first person to put a hand on him.
- 2 DD: Yes. As far as I know. That's what I've been told. I didn't
- 3 - I thought -
- 4 CL: Its true.
- 5 DD: And see, that's what -
- 6 CL: They didn't put hands on him.
- 7 DD: They told me that I was the first one that put hands on him.
- 8 MS: Yeah.
- 9 DD: And I've also heard that its in the body cam footage, that
- 10 they're sitting there, when they hear me go en route, they're
- 11 sitting there the whole time going, wait on him to get here,
- 12 wait on him to get here. I've heard that. I don't know if
- 13 that's true or not, but -
- 14 CL: I don't remember but that wouldn't surprise me.
- 15 DD: But, that's, somebody told me that they had heard that in the
- 16 body cam. They kept saying, wait on Duggan to get here, wait
- 17 on Duggan to get here. And when I heard that, I'm like --
- 18 MS: That was setting you up to fail, bro.
- 19 DD: Yeah, and then I didn't realize - after I got done and got
- 20 him woke up is when they told me they'd used four cartridges
- 21 on him. So, I'm thinking, at this point, okay, they went
- 22 from two tasings to now they've tased him four times. I
- 23 didn't realize it was as much as what you said.
- 24 CL: Yeah, almost, almost four minutes' worth.
- 25 MS: 55 tases, wasn't it?
- 26 CL: I think it was 52.
- 27 MS: 52, okay.

1 DD: Gah.

2 CL: One had 20 on it and one had 32.

3 DD: Holy shit.

4 CL: It is hard to watch.

5 DD: I don't understand tasing - which, I don't have a taser, I'm
6 not certified on a taser or anything like that, so, but, I
7 never have had one.

8 CL: I don't know that these guys were trying to be malicious,
9 they are very poorly trained but -

10 DD: They are. I'll give them, I will say that.

11 CL: But, golly, I mean, I just don't, I mean, it is, its offensive
12 to your sense of humanity to see them treat a human being
13 like that. I would, I would assume after, you know, three
14 or four tases, that even if your brain is trying to send a
15 signal to your hands to put them behind your back, it might
16 be hard to do that.

17 DD: It may. Like I said, I, I've been tased once, but I've never
18 -- not 52 times, which, 52 times would kill me and I'm not
19 5-9, 350.

20 CL: If you'll, if you'll give me your word you'll resign, I will
21 just say no, no, nothing filed on him. Are you comfortable
22 doing that?

23 DD: I am. Could I have a day to think about it and talk about
24 it to my wife and everything and then --

25 CL: You can.

26 DD: That way I'm not --

27 CL: You got my cell phone?

1 DD: Yeah.

2 CL: And I hate to put you in that position, but, really, I'm
3 trying to help you out.

4 DD: Oh, I understand.

5 CL: Because the M.E. ain't trying to help us.

6 DD: No, it doesn't look like it.

7 CL: And society, I mean, I think down here we're in pretty good
8 shape in law enforcement, but --

9 DD: But, its, its kind of one of those things, honestly, I've
10 been kind of thinking about that with everything going on,
11 too, its kind of getting to the point its not really worth
12 it anymore, hardly.

13 CL: No.

14 MS: No shit. I've got about a year and a half left, maybe two.

15 CL: It is so frustrating.

16 MS: Unless he threatens to file charges on me and makes me stay
17 for a couple more years, but -

18 CL: (laughs) I think I can explain --

19 DD: Yeah.

20 CL: I think I can explain to the family and to the public. You
21 know, I just think Duggan's part, there were a lot of
22 extenuating circumstances for Duggan that are not present for
23 Dingman and Taylor. Its just, I've been in situations, not
24 completely analogous to this, but, I just know that sometimes
25 when a police officer is accused of doing something, if they
26 just walk away, it's a lot easier to explain, hey, there's
27 been remedial measures taken or whatever.

1 DD: Yeah.

2 CL: If you, if you decide something before 5:00, send me a text.

3 DD: Okay.

4 CL: Because I'm meeting with them at five.

5 DD: Okay. Yeah.

6 CL: That would make it a little easier for me. And I hated, I
7 didn't, we've been, I've been trying to meet with the
8 decedent's family and I had this in mind about doing it this
9 way, but I didn't want to burden you too far in advance.

10 DD: Uh-huh (indicating affirmatively).

11 CL: And then we had some last-minute changes on Friday, so how
12 about Monday at 5, and I was like, crap, I've got to talk to
13 David first.

14 DD: Yeah. That's why it kind of threw me off last night when you
15 texted me. I was like, okay.

16 CL: Well, all day yesterday, I kept thinking, I've got to let
17 Duggan know I need to meet him tomorrow.

18 DD: Yeah.

19 CL: And I looked up and its 9:15. I was like, crap.

20 DD: I was awake.

21 MS: How old are you?

22 DD: 36.

23 MS: Good Lord. You're young, dude.

24 DD: I know.

25 MS: If you want to do another, like me, I'm starting year 38. I
26 can't imagine being a cop --

- 1 CL: Well, I'm not saying, Dave, you can't be serving somewhere
2 else. These other two guys, I'm going to try to make sure
3 they're never cops again.
- 4 DD: Yeah.
- 5 MS: Yeah, and I just can't imagine why, you know, if I was your
6 age, I could find a lot of career choices that -
- 7 DD: Well, I, you know, I started doing this, technically, I guess,
8 when I was 21 is when I got into law enforcement.
- 9 MS: Did you?
- 10 DD: I went to the Highway Patrol.
- 11 MS: Yeah, I remember you were a Trooper.
- 12 DD: So, that's what I started then and its just always been
13 something.
- 14 MS: Yeah. That's the way I was. I was 21 when I started.
- 15 DD: Yeah.
- 16 MS: And I'm, I'm glad I did, but if I was a young man, I wouldn't
17 get back in it, because -
- 18 DD: Oh, yeah.
- 19 MS: --God, things are so - I've never seen things like this.
- 20 DD: I got out of it for four years -
- 21 MS: Yeah, you went into the oilfields, didn't you?
- 22 DD: I went to the oilfield for a little bit and then did some
23 other stuff once it crashed, but, and then, I decided back
24 in 2017 is when I decided I was going to -
- 25 MS: Get back.

1 DD: You know, I'm going to go back, and that's when I went to
2 Lone Grove for about four months and then Chris hired me.
3 So.

4 MS: Wow.

5 DD: Yeah, I'll let you, I'll probably let you know something by
6 five today. Okay.

7 CL: I'm sorry.

8 DD: Hey, it is what it is. I mean --

9 CL: Have you ever noticed when somebody says it is what it is,
10 its never a good thing?

11 (laughter)

12 MS: Best of luck to you, bro, with whatever happens.

13 DD: I appreciate it. Yep. Thank you all.

14 CL: All right, David. Just hit that green button to the left.

15 DD: Okay, thank you.

16 [0:17:23.8]

17 [0:17:42.1]

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19 END OF RECORDING

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STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

SS:

I, SUSAN M. HOLLAND, Certified Legal Transcriptionist, do hereby certify that the foregoing audiotaped recording was transcribed by me and that the typewritten transcript is a full, complete and verbatim transcription of the audio recording, to the best of my ability.

I further certify that I am not of counsel or attorney for any of the said parties in the foregoing proceedings, nor otherwise interested in said action.

WITNESS my hand this 8th day of September, 2021.

/s/ Susan M. Holland

SUSAN M. HOLLAND, CLT



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

STATE OF OKLAHOMA)	
)	
Plaintiff,)	
vs.)	Case No. 20-222
)	20-221
BRANDON DIGNMAN, JOSHUA TAYLOR,)	
Defendant.)	

**DEFENDANTS SUPPLEMENTAL RESPONSE PRELIMINARY WITNESS AND
EXHIBIT LIST**

COME NOW Defendants Brandon Dingman (“Dingman”) and Joshua Taylor (“Taylor”), by and through undersigned counsel, Shannon McMurray and Warren Gotcher, and respectfully offers the following objections to the State’s proposed witnesses.

DEFENDANT’S OBJECTIONS

The State has provided Defendants (“Dingman and Taylor”) with several written statements of three proposed witnesses in the case. Defendant’s previously filed response to two of the proposed witnesses as well as a Daubert challenge to said witnesses and incorporates those motions as fully set-forth herein. Additionally, Defendant’s have filed a Motion to Disqualify the District Attorney and his office as well as a Motion to Dismiss also incorporated by reference as if fully set-forth herein.

3rd Proposed Witness:

1. Kent M. Cochran: Defendant’s object to the testimony of this witness. Mr. Cochran proposed testimony is simply that Dingman and Taylor’s use of a Taser against Lakey was “outside of established guidelines and training provided by AXON Academy/Taser Training. First, the State is not prosecuting a Civil Rights violation and therefore use of force outside established Taser guidelines is wholly irrelevant and far more prejudicial

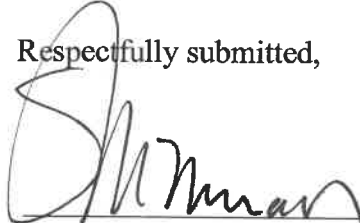
than probative. This especially in light of not only the ME report that cannot determine cause of death. The Defendant's expert, "world re-nowned" as admitted by the State will testify the use of Taser was NOT the cause of Lakey's death. Finally, the State's own expert cannot point to the Taser as a cause of death. There fore any testimony as to the use of force of the Taser is not only irrelevant is wholly prejudicial and not probative of Lakey's cause of death.

Conclusion

All proposed witnesses as to the use of Taser's should be excluded for all reasons stated herein as well as previously filed Objections and Exclusion under Daubert. Further, all officers intend to offer substantially the same testimony as the other increasing the risk of prejudice unnecessarily. The prejudicial effect of multiple, inadmissible sets of testimony creates a substantial risk of prejudice which outweigh the probative value of one testimony or the other. None of these proposed witnesses offer any insight as to causation of Lakey's death and therefore are irrelevant.

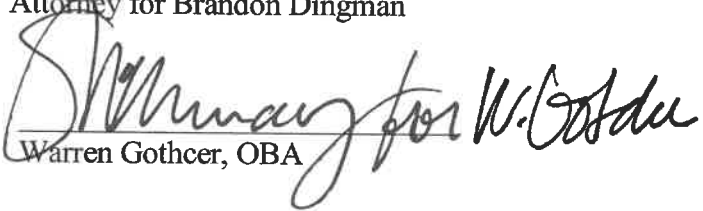
For all reasons stated in this and previously filed motions, Mr. Dingman and Mr. Taylor objections to the three proposed witnesses Kent Cochran, Eric Hamblin and Juan Galaicia must be sustained.

Respectfully submitted,



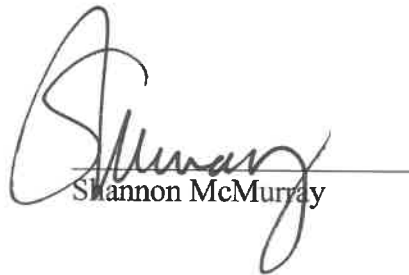
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CERTIFICATE OF MAILING/DELIVERY

I do hereby certify that on this 29 Sept 2024, mailed and/or delivered by other means a full, true and correct copy of the above and foregoing motion and brief in support to Shannon McMurray, counsel for the Defendant.


Shannon McMurray