

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

JOHN KRUEGER, individually and as
Co-Administrator of the Estate of Jeffery
Krueger, *et al.*

Plaintiffs,

VS.

SHERIFF CHRIS ELLIOTT, Sheriff of Wagoner County, Oklahoma, in his official capacity; *et al.*

Defendants.

Case No. 21-CV-044-DES

PLAINTIFFS' MOTION FOR SPOILIATION SANCTIONS

COME NOW the Plaintiffs, John Krueger and Pamela Krueger, by and through their attorney of record, Mark D. Lyons of Lyons & Clark, Inc., and hereby moves this Court to issue sanctions for spoliation of evidence or in the alternative, to submit the questions of: 1) the failure to preserve evidence, and/or 2) the negligent or intentional destruction of evidence, to the jury in this case to determine if evidence spoliation occurred and if so, for it to apply the OUI CIV 3.11A presumption the deleted evidence would have favored the Plaintiffs. In support of this motion, the Plaintiffs state as follows:

Oklahoma law requires that evidence be preserved when it is reasonably anticipated that litigation will occur.

"A litigant who is on notice that documents and information in its possession are relevant to litigation or potential litigation or are reasonably calculated to lead to the discovery of admissible evidence has a duty to preserve such evidence." *Id.*, ¶20. The "duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation."

Akins v. Ben Milam Heat, Air & Elec., Inc., 2019 OK CIV APP 52, ¶ 30, 451 P.3d 166, 175. The northern district has found the same rule applies under federal law. “Spoliation sanctions for the destruction of evidence are proper when (1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence.” *Ranchers Pipe & Steel Corp. v. Ohio Sec. Ins. Co.*, No. 17-CV-192-CVE-FHM, 2017 U.S. Dist. LEXIS 199673, at *2 (N.D. Okla. Dec. 5, 2017)

Under Oklahoma law, spoliation is the **intentional or negligent** failure to preserve evidence or the destruction of evidence that adversely affects a litigant’s ability to prove his/her claim.

Spoliation refers to the destruction or material alteration of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. *West v. Goodyear Tire*, 167 F.3d 776, 779 (2nd Cir. 1999). In *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, 987 P.2d 1185, 1202, spoliation was defined as the destruction or significant and meaningful alteration of a document or instrument. We said that spoliation occurs when evidence relevant to prospective civil litigation is destroyed, adversely affecting the ability of a litigant to prove his or her claim. *Id.*, 987 P.2d at 1202. **Spoliation includes the intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim.** (emph.) *Koch v. Koch Industries, Inc.*, 197 F.R.D. 488, 490 (N.D. Okla. 1999).

Barnett v. Simmons, 2008 OK 100, ¶ 21, 197 P.3d 12, 20.¹ This is consistent with federal law which does not require bad faith for spoliation sanctions in a civil case. “However, a showing of bad faith is not required to impose a sanction for spoliation. Therefore, the absence of bad faith does not present a reason for denying Defendant's motion. The degree of culpability may be considered in

¹ Oklahoma does not recognize a tort of evidence spoliation. *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶ 45, 987 P.2d 1185, 1202.

fashioning an appropriate remedy in some cases.” *Howard v. Zimmer, Inc.*, No. 02- CV-564-CVE -FHM, 2014 U.S. Dist. LEXIS 32605, at *4 (N.D. Okla. Mar. 13, 2014).

In this case, it is immediately obvious that Deputy Phillips’ body cam video has been altered. Phillips’ body cam video starts mid-fight with Mr. Krueger. See Exh. 1 (Doc. #327, Exh. 2). Within seconds of the start of the video, both of Phillips’ tattooed hands can be seen where he is fighting with and tasing Jeffrey Krueger.

Phillips testified he was not trained on how to use the body camera. Exh. 2, p. 48-49. It was a trial camera. *Id.* It did not automatically turn on; he didn’t remember how to turn it on; he guessed he had to push a button to start it; but thought it was by a start button on his chest. *Id.*, at 49-50. He testified it was his intent to turn it on when he turned on his overhead lights and he thought he had done that.

Q: Did your body camera get activated at some point?

A: At some point, yes.

Q: How did it get activated?

A: I don’t know, sir.

Q: Did you specifically turn it on?

A: I don’t know, sir.

Q: Well, how else did it get turned on if you didn’t do it?

A: It could have been, you know, from - - from the struggle being kicked. I don’t - - I don’t know, sir.

Q: **Was it your intention to turn the body camera on at the time you turned on your lights?**

A: **Yes.**

Q: **Okay, did you - - it was your belief that you thought you had accomplished that; right?**

A: **Yes. I would say.** (emph. added)

Id., at p. 90.

Phillips further testified he didn’t know the brand of the body camera; he admitted multiple times he never received training on how to operate the camera; and he didn’t know how long the

camera was in use. *Id.*, at p. 49-51. He did not remember what happened to his body camera at the end of his shift; he had no idea how the information was stored; and had no idea what the chain of custody for the body cam video was. *Id.*, at p. 53.

According to a June 28th, 2022 email from Sheriff Elliott's Counsel Steve Gerles, the brand of body camera that Phillips was using was Wolfcom. See. Exh. 3, Email correspondence between Mr. Gerles and Plaintiffs' counsel. "The body camera which Phillips was wearing was returned to the company following the testing period. The laptop provided by Wolfcom with their software and docking equipment was also returned to Wolfcom along with the body camera." A July 5th, 2022 email from Mr. Gerles continues, "I was able to confirm with Wagoner County that they do not have the serial number or any specific identifier for the body camera assigned to Phillips." *Id.* Without knowing the serial number for the body cam worn by Phillips, there was no possible way for Wolfcom to search for Phillips' recording, especially since the search would have started three years after the equipment had been returned.

When the body camera, the laptop with the original body cam video footage and all the equipment was returned to Wolfcom, that violated Wagoner County's duty to preserve evidence. Only a forensic examination of the original footage on the Wolfcom laptop could determine what was altered, deleted, etc.

The fact the video was altered/deleted, is proven by Wolfcom's website, which states that the body cameras feature a pre-recording technology that captures video and audio leading up to when the button is pushed or the camera is activated. The camera constantly records a rolling video and audio buffer while on standby. When the main record button is pressed, the camera saves the pre-recorded footage, which can range from 30 seconds up to a longer flashback and it appends to

the to the start of the live recording. See Exh. 4. According to Wolfcom, the audio only starts 31 seconds into the video. Yet the Phillips video has sound at the very beginning, showing him fighting with Mr. Krueger, with both of Phillips' hands visible fighting with Mr. Krueger. There is no possible way Deputy Phillips turned on the video mid-fight with Mr. Krueger.

Exh. 5 is the real time, CAD Detail/radio log for the incident with Mr. Krueger. See DDR 9-000006-0000016. On DDR 9-00009, three entries from the top, it shows Kaleb Phillips, the first officer to pull Mr. Krueger over, to be "on scene", at 21:55:44 hours. About ten entries down from the top of the page shows Nicholas Orr, on scene, at 21:55:53 hours, 9 seconds after Phillips was on scene. The next entry is 21:55:59 of 'ONE FIGHTING' called in by Orr. Six seconds after Orr arrives on scene, he reported to dispatch he was fighting with Jeff Krueger.

Phillips' body camera footage starts at the real time of 21:56:30. The elapsed time from 21:55:44 when Phillips is on scene, to the first time shown in Phillips' body cam video, is 21:56:30. That is a difference of **46 seconds of provably missing video.**

According to Phillips testimony (ie., - he intended to turn his body camera on when he turned on his overhead lights and thought he did), he would have at least had his body camera turned on at 21:55:44 when told dispatch he was "on scene".

If Phillips did turn his body camera on when he turned on his overhead lights, the video would have shown Phillips' initial encounter with Mr. Krueger at his car window. The video would have shown and the audio would have documented Phillips screaming conflicting instructions at Mr. Krueger of show me your hands and put your hands on the steering wheel. Exh. 2, p. 70-71. It would have shown Jeffrey Krueger with driver's license, insurance verification and various credit cards in his hands to give to Phillips and Orr for a normal, nonconfrontational traffic stop. See Exh.

6 (scene photos that show his DL in the driver's seat of his car and credit cards and insurance verification card on the highway outside his driver's door). These missing seconds of the video would show critical footage of Orr grabbing Mr. Krueger by his hair and slamming his head to the concrete, from a standing position, causing a huge and mentally and physically debilitating gash on the back of his skull. It would critically show Jeff Krueger was trying to fully and completely comply with the officers' commands.

The Plaintiffs are deprived of the 46 seconds of missing, innocence proving video and audio evidence due to the intentional or grossly negligent, erasure/alteration or failure to preserve the first 46 seconds of missing video.² The Defendants were on notice as a matter of fact and law of their duty to preserve all evidence, including body cam video footage, for officer involved deaths. When just the initial 46 seconds of video is missing, that could only occur due to deliberate acts of alteration or deletion of video footage. The Plaintiffs are entitled to a finding of evidence spoliation by this Court with the necessary jury spoliation jury instruction. See OUJI Civil 3.11A.

In the alternative, the Plaintiffs are entitled to an instruction or special interrogatory for the jury to decide if the video was negligently or intentionally deleted/erased/altered and if so, they can apply the evidence spoliation presumption under OUJI 3.11A.

Manzanares v. El Monte Rents, Inc., Civil Action No. 4:24-cv-191, 2026 U.S. Dist. LEXIS 2064, at *25-26 (E.D. Tex. Jan. 7, 2026) allowed alternate jury instructions for evidence spoliation.

The Court will grant Plaintiffs' request to introduce evidence of spoliation. Defendant will be permitted to rebut it. If the evidence at

² The missing 46 seconds should have included all the audio and video. But there should have been an earlier 30 seconds without audio when Phillips first got the call from Orr to stop Ms. Krueger because Orr claimed he was driving under the influence of alcohol when he left the QuikTrip parking lot.

trial conclusively establishes spoliation, the Court will consider instructing the jury that Defendant did spoliage evidence and to draw an adverse inference as a consequence. Plaintiffs' request for sanctions in the form of non-permissive adverse inference instructions will therefore be denied without prejudice.

If a genuine issue of material fact as to spoliation remains at the conclusion of trial, the Court will submit a permissive spoliation instruction to the jury in accordance with *Rogers*. For example, one of the approaches *Rogers* approved allowed an adverse inference only if the jury "determined that the evidence was in the control of the defendants, that they had an obligation to preserve it, that the destroyed evidence was relevant to the litigation, and that the evidence was destroyed intentionally and in bad faith." *Rogers*, 82 F.4th at 378 (citation modified). The jury will decide the issue of spoliation unless Defendant manages to conclusively negate spoliation at trial.

Winkle v. Rogers, 82 F.4th 370 (5th Cir. 2023) analyzed and cited to multiple circuit cases for instructing a jury on evidence spoliation. *Rogers* reversed summary judgment and remanded a negligence case where a tractor trailer tire separated injuring the driver of another car. The trucking company gathered up the tire remnants and it was factually disputed and never resolved for what happened to the remnants when the truck reached the trucking company facility.

Prime has no evidence of what actually happened to the remnants of the tire. It proposes that, likely, a Prime employee discarded or sold the tire scraps when the truck reached Salt Lake City. A Prime representative, designated under Federal Rule of Civil Procedure 30(b)(6), was deposed and stated it was a customary practice to dispose of a tire that had reached the end of its useful life and that the blown-out tire was unusable. Defendants insist that bad faith is not established merely through loss of evidence in the ordinary course of business or through the defendant's adherence to standard operating procedures in destroying the evidence.

Id., at 376. The court ruled it was error to grant summary judgment and then found the disputed evidence of evidence spoliation required a jury to decide the issue.

We agree with another circuit court, in the context of spoliation, that "bad faith is a question of fact like any other." *Bracey v. Grondin*, 712 F.3d 1012, 1019 (7th Cir. 2013) (quotation marks and citation omitted). If a genuine dispute of material fact exists as to bad faith, a jury should make that determination. One circuit court agreed with giving the issue of bad faith to jurors:

We conclude that the district court acted within its discretion in permitting the jury to draw an adverse inference if it found that [the spoliator] caused destruction or loss of relevant evidence. Rather than deciding the spoliation issue itself, the district court provided the jury with appropriate guidelines for evaluating the evidence.

Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 157 (4th Cir. 1995). Another circuit court found no error when the district court issued a permissive adverse inference jury instruction to allow the jury to resolve the genuine disputes of material fact concerning spoliation. *GN Netcom, Inc. v. Plantronics, Inc.*, 930 F.3d 76, 81-85 (3d Cir. 2019).

Id., at p. 378. *Rogers* cited to another case that held the court should hear the spoliation evidence and wait till the end of the trial to decide whether to instruct the jury on spoliation. "Likewise, we have cited with approval a district court's decision to give 'both parties the freedom to put forward evidence about document destruction' and to defer a decision on whether a spoliation instruction is warranted until the close of trial. See *BCE Emergis Corp. v. Cmty. Health Sols. of Am., Inc.*, 148 F. App'x 204, 219 (5th Cir. 2005)." *Id.*, at 378-79.

Wagoner County has been on actual notice since at least the summary jury trial on June 1st to 2nd of the Plaintiffs' spoliation claim. So it is not possible for them to claim this motion is a last minute surprise of which it would not have been aware.

This case is not the first time Wagoner County has been accused of spoliation of critical evidence. It faced the exact spoliation claims and jury instruction issues against Sheriff Elliott, for

the failure to preserve or for the deletion of jail telephone calls, with Sheriff Elliott defended by the same attorney in this case. Judge Ron White in *Rodriguez v. Bd. of Cty. Comm'rs of Wagoner*, No. CIV-20-037-RAW, 2021 U.S. Dist. LEXIS 158691, at *5 (E.D. Okla. Aug. 23, 2021), found it was appropriate to hear spoliation evidence at trial and then decide whether to give the jury an adverse inference instruction. "Applying the philosophies, texts and factors set forth above, the court presently declines to impose sanctions against Defendants. To be sure, Defendants' alleged actions with regard to the recordings will be ripe fodder for cross-examination and argument by Plaintiffs. After hearing all the evidence at trial, the court may be amenable to an adverse jury instruction regarding spoliation of evidence." Judge White applied a negligent or intentional failure to preserve or destruction of evidence for spoliation, plus prejudice to the Plaintiff.

Spoliation is "the intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim." *United States a rel. Koch v. Koch Indus.*, 197 F.R.D. 488, 490 (N.D. Okla. 1999). The duty to preserve evidence is triggered when a party receives notice of a potential claim and the evidence's relevance to such potential claim. *Rowe v. Albertsons, Inc.*, 116 Fed. Appx. 171, 174 (10th Cir. 2004)(unpublished).

Sanctions for spoliation are appropriate where: "(1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of evidence." *Turner v. Pub. Serv. Co. of Colo.*, 563 F.3d 1136. Accordingly, under the court's inherent power, the court is authorized to impose sanctions for spoliation of evidence when a moving party suffers prejudice because the nonmoving party has failed to preserve or had destroyed evidence. *Cache La Poudre Feeds LLC v. Land Takes, Inc.*, 244 F.R.D. 614, 620 (D. Colo. 2007).

Id., at *2-3. The two more important spoliation factors to consider for whether to issue sanctions and/or instruct a jury are, " . . . two factors should ordinarily carry the most weight: the degree of

culpability of the party who lost or destroyed the evidence, and the degree of actual prejudice to the other party.” *Id.*, at *3-4.

The Plaintiffs can prove actual and severe prejudice to their case due to the missing video evidence. “It is not enough for a party seeking spoliation sanctions to raise an issue of theoretical prejudice, i.e., that prejudice cannot be known because the evidence no longer exist. This is true in any instance involving the destruction of evidence. Rather, a party must present evidence of actual prejudice. A party suffers actual prejudice when the spoliated evidence goes to a critical issue and the evidence at hand is conflicting.” *Yardley v. Tapia*, No. 4:25-cv-00006-DN-PK, 2026 U.S. Dist. LEXIS 169623, at *6 (D. Utah July 29, 2026).

The prejudice to the Plaintiffs of the missing video evidence is enormous. Phillips and Orr testified they pulled their guns, and pointed them at Mr. Krueger, ready to use deadly force, due to Jeff Krueger’s:

1. failure to follow Phillips’ instructions (“I do believe I said either stay in your vehicle, show me your hands, put your hands on the steering wheel. I don’t remember exactly.”);
2. failure to follow verbal commands (Exh. 2, p. 74-75);
3. Mr. Krueger’s, “abrupt stop, the location, slinging open of the door, attempt to get out of the vehicle, moving around; Sir I don’t know.”;
4. Phillips’ claim that Jeff Krueger assaulted him.

Q: What did he do to assault you?

A: He grabbed me and pulled - - tried to pull me into his vehicle.” (P. 74);

A: He assaulted me.

Q: Okay. What did he do to assault you?

A: At that time that when he grabbed my leg.

Q: He grabbed your leg?

A: Grabbed my leg, pulled me - - like pulled me in closer, grabbed my left arm and grabbed my gun.” (P. 81)³; which Phillips later described as Mr. Krueger grabbed the “slot”, “slide” of his gun (p. 99, 148).

Q: Whether he grabbed your gun or touched it, what did he do when he grabbed your gun? What did he do?

A: What do you mean what did he do? He grabbed my gun.

Q: Okay. How did he grab it?

A: He grabbed it, reached out and grabbed it.

Q: What part of his - -

A: The slot of my gun. The top of my gun, sir.

Q: The top of the gun, okay. How long did he have his hand on the gun?

A: I’m not sure.

Q: And did he try to pull it away from you?

A: I don’t know, sir.

Q: All right. So what kind of crime is that for him to put his hand on the slide of the gun when you don’t know what he’s going to do with it?

A: Okay.

Q: What is his intention?

A: I don’t know his intention. (p. 97-98) (emph. added)

5. Mr. Krueger didn’t follow Phillips commands when he initially told Mr. Krueger to stay in the car; then he reached in and unlocked Mr. Krueger’s seat belt and drug him out of the car (*Id.*, p. 73-74);
6. Mr. Krueger refused multiple commands; constant movement in the car; he didn’t know if he had a gun, knife or any type of weapon in the car (P. 86).

That testimony is the factual basis for Phillips pulling his gun and pointing it at Mr. Krueger ready to use deadly force when Phillips approached the car door and then drug him out.

The factual basis for his claims would be seen in the missing 46 seconds of body cam video. And Phillips’ deposition testimony conflicts with a statement he gave to the OSBI that Mr. Krueger only **“grabbed for”** his gun, at which point he immediately holstered it. Exh. 7, p. 10 of his OSBI statement.

³ See also and p. 156-57.

As this Court well knows, any assault or assault and battery crime is a specific intent offense. If Jeffrey Krueger touched Deputy Phillips' gun, a jury can conclude he was pushing it away so he wouldn't get shot when he was handing Phillips his driver's license and insurance verification. Without the missing video, the Plaintiffs are left defending against Phillips' and Orr's self-serving versions of what happened.

The Plaintiffs' ability to defend against the Defendants' claims of Jeffrey Krueger assaulting Deputy Phillips and "grabbing for", or "grabbing" the slot/slide of his gun, is severely prejudiced due to the missing video evidence. Phillips and Orr can distort and exploit their justifications with impunity because of the missing body cam video.

Finally the missing 46 seconds of body camera video severely affects the Plaintiffs' ability to attack the credibility of Phillips and Orr. Credibility issues exist when a police officer is the only surviving witness after having killed a person. See *Scott v. Henrich*, 39 F3d 912, 915 (9th Cir. 1994) requires that a judge examine all the evidence in a case to ". . . ensure that the officer is not taking advantage of the fact that the witness most likely to contradict his story - the person shot dead - is unable to testify.", and *Pauly v. White*, 874 F.3d 1197, 1218 (10th Cir. 2017) ("[T]he court may not simply accept what may be a self-serving account by the police officer. Rather, it must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably.' (original brackets and internal quotation marks omitted))."

There is no objective evidence of speeding and claimed weaving in a lane or of claimed threatening behavior by Mr. Krueger as Phillips and Orr approached Mr. Krueger's car door with guns drawn prepared to use deadly force. It is only Phillips' incredibly vacuous explanation of Mr.

Krueger's speeding (he described a "high rate of speed" and not a specific speed he was traveling, Exh. 2, P. 59) and "failing to maintain a single lane of travel, swerving", that justified the traffic stop. But the body cam footage would show everything.

CONCLUSION

There can't be any doubt that Sheriff Elliott, Wagoner County, had a duty to preserve the footage for a death during an incident with multiple Wagoner County deputies. This Court, or a jury, can certainly conclude, that critical Phillips' body cam video footage is missing. The mere fact the video footage is missing violates Sheriff Elliott's duty, ". . . to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *Barnett v. Simmons*, 2008 OK 100, ¶ 21, 197 P.3d 12, 20. "We said that spoliation occurs when evidence relevant to prospective civil litigation is destroyed, adversely affecting the ability of a litigant to prove his or her claim. *Id.*, 987 P.2d at 1202. Spoliation includes the intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim. *Koch v. Koch Industries, Inc.*, 197 F.R.D. 488, 490 (N.D. Okla. 1999)." *Id.*

The spoliation negative inference jury instruction can be for negligent or intentional destruction of evidence a person needs for litigation. If Sheriff Elliott raises a defense the video footage was unintentionally destroyed, the OUJI Civil 3.11A negative inference instruction should still be given. Certainly, evidence exists from which a jury can readily find the missing 46 seconds of video was intentionally and conveniently removed to start precisely at the point the Defendants claim Mr. Krueger is resisting arrest or assaulting them by trying to grab a taser, thereby justifying the method and manner of force used against him.

The next element is prejudice. When the initial confrontation at Mr. Krueger's car door is the crux of every justification the Defendants have for the method and manner for the force used against Mr. Krueger, then yes the Plaintiffs are prejudiced in not being able to show Jeff's response to guns shoved in his face while he was trying to hand Phillips and Orr his driver's licence and proof of insurance.

First, this Court should and can conclude Phillips' body cam video was either not preserved or it was deleted/alterd/partly destroyed. Based on that evidence alone, this Court should sanction the Defendants by entry of a liability judgment in favor of the Plaintiffs.

If this Court is unwilling to enter judgment in favor of the Plaintiffs, it should at least find they are entitled to a negative inference spoliation instruction under OUI Civil 3.11A. There is no other known explanation for the missing video footage.

If this Court is unwilling to find the Plaintiffs are entitled to a negative inference spoliation instruction under OUI Civil 3.11A, it should at least instruct the jury if it finds evidence spoliation, then it can apply the negative inference under OUI Civil 3.11A. See *Rodriguez v. Bd. of Cty. Comm'rs of Wagoner*, No. CIV-20-037-RAW, 2021 U.S. Dist. LEXIS 158691, at *5 (E.D. Okla. Aug. 23, 2021), *Manzanares v. El Monte Rents, Inc.*, Civil Action No. 4:24-cv-191, 2026 U.S. Dist. LEXIS 2064, at *25-26 (E.D. Tex. Jan. 7, 2026), *Winkle v. Rogers*, 82 F.4th 370 (5th Cir. 2023) and *BCE Emergis Corp. v. Cmty. Health Sols. of Am., Inc.*, 148 F. App'x 204, 219 (5th Cir. 2005).

For the reasons cited above, the Plaintiffs request they be granted sanctions of a judgment entered against Wagoner County for failing to preserve and/or negligently/intentionally destroying or altering Phillips' body cam video. In the alternative the Plaintiffs request that this Court give the negative inference spoliation instruction under OUI Civil 3.11A. Finally, if this Court is unwilling

to give OUJI Civil 3.11A, it should at least instruct the jury that it can find the negative inference from evidence spoliation Sheriff Elliott's failure to preserve the body cam video when it was obvious there was a need to do so, and/or for the jury to find the negative inference from the negligent or intentional destruction or alteration of Phillips' body cam video.

Respectfully submitted,

s/ Mark D. Lyons

Mark D. Lyons, OBA #5590

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of October, 2026, a true and correct copy of the above and foregoing *Plaintiffs' Motion for Spoliation Sanctions* was transmitted via electronic transmission through the CM/ECF System, to the following:

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s/ Mark D. Lyons

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KALEB L. PHILLIPS 6-8-22

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FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) JOHN KRUEGER, individually)
and as Co-Administrator of the)
Estate of Jeffery Krueger and)
(2) PAMELA KRUEGER, individually)
and as Co-Administrator of the)
Estate of Jeffery Krueger,)
Plaintiffs,)
vs.) Case Number
21-CV-044-RAW)
(1) BOARD OF COUNTY COMMISSIONERS)
FOR WAGONER COUNTY, OKLAHOMA,)
a/k/a WAGONER COUNTY, OKLAHOMA,)
(2) WAGONER COUNTY SHERIFFS)
DEPARTMENT,)
(3) WAGONER EMERGENCY SERVICES,)
INC. a/k/a WAGONER EMS,)
(4) KALEB PHILLIPS, individually,)
(5) NICHOLAS ORR, individually,)
(6) JEFF PATTERSON, individually,)
(7) ALAN SMITH, individually,)
(8) DREW CRAIG, individually, and)
(9) TYLER McFARLAND, individually,)
(10) CLARENCE COLLINS, individually,)
(11) COREY NEVITT, individually,)
(12) TRAVIS POTTS, individually,)
(13) BEN BLAIR, individually,)
(14) COLBY NORTH, individually,)
(15) MATTHEW LOTT, individually,)
(16) ELIZABETH CROCKETT,)
individually,)
(17) DUSTIN DOOR, individually,)
Defendants.)

ORAL DEPOSITION OF KALEB L. PHILLIPS
TAKEN ON BEHALF OF PLAINTIFFS
IN TULSA, OKLAHOMA
ON JUNE 8, 2022
REPORTED BY MICHELE VEST, CSR

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Also Present: MS. PAMELA KRUEGER
MS. MICHELLE JONES

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KALEB L. PHILLIPS,

after having been first duly sworn to tell the truth, the
whole truth, and nothing but the truth, testified as
follows:

DIRECT EXAMINATION

BY MR. LYONS:

Q Sir, would you state your full name, please.

A Kaleb Lee Phillips.

Q How old are you, please?

A Twenty-six years old.

Q You have worked in law enforcement in the past;
correct?

A Correct.

Q Have you ever testified?

A Yes, sir.

Q Okay. So do you understand the purpose of giving
truthful answers under oath?

A Yes, sir.

Q How frequently have you testified?

A I do believe it was one time.

Q And that was in what kind of a case?

A DUI.

Q Tell me your educational background, please.

A What do you mean by that? Just all of it, like,
school?

1 (Pages 1 to 4)

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EXHIBIT

2

KALEB L. PHILLIPS 6-8-22

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1 Q Glaze -- 00:58:57
 2 A Prep.
 3 Q Prep. And how long have you been there?
 4 A Approximately, three months.
 5 Q I noticed you've got some tattoos? 00:59:28
 6 A Yes, sir.
 7 Q Okay. What have you got on your right hand?
 8 A My hand right I have nominate, established, and a K.
 9 Q And what does the K stand for?
 10 A Kaleb. 00:59:45
 11 Q Okay. And the 918, what does that stand for?
 12 A Oklahoma.
 13 Q And the other tattoos you've got?
 14 A This is in remembrance of my grandmother and
 15 grandfather. 00:59:59
 16 Q Hang on. Because when you say "this," are you
 17 pointing to your right arm?
 18 A What do you mean?
 19 Q Where's the tattoo that you're referring to that's --
 20 A Right here. 10:00:11
 21 Q Okay. Is that your right arm?
 22 MR. WOOD: Yeah, she can't record what you're
 23 saying --
 24 THE WITNESS: Oh, okay.
 25 MR. WOOD: -- so you just need to describe 10:00:16

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1 where you're pointing. 10:00:17
 2 A Right. This is my right arm. This is Virginia
 3 1938-2018. This is a dove with, you know, some cloud
 4 shading. This is Ernest for my grandfather 1933 to
 5 2013. 10:00:35
 6 Q (By Mr. Lyons) Okay. Now, on your left hand or arm
 7 have you got some tattoos?
 8 A Yes, sir, I do.
 9 Q What are those?
 10 A On my left hand is 1995. A "P" for Phillips. I have
 11 Ashley down which is my wife. I have -- well, sorry,
 12 this is on my left arm. Kendyn Lee. It's his actual
 13 footprint. Kenley Faith, which is my daughter, on
 14 her -- foot, and then Kendyl Kaleb, which is his
 15 foot. 10:01:11
 16 Q So you've got -- those are the names and feet print
 17 of your three children?
 18 A Correct.
 19 Q And the 1995 stands for what?
 20 A 1995, the year I was born. 10:01:21
 21 Q Okay.
 22 MR. LYONS: We've been at this about an hour.
 23 How about we take a break?
 24 MR. WOOD: Let's do it.
 25 (A brief recess was taken.) 10:01:30

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1 Q (By Mr. Lyons) All right. Mr. Phillips, do you have 10:14:37
 2 any other tattoos on you other than those that are
 3 visible to your hands and arms?
 4 A Yes.
 5 Q And what kinds of tattoos do you have? 10:16:44
 6 A On my right shoulder is "trust your struggle."
 7 Q I'm sorry, it was trust or struggle?
 8 A Trust your struggle.
 9 Q Trust your struggle. And what does that refer to?
 10 A I mean, it's just pertaining to life, you know, 10:17:03
 11 people go through different trials and struggles. I
 12 just got to kind of trust the process, I guess.
 13 Q All right. Do you have any others?
 14 A Yes. Fear no evil.
 15 Q And that's on your left upper arm? 10:17:10
 16 A Yes.
 17 Q Do you have any other than those?
 18 A No.
 19 Q Do you have any on your torso?
 20 A No. 10:17:30
 21 Q And are you -- I'm sorry, is your wife's name Ashley?
 22 A Yes.
 23 Q Are y'all still married?
 24 A Yes.
 25 Q In your reserve officer training or in this FTO 10:17:51

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1 program that you did, did you learn about using 10:18:08
 2 tasers?
 3 A Yes.
 4 Q And did you learn the times when you can deploy them?
 5 A Yes. 10:18:29
 6 Q And what were you told were the times that you can
 7 deploy a taser? And by deploy, I mean use it on a
 8 person.
 9 A I mean, under certain circumstances. I mean, right
 10 now at this time I don't remember everything. 10:18:46
 11 Q Tell us anything you remember about what you were
 12 taught about when you get to use a taser on somebody.
 13 A Under, you know, certain circumstances.
 14 Q What circumstances? Can you explain any? I mean, if
 15 you can't, that's fine, just tell me you can't. 10:19:12
 16 A I mean, under certain circumstances: resisting, you
 17 know, as -- resisting, I mean, like I said. Right
 18 now at this time I don't -- I don't remember
 19 everything.
 20 Q Is that the only one you can remember? 10:19:33
 21 A As of right now, yes.
 22 Q Resisting what?
 23 A Being taken into custody.
 24 Q All right. And you were also trained in the use of
 25 videos or body cameras? 10:19:56

12 (Pages 45 to 48)

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1 **A No.** 10:30:04
 2 Q So -- well at some point did you have a body camera?
 3 **A Yes.**
 4 Q When did you get one?
 5 **A I don't remember.** 10:30:17
 6 Q Well, tell me generally. I mean, was it while you
 7 were at Wagoner?
 8 **A It was at Wagoner County, yes.**
 9 Q Tell me the training that you went through to use a
 10 body camera. 10:30:26
 11 **A I didn't.**
 12 Q Were you at least told how to turn it on?
 13 **A So it was pretty much a trial -- a trial camera.**
 14 Q Were you taught how to turn it on?
 15 **A I don't remember.** 10:30:43
 16 Q Well, how do you turn the body camera on that you got
 17 while at Wagoner?
 18 **A I don't remember.**
 19 Q Is it automatically activated some way?
 20 **A No.** 10:30:54
 21 Q Do you physically have to touch something to turn it
 22 on?
 23 **A I don't know the exact process, but you do have to**
 24 **press something.**
 25 Q Okay. Was it like a start button? 10:31:06

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1 **A I guess.** 10:31:11
 2 Q Okay. Where was the button located?
 3 **A I don't remember.**
 4 Q Was it on your chest?
 5 **A The button?** 10:31:14
 6 Q Yes, sir.
 7 **A The camera was on my chest.**
 8 Q Okay. Where on your chest?
 9 **A I don't remember exactly, but I do believe it was**
 10 **right in this general area (indicating).** 10:31:24
 11 Q Okay. Well, let's do this. Does -- did you have a
 12 vest on?
 13 **A Yes.**
 14 Q Let's describe it as maybe a right pocket, left
 15 pocket, certain identifiers like that on a vest. 10:31:42
 16 Okay. Where was the body camera located with regard
 17 to those items?
 18 **A We didn't have pockets on our vests. I don't -- like**
 19 **I said, I don't remember exactly where it was. It**
 20 **was in this general area.** 10:31:56
 21 Q How was it attached?
 22 **A I do believe it was, like, a clip or something like**
 23 **that.**
 24 Q And did you -- was it battery charged?
 25 **A I don't remember.** 10:32:14

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1 Q Did you have to do something at the beginning of a 10:32:17
 2 shift to make sure that it would work; in other
 3 words, did you have to plug batteries in? Did it
 4 have a battery in it that you had to charge up?
 5 **A I mean, nothing was established at that time. I** 10:32:30
 6 **don't -- I don't remember.**
 7 Q Okay, but -- what I'm trying to understand is the
 8 basics of how this camera operated while it was on
 9 you and what you did to prepare it for a shift.
 10 **A As I stated before, I don't remember, sir.** 10:32:40
 11 Q Okay. Can you -- do you know what brand it was?
 12 **A No, sir.**
 13 Q Okay. And I thought I understood you to say, but
 14 confirm this, did you receive any training on how to
 15 use the camera? 10:32:54
 16 **A No, sir.**
 17 Q Did you receive any training for the circumstances
 18 under which you should activate the camera?
 19 **A No, sir.**
 20 Q How long had you had the camera prior to this 10:33:10
 21 incident with Mr. Krueger?
 22 **A I don't -- I don't remember.**
 23 Q Was it months possibly?
 24 **A I can't say because I don't remember.**
 25 Q Do you know if there's anything in your personnel 10:33:28

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1 file or somewhere that would indicate when you were 10:33:42
 2 issued this body camera?
 3 **A I'm not sure.**
 4 Q Do you know who issued it to you?
 5 **A I know the sheriff's office.** 10:33:52
 6 Q Who in the sheriff's office?
 7 **A I don't remember.**
 8 Q Do you know where you picked -- physically picked it
 9 up?
 10 **A No, I don't remember. It was at the sheriff's** 10:34:05
 11 **office.**
 12 Q After this incident with Mr. Krueger, and I'm talking
 13 about the late evening hours and the early morning
 14 hours of the next day, were you asked to give an
 15 interview with the OSBI? 10:34:11
 16 **A I don't remember.**
 17 Q Was there an OSBI agent there investigating what
 18 happened?
 19 **A That night?**
 20 Q Yeah. 10:34:22
 21 **A I do believe so.**
 22 Q Okay. And I know this agent talked to various
 23 people. She at least talked to the paramedics. Do
 24 you remember any of that going on?
 25 **A I wasn't there. I don't remember.** 10:35:05

13 (Pages 49 to 52)

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1 Q Well, okay. Did the -- did any OSBI agent on the 10:25:08
 2 evening or -- of this incident or the early morning
 3 hours of the next day ask to interview you?
 4 **A I don't remember.**
 5 Q When this incident ended, what did you do with your 10:25:30
 6 body camera?
 7 **A I don't remember.**
 8 Q Okay. Was the video located on a chip on the body
 9 camera? Where was the information stored?
 10 **A I'm not sure. I didn't -- I don't know the process 10:25:51**
 11 of that. I don't know.
 12 Q Okay. All right. So what's -- do you know what
 13 chain of custody is?
 14 **A Yes.**
 15 Q Okay. Tell me what the chain of custody was from you 10:26:02
 16 to the next person regarding your body camera and the
 17 video footage.
 18 **A Sir, as I stated before, I don't remember.**
 19 Q Did you review the body camera video before you gave
 20 a statement to the OSBI? 10:26:28
 21 **A I don't believe so. I don't remember.**
 22 Q Did you look at it with your -- with an attorney?
 23 **A I do believe so.**
 24 Q Okay. And how did you find that attorney?
 25 **A The FOP. 10:26:47**

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1 Q Was there a particular reason why you thought you 10:26:51
 2 needed an attorney before you were interviewed by the
 3 OSBI?
 4 **A I mean, I guess due process.**
 5 Q What do you mean by due process? 10:27:09
 6 **A Due process. Everybody has their right to an**
 7 **attorney.**
 8 Q Did you feel like you needed one?
 9 **A Like I said, everybody has their right to an**
 10 **attorney, sir. 10:27:34**
 11 Q Do you know how many different times you looked at
 12 the videos? How many videos are there of this
 13 incident, do you know?
 14 **A I don't know.**
 15 Q Is there more than one? 10:27:37
 16 **A I don't believe so.**
 17 Q So you just -- you've just looked at one?
 18 **A Yes.**
 19 Q All right. Let's talk about this incident with
 20 Mr. Krueger. Do you recall the date of the incident? 10:28:03
 21 **A Not exactly.**
 22 Q Can you tell me a year?
 23 **A I do believe it was 2019.**
 24 Q Do you know what month?
 25 **A I do believe it was in July. 10:28:19**

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1 Q All right. And tell me how something was called to 10:28:26
 2 your attention.
 3 **A What do you mean?**
 4 Q Well, how did you get involved in this incident?
 5 **A I received a phone call. 10:28:39**
 6 Q From who?
 7 **A Deputy Orr.**
 8 Q Tell me everything he told you in that phone call.
 9 **A I don't remember.**
 10 Q Do you remember anything he told you? 10:28:52
 11 **A The situation, it was possibly an intoxicated person.**
 12 Q That's what Deputy Orr told you?
 13 **A That's what I can remember.**
 14 Q My question was more specific than that. Did he say
 15 that there's possibly an intoxicated person? 10:29:07
 16 **A I don't remember.**
 17 Q Okay. What do you remember about the phone call from
 18 Deputy Orr?
 19 **A I don't remember exact words.**
 20 Q Do you remember any words? 10:29:22
 21 **A Not the exact term but possibly an intoxicated**
 22 **person.**
 23 Q And why did he call you on your phone instead of
 24 using the recorded radio broadcast?
 25 **A I don't know. I wasn't there. 10:29:45**

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1 Q Well, you took the call. 10:29:47
 2 **A I know that.**
 3 MR. WOOD: Stop. Stop. Don't yell at the
 4 witness.
 5 MR. LYONS: I wasn't yelling. 10:29:53
 6 MR. GERES: I thought you were.
 7 MR. LYONS: Okay.
 8 MR. WOOD: Calm down and ask the question.
 9 Q (By Mr. Lyons) Okay. You took the call; right?
 10 **A Yes, sir. 10:30:02**
 11 Q Okay. Was that common practice for deputies to
 12 telephone each other back and forth instead of using
 13 the Wagoner County radio?
 14 **A I mean, it's not uncommon.**
 15 Q What else did he tell you other than possibly some -- 10:30:31
 16 did he say somebody was possibly intoxicated?
 17 **A Yeah, that was a possible intoxicated person. That**
 18 **is not his exact words but...**
 19 Q Okay. So how did you know who to -- did he tell you
 20 to do something about this person? 10:30:47
 21 **A I know he just passed on that, you know, the**
 22 **information. Possibly the -- well, he gave me the**
 23 **description of the vehicle.**
 24 Q Okay. What was the description?
 25 **A It was a darkish color vehicle. 10:31:16**

14 (Pages 53 to 56)

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1 Q All right. When you pull your gun that means you're 10:50:45
 2 prepared to use it; right?
 3 **A Correct.**
 4 Q All right. And that's deadly force; right?
 5 **A Correct.** 10:50:52
 6 Q So tell me what the driver of the car did to justify
 7 you getting ready to use deadly force.
 8 MR. WOOD: Other than what he already said or
 9 do you want him to repea..
 10 Q (By Mr. Lyons) Just tell me everything the driver did 10:50:57
 11 for you to pull your gun and point it at him and be
 12 ready to use deadly force
 13 **A I mean, as I stated before stopped -- where we**
 14 **stopped at, the abrupt stop, the location, slinging**
 15 **open of the door, attempt to get out of the vehicle,** 10:50:59
 16 **moving around Sir, I don't know.**
 17 Q When you pulled your gun and pointed it at him and
 18 were prepared to use deadly force, was that the
 19 training you had received at Wagoner County?
 20 MR. WOOD: Object to the form. 10:51:03
 21 **A I don't know.**
 22 Q (By Mr. Lyons) Well, was that consistent with all the
 23 law enforcement training you had received?
 24 **A Yes, sir.**
 25 Q And would that include the law enforcement training 10:51:05

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1 Q But stay in the vehicle and show me your hands or put 10:51:06
 2 the hands on the steering wheel?
 3 **A Something of that nature, sir. I don't remember**
 4 **exactly.**
 5 Q Okay. So what did you want him to do? To show you 10:51:10
 6 his hands or put them on the steering wheel?
 7 **A That's both the same thing. You can show your hands**
 8 **by placing them on the steering wheel.**
 9 Q Had he closed the car door by this time?
 10 **A No, sir.** 10:51:13
 11 Q The car door is still open?
 12 **A Yes, sir.**
 13 Q Did you come up to the open door area of the car?
 14 **A Yes, sir.**
 15 Q How close were you to it? 10:51:17
 16 **A I mean, I was right there -- right there at it at one**
 17 **point in time.**
 18 Q How far were you away from the driver?
 19 **A At what time?**
 20 Q At the time you come up to the vehicle. 10:51:20
 21 **A I mean, it was all -- happened so fast.**
 22 Q Okay. Did you get into the space of the opening from
 23 the car seat to the car door? Did you get in that
 24 open space?
 25 **A Yes, at one point.** 10:51:24

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1 that you had during this field training officer 10:51:25
 2 process?
 3 **A Yes, sir.**
 4 Q Did you believe that in pulling the gun and offering
 5 to use deadly force there that you were following the 10:51:27
 6 policies and procedures of Wagoner County Sheriff's
 7 Office?
 8 MR. WOOD: Offering to use deadly force.
 9 Object to the form.
 10 MR. GERIES: Object to the form. 10:51:30
 11 Q (By Mr. Lyons) Did you believe that you were doing
 12 that in furtherance of the Wagoner County Sheriff's
 13 Office policies and procedures?
 14 **A I don't remember all the policies and procedures at**
 15 **this time, sir.** 10:51:31
 16 Q Well, is that what you believe that you had been
 17 trained to do?
 18 **A Prior training and experience, yes, sir.**
 19 Q Now, what did you do after you pulled your gun and
 20 you were pointing it at the driver? 10:51:34
 21 **A Verbal commands.**
 22 Q To do what?
 23 **A I do believe I said either stay in your vehicle, show**
 24 **me your hands, put your hands on the steering wheel.**
 25 **I don't remember exactly.** 10:51:36

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1 Q Okay. And why did you do that? 10:51:38
 2 **A Attempting to make contact with the driver.**
 3 Q You mean verbal contact or physical contact?
 4 **A Verbal.**
 5 Q Could you have made verbal contact from a distance 10:51:40
 6 further back than that?
 7 **A Yes.**
 8 Q So why did you feel the need to go up into this area
 9 of the open door?
 10 **A Constant moving, if there's something in the vehicle** 10:51:42
 11 **that you want to obviously get the person away from**
 12 **it. You don't know.**
 13 Q Well, did you see anything in the vehicle that he
 14 needed to get away from?
 15 **A I wasn't there, sir.** 10:51:45
 16 Q No. Mr. Phillips, it's the time that you're standing
 17 right there in the doorway. This is the time we're
 18 talking about. Did you see anything in the vehicle
 19 that you thought he needed to get away from?
 20 **A No. I don't know.** 10:51:47
 21 Q Okay. Well, when you looked in the vehicle did you
 22 see a gun?
 23 **A It really wasn't time to look, sir.**
 24 Q Well, did you look in the vehicle?
 25 **A No, not necessarily.** 10:51:49

18 (Pages 69 to 72)

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1 Q At any time up to this point that you're sitting in 10:54:26
 2 the doorway area there and the driver is right there,
 3 how far away is he from you?
 4 **A I mean, at that point we were trying to get him out**
 5 **of the car.** 10:54:30
 6 Q How far away was he from you?
 7 **A I can't give you exact measurements. I don't know,**
 8 **sir.**
 9 Q Give me your best estimate.
 10 **A I don't know.** 10:54:50
 11 Q Within arm's-length?
 12 **A Maybe one or two.**
 13 Q Okay. Could you reach out and touch him?
 14 **A Yes, sir.**
 15 Q Okay, because you did reach out and touch him, didn't 10:54:58
 16 you? You grabbed his arm?
 17 **A After he grabbed me.**
 18 Q Do you remember giving a verbal statement to the OSBI
 19 agent that said you reached out and grabbed his arm?
 20 Do you remember that? 10:55:11
 21 **A Not at that time, no.**
 22 Q Did you reach out and grab the driver's arm?
 23 **A Yes, sir, I did.**
 24 Q Okay. Was that his left arm?
 25 **A I don't recall.** 10:55:19

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1 Q Why would you grab his arm? 10:55:29
 2 **A Trying to remove the person out of the vehicle.**
 3 Q Why did you -- I thought you told him to stay in the
 4 vehicle when he opened the door?
 5 **A That is separate times.** 10:55:32
 6 Q Okay. Why did he need to get out of the vehicle?
 7 **A Because of the unknown inside of the vehicle. He was**
 8 **failing to comply with verbal commands.**
 9 Q Okay. Had he committed any other crimes by this time
 10 that you are up there in the doorway with him? 10:55:50
 11 **A Yes.**
 12 Q What?
 13 **A Assault.**
 14 Q What did he do to assault you?
 15 **A He grabbed me and pulled -- tried to pull me into his** 10:56:02
 16 **vehicle.**
 17 Q I'm talking about right before that. Leading up to
 18 that, as you're sitting there in the doorway with him
 19 did he commit any other crimes?
 20 MR. GERIES: Object to the form. 10:56:14
 21 **A I mean, he's not complying, sir.**
 22 Q (By Mr. Lyons) Complying with?
 23 **A Verbal commands.**
 24 Q To do what?
 25 **A I mean, I don't -- I don't remember exactly at that** 10:56:23

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1 **point in time. I know we were giving verbal** 10:56:26
 2 **commands.**
 3 Q Can you tell me what verbal commands you gave him
 4 that he was not doing?
 5 **A I don't remember.** 10:56:38
 6 Q And so you grabbed his arm because you didn't know
 7 what was in the car?
 8 **A I grabbed his arm because we were trying to get him**
 9 **out of the vehicle.**
 10 Q And you were trying to get him out of the vehicle 10:56:50
 11 because?
 12 **A I mean, he's not complying with verbal commands,**
 13 **continuous movement inside the vehicle. I don't know**
 14 **what's in the car. It could be anything.**
 15 Q Well, what was he looking for in the car? 10:57:01
 16 **A I'm not sure.**
 17 Q Could it have been a driver's license?
 18 **A I'm not sure, sir.**
 19 Q Well, could it have been?
 20 **A I'm not sure, sir.** 10:57:08
 21 Q Could he have been looking for his insurance?
 22 **A I'm not sure, sir.**
 23 Q Did you ask him any questions?
 24 **A Not at that time I don't think so. I don't --**
 25 Q You what? 10:57:11

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1 **A I don't think.** 10:57:21
 2 Q Okay. Were you investigating some alleged criminal
 3 activity that had occurred in your presence?
 4 **A Yes, sir.**
 5 Q Such as driving under the influence? 10:57:30
 6 **A Yes, sir.**
 7 Q Such as swerving?
 8 **A Yes, sir.**
 9 Q Or unsafe lane --
 10 **A Failing to maintain.** 10:57:38
 11 Q Failing to maintain. Do you know what the statutory
 12 citation is on that?
 13 **A Not at this time, sir.**
 14 Q Okay. So what were you doing to investigate that at
 15 the time you're sitting there in the doorway and
 16 trying to get him out of the car? 10:57:44
 17 MR. GERIES: Object to the form.
 18 MR. WOOD: Object to the form.
 19 **A At that time it was a different -- different**
 20 **circumstances.** 10:58:00
 21 Q (By Mr. Lyons) Okay. Were you close enough to smell
 22 whether or not he had an odor of alcohol?
 23 **A At that time it was different circumstances, sir.**
 24 Q No. Look, my question was specific. Were you close
 25 enough to be able to determine whether he had an odor 10:58:18

19 (Pages 73 to 76)

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1 Q Did you see any offensive weapons in the car? 11:03:00
 2 **A No.**
 3 Q Did the driver threaten you in any way as you reached
 4 across him to undo his seat belt?
 5 **A Yes.** 11:03:11
 6 Q What did he say to you to threaten you?
 7 **A He assaulted me.**
 8 Q Okay. What did he do to assault you?
 9 **A At that time that's when he grabbed my leg.**
 10 Q He grabbed your leg? 11:03:20
 11 **A Grabbed my leg, pulled me -- like pulled me in**
 12 **closer, grabbed my left arm and grabbed my gun.**
 13 Q Okay. But was your gun holstered at that point?
 14 **A When I -- when I reached in to unpop his seat belt?**
 15 Q Right. 11:03:43
 16 **A I don't remember.**
 17 Q I mean, why would you reach in across somebody and --
 18 did you have to do that with your left arm?
 19 **A I don't remember exactly. I don't remember.**
 20 Q Did you have the gun in your right hand or left hand? 11:03:56
 21 **A Right.**
 22 Q Okay. Well, it seems logical to me that you would
 23 have reached in to unbuckle the seat belt with your
 24 left hand and left arm. Does that seem logical?
 25 **A I mean, it may seem logical to you, but I don't** 11:04:10

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1 **remember though.** 11:04:13
 2 Q Well, tell me what is logical for you as you are
 3 recounting this. Was it likely your left hand or was
 4 it likely your right hand?
 5 **A I don't remember.** 11:04:20
 6 Q So this person started tugging on your leg?
 7 **A Leg, yes.**
 8 Q Which leg?
 9 **A I do believe it was my right leg. Thigh.**
 10 Q I'm sorry? 11:04:31
 11 **A Thigh.**
 12 Q All right. Okay. Did you ask the driver any
 13 questions about why he was tugging on your leg?
 14 **A I don't believe so.**
 15 Q Why not? 11:04:44
 16 **A I mean, in that type of situation you're not...**
 17 Q You're not what?
 18 **A You're not going to ask questions.**
 19 Q Okay. You have pulled somebody over for a couple of
 20 traffic offenses. You immediately get out of your
 21 car with a gun. The person is looking inside the
 22 interior of the automobile and could have been
 23 looking for a driver's license or insurance; correct?
 24 MR. WOOD: Object to the form.
 25 **A I don't know, sir.** 11:05:14

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1 Q (By Mr. Lyons) Well, is that a possibility? 11:05:20
 2 **A I mean, it could be.**
 3 Q Okay. And then the next thing that happens is you're
 4 up there reaching across him with a gun in one hand
 5 and you're undoing the seat belt with the other hand. 11:05:31
 6 Did you ever consider the fact that this person might
 7 have been scared?
 8 MR. WOOD: Hold on. Now I think you are
 9 mischaracterizing his prior testimony. Object to
 10 the form. 11:05:41
 11 Q (By Mr. Lyons) Okay. Did you ever consider the fact
 12 that this person might have been scared?
 13 **A No.**
 14 Q All right. So tell me what you did as he was pulling
 15 or tugging on your right leg and thigh. 11:05:56
 16 **A I don't remember.**
 17 Q Well, did you get the seat belt undone?
 18 **A Yes, we did.**
 19 Q Then -- now, and by the way, Deputy Orr had his
 20 handgun pulled; right? 11:06:09
 21 **A I don't remember.**
 22 Q Didn't you say that in your interrogatory answer?
 23 **A At this time, I don't remember.**
 24 Q Sir, I'm going to show you a document.
 25 MR. LYONS: And regrettably, I don't have 11:06:17

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1 copies. I hope you guys can follow along a little
 2 bit. 11:06:49
 3 Q (By Mr. Lyons) Do you see this? It says Defendant
 4 Kaleb Phillips' Responses to Plaintiffs' First
 5 Discovery Requests? 11:06:58
 6 **A Yes, sir.**
 7 Q Do you recall getting some -- getting a document like
 8 this that you had to provide some responses to?
 9 **A Yes.**
 10 Q Okay. And on page 16, the answer to interrogatory
 11 number 11, which ask "please state in chronological
 12 order everything you were told and/or learned about
 13 the situation with Jeff Krueger after you first saw
 14 him or his car." 11:07:08
 15 Okay. And then over on the second page here,
 16 would you read out loud this part from -- it starts
 17 "the" it's about five lines up from the bottom.
 18 Would you read that out loud?
 19 **A "The subject was not compliant with Deputy Phillips'**
 20 **commands."** 11:07:46
 21 Q Slow down a little bit. Okay, there you -- continue.
 22 **A "Around this time Defendant Orr arrived on scene.**
 23 **Both officers began giving commands to the subject to**
 24 **exit the vehicle and show hands. Defendants Orr and**
 25 **Phillips approached the driver's side of the vehicle** 11:07:59

21 (Pages 81 to 84)

KALEB L. PHILLIPS 6-8-22

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1 **with weapons drawn."** 11:08:01
 2 Q All right.
 3 **A Do you want me to finish the --**
 4 Q That's fine to that point.
 5 **A Okay.** 11:08:07
 6 Q Do you know why Deputy Orr had his gun drawn?
 7 **A Due to the circumstances.**
 8 Q What circumstances?
 9 **A Unknown.**
 10 Q All right. So you popped his seat belt? 11:08:37
 11 **A Yes, sir.**
 12 Q He's tugging on your thigh. And you're dragging him
 13 out of the car; correct?
 14 MR. GERIES: Object to the form.
 15 Q (By Mr. Lyons) Are you doing that? 11:08:53
 16 **A I wouldn't agree to dragging him out of the car. We**
 17 **were extracting him out of the car.**
 18 Q Extracting?
 19 **A Yes, sir.**
 20 Q What does extract mean? 11:09:02
 21 **A That means you're getting somebody out of the car.**
 22 Q Physically explain to me how you extracted him.
 23 **A I don't recall exactly how we got him out of the**
 24 **vehicle.**
 25 Q Well, was there a particular reason why you didn't 11:09:17

Page 86

1 just tell him at that point look, just come on, get 11:09:19
 2 out of the car?
 3 **A No.**
 4 Q Okay. And was there some reason that you had to
 5 approach his car as opposed -- and open the car door, 11:09:37
 6 pop the seat belt, and drag him out -- or pull him
 7 out instead of standing back a ways and talking to
 8 him? Was there some particular reason you had to do
 9 it that way?
 10 **A I wasn't trained like that.** 11:09:53
 11 Q You were trained to do what? To approach the vehicle
 12 first?
 13 **A Can you go back and repeat the other question?**
 14 Q Was there a reason why you couldn't have stood back
 15 away from the car door and out of harm's way to ask 11:10:08
 16 the driver questions instead of going up to him,
 17 undoing the seat belt and pulling him out?
 18 **A After commands are refused, constant movement in the**
 19 **car, we don't know what is inside the vehicle, sir.**
 20 **So at that time we're trying to get them away from** 11:10:32
 21 **that -- of the unknown. We don't know if it's a gun,**
 22 **knife, any type of weapon, anything -- anything could**
 23 **be a weapon.**
 24 Q Okay. When you got him out of the car did he have a
 25 gun? 11:10:49

Page 87

1 **A It was --** 11:10:54
 2 MR. WOOD: On his person?
 3 Q (By Mr. Lyons) Did you see a gun when you got him out
 4 of the car?
 5 **A I didn't see anything.** 11:11:00
 6 Q Specifically, did you see a gun when you got him out
 7 of the car?
 8 **A I didn't see anything.**
 9 Q Okay. Please give me a yes or no. When you got him
 10 out of the car did you see a gun? 11:11:09
 11 **A No.**
 12 Q All right. When you got him out of the car did you
 13 see a knife?
 14 **A No.**
 15 Q When you got him out of the car did you see any 11:11:14
 16 offensive weapon whatsoever with the driver?
 17 **A No.**
 18 Q Did he threaten you verbally when you got him out of
 19 the car? 11:11:24
 20 **A I don't -- I don't believe so.**
 21 Q Okay. So what were you doing to him at the time you
 22 got him out of the car and you're right there beside
 23 him?
 24 **A What do you mean?**
 25 Q Well, what are you trying to accomplish? 11:11:41

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1 **A We're trying to take the suspect into custody, sir.** 11:11:49
 2 Q Because of -- let me put it this way. Is it because
 3 of the things you told us up to that point?
 4 **A Yes.**
 5 Q Has he done anything else new or different up to that 11:11:53
 6 point in terms of did you have probable cause to
 7 believe he had committed any sort of other crime
 8 other than what you told us about?
 9 **A Everything I told you. No.**
 10 Q Okay. I'm trying to be very specific because these 11:12:10
 11 transcripts, they've got to be read carefully. Okay?
 12 **A Right.**
 13 Q Did you have any probable cause to believe that the
 14 driver had committed any other offense other than
 15 what you have previously told us at the time you're 11:12:25
 16 getting him out of the car?
 17 **A No.**
 18 Q And did you start struggling with him?
 19 **A There was struggle inside the car and outside the**
 20 **car.** 11:12:39
 21 Q Okay. And were you trying to handcuff him?
 22 **A Yes.**
 23 Q And take him into custody?
 24 **A Yes.**
 25 Q And he was arrested at that point; right? Or you 11:12:44

22 (Pages 85 to 88)

KALEB L. PHILLIPS 6-8-22

Page 97

1 Q Did you smell anything in the vehicle that indicated 11:22:42
 2 he may have been smoking marijuana?
 3 **A No, sir.**
 4 Q All right. So you end up with Mr. Krueger on the
 5 ground, okay, this is in the continuum of things. 11:22:54
 6 Tell me what you do when you and Deputy Orr have
 7 Mr. Krueger on the ground.
 8 **A We're trying to -- trying to get hands, trying to**
 9 **place him in the handcuffs, was trying to get him in**
 10 **compliance.** 11:23:13
 11 Q Tell me what you did to try to get compliance.
 12 **A I do know at one point I used my taser, the CEW.**
 13 Q I'm sorry, the what?
 14 **A It's a conducted energy weapon, taser. I used that**
 15 **to try to gain compliance so we can get his hand from** 11:23:30
 16 **underneath.**
 17 Q And did you hear Mr. Krueger saying anything during
 18 the struggle?
 19 **A I do know -- he was uttering something. It was a lot**
 20 **of mumbled talk, kind of like help, help, help, like** 11:24:05
 21 **real low not as -- I don't know. I can't remember**
 22 **everything that was said, sir.**
 23 Q Did you ask him why he was asking for help?
 24 **A I mean, you can't do that in that type of situation,**
 25 **sir.** 11:24:22

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1 Q Why not? 11:24:23
 2 **A You're trying to -- at the point of somebody grabbing**
 3 **you, assaulting you, trying to take your gun, all of**
 4 **that, I mean, we're trying to get him into custody,**
 5 **sir.** 11:24:33
 6 Q When did he try to take your gun?
 7 **A Right there in the beginning of the first contact.**
 8 Q Well, okay. What did he do to try to take your gun?
 9 **A He grabbed my gun.**
 10 Q Okay. But then you pulled it away? Did you? 11:24:45
 11 **A I did. We were able to get it back, yes, sir.**
 12 Q And you holstered it?
 13 **A It's still the fact that he grabbed my gun and**
 14 **grabbed me and tried to pull me in closer.**
 15 Q Okay. Is someone touching your gun -- is that a 11:24:58
 16 crime?
 17 MR. WOOD: Object to the form.
 18 **A Yes, sir, it is.**
 19 Q (By Mr. Lyons) Okay. And what is that crime?
 20 **A I mean, what are you -- what's the intent?** 11:25:03
 21 Q No. My question is tell me what crime he committed
 22 when he touched your gun.
 23 MR. WOOD: Hold on. That's not his testimony
 24 as you know. Object to the form.
 25 Q (By Mr. Lyons) Okay. Whether he grabbed your gun or 11:25:16

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1 touched it, what did he do when he grabbed your gun? 11:25:21
 2 What did he do?
 3 **A What do you mean what did he do? He grabbed my gun.**
 4 Q Okay. How did he grab it?
 5 **A He grabbed it, reached out and grabbed it.** 11:25:28
 6 Q What part of his --
 7 **A The slot of my gun. The top of my gun, sir.**
 8 Q The top of the gun, okay. How long did he have his
 9 hand on the gun?
 10 **A I'm not sure.** 11:25:38
 11 Q And did he try to pull it away from you?
 12 **A I don't know, sir.**
 13 Q All right. So what kind of crime is that for him to
 14 put his hand on the slide of the gun when you don't
 15 know what he's going to do with it? 11:25:48
 16 **A Okay.**
 17 Q What is his intention?
 18 **A I don't know his intentions.**
 19 Q Okay. So at any point were you asking him what do
 20 you need help with? Why are you asking for help? 11:26:13
 21 Did you ask him anything about that?
 22 **A No, sir, I didn't.**
 23 Q Did you in any way investigate why it was that he
 24 might have needed help?
 25 **A No, sir, I didn't.** 11:26:23

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1 Q And why didn't you? 11:26:30
 2 **A Due to the circumstances.**
 3 Q Okay. How many times did you tase him?
 4 **A Approximately, three times, sir.**
 5 Q What does approximately mean? 11:26:40
 6 **A Approximately. Approximate.**
 7 Q Well, could it have been more than three?
 8 **A I don't know. I don't remember.**
 9 Q Could it have been less than three?
 10 **A I don't know. I don't remember.** 11:26:50
 11 Q Okay. And tell me what you did to tase him.
 12 **A What do you mean?**
 13 Q In other words, did you have a taser with prongs on
 14 it?
 15 **A Drive stun.** 11:27:05
 16 Q What does "drive stun" mean?
 17 **A It's an attempt to gain compliance. It's taking the**
 18 **prongs off the taser and the drive stun.**
 19 Q How many volts did your taser have?
 20 **A I'm not sure. I don't recall at this time, sir.** 11:27:18
 21 Q And how many times did you tase -- so you thought it
 22 was about three times. Had you been taught anything
 23 during your training about how many times that you
 24 can tase somebody?
 25 **A Yes, sir.** 11:27:39

25 (Pages 97 to 100)

KALEB L. PHILLIPS 6-8-22

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1 MR. LYONS: Object to form of the question. 12:54:49

2 **A Yes.**

3 Q (By Mr. Wood) Now, in your training that you had had

4 up to this point either through CLEET or your field

5 training officer training or whatever training you 12:54:59

6 had, had you had training that an abrupt stop and a

7 door being flung open could be an indication of a

8 aggressive behavior by the driver?

9 MR. LYONS: Object to form of the question.

10 **A Yes.** 12:55:17

11 Q (By Mr. Wood) Had you seen or been related to past

12 incidents that had happened to officers where drivers

13 would come out very quickly and they have a gun?

14 **A Yes.**

15 Q And they would start shooting at the officer? 12:55:33

16 **A Yes.**

17 Q Have you seen such videos?

18 **A Yes, sir.**

19 Q Was that in your mind at the time that you are

20 approaching this vehicle? 12:55:45

21 **A Absolutely.**

22 Q And because of this behavior did that cause you to

23 draw your weapon?

24 **A Yes.**

25 Q Now, when you approached the vehicle you were telling 12:55:57

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1 us that you're giving commands to Mr. Krueger to show 12:56:00

2 you his hands; is that right?

3 **A Yes.**

4 Q And also to put his hands on the wheel?

5 **A Yes.** 12:56:12

6 Q Were you telling him to put his hands on the wheel so

7 you could see his hands?

8 **A Yes.**

9 Q And did he do that?

10 **A No.** 12:56:20

11 Q Was he moving his hands around the compartment of the

12 vehicle?

13 **A Yes.**

14 Q Did it appear to you that he was searching for

15 something? 12:56:30

16 MR. LYONS: Object to the form of the

17 question.

18 **A Yes.**

19 Q (By Mr. Wood) Okay. And plaintiffs' counsel was

20 asking you was it possible that he was searching for 12:56:37

21 a driver's license or insurance information. Do you

22 recall that question?

23 **A Yes, sir.**

24 Q Okay. But were you also concerned about the

25 possibility that he could also be searching for a 12:56:49

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1 weapon? 12:56:51

2 **A Yes.**

3 Q Now, prior to the point in time that Mr. Krueger was

4 pulled from the vehicle, physically pulled from the

5 vehicle, did you have an opportunity to completely 12:57:03

6 inventory the contents of the compartment of that

7 car?

8 **A No.**

9 Q Was it your purpose to separate Mr. Krueger from the

10 inside of that car? 12:57:24

11 **A Yes.**

12 MR. LYONS: Object to the form of the

13 question.

14 Q (By Mr. Wood) And why was that?

15 **A The unknown. It could be anything.** 12:57:36

16 Q Once Mr. Krueger was taken out of the car -- pulled

17 out of the car, were you trying to get him physically

18 restrained?

19 **A Yes.**

20 Q You were telling us that at one point in time 12:57:59

21 Mr. Krueger grabbed your gun. Do you recall that

22 testimony?

23 **A Yes.**

24 Q I think plaintiffs' counsel used the term he touched

25 your gun. I'm not sure the difference. Can you 12:58:17

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1 describe for us -- okay. You've got your gun out. 12:58:19

2 Is it extended out like I'm holding my hands?

3 **A Yes.**

4 Q Okay. So extended out in front of you; is that

5 right? 12:58:24

6 **A Yes.**

7 Q And is it in your right hand?

8 **A Yes.**

9 Q Okay. And how far are you away -- what's the closest

10 that you got to Mr. Krueger with the gun in your 12:58:33

11 hand?

12 **A I don't know how close. It got pretty close.**

13 Q Okay. Close enough for him to reach out with his

14 hand and grab the gun?

15 **A Yes, right.** 12:58:50

16 Q Okay. And to the extent that you can recall, can you

17 describe for me how he grabbed your gun?

18 **A It was -- reached out and grabbed the top slot of it.**

19 Q Okay. And you also said that he reached out and

20 grabbed your arm and tried to pull you into the 12:59:13

21 vehicle?

22 **A Yes.**

23 Q Okay. So these acts of him grabbing your gun and

24 grabbing your arm and pulling you into the vehicle,

25 did that alarm you? 12:59:27

37 (Pages 145 to 148)

KALEB L. PHILLIPS 6-8-22

Page 153

1 **A That's a hostile situation.** 13:05:33
 2 Q And why would you ever get so close to Mr. Krueger if
 3 you thought he was dangerous and that he could reach
 4 out and grab your gun? Is that what you were taught
 5 to do in law enforcement training? 13:05:42
 6 **A I mean, no.**
 7 Q Okay.
 8 **A But trying to eliminate the threat, sir.**
 9 Q And we already determined that when you came in
 10 contact with Mr. Krueger that you knew that he wasn't 13:05:57
 11 drinking, right, because you couldn't smell anything?
 12 MR. GERIES: Object to the form.
 13 **A Just because you can't smell it that doesn't mean**
 14 **anything.**
 15 Q (By Mr. Lyons) Did you have any proof -- did you have 13:06:06
 16 any facts whatsoever that indicated Mr. Krueger was
 17 driving under the influence of alcohol?
 18 MR. GERIES: Other than what he stated
 19 earlier?
 20 Q (By Mr. Lyons) Did you have any evidence that he was? 13:06:17
 21 **A It's a possibility.**
 22 Q What was -- what facts -- what facts indicated he was
 23 driving under the influence?
 24 **A Probable cause. We were investigating that.**
 25 Q Okay. My question was more specific than that. 13:06:28

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1 During the investigation you did, did you ever 13:06:31
 2 determine any facts that made you suspect that
 3 Mr. Krueger was driving under the influence?
 4 **A Yes.**
 5 Q Which -- did you smell any alcohol on him? 13:06:40
 6 **A I mean, there is probable causing. Failing to**
 7 **maintain.**
 8 Q Other than failing to maintain what -- lane -- what
 9 other evidence did you have that he was intoxicated?
 10 **A I mean all of it is possibilities.** 13:06:54
 11 Q I don't want possibilities. I want facts. I want
 12 evidence. Did you smell alcohol on him?
 13 **A No, I didn't.**
 14 Q Did he have any slurred speech?
 15 **A That's -- I don't know.** 13:07:06
 16 Q Did he have bloodshot eyes?
 17 **A I don't know.**
 18 Q Did he have staggered gait?
 19 **A I don't know.**
 20 Q What other indications do you have as a patrol 13:07:14
 21 officer to look for for signs of intoxication other
 22 than those I just mentioned?
 23 **A There's a lot.**
 24 Q What are they?
 25 **A So first, I mean, you have to build your case. You** 13:07:27

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1 **have -- you know, one of the probable causes is** 13:07:30
 2 **failing to maintain lane.**
 3 Q Okay.
 4 **A Driving erratically.**
 5 Q Okay. Other than those. Other than those. 13:07:37
 6 **A Well, you asked. I'm telling you.**
 7 Q Okay. The personal indicators of Mr. Krueger that he
 8 was under the influence, what evidence did you have?
 9 **A Like I said, I was investigating it.**
 10 Q And what did you do to investigate it when you went 13:07:54
 11 up to the car to determine if he had been drinking?
 12 **A There wasn't time.**
 13 Q Okay. So your first priority to get Mr. -- was to
 14 get Mr. Krueger detained and cuffed; correct?
 15 **A Correct.** 13:08:20
 16 Q And that was your sole priority then; right?
 17 **A Correct.**
 18 Q So Mr. Krueger was or was not rolling over and
 19 obeying your commands to show his hands?
 20 **A I didn't -- repeat that.** 13:08:33
 21 Q You told -- did you tell us that Mr. Krueger was not
 22 obeying your commands to roll over?
 23 **A Yes.**
 24 Q And did you tell us that he was not obeying your
 25 commands to show his hands? 13:08:43

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1 **A Yes.** 13:08:44
 2 Q And is that why you then had to detain him and cuff
 3 him?
 4 MR. WOOD: Object to the form. That's --
 5 Q (By Mr. Lyons) Is that why you were fighting with him 13:08:52
 6 to get him cuffed is because he wouldn't roll over
 7 and show his hands?
 8 **A Part of that is correct.**
 9 Q Okay. What's incorrect about it?
 10 **A I mean, you're leaving stuff.** 13:09:04
 11 Q Tell me what I'm leaving out.
 12 **A The assault.**
 13 Q What, when he grabbed your leg?
 14 **A Grabbed my arm, my leg, and my gun.**
 15 Q Okay. So then you still wanted to detain him and get 13:09:11
 16 him rolled over for touching your leg, touching your
 17 arm and grabbing your gun; is that right?
 18 MR. GERIES: Object to the form.
 19 MR. WOOD: Object.
 20 Q (By Mr. Lyons) Is that right? 13:09:27
 21 **A Can you repeat that?**
 22 Q You were wanting him to roll over on his back and to
 23 show his hands to detain and cuff him because of the
 24 assault. And you said the assault was that he
 25 grabbed your leg, which was your thigh. He grabbed 13:09:40

39 (Pages 153 to 156)

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1 your arm, and he grabbed your gun; is that right? 13:09:44

2 **A At that point he was going to jail.**

3 Q Okay. And after that, after you got him out of the

4 car, did he grab your leg again? 13:09:58

5 **A Kicked, grabbed for my gun again.**

6 Q Did he get ahold of the gun?

7 **A You can look in the video and see.**

8 Q Did he get ahold of the gun?

9 **A He didn't get ahold of it, but he had ahold of it.**

10 Q He was fighting for his life, wasn't he? 13:10:10

11 MR. GERIES: Object to the form.

12 MR. BERKHOUSE: Object to the form.

13 **A He was fighting us.**

14 Q (By Mr. Lyons) Huh?

15 **A He was fighting us.** 13:10:15

16 Q So Mr. Krueger died because he wouldn't roll over and

17 show his hands and get cuffed; is that correct?

18 MR. GERIES: Object to the form.

19 MR. BERKHOUSE: Object to the form.

20 MR. WOOD: Object to the form. 13:10:25

21 Q (By Mr. Lyons) Is that what happened?

22 **A No.**

23 Q Okay. Tell me why he deserved to die.

24 MR. GERIES: Object to the form.

25 MR. BERKHOUSE: Object to the form. 13:10:31

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1 MR. WOOD: Don't answer that. That's getting 13:10:31

2 purely argumentative. I'm going to instruct the

3 witness not to answer.

4 MR. LYONS: Okay.

5 MR. WOOD: If you're just going to argue with 13:10:36

6 the witness --

7 MR. LYONS: We'll certify the question. I'm

8 finished. We're going to certify that and come

9 back.

10 MR. BERKHOUSE: No questions. 13:10:43

11 MR. GERIES: I have one question.

12 CROSS EXAMINATION

13 BY MR. GERIES:

14 Q Deputy Phillips -- or former Deputy Phillips, you've

15 been asked several times if you ever saw Mr. Krueger 13:10:49

16 with a gun in his hands. And I want to clarify,

17 other than the time that he had your gun in his hand,

18 did you see him with a gun in his hand?

19 **A No.**

20 Q Did he try to get your gun away from you? 13:11:02

21 **A Yes.**

22 MR. GERIES: No further questions.

23 MR. WOOD: No questions. He will read and

24 sign.

25 (Witness excused; Signature required.) 13:11:11

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1 J U R A T

2 STATE OF OKLAHOMA)

3) SS:

4 COUNTY OF TULSA)

5 I, KALEB L. PHILLIPS, do hereby state under oath

6 that I have read the above and foregoing deposition in its

7 entirety and that the same is a full, true and correct

8 transcription of my testimony so given at said time and

9 place, except for the corrections noted.

10

11

12 KALEB L. PHILLIPS

13

14 Subscribed and sworn to before me, a Notary Public

15 in and for the State of Oklahoma by said witness, KALEB L.

16 PHILLIPS, on this the _____ day of _____, 2022.

17

18

19 Notary Public in and for the

20 State of _____

21

22 My Commission Expires: _____

23 My Commission Number: _____

24

25

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1 CORRECTION SHEET

2 WITNESS NAME: KALEB L. PHILLIPS

3 DATE: JUNE 8, 2022

4 CASE: KRUEGER v. WAGONER COUNTY, ET AL.

5 REPORTER: MICHELE VEST, CSR

6 PG/LN CORRECTION REASON FOR CORRECTION

7

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40 (Pages 157 to 160)

RE: Krueger v. Wagoner BOCC, et al.

From: Lyons and Clark (lyonscla@swbell.net)

To: SLG@czwlaw.com

Date: Tuesday, July 5, 2022 at 11:40 AM CDT

Thanks.

Michelle

From: Steve Geries [mailto:SLG@czwlaw.com]
Sent: Tuesday, July 5, 2022 11:12 AM
To: Lyons and Clark <lyonscla@swbell.net>
Cc: Joann Johnson <JTJ@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

Michelle,

I was able to confirm with Wagoner County that they do not have the serial number or any specific identifier for the body camera assigned to Phillips. The names of the contacts we had with Wolfcom were Tiffany Wang and Marko Kova.

Thanks,

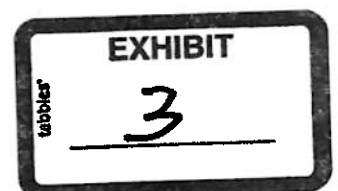
Steve

From: Lyons and Clark <lyonscla@swbell.net>
Sent: Tuesday, July 5, 2022 9:41 AM
To: Steve Geries <SLG@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

That's fine.

Thanks!

Michelle



From: Steve Geris [mailto:SLG@czwlaw.com]
Sent: Tuesday, July 5, 2022 9:26 AM
To: Lyons and Clark <lyonscla@swbell.net>
Subject: RE: Krueger v. Wagoner BOCC, et al.

Michelle,

I have checked on it further and have no other information. If you will give me until noon, I will follow up once more just to make sure.

Thanks,

Steve

From: Lyons and Clark <lyonscla@swbell.net>
Sent: Tuesday, July 5, 2022 8:32 AM
To: Steve Geris <SLG@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

Good morning, Mr. Geris.

We are planning to issue the subpoena soon and I wanted to check with you to see if you have any additional information, such as the serial number or other information specific to the body cam Deputy Phillips was wearing, so that Wolfcom Enterprises can produce the correct equipment.

Thank you.

Michelle

From: Steve Geris [mailto:SLG@czwlaw.com]
Sent: Tuesday, June 28, 2022 2:50 PM
To: Lyons and Clark <lyonscla@swbell.net>
Cc: 'John Kim' <JKim@piercecouch.com>; 'Robert Lafferrandre' <rlafferrandre@piercecouch.com>; 'Thomas LeBlanc' <tbleblanc@bestsharp.com>; 'Jordan Berkhouse' <jberkhouse@bestsharp.com>; Michael L. Carr <MLC@czwlaw.com>; Joann Johnson <JTJ@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

I do not have an objection to Plaintiff sending a subpoena for the body camera other than it be limited in scope for information related to the Krueger matter/date.

I will see what I can find out with regard to any serial numbers etc and will let you know as soon as I find out anything.

Thanks,

Steve

From: Lyons and Clark <lyonscla@swbell.net>
Sent: Tuesday, June 28, 2022 2:54 PM
To: Steve Geries <SLG@czwlaw.com>
Cc: 'John Kim' <JKim@piercecouch.com>; 'Robert Lafferrandre' <rlafferrandre@piercecouch.com>; 'Thomas LeBlanc' <tbleblanc@bestsharp.com>; 'Jordan Berkhouse' <jberkhouse@bestsharp.com>; Michael L. Carr <MLC@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

Thanks.

Do you have any objection to our office and/or Advansic contacting Wolfcom directly in order to facilitate the inspection?

We likely don't need a phone call, but if you could provide us with anything which would help identify the specific body cam/storage, such as a serial number, etc., that would be very helpful.

Michelle

From: Steve Geries [<mailto:SLG@czwlaw.com>]
Sent: Tuesday, June 28, 2022 2:38 PM
To: Lyons and Clark <lyonscla@swbell.net>
Cc: John Kim <JKim@piercecouch.com>; Robert Lafferrandre <rlafferrandre@piercecouch.com>; Thomas LeBlanc <tbleblanc@bestsharp.com>; Jordan Berkhouse <jberkhouse@bestsharp.com>; Michael L. Carr <MLC@czwlaw.com>
Subject: RE: Krueger v. Wagoner BOCC, et al.

Ms. Jones,

I have learned that the body camera was provided by a company named Wolfcom Enterprises. I must admit that I am not familiar with this company. The specific body camera model was a "Halo".

The address I have for the company is:

Wolfcom Enterprises

1700 Lincoln Avenue

Pasadena, CA 91103

The body camera which Phillips was wearing was returned to the company following the testing period. The laptop provided by Wolfcom with their software and docking equipment was also returned to Wolfcom along with the body camera. I'm available today and tomorrow to discuss with Mark, I just don't know what other information he is needing. If you give me some idea then I will gather the information so we don't waste a call.

Thanks,

Steve

From: Lyons and Clark <lyonscla@swbell.net>

Sent: Tuesday, June 28, 2022 12:58 PM

To: Steve Gerles <SLG@czwlaw.com>

Subject: Krueger v. Wagoner BOCC, et al.

Good afternoon, Mr. Gerles.

I'm following up on our discussion at last Friday's deposition regarding the custodian of the body worn camera and any memory cards/external storage and production for forensic examination. Do you have any update? If so, could you please give Mr. Lyons a call to discuss?

Thank you.

Michelle D. Jones, Paralegal

LYONS & CLARK, INC.

616 S. Main, Suite 201

Tulsa, OK 74119
918-599-8844 Telephone
918-599-8585 Facsimile

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wolfcom body cameras go back 30 seconds on

AI Mode All Videos Shopping News Short videos Images More Tools

AI Overview

Wolfcom body cameras feature pre-recording (or flashback) technology that captures video and audio leading up to when the button is pushed or the camera is activated.  wolfcomusa.com +2

How Pre-Record Works

- **Continuous Buffer:** The camera constantly records a rolling video and audio buffer while on standby. 
- **Pre-Event Capture:** When the main record button is pressed, the camera saves the pre-recorded footage (which can range from 30 seconds up to longer flashback windows depending on the specific Wolfcom model, such as the 3rd Eye or Halo series) and appends it to the start of the live recording.  wolfcomusa.com +2
- **Holster Trigger Integration:** Certain Wolfcom models also support automatic holster sensors that trigger recording—and include the pre-event buffer—the moment a firearm or device is drawn.  Facebook · Wolfcom +1

If you are looking for information on a **specific Wolfcom model** (like the Halo 2.0, 3rd Eye, or Commander), let me know and I can share its exact pre-record or flashback settings.

 wolfcomusa.com

Halo Police Body Camera Troubleshooting - Police Body Cameras

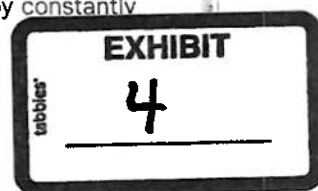
Power and Charging: Dead/low battery (charge 2+ hours); frozen unit (press reset button on back with paperclip); damaged USB cable...

 Reddit · r/explainlikeimfive

ELI5: How do police body cameras record 30 seconds prior to ...

August 7, 2017 — Body Camera Pre-Recording: Police body cameras record prior to activation by constantly maintaining a 30-second buffer of footage.

 Google





CAD Detail

Print Date: 02-Jul-19
 Print Time: 03:41:13 AM
 User Name: tpuckett

Incident #2019-0031882

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Incident Location:	TURN LANE 260/HWY 51	Apt:	
Inc Loc Info:		Latitude:	
Building:		Longitude:	
Community:			
Municipality:			
Caller Name:		Disposition:	CC
Caller Location:		Apt:	
Call Loc Info:		Building:	
Phone:		Source:	O
Call Back Phone:			
Incoming 911:	01-Jul-19 21:55:44 PM	Created By:	tpuckett
Create Date/Time:	01-Jul-19 21:55:44 PM	Sent By:	tpuckett
Dispatch Date/Time:	*01-Jul-19 21:55:42 PM	Language:	
Enroute Date/Time:	*01-Jul-19 21:55:43 PM		
Onscene Date/Time:	01-Jul-19 21:55:44 PM	Priority:	1
Clear Date/Time:	02-Jul-19 03:40:45 AM	Event:	TS
Closed Date/Time:	02-Jul-19 03:40:45 AM		

Associated Case Numbers:

Unit	Unit Cdg	Station	Case No	Date/Time
WAM	WEMS		1481	01-Jul-19 21:58:22 PM
B29	WCSO	CODY STANDIFIR	19-0864	01-Jul-19 23:22:53 PM

Remarks:

Operator	Date/Time	Remarks
tpuckett	01-Jul-19 21:55:39 PM	B204 has a new remark: ONE FIGHTING .
tpuckett	01-Jul-19 21:55:41 PM	B204 has a new remark: 1063.
tpuckett	01-Jul-19 21:55:49 PM	A103 has a new remark: CODE 3.
tpuckett	01-Jul-19 21:57:16 PM	B203 has a new remark: STILL FIGHTING .
jjackson	01-Jul-19 21:57:57 PM	B203 has a new remark: START EMS.
jjackson	01-Jul-19 22:00:02 PM	OHP ENROUTE
jjackson	01-Jul-19 22:00:10 PM	ALL UNITS BACK ENROUTE
jjackson	01-Jul-19 22:01:07 PM	ALL UNITS 97

EXH 5

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Remarks:

jjackson	01-Jul-19 22:01:56 PM	B204 has a new remark: 1 IN CUSTODY.
tpuckett	01-Jul-19 22:03:36 PM	D20 has a new remark: ALL UNITS ARE 10-90.
tpuckett	01-Jul-19 22:09:58 PM	A103 has a new remark: TX BD2F871 LAST 4 3180.
tpuckett	01-Jul-19 22:24:28 PM	D20 ADVISED INDV IS BEING TRANSPORTED TO WCH ER CODE 3 / TAKEN PHOTOGRAPHS / VECH IMPOUND / WAG PD IS ENROUTE TO WCH
jjackson	01-Jul-19 22:25:13 PM	D20 has a new remark: OCCUP 1 TIME DRIVER STOPPED BREATHING WAS TRASNSPORTED TO WCH.
jjackson	01-Jul-19 22:39:19 PM	A103 has a new remark: TIME OF DEATH 22:38.
tpuckett	01-Jul-19 22:41:09 PM	O19 NOTIFIED O50 AT 22:17
jjackson	01-Jul-19 22:45:49 PM	A103 has a new remark: 3 VAULES OF BLOOD WAS TAKEN 22:39 HOURS BLLOD KIT #182263.
tpuckett	01-Jul-19 22:56:57 PM	Z50 has a new remark: THE CAR IS A CRIME SCENE MOVE MCDANIEL BACK TO THE TOP AND WHEN THEY REQUEST FOR VECH TO BE TOWED CALL THEM BACK .
jjackson	01-Jul-19 23:23:47 PM	Z50 has a new remark: CONSEAL THE TAPE.
tpuckett	01-Jul-19 23:31:16 PM	L1 has a new remark: ENROUTE TO Z50 FROM MY RESIDENCE .
tpuckett	01-Jul-19 23:46:54 PM	D20 has a new remark: D20 REQUESTED TO LIGHT TOWERS FROM EM.
tpuckett	01-Jul-19 23:50:07 PM	EM has a new remark: EM1 NOTIFIED .
tpuckett	01-Jul-19 23:50:33 PM	Z103 has a new remark: BACK ENR TO Z50.
tpuckett	01-Jul-19 23:52:23 PM	EM1 has a new remark: ENR TO THE OFFICE .
tpuckett	02-Jul-19 00:01:13 AM	EM1 has a new remark: OUT AT THE EOC .
jjackson	02-Jul-19 00:13:53 AM	L1 has a new remark: ENROUTE TO 10-19.
tpuckett	02-Jul-19 00:14:25 AM	EM1 has a new remark: COM1 / LIGHT 1 ENR .
tpuckett	02-Jul-19 00:14:58 AM	EM6 has a new remark: EM 6 RES 1 LIGHT 2 ENR .
jjackson	02-Jul-19 00:21:04 AM	Z103 has a new remark: 10-19.
jjackson	02-Jul-19 00:26:23 AM	Z103 has a new remark: 10-97 10-19.
jjackson	02-Jul-19 00:32:11 AM	EM1 has a new remark: LIGHTS ARE ACTIVATED.
tpuckett	02-Jul-19 00:50:53 AM	A103 has a new remark: NO LONGER 10-12 B203 10-7.
tpuckett	02-Jul-19 03:24:52 AM	EMCOM1 has a new remark: ALL EM UNITS CLEAR BACK IN SERVICE .
tpuckett	02-Jul-19 03:25:12 AM	Z50 has a new remark: MCDANIELS WRECKER HAS POSS / EM IS BACK IN SERV .
tpuckett	02-Jul-19 03:40:07 AM	Z50 has a new remark: Z50 AND B202 ARE CLEAR WCH .

Unit Activity:

Unit	Employee	Department	Activity	Location/Remarks	Date/Time
A103	MATTHEW LOTT	WCSO	Dispatched		*01-Jul-19 21:56:05 PM
A103	MATTHEW LOTT	WCSO	En Route		01-Jul-19 21:56:06 PM
A103	MATTHEW LOTT	WCSO	New Remark	CODE 3	01-Jul-19 21:56:10 PM

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Unit Activity:

Unit	Employee	Department	Activity	Time
A103	LOTT MATTHEW	WCSO	On Scene	01-Jul-19 22:01:30 PM
A103	LOTT MATTHEW	WCSO	New Remark	TX BD2F871 LAST 4 3180 01-Jul-19 22:10:18 PM
A103	LOTT MATTHEW	WCSO	New Remark	TIME OF DEATH 22:38 01-Jul-19 22:39:50 PM
A103	LOTT MATTHEW	WCSO	New Remark	3 VAULES OF BLOOD WAS TAKEN 22:39 HOURS BLLOD KIT #182263 01-Jul-19 22:46:21 PM
A103	LOTT MATTHEW	WCSO	En Route	02-Jul-19 00:44:11 AM
A103	LOTT MATTHEW	WCSO	New Remark	10-12 WITH B203 ENR TO HIS RESIDENCE 02-Jul-19 00:44:11 AM
A103	LOTT MATTHEW	WCSO	New Remark	NO LONGER 10-12 B203 10-7 02-Jul-19 00:51:14 AM
A103	LOTT MATTHEW	WCSO	Available	02-Jul-19 01:11:38 AM
B202	MCCHRISTIAN MICHAEL	WCSO	Dispatched	*01-Jul-19 22:16:24 PM
B202	MCCHRISTIAN MICHAEL	WCSO	En Route	*01-Jul-19 22:16:25 PM
B202	MCCHRISTIAN MICHAEL	WCSO	On Scene	01-Jul-19 22:16:26 PM
B202	MCCHRISTIAN COLBY	WCSO	EWCH	01-Jul-19 22:28:57 PM
B202	MCCHRISTIAN COLBY	WCSO	New Remark	ENROUTE TO WCH 01-Jul-19 22:28:57 PM
B202	MCCHRISTIAN COLBY	WCSO	OWCH	01-Jul-19 23:30:24 PM
B202	MCCHRISTIAN COLBY	WCSO	Available	02-Jul-19 03:40:43 AM

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Unit Activity:

Unit	Employee	Agency	Activity	Time
	NORTH,MICH AEL MCCHRISTIAN			
B203	KALEB PHILLIPS	WCSO	Dispatched	*01-Jul-19 21:55:42 PM
B203	KALEB PHILLIPS	WCSO	En Route	*01-Jul-19 21:55:43 PM
B203	KALEB PHILLIPS	WCSO	On Scene	01-Jul-19 21:55:44 PM
B203	KALEB PHILLIPS	WCSO	New Remark STILL FIGHTING	01-Jul-19 21:57:37 PM
B203	KALEB PHILLIPS	WCSO	New Remark START EMS	01-Jul-19 21:58:28 PM
B203	KALEB PHILLIPS	WCSO	Available	02-Jul-19 00:51:23 AM
B204	NICHOLAS ORR	WCSO	Dispatched	*01-Jul-19 21:55:51 PM
B204	NICHOLAS ORR	WCSO	En Route	*01-Jul-19 21:55:52 PM
B204	NICHOLAS ORR	WCSO	On Scene	01-Jul-19 21:55:53 PM
B204	NICHOLAS ORR	WCSO	New Remark ONE FIGHTING	01-Jul-19 21:55:59 PM
B204	NICHOLAS ORR	WCSO	New Remark 1063	01-Jul-19 21:56:02 PM
B204	NICHOLAS ORR	WCSO	New Remark 1 IN CUSTODY	01-Jul-19 22:02:27 PM
B204	NICHOLAS ORR	WCSO	Available	02-Jul-19 01:17:07 AM
B29	CODY STANDIFIRD	WCSO	Dispatched	*01-Jul-19 22:01:36 PM
B29	CODY STANDIFIRD	WCSO	En Route	*01-Jul-19 22:01:37 PM
B29	CODY STANDIFIRD	WCSO	On Scene	01-Jul-19 22:01:38 PM
B29		WCSO	Case Number 19-0864	01-Jul-19 23:23:24 PM
B29	CODY STANDIFIRD	WCSO	Available	02-Jul-19 01:44:50 AM
B29	CODY STANDIFIRD	WCSO	On Scene	02-Jul-19 01:47:32 AM
B29	CODY STANDIFIRD	WCSO	OWCH	02-Jul-19 01:47:43 AM
B29	CODY	WCSO	Available	02-Jul-19 02:01:24 AM

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Unit Activity:

Unit	Employee	Agency	Activity	Remarks	Date/Time
D20	STANDIFIRD ELIZABETH CROCKETT	WCSO	Dispatched		*01-Jul-19 21:56:16 PM
D20	ELIZABETH CROCKETT	WCSO	En Route		01-Jul-19 21:56:17 PM
D20	ELIZABETH CROCKETT	WCSO	On Scene		01-Jul-19 22:01:30 PM
D20	ELIZABETH CROCKETT	WCSO	New Remark	ALL UNITS ARE 10-90	01-Jul-19 22:03:57 PM
D20	ELIZABETH CROCKETT	WCSO	New Remark	OCCUP 1 TIME DRIVER STOPPED BREATHING WAS TRASNSPORTED TO WCH	01-Jul-19 22:25:44 PM
D20	ELIZABETH CROCKETT	WCSO	New Remark	D20 REQUESTED TO LIGHT TOWERS FROM EM	01-Jul-19 23:47:14 PM
D20	ELIZABETH CROCKETT	WCSO	Available		02-Jul-19 01:13:51 AM
D20	ELIZABETH CROCKETT	WCSO	On Scene		02-Jul-19 01:56:55 AM
D20	ELIZABETH CROCKETT	WCSO	Available		02-Jul-19 02:17:00 AM
EM		EMERGENC Y MANAGEME NT	Dispatched		01-Jul-19 23:50:20 PM
EM		EMERGENC Y MANAGEME NT	New Remark	EM1 NOTIFIED	01-Jul-19 23:50:27 PM
EM		EMERGENC Y MANAGEME NT	Available		02-Jul-19 03:26:08 AM
EM1	Heath Underwood	EMERGENC Y MANAGEME NT	Dispatched		*01-Jul-19 23:52:27 PM
EM1	Heath Underwood	EMERGENC Y MANAGEME NT	En Route		01-Jul-19 23:52:28 PM
EM1	Heath	EMERGENC	New Remark	ENR TO THE OFFICE	01-Jul-19 23:52:44 PM

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Unit Activity:

Unit	Employee	Dispatched	Dispatched Status	Location/Remarks	Date/Time
	Underwood	Y	MANAGEMENT		
EM1	Heath Underwood	NT EMERGENCY	New Remark	OUT AT THE EOC	02-Jul-19 00:01:33 AM
		Y MANAGEMENT			
EM1	Heath Underwood	NT EMERGENCY	New Remark	COM1 / LIGHT 1 ENR	02-Jul-19 00:14:46 AM
		Y MANAGEMENT			
EM1	Heath Underwood	NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
		Y MANAGEMENT			
EM1	Heath Underwood	NT EMERGENCY	New Remark	LIGHTS ARE ACTIVATED	02-Jul-19 00:32:42 AM
		Y MANAGEMENT			
EM1	Heath Underwood	NT EMERGENCY	Available		02-Jul-19 03:26:08 AM
		Y MANAGEMENT			
EM2	Brandon Wren	NT EMERGENCY	Dispatched		*02-Jul-19 00:16:36 AM
		Y MANAGEMENT			
EM2	Brandon Wren	NT EMERGENCY	En Route		02-Jul-19 00:16:37 AM
		Y MANAGEMENT			
EM2	Brandon Wren	NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
		Y MANAGEMENT			
EM2	Brandon Wren	NT EMERGENCY	Available		02-Jul-19 03:26:08 AM
		Y MANAGEMENT			
EM6	Mark Wilsom	NT EMERGENCY	Dispatched		*02-Jul-19 00:14:52 AM
		Y MANAGEMENT			
EM6	Mark Wilsom	NT EMERGENCY	En Route		02-Jul-19 00:14:53 AM

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Unit Activity:

EM6	Mark Wilsom	Y MANAGEMENT NT EMERGENCY	New Remark	EM 6 RES 1 LIGHT 2 ENR	02-Jul-19 00:15:18 AM
EM6	Mark Wilsom	Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
EM6	Mark Wilsom	Y MANAGEMENT NT EMERGENCY	Available		02-Jul-19 03:26:08 AM
EMCOM1		Y MANAGEMENT NT EMERGENCY	Dispatched		*01-Jul-19 23:52:37 PM
EMCOM1		Y MANAGEMENT NT EMERGENCY	En Route		01-Jul-19 23:52:38 PM
EMCOM1		Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
EMCOM1		Y MANAGEMENT NT EMERGENCY	New Remark	ALL EM UNITS CLEAR BACK IN SERVICE	02-Jul-19 03:25:23 AM
EMCOM1		Y MANAGEMENT NT EMERGENCY	Available		02-Jul-19 03:25:25 AM
EMLIGHT1		Y MANAGEMENT NT EMERGENCY	Dispatched		*02-Jul-19 00:14:34 AM
EMLIGHT1		Y MANAGEMENT NT EMERGENCY	En Route		02-Jul-19 00:14:35 AM
EMLIGHT1		Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM

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Unit Activity:

Unit	Employee	Dispatched	Current Status	Timestamp
EMLIGHT1	Y MANAGEMENT NT EMERGENCY	Available		02-Jul-19 03:26:08 AM
EMLIGHT2	Y MANAGEMENT NT EMERGENCY	Dispatched		*02-Jul-19 00:14:59 AM
EMLIGHT2	Y MANAGEMENT NT EMERGENCY	En Route		02-Jul-19 00:15:00 AM
EMLIGHT2	Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
EMLIGHT2	Y MANAGEMENT NT EMERGENCY	Available		02-Jul-19 03:26:08 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	Dispatched		*02-Jul-19 00:15:05 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	En Route		*02-Jul-19 00:15:06 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:15:07 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	En Route		02-Jul-19 00:15:09 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	On Scene		02-Jul-19 00:32:23 AM
EMRES1	Y MANAGEMENT NT EMERGENCY	Available		02-Jul-19 03:26:08 AM

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Incident #2019-0031882

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Unit Activity:

Unit	Officer	Activity	Time
L1	CHRIS ELLIOTT	Dispatched	*01-Jul-19 23:31:23 PM
L1	CHRIS ELLIOTT	En Route	01-Jul-19 23:31:24 PM
L1	CHRIS ELLIOTT	New Remark	01-Jul-19 23:31:37 PM
L1	CHRIS ELLIOTT	On Scene	01-Jul-19 23:50:25 PM
L1	CHRIS ELLIOTT	New Remark	02-Jul-19 00:14:24 AM
L1	CHRIS ELLIOTT	Available	02-Jul-19 01:23:40 AM
MCDANIEL WRECKER	MCDANIEL WRECKER	Dispatched	01-Jul-19 22:33:10 PM
MCDANIEL WRECKER	MCDANIEL WRECKER	Available	01-Jul-19 23:00:06 PM
WAM	WEMS	Case Number 1481	01-Jul-19 21:58:43 PM
WAM	WEMS	Dispatched	01-Jul-19 21:58:43 PM
WAM	WEMS	Available	01-Jul-19 22:46:39 PM
WEMS2	WEMS	Dispatched	*01-Jul-19 21:58:57 PM
WEMS2	WEMS	En Route	01-Jul-19 21:58:58 PM
WEMS2	WEMS	On Scene	01-Jul-19 22:00:47 PM
WEMS2	WEMS	New Remark	01-Jul-19 22:46:33 PM
WEMS2	WEMS	Available	01-Jul-19 22:46:35 PM
WEMS2	WEMS	En Route	02-Jul-19 01:47:54 AM
WEMS2	WEMS	EWCH	02-Jul-19 01:47:58 AM
WEMS2	WEMS	New Remark	02-Jul-19 01:48:07 AM
WEMS2	WEMS	OWCH	02-Jul-19 01:50:49 AM
WEMS2	WEMS	Available	02-Jul-19 02:17:10 AM
Z103	WCSO	Dispatched	*01-Jul-19 22:43:23 PM
Z103	WCSO	En Route	01-Jul-19 22:43:24 PM
Z103	WCSO	On Scene	01-Jul-19 22:54:29 PM
Z103	WCSO	EWCH	01-Jul-19 23:28:06 PM
Z103	WCSO	OWCH	01-Jul-19 23:30:15 PM
Z103	WCSO	New Remark	01-Jul-19 23:50:54 PM
Z103	WCSO	En Route	01-Jul-19 23:50:55 PM
Z103	WCSO	New Remark	02-Jul-19 00:21:35 AM
Z103	WCSO	New Remark	02-Jul-19 00:26:54 AM

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Unit Activity:

Unit	Operator	Activity	Time
Z103	WCSO	En Route	02-Jul-19 02:07:41 AM
Z103	WCSO	New Remark	02-Jul-19 02:07:41 AM
Z103	WCSO	Available	02-Jul-19 02:33:51 AM
Z50	DUSTIN DORR WCSO	Dispatched	*01-Jul-19 22:24:34 PM
Z50	DUSTIN DORR WCSO	En Route	*01-Jul-19 22:24:35 PM
Z50	DUSTIN DORR WCSO	On Scene	01-Jul-19 22:24:36 PM
Z50	DUSTIN DORR WCSO	New Remark	01-Jul-19 22:57:17 PM
		THE CAR IS A CRIME SCENE MOVE MCDANIEL BACK TO THE TOP AND WHEN THEY REQUEST FOR VECH TO BE TOWED CALL THEM BACK	
Z50	DUSTIN DORR WCSO	New Remark	01-Jul-19 23:24:18 PM
Z50	DUSTIN DORR WCSO	New Remark	02-Jul-19 03:25:43 AM
		CONSEAL THE TAPE MCDANIELS WRECKER HAS POSS / EM IS BACK IN SERV	
Z50	DUSTIN DORR WCSO	Available	02-Jul-19 03:25:48 AM
Z50	DUSTIN DORR WCSO	On Scene	02-Jul-19 03:29:08 AM
Z50	DUSTIN DORR WCSO	OWCH	02-Jul-19 03:29:11 AM
Z50	DUSTIN DORR WCSO	New Remark	02-Jul-19 03:40:38 AM
		Z50 AND B202 ARE CLEAR WCH	
Z50	DUSTIN DORR WCSO	Available	02-Jul-19 03:40:40 AM

Dispositions:

Disposition	Count
CC - Incident processing has been completed	

Disposition	Unit Org	Count	Remarks
ASSIGNED-ASSIGNED CALL	MCDANIEL WRECKER	1	

Vehicle Information:

License Plate	BD2F871	License Plate	TX	Expiration Year:	2019
Vehicle Type:		Vehicle Make:	CADILLAC	Vehicle Model:	4T
Vehicle Color:	BLACK	Vehicle		VIN:	1G6DN57U160163180
Remarks:	IMPOUND				

Wrecker Information:

* Date/Time is Backfilled

For Official Use Only



CAD Detail

Print Date: 02-Jul-19

Print Time: 03:41:14 AM

User Name: tpuckett

Incident #2019-0031882

Hide Incident Log; Hide System Messages; Hide Media

Wrecker Information:

Incident#: 2019-0031882

Tow Number: 2019-0017

Tow Requested By:

Vehicle Information: BD2F871, 1G6DN57U160163180

Is On Hold? false **Reason Held:**

Release Date/Time:

Towed From: TURN LANE 260/HWY 51

Notified By:

Wrecker Company: MCDANIEL WRECKER

Impound Phone:

Towed To Company

Dispatcher: tpuckett

Issue Date: 01-Jul-19 23:00:06 PM

Towed Date:

Can Be Released To:

Notified Date/Time:

Impound Location:

* Date/Time is Backfilled

For Official Use Only



EXH 6





6:21-cv-00044-RAW Document 309-5 Filed in ED/OK on 05/15/23 Page 1 of 24

Kaleb Phillips

1/12/2022

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ATTORNEY WORK PRODUCT

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(KRUEGER vs. WAGONER COUNTY)

11

OSBI INTERVIEW OF

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KALEB PHILLIPS

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Stephen L. Gerles

COLLINS, ZORN & WAGNER

20

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EXHIBIT 5

EXHIBIT

7

Kaleb Phillips

1/12/2022

10

1 Q. Okay. He wasn't complying. You -- he's
2 continuing to fumble around in the car. You're
3 telling him to show your -- show me your hands, or
4 give me your hands. And at some point he tells you,
5 No?

6 A. Uh-huh. Well, that's -- he tells me no at a
7 point to where, you know, I told him to get out of the
8 vehicle.

9 Q. Okay. To get out. Okay. And he actually
10 grabbed your left arm --

11 A. Yes.

12 Q. -- and tries to pull you in closer to him?

13 A. He did.

14 Q. And then he actually tried to grab for your
15 weapon as well?

16 A. Yes.

17 Q. And at that point you go ahead and you
18 holster it. You go to remove him, that's when you
19 realize that he's still seat belted in. You go ahead
20 and you undo his seat belt. At that point Kaleb's
21 already on scene with you as well; right?

22 A. Deputy Orr, That's me.

23 Q. Oh, I'm sorry. You're Kaleb. Thank you for
24 correcting me.

25 A. It's okay.

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EXHIBIT 5