

**IN THE DISTRICT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CF-2020-2889
)	
DAVID ANTHONY WARE,)	
MATTHEW HALL.)	
Defendants.)	

**SUPPLEMENTAL MOTION TO STRIKE ORDER PREVENTING PUBLIC
RELEASE OF INFORMATION**

Comes now David Ware, by and through his attorney of record Kevin Adams, and supplements the request filed on July 16, 2020 to strike the the order entered on July 6, 2020 that prevents the release on the dash camera and body camera footage of Officer Zarkeshan and Sergeant Johnson as it relates to the above referenced matter. In support of this motion counsel shows the Court the following:

IMNTRODUCTION

The Tulsa County District Attorney's Office, through an *ex parte* order, has subverted and perverted the Oklahoma Open Records Act to prevent the release of video evidence that will prove that members of the Tulsa Police Department, including the Chief of Police, are grossly misrepresenting and/or lying about the events that led to the filing of the charges in this matter.

The Oklahoma Legislature passed the Oklahoma Open Records Act because they recognized "*all political power is inherent in the people. Thus, it is the public policy of the*

State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government.” (See Title 51 O.S. Section 24A.2)

On June 29th¹ of this year, at a press conference, Steve Kunzweiler, the elected District Attorney of Tulsa County, stood along side the Tulsa Police Chief Wendell Franklin as Chief Franklin described details from the very dash camera and body camera footage that his office later persuaded this Court to order not to be released. All of this was done without giving Mr Ware notice of the state’s request or giving Mr. Ware an opportunity to respond to

Staff reports Jun 29, 2020



District Attorney Steve Kunzweiler (left), U.S. Attorney Trent Shores, Tulsa Police Chief Wendell Franklin, Mayor G.T. Bynum and deaf interpreter Glenna Cooper participate in a news conference Monday afternoon following the shooting of two officers.

¹ As of the drafting of this motion the video of this press conference can be viewed on the Tulsa World website by watching the video associated with the June 29, 2020 article “Police officers ‘fighting for their lives,’ chief says after shooting early Monday”

the request. In fairness to the Court, this was done very early in the case and the Court ordered the order was subject to reconsideration when Mr. Ware had counsel.

Furthermore, despite Mr. Kunzweiler participating in a press conference during which this video was described to the public, he and his office have made multiple efforts to stop undersigned counsel from setting the record straight by discussing this video with the press². From the very beginning of the June 29, 2020 incident the Tulsa Police Department, has made a coordinated and concerted effort to spread gross mischaracterizations and/or lies about what the video evidence plainly shows in this case³.

This motion is undersigned counsel's attempt to get the truth out and stop the spread of the gross mischaracterizations and/or lies about the facts in this case, a case in which a member of the Tulsa County DA's office told undersigned counsel "you're damn right we are filing a bill" after asking if his office was going to try and seek the death penalty against his client; also in this case the court minutes reflect that this Court this case was passed on July 2, 2020 for "FOR CAPITOL QUALIFIED COUNCIL".

PROCEDURAL HISTORY

1. On July 2, 2020 the State of Oklahoma filed the State's Motion to prevent Release of Video Evidence.
2. On July 2, 2020 the Court signed an Order setting a hearing on the State's motion for a hearing on July 6, 2020.

²Webster's Dictionary describes hypocrisy as "behavior that contradicts what one claims to believe or feel."

³ Counsel is unsure why the Tulsa Police Department investigated the shooting of their own officers instead of asking an outside agency such as the OSBI or the Tulsa County Sheriff's office to investigate.

3. On July 6, 2020 the Court granted the State's requested order that the video recordings related to this incident, investigation, and/or arrest of David Ware and Matthew Hall not be released for a period of six (6) months. Handwritten on the order there is a provision that appears to read "Subject to application for reconsideration upon filing or until further order of this Court."
4. The day after the order was entered preventing the release of the video in this case, on July 7, 2020 the Affidavit and Finding of Probable Cause T.R.A.C.I.S. was filed in this case alleging in part in paragraph seven (7) that "After Sgt. Johnson is down from being shot. **Ware stands over him and fires three more times into Sgt. Johnson.**"


THE FALSE NARRATIVE


Within hours of the filing of charges against Mr. Ware in this matter the Tulsa Police Department began spreading a false narrative concerning the facts of this case as shown in the video. Counsel will address the two (2) falsehoods the Tulsa Police have been widely publicly disseminated in this case, there are other issues that counsel may choose to address at a later time or simply may save for trial. These false narratives are: one (1) "After Sgt. Johnson is down from being shot. **Ware stands over him and fires three more times into Sgt. Johnson.**" (See Exhibit A, Paragraph Seven (7) of the Finding of Probable Cause Affidavit) and two (2) after the shooting that David Ware "slowly walked away".

Additionally, Chief Franklin's description of what the dash and body cameras show and the affidavit, which was also based upon the dash and body camera videos, omitted numerous relevant facts clearly shown in the video and has painted a false and incomplete

narrative of what occurred in this case. Those omissions will be describe and detailed below when counsel address what is depicted in the videos.

The narrative being pushed by the Tulsa Police Department is one, that in undersigned counsel's opinion, that is designed to spread the idea that David Ware killed Sergeant Johnson in a cold and calculated manner and then "slowly walked away". Undersigned counsel has been told by multiple people words to the effect that "I hope they fry your client" and the reason always given is because they falsely believed Mr. Ware "stood over" Sergeant Johnson and "fires three more times" into Sgt. Johnson.


**Tulsa Police Department** ✓
June 29 at 2:23 PM · 🌐



FOX23 Sara Whaley ✓
June 29 at 2:12 PM · 🌐

David Ware, the suspect accused of shooting Sgt. Craig Johnson and rookie Officer Aurash Zarkeshan, has been booked into the Tulsa County Jail on two shooting charges and one gun charge. As I mentioned below, a second suspect, Matthew Hall, has been arrested as well. Police say he picked Ware up from the shooting scene and helped him get away.

More: <https://www.fox23.com/news/local/two-tulsa-police-officers-shot-during-an-early-monday-morning-traffic-stop/YKYIWXB72NAKVOSJCZHEZZD67I/>

 Shawna Allen, Lisa Lewis and 3.2K others

1.7K Comments 764 Shares

The Tulsa Police Department is polluting the jury pool in this matter and is spreading this false narrative. The Tulsa Police Department even placed a link to a Fox 23 News Article on their Facebook Page that contains this very falsehood. (See above photo) The Tulsa Police Department's Facebook post had "3.2K" reactions, "1.7K" comments and "764 Shares".

The July 1, 2020 article posted on the Fox 23 News website, "Procession held for Sgt. Johnson, second officer remains critical" (Attached as Exhibit B) and shared on the TPD Facebook page, says "Documents say Ware stood over Johnson after he'd been hit and shot him three more times" and is believed to have come directly from Paragraph Seven (7) of the Finding of Probable Cause Affidavit in this case. This claim has also been reported in multiple other media accounts.

The claim that "Ware stands over him and fires three more times into Sgt. Johnson" is a provably false statement. In fact when this issue was brought up in Court on July 16, 2020, ADA Kevin Gray, announced in open court on the record, that the affidavit was not drafted by anyone from his office and that it was written by the Tulsa Police Department. Undersigned counsel suggests that the reason the the Tulsa County District Attorney's Office is attempting to distance itself from the affidavit is because they share counsel's opinion that at least a portion of the affidavit is provably false⁴. However, despite the District Attorney's misgivings about this affidavit, apparently it did not stop them from releasing it to the media and furthering the falsehood. In a story counsel found on Channel

⁴ Of course for an officer to make a knowingly false claim in a sworn affidavit would be a Giglio violation and would require disclosure to defense counsel in all future cases in which that officer testified in front of jury. See *Giglio v. United States*, 405 U.S. 150 (1972).

8's KTUL website published on June 29, 2020 and Titled "Suspect captured after 2 Tulsa Police officers shot, critically wounded" the following appears "UPDATE: An arrest affidavit released by the District Attorney's Office provides new details of the events that led up to the shooting of two Tulsa police officers." (See attached Exhibit C)

These "details", came from the affidavit that contains the falsehood "After Sgt. Johnson is down from being shot. **Ware stands over him and fires three more times into Sgt. Johnson**", and was distributed to the very same media that the Tulsa County District Attorney's Office has tried to prevent Mr. Ware's counsel from talking to.

The other details, the only details included that are in fact true, present a one sided view of the events but were gleamed from the very videos the state is seeking to prevent defense counsel from discussing. At one time ADA Kevin Gray told undersigned counsel that if defense counsel wants to release the video that is up to them. Apparently Mr. Gray's opinion has either changed or he has been overruled by his supervisors at the Tulsa County District Attorney's office.

The KTUL article listed the following "updated" information from the affidavit given to them by the Tulsa County District Attorney's Office:

According to the affidavit, 32-year-old David Ware was pulled over around 3:20 a.m. near 21st and Memorial in a 2007 Chevy Cobalt with expired paper tags.

The officers' body camera videos reveal Ware argued with police when they told him they would have to tow the vehicle. Ware refused to get out of the car and began arguing with the two officers, saying they were violating his rights.

The argument with Ware escalated, lasting approximately three minutes before one officers attempted to tase him, but Ware tore out the taser prongs and continued arguing. The officer again attempted to deescalate the situation by using pepper spray on Ware, but he continued to refuse to get out of the car, according to the affidavit.

Both officers then tried to pull Ware from the vehicle, but he fought them and grabbed a gun from under his seat before "ring on the two officers. Ware shot at each officer several times, according to the arrest affidavit.

After both officer were down, Ware stepped out of the vehicle and stood over one of them and fired three more shots. He then fled the scene and got into a red Jeep SUV.

(See attached Exhibit C)

Remarkably, the Tulsa County District Attorney's office in an ex parte hearing (at least in regards to Mr. Ware) persuaded this Court, to prevent the release of a video after they had already given an affidavit to the media based in part on the very video they claim not to want released to the media. Yet, a member of that office disparaged undersigned counsel in open court, by accusing him of wanting to "try the case in the media" at the same time claiming his office did not "try cases in the media". Counsel would refer the Court to footnote two (2) listed above.

There is a theory in the law, while not completely applicable is certainly analogous, that theory is codified in Oklahoma Statutes at *Title 12 O.S. Section 2107-Remainder of Part of The Record-Other Records* and reads in its entirety "When a record or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other record that should in fairness be considered contemporaneously with it." Fairness is all counsel is asking this Court to do.

The other false claim is that after the shooting that came from the Chief of Police himself in the press conference during which he gave a very one-side description of the body camera and dash camera footage. During that interview, referenced above, at 3:21 of the video Chief Franklin states "The officers went down and the driver slowly walked away

from the vehicle and got into a waiting vehicle that had arrived at to the scene and drove away.” This too is a provably false factual statement proven by the videos the Tulsa County District Attorney’s Office has kept and is attempting to continue to keep from the public and the media.

WHAT IS DEPICTED IN THE VIDEOS THE STATE IS TRYING TO KEEP FROM THE PUBLIC

The videos that the state is trying to keep from the public shows the brutal and shocking treatment of David Ware at the hands of Officer Zarkeshan and Sergeant Johnson in the moments leading up to the shooting.

During the video Sergeant Johnson can be seen standing at the the edge of the Mr. Ware’s open driver’s door, Sergeant Johnson takes a step back and kicks Mr. Ware in the groin/stomach area as Mr. Ware sits sideways in the driver’s seat of his car. (at approximately 03:22:26 A.M.) The second kick or stomp comes less than a minute later at approximately 03:23:12 A.M.. The second kick or stomp occurs approximately ten (10) seconds before Mr. Ware fires the first shot. (at approximately 03:23:22 A.M.)

All of this is occurring as David Ware is screaming for help and begging the officers to stop and asking them why they are doing this. It is also obvious from the video that Ware is having difficulty breathing after being tased twice and sprayed with OC spray at least twice, when Officer Zarkeshan, with a hand on each side of his neck pulls Ware’s head down pushing his chin towards or into his chest, further restricting Ware’s ability to breath. (03:22:52 A.M. to 03:22:59 A.M.) Ware then begins reaching in the car for his weapon.

During the event, while Ware is crying out for help, Officer Zarkeshan appears to mute his body camera, approximately ten (10) seconds later the body camera belonging to Officer Zarkeshan loses sound. (at 3:22:59 A.M.) Officer Zarkeshan's body camera is muted ten seconds after he appears to mute it in the dash cam video at 03:22:49 A.M..

As the Court stated at the July 16, 2020 hearing the Court has not viewed the videos in question. Below is counsel best attempt at giving a fair and accurate description of what occurred that night, from the moment Officer Zarkeshan and Sergeant Johnson begin using force on Ware. Counsel has a detailed description of the entire event, however counsel has chosen not to attach the entire description because of the current court orders in place. The events immediately leading up to the shooting is listed below:

As seen from the dash camera at 03:21:29 as white car approaches Ware's vehicle from the north and passes scene at 03:21:32. After the car passes Officer Zarkeshan and Sergeant Johnson begin using force against Ware.

Ware "No y'all this is my car" Sgt. Johnson "I'm going to hit him are you ready" Officer Zarkeshan "Ready" 03:21:34 taser can be heard deploying. Ware can be heard screaming as taser electrocutes him Ware is screaming "Fuck you dude... ahhhwhat the fuck" the taser can be heard electrocuting Ware as he yells. Sgt. Johnson "Get out of the car" Ware is screaming as Officer Zarkeshan moves in and grabs him. At 03:21:43 on the dash camera Officer Zarkeshan reaches into Ware's vehicle grabbing Ware. Ware is screaming in pain as he wrestles with Officer Zarkeshan and yelling "Fuck...dude....what the fuck.." 03:21:52 Ware "ahhh...."

At 03:21:51 from the dash Camera Officer Zarkeshan is trying to remove Ware as Sgt. Johnson walks around the front of Ware's vehicle At 03:21:55 Sgt. Johnson is at driver's side window in front of door as Officer Zarkeshan is trying to pull Ware out of vehicle. Sgt. Johnson is screaming "Wanna get sprayed" Ware yells "No" and raises his hands in front of his face to protect his face from the OC spray he is being threatened with. Ware's now sitting sideways in the car seat with feet outside the car and hands in front of face. 03:21:57

Sgt. Johnson is screaming 03:21:58 "Now...get out of the damned car" Ware says " I'm getting out" Sgt. Johnson continues screaming "Now get out of the damned car or I will spray you".

At 03:22:00 Sgt. Johnson can be heard from dash camera yelling "Get out now", Sgt. Johnson is pointing OC spray at Ware and Officer Zarkeshan steps back. At 03:22:01 Ware can be seen sitting sideways in driver's seat leaning forward with both feet on ground. At 03:22:03 Ware starts to stand up, Sgt. Johnson can be heard yelling at Ware, from the dash camera in Officer Zarkeshan's police cruiser. From Officer Zarkeshan's body camera Ware starts to comply at 03:22:03 and is standing up with wallet in left hand and holding a piece of paper in right hand

Officer Zarkeshan then yells "Get on the fucking ground now" Ware says "Why" 03:22:04. Officer Zarkeshan "On the ground" Ware starts to sit back in the car and says "Man I don't want to go to jail stop" and sits down in car seat sideways with feet out of car on ground. At 03:22:05 Ware starts to sit back down in seat and Officer Zarkeshan reaches up to grab him.

03:22:06 Sgt. Johnson while reaching through the window sprays Ware in face as Ware holds hand in front of face in an attempt to block the spray and ducks his head. Ware screams and starts gasping for breath as Sgt. Johnson yells "Get out of the car...get out now". 03:22:13 Sgt. Johnson extends his arm threatening the spray and says "I will spray you agin" Ware is cowering still seated curling up with his hands up near his face. Ware says "ok ...ok " holding his hands up. Sgt. Johnson is yelling "get on the ground" while pointing to the ground. At 03:22:15 from the dash camera footage, Ware can be seen bending over reacting to the OC spray.

Officer Zarkeshan has handcuffs out and yells "Get on the ground". Ware is trying to breath. Obviously suffering the effects of the OC spray, sounds like he is crying as Sgt. Johnson. Sgt. Johnson is screaming "Get on the ground now" Officer Zarkeshan is also yelling "get on the ground" as he points to the ground. Officer Zarkeshan grabs Ware's left arm as Ware cries out "Please stop..stop...stop...please wait"

At 3:22:33 Officer Zarkeshan moves up to the car door and Sgt. Johnson can be seen behind the car door towards the middle of the driver's side of the car. Ware is still clutching his wallet sitting in the car. Ware yells "Please stop" and starts yelling "Help help please they are violating my rights" Ware never fights back. Never strikes the officers as they try and pull him out of the car.

At 03:22:26 Sgt. Johnson can be seen from the dash camera standing at the edge of the drivers side door from the dash camera. Sgt. Johnson takes a step back at 03:22:27 and kicks Ware in the groin/gut area. Sgt. Johnson can also be seen kicking Ware from Officer Zarkeshan's body camera footage while Ware was seated in the drivers seat. Then Sgt. Johnson yells "Get out of the fucking car". Ware cries out "Why are you doing this?". As Sgt. Johnson grabs him and attempts to yank him out of the car. Sgt. Johnson yells "Get out now".

On the dash camera footage at 03:22:34 Mathew Hall's vehicle can be seen coming into the camera frame.

03:22:39 Ware "Matt please help...." as Matt drives by. Ware cries out "Stop your violating my rights" Officer Zarkeshan turns and yells at Matt "Get out of here, stay in the car".

From the dash camera Officer Zarkeshan appears to mute body camera at 03:22:49

At 3:22:51 Matt's vehicle can be seen through the car window. Ware yells "Help...help" At 3:22:52 Officer Zarkeshan is in front of Ware with his right hand on Ware's left arm and his left hand on Ware's right hand Sgt. Johnson is to Ware's left facing Ware's side with his left hand holding Ware's left arm and his right hand on Ware's left back.

Ware is pleading a screaming for help. Ware yells "Matt help...help...help" as Officer Zarkeshan reaches up and places each arm on each side of Ware's neck and pulls head down pushing his chin towards or even into his chest, an action which would make it more difficult for Ware to breath.

At 3:22:59 Officer Zarkeshan's body camera is muted, ten seconds after he appears to mute it in the dash cam video at 03:22:49.

03:23:02 Ware can be seen from Officer Zarkeshan's body camera reaching back into car. 03:23:08 Sgt. Johnson has Ware's left hand with his left hand and with his right hand he is spraying Ware in the face with OC Spray. From the dash camera footage 03:22:06 Officer Zarkeshan tries to yank Ware out of car and Ware slips out of his grasp as Ware sits back back down. At 03:22:07 from the dash camera footage the spray of the OC spray can be seen as Sgt. Johnson sprays Ware. At 03:22:08 on the dash camera footage, Officer Zarkeshan can be seen stepping back to edge of the door while Ware is sitting down again sideways in seat.

03:23:12 Sgt. Johnson kicks Ware again, for the second time, in the groin area. The kick could be described as a kick or a stomp. At 03:23:13 from Officer Zarkeshan's body camera footage, Ware can be seen with his body is turned completely sideways reaching into the floor board of the car.

At 03:23:17 from Officer Zarkeshan's body camera Ware is pulled from the car with Officer Zarkeshan is directly in front of him. At 03:23:17 it can also be seen from the dash camera footage you can see Ware is out of vehicle.

03:23:18 Ware attempts to pull away from Officer Zarkeshan and Sgt. Johnson, Ware is closest to open door and Officer Zarkeshan and Sgt. Johnson each have an arm struggling

At 03:23:22 from the dash camera as the car door closes the first shot can be heard, Hall's vehicle can be seen stopped in front of Ware vehicle. Ware is facing west and Sgt. Johnson is on his left and Officer Zarkeshan is on his right as Ware is pushed back against the car with Officer Zarkeshan in front of him and Sgt. Johnson to his left you can hear the second shot, Officer Zarkeshan falls back and appears to be shot by Ware, Ware turns the gun and shoots Sgt. Johnson, and then shoots towards Officer Zarkeshan again, Sgt. Johnson falls to the ground and is propped up on his left arm behind the car with his upper portion of his body completely behind the car, (03:23:26) as Sgt. Johnson reaches for his firearm Ware is running backwards located near the front of his driver's side door (03:23:26) Ware is facing Sgt. Johnson as he is running backwards and fires last shot, Ware continues to run backwards as Sgt. Johnson falls back and rolls to his right side Ware immediately turns and runs. On Sgt. Johnson's body camera footage Ware can be heard screaming "ahhh... ahhh...ahhh" in an apparent panic as he runs off.

03:23:27 Ware has passed or is almost past his car running towards Hall's vehicle. The time elapsed between first and fifth shot is less than 5 seconds. Ware never stands over Sgt. Johnson firing 3 shots and runs off and could never be describe as having "slowly walked away".

THE ALLEGED BASIS FOR THE STATE'S REQUEST

In the State's Motion to prevent Release of Video Evidence the State writes that "The release of these recordings to the public and their subsequent broad dissemination will likely materially compromise an ongoing criminal investigation and/or prosecution, and will likely

materially compromise the rights of both defendants to receive a fair trial.” (See State’s Motion to prevent Release of Video Evidence, page 2, last paragraph)

The investigation is over, the state has filed four informations in this case. What is “materially” compromising the right of Mr. Ware to receive a fair trial are the falsehoods that have been widely disseminated about the evidence in the dash and body cameras in this case. Specifically as described above, the falsehood that “After Sgt. Johnson is down from being shot. **Ware stands over him and fires three more times into Sgt. Johnson.**”

According to the Edmunds website⁵ David Ware’s 2007 Chevy Cobalt has a length of 180.5 inches, that is 15 feet long. Based upon the fact that the video shows Ware is near the front of his Chevy Cobalt driver’s side door at the time he fires the last round toward Sergeant Johnson and Sergeant Johnson appears to have his entire upper torso behind the bumper of the vehicle counsel estimates the final shot was fired from a distance of at least 10 to 15 feet. This could never be accurately and fairly described as standing over and firing “**three more times into Sgt. Johnson**” as is falsely claimed and widely publicly disseminated by the false statement contained in the Affidavit and Finding of Probable Cause.

And while the Tulsa County District Attorney’s office did not draft the affidavit, they could have sent it back and had it corrected and they have taken no action to correct the false narrative they have helped to publicly disseminate. To the contrary they have done everything within their power to allow this false narrative to remain in the public forum while it pollutes the jury pool in this matter.

⁵ <https://www.edmunds.com/chevrolet/cobalt/2007/features-specs/>

Furthermore, Chief Franklin's claim that after shooting Sergeant Johnson that Ware "slowly walked away" as Steve Kunzweiler the elected Tulsa County District Attorney stood by his side. This falsehood can be plainly seen on Officer Zarkeshan's dash camera at 03:23:26 A.M. to 03:23:30 A.M. Additionally on Sergeant Johnson's body camera, that was not muted, after the shooting Ware can be heard screaming "Ahhh...Ahhh...Ahhh" as he runs away after the shooting⁶.

This case is much more complicated and much more nuanced than the public has been lead to believe. If the state does attempt to obtain a death sentence against Mr. Ware, undersigned counsel will request funds for the appointment of a police procedures expert. While counsel is not qualified as an expert counsel is confident that the kicking and or stomping of Mr. Ware was a policy violation.

Perhaps it is actually the disturbing and shocking nature of the video and David Ware's repeated pleas such as "Why are you doing this?", "Please stop" or "Help help please they are violating my rights" the state is attempting to hide from public view, that actually motivated their decision to prevent the release of the video in this matter.

But to claim that after all of the publicity associated with this case that this video, which will prove the false statements of the Tulsa Police Department, will negatively will "materially" compromise the right of Mr. Ware to receive a fair trial is disingenuous and clearly contrary to the stated purpose of the Oklahoma Open Records Act which was passed because the Oklahoma Legislature realized "*all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the*

⁶ For whatever reason counsel has been unable to get Sergeant Johnson's body camera footage to show a time stamp.

inherent right to know and be fully informed about their government.” (See Title 51 O.S. Section 24A.2)

Is it better for the truth to come out six (6) months from now, or even eighteen (18) months from now, and for the public to learn the the Tulsa Police Department has been lying to us all along?

It is certainly not better for Mr. Ware’s prospects of receiving a fair trial for the potential jury panel members to cement their opinions about this case and start making statements to their friends and families that they hope Mr. Ware receives the death sentence; for the same reason that juries are instructed “Do not form or express an opinion on the case until it is submitted to you for your decision.” OUJI 1-8A.

The statute only allows for this information to be kept from the public for a period of eighteen (18) months, with the current pandemic there is no guarantee this case will get to trial within the next eighteen (18) months. Perhaps the real goal is to keep the videos from the public until after November 8, 2022? That would be the date of Steve Kunzweiler’s next election. If that is the real reason the videos are being withheld that is clearly against the purpose of the Oklahoma Open Records Act. Counsel only raises this prospect because before the last election in 2018, the Tulsa County District Attorney’s Office filed six (6) requests for the death penalty against six (6) separate defendants in five (5) cases and then after Steve Kunzweiler won reelection every single request for the death penalty was dismissed.⁷

⁷ This is an issue that Counsel will explore in defending a request for death against Mr. Ware.

What is wrong with just telling the public the truth? What is wrong with just admitting the statements made in this case were false and letting everyone see the truth and letting this case be fairly tried to a jury of citizens from this community who will have to decide whether Mr. Ware's actions make him guilty of First Degree Murder (or even manslaughter) and what the appropriate punishment is a term of years up to life, life, life without parole or even death (if the state actually goes through with requesting it.) All Mr. Ware and his counsel ask for is an even playing field. The state need not worry about Mr. Ware receiving a fair trial, defense counsel is more than capable of ensuring that occurs.

THE WIDE DISSEMINATION OF THE FALSEHOODS IN THIS CASE

The false claim that David **“Ware stands over him and fires three more times into Sgt. Johnson”** has been widely disseminated in the prospective jury pool.

Chief Franklin's claim that:

The officers went down, and the driver slowly walked away from the vehicle and got into a waiting vehicle that had arrived to the scene and drove away.

Was published by the Tulsa World on June 29, 2020 in an Article Titled “ *‘We need this community to come together’: Police chief asks for prayer, unity after officers shot during traffic stop*”. (See attached Exhibit D) How can we come together as a community until the leaders of the community are willing to tell the truth.

The false claim made concerning David Ware standing over Johnson, “Ware then shot Johnson three more times while he was on the ground, police allege.” (See attached Exhibit D) was also disseminated in that article, published the first day the public learned about the shooting.

There are other examples of the wide dissemination of the false information in this case that was produced by the Tulsa Police Department and released by the Tulsa County District Attorney's office, but counsel will not belabor the record with it.

CONCLUSION

Therefore for all the reasons described above counsel supplements and reargues the request made in Mr. Ware's July 16th filing, that this court enter an order striking the order that the video recordings related to this incident, investigation, and/or arrest of David Ware and Matthew Hall not be released for a period of six (6) months be **stricken**.

Respectfully submitted,

Kevin D. Adams, OBA#18914
36 East Cameron Street, #16
Tulsa, OK 74119
(918)582-1313
kadams@lawyer.com

CERTIFICATE OF DELIVERY

I hear by certify that a copy of the foregoing instrument was mailed or delivered on July 20, 2020 to the office of the following:

Tulsa County District Attorney's Office
500 S Denver Ave, 9th Floor
Tulsa, OK 74103

Brian Martin
1331 S. Denver Ave.
Tulsa, OK 74119

Kevin D. Adams