IN THE DISTRICT COURT OF KAY COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. CF-2019-589**
	)	
JOHN MITCHELL,	)	
	)	
Defendant.	)	

VERIFED MOTION TO QUASH AND BRIEF IN SUPPORT

COMES NOW the Defendant, John Mitchell, by and through his attorney of record, Gary James, of Gary James and Associates, P.C., who stands charged by Multi-county Grand Jury Indictment on November 21, 2019 and having said Indictment filed with Kay County in above styled action pursuant to 22 O.S. § 358, comes before this Court charged with: Count I, Manslaughter in the First Degree, in violation of 21 O.S. § 711(3) and files his Verified Motion to Quash and set aside for the reasons and upon the grounds as follows:

PROCEDURAL HISTORY

On November 21, 2019, the Oklahoma Multicounty Grand Jury returned a one Count Indictment for Murder in the Second Degree with an alternative charge, Manslaughter in the First Degree. On November 21, 2019, the Presiding Judge of the Multicounty Grand Jury transferred the indictment to Kay County. On November 25, 2019, the Defendant appeared personally with undersigned counsel for initial appearance and the Court released the Defendant on an own recognizance bond. On that same date, the Defendant filed a Request for Preliminary Hearing, pursuant to 22 O.S. § 524. The Defendant's Request for Preliminary Hearing was granted on December 11, 2019, ordering that such hearing be set before the Honorable Nikki Leach, Noble

County Associate District Judge. On December 31, 2019, the hearing was scheduled for February 18-19, 2020 and without objection from either party, to be held in Noble County.

On February 18-19, 2020, the Preliminary Hearing was held. At the conclusion of the evidence, the Court found there to be probable cause to have the Defendant bound over for Count One's alternative charge, Manslaughter in the First Degree. (PH Vol. II, pg. 28)[1].

FACTS

On May 19, 2020, Ms. Jackie Randolph contacted the Blackwell Police Department with concerns regarding her daughter's, Michael Godsey, mental health. (PH Vol. I, at 78, ln. 1-24). Officer Keith Denton of the Blackwell Police Department responded to the call at Ms. Godsey's residence. Officer Denton had previous training in crisis intervention training. (PH Vol. I, at pg. 73, ln 17-23). Officer Denton observed Ms. Godsey to be coherent and conversational, while on medication. (PH Vol. I, at pg. 82, ln. 6-23). Officer Denton further evaluated Ms. Godsey by employing a five factor test to determine whether not a mental health intervention was necessary. (PH Vol. I, at pg. 75, ln 17-23 & pg. 79, ln 1-21). Officer Denton determined an Emergency Order of Detention ("EOD") was not necessary and encouraged the family to call back if Ms. Godsey's disposition changed. (PH Vol. I, at pg. 79, ln. 4-9).

Later, in the early morning hours of May 20, 2019, an innocent civilian by the name of Tyler Kroger was driving south on Main Street when he noticed a vehicle behind him, tailgating him. (PH Vol. I, at pg. 12, ln 4-17). Mr. Kroger brake checked the vehicle and the vehicle rammed into the back of his 2017 Dodge Charger. (PH Vol. I, at pg. 12, ln 18-23 & 26, ln. 3-13). He then

[1] The Preliminary Hearing Transcript held on February 18-19, 2020 is attached as Attachment 4. The attached transcript is submitted in the format by which the court reporter submitted it to defense counsel. The Court should take note this format causes the page numbers to be inconsistent throughout the document. It is defense counsel's belief and understanding the page numbers begin at the top of the page for each page of the transcript. As such, the references in this brief to the transcript are made under that assumption.

stopped and the vehicle ran into the back of his car again. (PH at pg. 13, ln. 3-4). Mr. Kroger saw the vehicle that had run into him was a white Ford F-150 pickup. (PH Vol. I, at pg. 14, ln. 5-7). As he got out of his vehicle, the F-150 pulled beside him attempting to go around him. (PH Vol. I, at pg. 13, ln. 1-16). It was at that time Mr. Kroger had a weird verbal exchange with the woman inside the vehicle. (PH Vol. I, at pg. 13, ln. 18-22). Not wanting to deal with the situation, Mr. Kroger attempted to leave. When the woman in the white F-150 shot a gun twice at Mr. Kroger. (PH Vol. I, at pg. 14, ln 14-20 & pg. 16, ln. 2-3). Mr. Kroger scrambled out of his vehicle and ran into the alley to hide. While in the alley, he observed the woman yell at his Charger to roll down his window. (PH Vol. I, at pg. 17, ln. 4-12). The women then drove off in the white Ford F-150. Interestingly, Mr. Kroger's vehicle, a 2017 Grey Dodge Charger, looked very similar to that of a police vehicle. (PH at pg. 26, ln. 3-13).

Officer Denton received a call from dispatch that gunshots had been fired at a vehicle on South Main Street around 3:00 a.m. (PH Vol. I, at pg. 86). Dispatch notified the other officers on duty including, Officer Kayla Green of the Blackwell Police Department. Officer Green received a phone call from dispatch advising of gunshots fired on Main Street. (PH Vol. I, at pg. 211, ln. 25 & 212, ln. 1-20). The officers responded to Main Street where the shooting had just occurred.

While on scene of the Main Street shooting, Officer Denton observed bullet holes in Mr. Kroger's Dodge Charger. Officer Denton advised his immediate supervisor, the Defendant, Lieutenant John Mitchell, of the situation and requested assistance. (PH Vol. I, at pg. 92, ln. 13-24). It was there, at the location of the Main Street shooting, officers learned the shots came from a woman driving a white Ford F-150. While officers were further investigating the shooting on Main Street, dispatch put out over the radio that someone had called in to report other gunshots around town. (PH Vol. I, at pg. 41, ln. 1-9). Then officers hear other gunshots ring out in town.

(PH Vol. I, at pg. 41, ln. 5-23). At that point, officers begin searching the town for where these shots came from. Officer Denton began to search the town for where the suspected shots may have come from. He came upon two gentlemen offloading a refrigerator or couch at a home near the 800 to 900 block of West Oklahoma. (PH Vol. I, at pg. 95, ln. 16-20). He asked those two men if they had heard gunshots. (PH Vol. I, at pg. 95, ln. 21-23). Those gentlemen told Officer Denton they heard what they believed to be a gunshot four to five blocks east. (PH Vol. I, at pg. 96, ln. 12-18). Leaving towards that direction, dispatch notified Officer Denton that a white truck had just pulled past police headquarters. Officer Denton left to investigate the suspect vehicle, but later determined it was not the vehicle officers were looking for. (PH Vol. I, at pg. 98, ln 14-16). Officer Denton left and drove back to West Oklahoma.

Officer Denton observed a white pickup setting in the driveway of 322 West Oklahoma. The home he had previously visited the day before. (PH Vol. I, at pg. 97, ln. 21-25, & pg. 98, ln. 1-2). Upon exiting his patrol vehicle, Officer Denton contacts Ms. Randolph who said that Ms. Godsey had a gun. (PH Vol. I, at pg. 100, 7-16). About that time, Officer Denton observed an elongated entry point from a bullet in the hood of Ms. Randolph's car. When Officer Denton looked back towards the white Ford F-150, he saw a black semiautomatic handgun come out of the driver's door of the pickup, then across the windshield. (PH Vol. I, at pg. 100, ln. 17-25 & 101, ln. 1-3). The gun was pointed at Officer Denton. (PH Vol. I, at pg. 100, ln. 4-6). He recognized the person holding the firearm was Ms. Godsey and further realized that she was the suspect from the Main Street shooting. (PH Vol. I, at pg. 101, ln. 22-25 & 102, ln. 1-14). Ms. Godsey fired a 2nd shot into the front of Ms. Randolph's car at Ms. Randolph and Officer Denton, so Officer Denton unholstered his sidearm. (PH at pg. 108, ln. 9-16). Ms. Godsey began giving demands to Officer Denton to put his gun down and get back to his car. (PH at pg. 104, ln. 16-25 & 105, ln. 1-9). Ms.

Godsey was delusional. (PH at pg. 105, ln. 16-18). Officer Denton was in fear of his life. (PH at pg. 160, ln. 6-8).

Ms. Godsey got back into the white Ford F-150 and drove it towards Ms. Randolph's car. (PH Vol. I, at pg. 108, ln. 17-25 & 109, ln. 1-9). Officer Denton commanded Ms. Godsey to stop. (PH Vol. I, at pg. 109, ln. 4-5). She began to drive forward in the pickup as if she was going to forcefully ram Ms. Randolph's car out of her way. (PH Vol. I, at pg. 109, ln. 2-15). As Ms. Godsey attempted to hit and forcefully move Ms. Randolph's car, Officer Denton fired a round at the pickup taking aim at the driver's side of the windshield. (PH Vol. I, at pg. 109, ln. 16-24 & 165, ln. 7-18, 165, ln. 19-25 & 166, ln. 1-3). In response, Ms. Godsey pulls through the yard and fires two rounds at Officer Denton. (PH Vol. I, at pg. 110, ln. 5-17 & 167, ln. 17-19). Officer Denton returns fire back at Ms. Godsey, aiming at the glass between the A and B pillars of the truck's rear glass window. (PH Vol. I, pg. 111, ln. 3-8 & 168, ln. 11-25 & 169, ln. 1). At this point, Officer Denton believed Ms. Godsey was a violent fleeing felon who was a danger to the public and other officers. (PH Vol. I, at pg. 178, ln. 1-11).

At that point, a vehicle pursuit after Ms. Godsey began. Officer Denton communicated to his fellow officers that Ms. Godsey is still shooting as the vehicle pursuit continued through the town of Blackwell. (PH Vol. I, at pg. 117, ln. 20-24; 122, ln. 22-25; 123, ln. 1-4). Continuing in her flight from Officer Denton, the pursuit came to the area of 2nd and Doolin where Lieutenant Mitchell's patrol vehicle was stationary. (PH Vol. I, at pg. 121, ln. 2-9). Lieutenant Mitchell joined the chase alongside Officer Denton and began to engage the vehicle with gunfire. (PH Vol. I, at pg. 124, ln. 16-21).

The vehicle pursuit continues through the town of Blackwell and eventually Ms. Godsey came to a stop and there was a pause in gunfire. (PH Vol. I, at pg. 128, ln. 18-25). Officers still

considered Ms. Godsey to be a danger. (PH Vol. I, at pg. 180, ln. 2-9). They believed this was a going to be Ms. Godsey's last stand and a shootout was about to occur. (PH at Vol. I, pg. 183, ln. 19-25). Ms. Godsey's vehicle begins to move forward and officers re-engage the vehicle with gunfire. (PH Vol. I, at pg. 128, ln. 18-25). Lieutenant Mitchell calls for a cease fire. (PH Vol. I, at pg. 136, line 9-11). Officers planned to approach the vehicle by using a patrol car as cover incase Ms. Godsey began firing again. (PH Vol. I, at pg. 136, ln. 15-25; 137, ln. 1-3). It was there they found Ms. Godsey was injured so they radioed for an ambulance. (PH Vol. I, at pg. 138, ln. 4-17).

At the Preliminary Hearing held on February 18-19, 2020, the Chief of the Blackwell Police Department, Dewayne Wood, did not provide any testimony that Lieutenant Mitchell had violated policy in his use of deadly force. The Chief and other responding officers testified they considered Ms. Godsey to be an active shooter, a violent fleeing felon, and that they were in fear of their lives and for the safety for the Blackwell community. (PH Vol. I, at 178, ln. 1-11; 249, ln. 15-25).

It is from these facts and those discussed in the Argument, that Defendant Lieutenant Mitchell brings this Motion to Quash.

ARGUMENT

A motion to quash may be filed under the authority of 22 O.S. § 504.1. At Preliminary Hearing the State has the burden of proving by a preponderance of the evidence (1) that a crime was committed; and (2) the Defendant committed that crime. *State v. Berry*, 1990 OK CR 73, ¶ 2, 799 P.2d 1131; *Matrica v. State*, 1986 OK CR 152, ¶ 10, 726 P.2d 900. In finding that a crime was committed, each element of that crime must be proven by evidence or testimony. *Berry* at ¶ 9. While it is presumed the State will strengthen its case at trial, the evidence at Preliminary Hearing must coincide with guilt and be inconsistent with innocence. *State v. Weese*, 1981 OK CR 19, ¶ 3,

625 P.2d 118. If the elements of the crime are not proven, then the fact of the commission of a crime cannot be said to have been established. *Berry* at ¶ 9.

I. The State Did Not Establish Lieutenant Mitchell's Actions Were In Excess Of Force Permitted By Law, Or Said Policies And Guidelines, Which Would Create A Presumption Allowing The Officer To Be Subject To The Criminal Laws Of This State Pursuant to 22 O.S. § 34.1.

Essentially, the State of Oklahoma is alleging the Defendant exceeded his lawful use of force in pursuit of his duties as a police officer by unlawfully shooting Ms. Godsey. In the State of Oklahoma, a police officer is allowed to use force when necessarily committed by a public officer in the performance of any legal duty. 21 O.S. § 643. Only when that use of physical force exceeds the degree of physical force permitted by law, or the policies and guidelines of the law enforcement entity, should the officer be subject to the criminal laws of this state. 22 O.S. § 34.1(A)-(B). Excessive force is presumed when an officer continues to apply physical force in excess of the force permitted by law or said policies and guidelines to a person who has been rendered incapable of resisting arrest. 21 O.S. § 34.1(B).

The Oklahoma Supreme Court specifically addressed the issue of charging a police officer with a crime in *Morales v. City of Oklahoma City*, 2010 OK 9, 230 P.3d 869:

> We begin by noting the obvious: a police officer *does not stand in the same shoes as an ordinary citizen when it comes to using force against another person which exposes that person to injury*. This much stands clearly recognized in the state's criminal law. In making a lawful arrest, a police officer in Oklahoma is statutorily relieved of *criminal liability* for *assault and battery* as long as the act of force is "necessarily committed by the officer in the performance of a legal duty." At the same time, an officer is "subject to the criminal laws of this state to the same degree as any other citizen" if *excessive force* is used. (Italics Oklahoma Supreme Court's, underlining added)

Morales, supra, at ¶23. As stated above, excessive force is only presumed under § 34.1(B) only if the applied force is in excess of that permitted by law or policy.

A. Lieutenant Mitchell's Use Of Force Was Not In Excess Of The Force That Was Permitted By Law At The Time That It Was Used.

As noted by the Oklahoma Supreme Court in *Morales*, a police officer does not stand in the same shoes as an ordinary citizen when it comes to criminal charges. Unlike the ordinary citizen, a police officer must engage with dangerous criminals and rapidly evolving, uncertain circumstances. The United States Supreme Court has too recognized this fact as well and held the standard for judging an officer's actions while on duty engaging in dangerous police work is the reasonableness standard.

The United States Supreme Court has found the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, "rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). "The calculus of reasonableness must embody the allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham*, supra, at 396-397. "The Fourth Amendment standard requires inquiry into the factual circumstances of every case; relevant factors include the crime's severity, the potential threat posed by the suspect to the officer's and others' safety, and the suspect's attempts to resist or evade arrest." *Medina v. Bruning*, 252 F.3d 1124, 1131 (10th Cir. 2001). "Obviously, events immediately connected with the actual seizure are taken into account in determining whether the seizure is reasonable." *Id.* "This approach is simply a specific application of the 'totality of the circumstances' approach inherent in the Fourth Amendment's reasonableness standard." *Id.* The objective facts "must be filtered through the lens of the officer's perceptions at the time of the

incident in question." *Rowland v. Perry*, 41 F.3d 167, 173 (4th Cir.1994). This "limits second-guessing the reasonableness of actions with the benefit of 20/20 hindsight" and "limits the need for decision-makers to sort through conflicting versions of the 'actual' facts, and allows them to focus instead on what the police officer reasonably perceived." *Id.*

In applying this standard, the United States Supreme Court has found the use of deadly force to end a vehicle pursuit that endangered the public and other officers was reasonable. In *Plumhoff v. Rickard*, 573 U.S. 765, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014), the United States Supreme Court held that officers' use of force to stop a pursuit did not violate law or the Fourth Amendment to the United States Constitution. *Id*, at 781. In *Plumhoff*, an officer stopped a motorist driving with one operational headlight. Upon requesting if the driver had been drinking, the driver fled and officer's pursued. The driver swerved through traffic at high speeds in excess of 100 miles per hour. Over two dozen innocent civilians were passed in the driver's flight from officers. Once officers were able to subdue the vehicle, the driver continued to try and use his vehicle as a ram to move police cars out of the way. Once free, the driver continued to flee when officers fired several rounds into the vehicle. *Id*, at 769-71. The Court used the *Graham* framework in its analysis of the officer's conduct. *Id*, at 775-76. The Court found that the driver's conduct was nothing less than "outrageously reckless" posing a grave public safety threat. *Id.* at 777. Moreover, the Court found the respondent's claim that the chase had ceased when the officers shot into the vehicle because "a reasonable police officer could have concluded that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road." *Id.* at 778. Ultimately, Court held that because the driver's flight posed a grave public safety risk, the police acted reasonably in using deadly force to end that risk. *Id.*

Prior to its decision in *Plumhoff*, the United States Supreme Court decided *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686. In *Scott*, the Court had to determine whether Deputy Scott's action of ramming his patrol vehicle to stop the vehicle of a fleeing suspect which ultimately cased injury to the suspect, was in violation of the Fourth Amendment. The Court held the deputy did not violate the Fourth Amendment and his actions were objectively reasonable. *Id.* at 382 & 385. In support of its holding, the Court found the suspect had put himself and the public in danger by unlawfully engaging in reckless behavior. *Id.* at 385. The deputy was confronted with allowing the public to continue to be endangered or to perform a maneuver to put an end to the chase. *Id.* Further, the Court found the use of force was certain to end the pursuit and the recklessness the suspect was engaged in. *Id.* at 386. Whereas in contrast, it was uncertain as to whether or not the suspect would end their reckless behavior if police stopped pursuing. *Id.* A second compelling reason by which the Court dismissed this theory of the ceased pursuit is because ultimately it would invite a "impunity-earned-by-recklessness". *Id.* 387. Which if such a rule existed it would allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. *Id.* The Court laid down a more sensible rule: "[a] police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." *Id.* at 387.

Lastly, the 10th Circuit Court of Appeals has found "[t]he use of deadly force is not unlawful if a reasonable officer would have had probable cause to believe there was a threat of serious physical harm to himself or others." *Thomas v. Durastanti*, 607 F.3d 655, 664 (10th Cir. 2010), *citing*, *Graham*, 400 U.S. at 396-97. In *Thomas*, ATF agents were driving in Wichita, Kansas looking for a fugitive while in plain clothes and an unmarked sport utility vehicle. Upon

seeing a Lincoln town car speed toward them and then away, bearing a paper tag, in what was considered a high crime area, the Agents decided to follow the vehicle. Upon running the numbers of the paper tag, the dispatcher informed the Agents the vehicle's registration was not in the file. Suspecting the driver of the Lincoln was not up to any good, the Agents requested a Kansas State Trooper make a stop of the vehicle. The Trooper pulled the vehicle over after the Lincoln had parked in an undesignated parking spot. *Id.* at 660. The Trooper activated all of his emergency lights and parked behind the Lincoln. An occupant of the Lincoln noticed the plain clothed ATF agents coming to the vehicle with weapons drawn. *Id.* at 660. At the same time, the Trooper had partially exited his patrol unit and told the occupants to have a seat back in the car and to put their hands where he could see them. *Id.* Once the occupant who attempted to get out of the vehicle re-entered the vehicle, he alerted the driver. Another occupant, in the driver's attempt to escape, saw the Trooper but did not notify the driver. As such, the Lincoln began to pull out of the driveway, maneuvering around the Agent's SUV. In doing so, another Agent attempted to stop the flight of the Lincoln and attempted to break the window with the butt of his gun. *Id.* at 661. The second Agent, believed that his fellow agent was in distress and that the Lincoln was coming directly at him. In an effort to stop the Lincoln, the second Agent fired several shots at the driver. Undeterred by the shots, the Lincoln continued forward running over the second Agent, who miraculously landed on his feet and fired two more shots towards the Lincoln. The Trooper and the first Agent gave chase and observed the driver throw a plastic bag onto the street. A short time later, the Lincoln came to a stop, where the driver had been shot in the head and a passenger had been shot in the leg. *Id.* Upon a search of the vehicle, no weapons were found and one of the occupants had been transporting crack cocaine. *Id.* The 10th Circuit Court of Appeals found the important details of this encounter was (1) a reasonable officer could certainly conclude the occupants of the Lincoln

had notice of police presence; (2) the driver of the Lincoln was pulling away from a traffic stop; (3) the driver of the Lincoln put the second agent in harm's way by driving at him; (4) even though the second Agent's belief the vehicle was still coming at him after being struck was incorrect, the misperception was reasonable given he had just been struck by the Lincoln and spun around; having no assurance the Lincoln, or the threat, had passed. *Id.* at 666. Ultimately, the Court concluded the officer's use of force did not constitute violation of law. *Id.* at 668 & 671.

To summarize, the United States Supreme Court and the 10th Circuit Court of Appeals has found the following actions of law enforcement to **NOT** be violations of law: (1) an officer's use of deadly force by shooting a driver of a vehicle whose conduct was so reckless that it endangered innocent civilians and who had a continued intent to flee (*Plumbhoff*); (2) a deputy's use of force by using his patrol vehicle as a ramming device to stop a fleeing motorist whose conduct endangered innocent bystanders, even when the use of force was likely to endanger or cause death to the driver of the fleeing vehicle (*Scott*); (3) a Federal Agent's use of deadly force upon a driver of a vehicle who was unarmed; but believed the driver was going to cause harm to his fellow Agent and later, himself (*Thomas*). Keeping not only the *Graham* framework in mind, but the above listed principles, the argument below shows that Lieutenant Mitchell's conduct on May 20, 2020, was not in excess of the force that was permitted under the law.

In the present case, it is apparent that on May 20, 2020, Ms. Godsey was an armed and dangerous fleeing felon whose conduct endangered the innocent citizens of the town of Blackwell and the responding officers of the Blackwell Police Department. Pursuant to *Graham* and its progeny, this Court must view the facts from the perspective of the reasonable officer in the shoes of Lieutenant Mitchell.

Going into the situation there were several facts that were apparent: (1) shots were fired at an innocent civilian on Main Street from a White Ford F-150; (2) dispatch notified officers of other gunshots being fired throughout the town; (3) Ms. Godsey was driving a White Ford F-150; (4) Ms. Godsey was giving Officer Denton commands to drop his gun; (5) Ms. Godsey had shot at her mother and Officer Denton prior to fleeing in a White Ford F-150; (6) another officer had fired his weapon at Ms. Godsey in an attempt to stop her from fleeing; (7) and radio traffic indicated that Ms. Godsey had fired her weapon during the pursuit. (PH Vol. I, pg. 16-17, 28-29, 98-99, 100-101, 104-105, 109-110, 112, 117-119, 123). Two testifying officers, including the Blackwell Chief of Police, testified that Ms. Godsey was a danger to the public, a threat to police officers, and a violent fleeing felon[2]. (PH Vol. I, at pg. 178, 249). In light of these facts, when compared to the United States Supreme Court and the 10th Circuit Court of Appeals prior precedent, it is apparent that officers, including Lieutenant Mitchell, were well within the law to use deadly force to stop not only a violent fleeing felon, but to stop great bodily harm or death to innocent civilians and fellow officers.

Armed with the above facts, officers pursue Ms. Godsey until she comes to a stop on 13th Street. (PH Vol, I, pg. 127, ln. 12-19). There was a pause in gunfire. (PH Vol I, pg. 128, ln. 21-22). Ms. Godsey's vehicle begins to pull forward leading officers to believe she was going to continue her dangerous flight from officers, so officers re-engaged the vehicle. (PH Vol I, pg. 128, at 22-25 & pg., 131, ln. 9-16). The vehicle continued to move and officers continued to engage. (PH Vol I, pg. 131, ln. 1-3). Eventually, Lieutenant Mitchell calls for a cease fire and officers approached cautiously using a patrol vehicle as cover to find Ms. Godsey in an agonal state. (PH

[2] This testimony was solicited by Defense Counsel on cross-examination. A third officer, Officer Kayla Green, gave testimony but the Court denied Defense Counsel the opportunity to ask similar questions that may have corroborated the other two officers' testimony. This gives rise to a separate proposition raised later in this Motion.

Vol I, pg. 136, 9-13 & 136, ln. 21-25, & 138, ln. 6-9). An ambulance was called for Ms. Godsey. (PH Vol I, pg. 138, ln. 6-9).

Appling the previously discussed precedent from the United States Supreme Court and the 10th Circuit Court of Appeals, it is clear to see that Ms. Godsey was a continued threat to the community and officers even after the vehicle had stopped. However, it is important to note that when the vehicle stopped, so did the officer's shots. It was only when Ms. Godsey's vehicle starts to move again and continue her flight from officers that officers re-engage. It is clear, the purpose of the use of deadly force was to stop an active shooter, who had shot at two innocent civilians and a police officer. Further, her actions made her a violent fleeing felon whose apparent intent was to continue her flight. Given the choice between two evils: the continued flight of an active shooter or stopping the threat, officers made a choice to stop the threat. This choice has been upheld as a lawful choice by both the United States Supreme Court and the 10th Circuit Court of Appeals and should as well be upheld as lawful by this Court.

Further, as tragic as it may be, it was Ms. Godsey's actions caused the use of deadly force. She intentionally placed herself and the public in danger by engaging in reckless and deadly behavior. She shot at innocent civilians and she shot at responding officers. She further decided to flee in a vehicle, using it to ram into other vehicles as she fled. She was the one who shot at officers as she fled. It is unfathomable to think of the innocent members of the community who may have been harmed but for the actions taken by Lieutenant Mitchell. As the United States Supreme Court and the 10th Circuit Court of Appeals has held, that similar actions taken by law enforcement did not violate the law, this Court too should find that Lieutenant Mitchell's conduct did not violate law on May 20, 2019 as he protected his community and his fellow officers from a delusional active shooter.

B. Whether Or Not Alterative Methods To Capture May Have Existed Is Not Enough To Establish That An Officer's Use Of Force Was Contrary To Law

It is anticipated the State will argue that Lieutenant Mitchell could have/should have used "other possibilities" to take Ms. Godsey into custody after she had stopped the White Ford F-150 on 13th Street. (PH Vol I, pg. 133, ln. 3-6). However, according to the United States Supreme Court, this analysis is problematic and improper under *Graham* for several reasons.

First, the appropriate inquiry under *Graham* is whether Lieutenant Mitchell acted reasonably, not whether he had less intrusive alternatives available to him. *Illinois v. Lafayette*, 462 U.S. 640, 647, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)[3]. The Ninth Circuit Court of Appeals, one of the most liberal, criticized Courts, who are typically very harsh in judgment of police officers has stated:

> Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose the option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.
>
> Officers need not avail themselves of the least intrusive means of responding to an exigent situation; they only act within that range of conduct we identify as reasonable.

Scott v. Henrich, 93 F.3d 912, 915 (9th Cir. 1992). In *Henrich*, officers were responding to a man firing a gun in the town of Butte, Montana. When they arrived, a boy told officers that "he had seen a man fire a shot or a couple of shots … and that [man] was acting strange or crazy and he was staggering." *Id.* at 913. Officers saw a man in a second story window, responded to the street

[3] Stating "[t]he reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative "less intrusive" means."

level door and announced themselves as police officers. Once the door opened, they saw the man with a long gun who had pointed it at them. One officer fired one shot and the other officer who believed it was the man, fired four shots that were fatal. Ultimately, the Ninth Circuit Court of Appeals held the officer's use of deadly force was proper under the law and policy. *Id.* at 916.

Secondly, as *Graham* prohibits the inquiry into the reasonableness of an officer's actions from 20/20 hindsight. *Graham*, 490 U.S. at 396. Determining an officer's actions from the peace of a judge's chambers, or courtroom, and whether alternative means were available does not embody the analysis that *Graham* requires. *Id.* at 397. Instead, the calculous under *Graham* must account for the fact that "police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation." *Id.*

Therefore, any inquiry into least intrusive alternatives is not proper under the United States Supreme Court precedent to determine whether an officer's use of force was reasonable. As such, this Court should not consider any least intrusive alternatives.

C. Lieutenant Mitchell's Use Of Force Was Not In Excess Of The Force Permitted By Blackwell Police Department's Policy

The Blackwell Police Department's Police Procedures Manual was issued to Lt. John Mitchell. The Use of Force section in that policy, Section 300.2, states as follows:

> The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and various interactions and, when warranted, may use reasonable force in carrying out their duties.
>
> Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law-enforcement duties.
>
> The Blackwell Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to

> use reasonable force and to protect the public welfare requires monitoring, evaluation and careful balancing of all interests.

This use of force policy was based upon Supreme Court precedent. (PH at pg. 250, ln. 4-14).

The United States Supreme Court again addressed excessive force in *City and County of San Francisco v. Sheehan*, 575 U.S. ___, 135 S.Ct. 1765, 191 L.Ed.2d 856 (2015). In that matter, the Supreme Court granted qualified immunity to two police officers that had used deadly force on a woman who suffered from a schizoaffective disorder. *Sheehan*, supra, slip op. at pg. 1, 1769. Sheehan had orally threatened to kill a social worker with a knife, though the social worker left her premises without actually seeing a knife. *Sheehan*, slip at pg. 2, 1770. The social worker telephoned the police and asked them to help take Sheehan to a secure facility. *Id.* When police officers Reynolds and Holder arrived, Sheehan grabbed a kitchen knife, threatened to kill them, and ordered them out of her premises. The officers retreated the premises, but did not leave the building. While in the hallway, the officers "had to make a decision." *Sheehan*, slip op. at 4, 1771. The officers did not wait for backup, but instead re-entered the premises with their pistols drawn. Officer Reynolds began pepper spraying Sheehan in the face, "but Sheehan would not drop the knife." *Id.* "When Sheehan was only a few feet away, [Officer] Holder shot her twice, but she did not collapse. Reynolds then fired multiple shots. After Sheehan finally fell, a third officer (who had just arrived) kicked the knife out of her hand. Sheehan survived." *Sheehan*, supra, slip op. at 4-5, 1771.

Sheehan later brought a claim for excessive force against the officers. The United States Supreme Court ruled that the police officers were entitled to qualified immunity. The United States Supreme Court noted that it was reasonable for the police to move quickly if they believed delay might endanger their lives or the lives of others. *Sheehan*, slip op. at 11-12, 1775.

Significantly, the United States Supreme Court took issue with the Ninth Circuit Court of Appeals' overly broad application of *Graham v. Connor*:

> The Ninth Circuit focused on Graham v. Connor, but Graham holds only that the "objective reasonableness" test applies to excessive-force claims under the Fourth Amendment. ***That is far too general a proposition to control this case.*** "We have repeatedly told courts – and the Ninth Circuit in particular – ***not*** to define clearly established law at a ***high level of generality***." Qualified immunity is no immunity at all if "clearly established" law can simply be defined as the right to be free from unreasonable searches and seizures.
>
> Even a cursory glance at the facts of Graham confirms just how different that case is from this one. That case did not involve a dangerous, unstable person making threats, much less was there a weapon involved. There is a world of difference between needlessly withholding sugar from an innocent person who is suffering from an insulin reaction, see Graham, supra, at 388-389, and responding to the perilous situation Reynolds and Holder confronted. Graham is a nonstarter.

Sheehan, supra, slip op. at 13, 1775-1776. (citations omitted, emphasis added)

The United States Supreme Court also ruled that "even if Reynolds and Holder misjudged the situation, Sheehan cannot establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided. Courts must not judge officers with the '20/20 vision of hindsight.'" *Sheehan*, slip op. at 15, 1777. Further, "Nor does it matter that for purposes of qualified immunity that Sheehan's expert, testified that the officers did not follow their training." *Id.* More specifically:

> Even if an officer acts contrary to her training, however, (and here, given the generality of that training, it is not at all clear that Reynolds and Holder did so), that does not itself negate qualified immunity where it would otherwise be warranted. ***Rather, so long as "a reasonable officer could have believed that his conduct was justified***", a plaintiff cannot avoid summary judgment by simply producing an expert's report that an officer's conduct leading up to a deadly confrontation was imprudent, inappropriate, or even reckless." "In close cases, a jury does not automatically get to second guess these life and death decisions, even though the plaintiff has as expert and a plausible claim that the situation could better have been handled differently."

Sheehan, slip op. at 16, 1777. (citations omitted, emphasis added).

At Preliminary Hearing, Chief Dewayne Wood of the Blackwell Police Department did not testify that Lieutenant Mitchell violated the use of force policy. The only mention of any policy that may have been violated was Lieutenant Mitchell's overtaking the pursuit. (PH Vol I, pg. 245, ln. 9-14). However, that violation was only because he did not radio ahead to say he was going to take over the pursuit. (PH Vol I, pg. 245, ln. 10-15). **That alleged violation of policy, had nothing to do with the use of deadly force**. Moreover, this determination by Chief Wood only came after he reviewed the dash cam video. (PH Vol I, pg. 245, ln. 5-8). In light of the established United States Supreme Court precedent, this 20/20 hindsight determination is improper.

Even so, there was no testimony at Preliminary Hearing that indicated Lieutenant Mitchell violated Department policy when he used deadly force on an active shooter or violent fleeing felon.

D. Lieutenant Mitchell's Conduct Was Not In Violation Of Law Or Policy

A review of the applicable law and Oklahoma statute underscores a clear public policy. In carrying out their duties, there will be times police officers are going to have no choice but to use force. And yes, sometimes that force is going to be violent. If we hamper the officers' ability to make split second life and death decisions with lawsuits and criminal charges, we are going to make them so hesitant to act in those dangerous situations that we'll put innocent civilians and law enforcement officers' lives in danger. This is not merely the convenient stance of the defense, it is the law as expressed by the United States Supreme Court, the Oklahoma Court of Criminal Appeals, Oklahoma Statues, and the Oklahoma Supreme Court. This is why the Oklahoma Legislature required proof of excessive force before proceeding with criminal charges against a police officer.

The United States Supreme Court has made it abundantly clear that we are not supposed to define excessive force at a "high level of generality." But that is precisely what the State has done

here. The United States Supreme Court has mandated that it "must be sufficiently clear that a reasonable official would understand what he is doing violates that right." That is, the police officer must receive some notice. Yet at Preliminary Hearing the State has produced no Blackwell Police Department policy or guideline that notified Lieutenant Mitchell that he was prohibited from doing what he did. And the State has produced no law that notified Lieutenant Mitchell that the use of deadly force upon a violent fleeing felon or an active shooter was prohibited. In fact, at Preliminary Hearing Officer Denton testified he should have put six rounds into the windshield of Ms. Godsey's truck to stop the threat. (PH at pg. 162, ln. 11-25 & 163, ln. 1-2). Instead, the State has just simply Indicted Lieutenant Mitchell and put the burden **on him** to prove that his "use of force" was lawful. This is precisely what the Supreme Court has told courts **not** to do. And it is completely contrary to the standard required by 22 O.S. §34.1.

Therefore, because nothing was presented at Preliminary Hearing indicating that Lieutenant Mitchell had exceeded reasonable force for the situation he faced, the Indictment should be quashed.

II. There Was No Evidence Presented At Preliminary Hearing That Suggested Lieutenant Mitchell Killed Ms. Godsey

At preliminary hearing the State bears the burden to prove by the preponderance of evidence: (1) that a crime was committed and (2) the Defendant committed that crime. *Berry*, at ¶ 2. To first prove that a crime was committed, the State must prove each element of the crime. *Id.* at ¶ 9. The elements for Manslaughter in the First Degree under the Oklahoma Uniform Jury Instructions, Criminal, are:

> First, the death of a human;
>
> Second, perpetrated unnecessarily (while resisting an attempt by the deceased to commit a crime)/(after an attempt by the deceased to commit a crime had failed);

Third, perpetrated by the defendant.

OUJI-CR 4-102, Statutory Authority 21 O.S. § 711(3). In order to meet its burden at Preliminary Hearing, the State bears the burden of proving all three elements. Including, that the Defendant killed the deceased. In the present case, no testimony or evidence was presented at Preliminary Hearing that Lieutenant Mitchell had killed Ms. Godsey.

Testimony at Preliminary Hearing indicated that two (2) officers fired their weapon at Ms. Godsey. (PH Vol. I, at pg. 108, ln. 9-16; 109, ln. 16-24; 111, ln 3-8; 124, ln 16-21; 128, ln 18-25; 129, ln 5-11). Those officers were Officer Denton and Lieutenant Mitchell. Officer Denton had fired rounds into the driver's side of the windshield and between the A and B pillars of the F-150. (PH Vol I, at pg. 165-166, ln 19-25 & 1-3; 168-169, ln. 11-25 & 1). Officer Denton testified that he did not know if the rounds he fired had killed Ms. Godsey. (PH Vol I, at pg. 186, ln. 9-25). However, his last three rounds were some of the last rounds fired. (PH Vol I, pg. 187, ln. 5-8).

The State provided Defense Counsel all medical reports prior to the preliminary hearing pursuant to 22 O.S. § 258(Sixth) and *LaFortune v. District Court*, 1998 OK CR 65, 292 P.2d 868. The report of Dr. Duvall, the State Medical Examiner, was admitted into evidence without testimony from Dr. Duvall. (PH Vol. I, at pg. 204, ln. 21-25). Defense Counsel did not object to its admission. (PH Vol I, at pg. 205, ln. 2-3). Nothing in that report indicated or even suggested the bullets from Lieutenant Mitchell's firearm is what killed Ms. Godsey. Further, the Medical Examiner's report doesn't differentiate whether the shots that hit Ms. Godsey were rifle shots or .45 caliber shots. (PH Vol. I, at pg. 186, ln. 19-25). Nor does the Medical Examiner's report (Attachment 3) indicate whose gun fired the fatal shots. Thus, there was no evidence at preliminary hearing that that indicates Ms. Godsey's death was perpetrated by Lieutenant Mitchell.

Therefore, because the State failed to prove that Ms. Godsey's death was perpetrated by Lieutenant Mitchell at Preliminary Hearing, the State failed to meet their burden. This Court should grant Lieutenant Mitchell's Motion to Quash.

III. Testimony And Evidence Presented At Preliminary Hearing Indicated A Justifiable Homicide

Police officers are unlike regular citizens. Police officers are justified in using deadly force in the performance of their legal duties when they reasonably believe the use of force is necessary to protect himself or others from infliction of a serious bodily harm. 21 O.S. § 732. Specifically, Justifiable Homicide is defined as "a peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:" **(3) "the officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect himself or others from the infliction of serious bodily harm.** *See* 21 O.S. § 732(3).

The Oklahoma Court of Criminal Appeals have stated that justifiable homicide is a defense if committed by a public officer acting within the provisions of § 732. *Cameron v. State*, 1992 OK CR 17, ¶ 13, 829 P.2d 47. Specifically, that Justifiable homicide in self-defense occurs when one person, not at fault in bringing on the struggle, kills another under apparent necessity to save himself from death or great bodily harm. *Id.* at ¶ 13. Further, *Camron* goes on to say that "justifiable homicide is a defense if committed by a public officer acting within the provisions of 21 O.S. §732. *Id.* at ¶ 49. The apprehension of danger and the belief of the necessity which would justify killing in self-defense is not to be tested by the defendant's honesty or good faith but by whether the defendant had reasonable grounds to believe the killing was necessary. *West v. State*, 1980 OK CR 82, ¶ 5, 617 P.2d 1362.

The United States Supreme Court has found that law enforcement officer's *reasonable belief* in using deadly force is significant in deciding if a threat exists. *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). **In the case of *Garner*, the United States Supreme Court had to determine whether a law enforcement officer's authority under a *Tennessee* statute allowed an officer to shoot an unarmed fleeing suspect. The Supreme Court found that if a suspect threatens the officer with a weapon or there is probable cause to believe he [suspect] has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.** *Id.* 471 U.S. at 11-12. As previously mentioned, the United States Supreme Court addressed the scope of reasonableness in use of force cases in *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989), which held that in determining the reasonableness of a particular use of force, it must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 vision of hindsight. *Id.* 490 U.S. at 396-397. The United States Supreme Court furthered, **"[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments- in circumstances that are tense, uncertain, and rapidly evolving", regarding the amount of force that is necessary in a particular situation.** *Id.*

The United States Supreme Court has held that **all claims** of excessive force, deadly or not, in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are analyzed under the Fourth Amendment's "objective reasonableness" standard. *See Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The Court in *Graham* went on to hold that in determining the reasonableness of a particular use of force, it must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 vision of hindsight. *Id.* 490 U.S. at 396-397;

see also, *Plumholff v. Rickard*, 572 U.S. 765, 755, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014). If threatened by a weapon, an officer may use deadly force. *Thomas v. Durastanti*, 607 F.3d 655, 664 (10th Cir., 2010). Thus, the court must consider whether Lieutenant Mitchell could have reasonably perceived he, others in the community, or his fellow officers were in danger at the precise moment that he used force.

In the present case it is without a doubt that Lieutenant Mitchell, the community, and his fellow officers were in danger. First, Ms. Godsey fired upon two innocent members of the community twice without provocation, one of which was her own mother. (PH at pg. 16, ln. 2-3; 100, ln. 17-25 & 101, ln. 1-3). Second, Ms. Godsey fired upon a law enforcement officer several times. (PH at pg. 108, ln. 9-16; 111, ln. 5-17). Third, Ms. Godsey fired while driving through the town of Blackwell endangering the citizens of Blackwell and others in the community. (PH at pg. 122, ln. 22-25 & 123, ln. 1-4). The actions of Lieutenant Mitchell were consistent with the actions of an officer attempting to stop a person endangering the lives of everyone she faced on that day. Even after Ms. Godsey's pickup stopped on 13th Street, there was still reason to believe she was going to attempt to flee or engage in a gun battle with law enforcement. (PH at pg. 128, ln. 18-25; 131, ln. 1-16; 180, ln. 16-19; 183, ln 19-25; 184, ln. 9-13).

Based upon the facts presented in this case, it is clear that the actions of Lieutenant Mitchell were not only lawful; but the death of Ms. Godsey, although tragic, was justifiable.

IV. Testimony and Evidence Presented At Preliminary Hearing Indicated An Excusable Homicide

Ordinarily, Excusable Homicide is found in cases where the decedent death comes from acts that are lawful in nature. The Oklahoma Court of Criminal Appeals has found that in order for an accidental death to be wholly excusable, it must have resulted from the during of some lawful act. *Adams v. State*, 1951 OK CR 20, pg. 338, 228 P.2d 195, *citing*, *Johnson v. State*, 1936 OK CR

66, pg.(s), 293-295, 58 P.2d 156. Further the *Adams* Court also defined misfortune as "... analogous to the word 'misadventure' which, when applied to homicide, means the act of a man who in doing any lawful act and without an unlawful intent unfortunately kills another person. *Adams*, at 338, *citing*, *Ganuce v. State*, 1923 OK CR 10, 211 P. 517. The Court in *Adams* went on stating "That everyman has the right to defend himself against any assault is elementary. No man is bound to measure the extent of an injury about to be done before he would be justified in defending himself. *Adams* at 338. The difference between excusable homicide and justifiable homicide was laid out in *Ganuce v. State*, 1923 OK CR 10, 211 P. 517, stating:

> There is an important difference between justifiable homicide and excusable homicide... Justifiable homicide is the taking of a human life under circumstances of justification, as a matter of right, such as self-defense, or other causes set out in the statute. Excusable homicide is where death results from a lawful act by lawful means, accomplished accidentally or by misfortune or misadventure, or so accomplished with sufficient provocation, with no undue advantage and without unnecessary cruel treatment.

Id. at pg. 364.

It is anticipated the State will argue the facts of this case are more akin to *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), where the United States Supreme Court held a Tennessee statute authorizing the use of deadly force against a non-dangerous fleeing suspect unconstitutional. *Id.* 471 U.S. at 11. However, the United States Supreme Court also found that if a suspect threatens the officer with a weapon or there is probable cause to believe the [suspect] has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. *Id.* 471 U.S. at 11-12.

However, the facts of *Tennessee* are different from the present case. There, the victim appeared to be unarmed and the officer never attempted to justify his actions on any basis other

than the need to prevent escape. *Id.* 471 U.S. at 20-21. Without a doubt Ms. Godsey was an active shooter and dangerous. Therefore, this case is dissimilar to that of *Garner*. However, in applying the premise that an officer may use deadly force to prevent escape when faced with a suspect that had either inflicted or threatened serious physical harm, or in this case even deadly harm, Lieutenant Mitchell's use of force would not only be necessary; but justifiable. Officer Denton testified that the use of force when Ms. Godsey's truck was pulled over on Doolin was because he had a belief a gunfight would occur and that Ms. Godsey was going to try and continue the pursuit. (PH at pg. 184, ln. 9-13; 131, ln. 7-16). Therefore, the actions of Lieutenant Mitchell were reasonable and justifiable.

Thus, this Court should grant the Lieutenant Mitchell's Motion to Quash and quash the Indictment against him.

V. No Probable Cause Existed To Bind The Defendant Over For Trial

At Preliminary Hearing after the conclusion of Officer Denton's testimony, the State moved pursuant to 22 O.S. § 258 for the Court to conclude the Preliminary Hearing based upon a showing of probable cause. (PH at pg. 205, ln 7-12). The Court determined at that moment the State had NOT met its burden and told the State to continue. (PH at pg. 205, ln. 19-21). The State called two more witnesses, Officer Kayla Green of the Blackwell Police Department and Chief Dewayne Wood of the Blackwell Police Department. (PH at pg. 205, ln. 25; 235, ln. 25).

The Defendant asserts that those two witnesses added nothing to the State's burden of showing that (1) that a crime was committed and (2) that the Defendant committed that crime. *Berry*, 1990 OK CR 73, ¶ 2. Specifically, nothing in Officer Green or Chief Wood's testimony indicated that a crime was committed and that Lieutenant Mitchell had committed that crime.

The only misgiving that was stated regarding Lieutenant Mitchell's actions was that he had passed Officer Green and took over the pursuit. (PH at pg. 222, ln. 10-25 & 223, ln. 1-4). Chief Wood had testified this was a violation of Blackwell Police Department Policy. (PH at pg. 245, ln. 5-17). Even so, this violation of policy was not a violation of policy in Lieutenant Mitchells use of force. Rather, it was a violation of policy regarding pursuits.

Additionally, the testimony of Officer Green and Chief Wood only reinforce that Ms. Godsey was a danger to police officers and the community. Officer Green testified that she heard that shots had been fired over the police radio and had received a phone call from dispatch. (PH at pg. 211, ln. 25 & 212, ln. 1–20). Further, she was able to hear the gunshots. (PH at pg. 217, Ln. 17-19). As to Chief Wood, his testimony indicated that he considered Ms. Godsey to be a mobile active shooter who was a danger to the community and was acting as a violent fleeing felon. (PH at pg. 249, line 15-25).

This testimony supports the actions of Lieutenant Mitchell in his use of force. Lieutenant Mitchell did not violate policy in his use of force to subdue an active shooter and violent fleeing felon. Therefore, because the testimony of the States final two witnesses did not provide any additional testimony that (1) a crime was committed and (2) that Lieutenant Mitchell had committed that crime, it cannot be said that probable cause had been established by a preponderance of the evidence.

Therefore, because the final two witness' did not provide any additional testimony that there had been a crime committed and the Defendant had committed that crime, the previous decision by the Court that the State had not met its burden should stand. Thus, this Court should find the State did not meet its burden by a preponderance of evidence, reverse the finding of probable cause, and quash the indictment of Lieutenant John Mitchell.

States Constitution, by right in the Oklahoma Constitution and by statutory right found at 22 O.S.

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of May 2020, a true and correct copy of the above instrument was mailed, faxed, emailed and/or hand-delivered to:

Jason M. Hicks
District Attorney Office
101 S. 11th St. Rm. 303
Duncan, OK 73533

Gary James