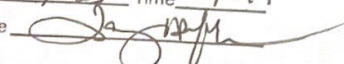


(Emailed to City of Lawton Policymakers)

August 28, 2023

Interim City Manager John Ratliff
212 SW 9th Street
Lawton, Oklahoma 73501

RECEIVED BY
Mayor - City Manager's Office
Date 8/29/2023 Time 4:49
Signature 

RE: ORIGINAL REQUEST FOR INTERNAL AFFAIRS INVESTIGATION COMPLAINT

Dear City of Lawton Clerks and Policymakers:

My name is Justine Howard. I am the sister of Mr. Robert Rodgers. Through this document, I am contemporaneously requesting an "Internal Affairs (IA) investigation" of all the officers involved with Aug. 15, 2023, arrest of Mr. Rodgers through their actions and inactions while filing this official complaint of "deprivation of constitutional rights", including but not limited to, violations of municipal "public policies" designed to protect the rights of citizens and to ensure compliance by officers of the Lawton Police Department (LPD) in the City of Lawton (City).

To make matters more egregious, Mr. Robert Rodgers has a mugshot and police story on the front page of the Wednesday, August 23, 2023, Lawton Constitution (Constitution). As the false narrative printed by the Constitution is making its rounds in the community, Mr. Rodgers is continuing to suffer from severe pain as he has not been afforded adequate medical care. It is speculated that the conduct and lack of training from officers employed by the City and the LPD may have been the proximate cause and results of injuries to Mr. Rodgers. However, it is alleged that the "moving force" behind the pain and suffering ascribed to Mr. Rodgers can also be attributable to the public entity's unconstitutional written policies including but not limited to, the lack of training of LDP's Foot Pursuit, Use of Force, De-escalation, Duty to Intervene,

Conducted Electrical Devices (CEDs), Fourth Amendment, Fourteenth Amendment, and the repeated constitutional violations of minorities with disabilities under Title II of the Americans with Disabilities Act (ADA). (*City of Canton, Ohio v. Harris*, 489 U.S. 378, 385, 391-92 (1989)).

Additionally, the “custom, pattern or practice” of unconstitutional policing by LPD patrol officers is a “matter of public concern”. (*Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397,404 (1997)).

On Aug. 15, 2023, Mr. Rodgers was unlawfully targeted by officers of LPD. Further, the family of Mr. Rodgers asserts that members of LPD had prior knowledge of the identity and whereabouts of Mr. Rodgers. At least once before, Mr. Rodgers evaded police interactions by fleeing on foot. Instead of showing the public a true representation of what had taken place at the arrival of officers on the scene, insidiously, LPD released a portion of distorted body-cam footage. Cunningly, an “official public statement” from the Office of the Chief of Police was manufactured to take the place of any unlawful conduct of the LPD.

In this scenario, it seems that the “state-created danger doctrine” also should apply. The officers, acting under the color of state law violated the Fourth and Fourteenth Amendment rights of Mr. Rodgers. The state should be held responsible for creating or increasing a danger to Mr. Rodgers. (*DeShaney v. Winnebago*, (1989)). The “failure to train” and “failure to supervise” the use of Conducted Electrical Devices (CEDs) by LPD superiors and training officers is per se unreasonable.

Plus, the City’s CED written policies and best practices are outdated, incomplete, lacking, and unavailable. These factors along with considering the totality of the circumstances

bring to light the possibility of flagrant and glaring abuses that could become worse and more prevalent if left completely unchecked. (*Bryan Caplan, The Totalitarian Threat*)

Moreover, LPD has an unwritten “custom, policy or practice” of arresting nonviolent citizens with disabilities because of LPD’s interest in drugs (marijuana) more than in providing mental health services, programs, and activities to adults with mental health disabilities in the most integrated setting appropriate to their needs under Title II of the ADA implementing regulations, 28 C.F.R. Part 35. Consequently, there is reasonable cause to believe that: (1) The City violates the ADA by failing to provide services to qualified individuals with mental health disabilities in the most integrated setting appropriate to their needs by unnecessarily institutionalizing them at Jim Taliaferro Community Mental Health Center, Comanche County Memorial Hospital (CCMH), Comanche County Detention Center (CCDC), and sub-acute facilities; (2) The City’s Public Safety Facility fails to provide constitutionally adequate mental health care to prisoners with serious mental health needs, including those at risk of suicide; and (3) The City’s Public Safety Facility violates the ADA by denying prisoners with mental health disabilities access to services, programs, and activities because of their disabilities which can be viewed as “deliberate indifference”.

If LPD had been trained effectively and consistently:

A.) The officers would not have attempted an arrest of a citizen at 5 AM based on the advisement of an unknown citizen. (**State-Created Danger**)

B.) Absent Reasonable Articulate Suspicion (RAS) and Probable Cause (PC) required to stop, search, and arrest a citizen, the police went looking for Mr. Rodgers for an allegedly nonviolent offense. (**State-Created Constitutional Deprivation Environment**)

C.) The Office of the Chief of Police acknowledges that officers pursued Mr. Rodgers over a warrant for an alleged nonviolent offense. (**LPD knew the severity of the crime at issue**)

D.) Officers improperly deploying the CED at a nonthreatening fleeing suspect knowing or should have known that the body would lock up causing unreasonable pain and suffering by running across a paved parking lot. (*Tennessee v. Garner*, LPD Policy MANUAL, pg. 268)

E.) The suspect did not pose an immediate threat to the safety of the LPD officers or others. (**Failed to properly interpret Graham v. Connor**)

F.) The “official statement” released to the public by the Office of the Chief of Police acknowledges the officer’s failure to give proper “verbal warning” before unlawfully deploying, his CED at a fleeing citizen’s back resulted in needless “proximate harms” of “physical and mental” injuries. (**Misuse of state authority, Conscious Disregard, Unconstitutional CED Policy**)

7.) The lack of officer training and lack of medical care shown to Mr. Rodgers was evident by the officer’s immediate comments like “he’s snoring” and “full body lock-up was weird” (MANUAL pg 268), as well as the officers’ actions and inactions demonstrated by contacting EMS while not rendering any immediate aide as noted in LPD Policy MANUAL. (**Deliberate Indifference, Conscious Disregard**)

8.) The LPD Officers that stood around violated Oklahoma Statutes Title 22, § 22-34.2 which is reporting incidents of excessive force – Contents of report – Failure to report or making materially false statements. (**LPD Policy MANUAL; LPD Internal Affairs investigation issue**)

9.) Not only LPD Officers McCracken and Officer Phillips should have known that their lack of training could have caused serious injuries but also the foreseeability of LPD and City Policymakers to adequately investigate constitutional deprivations have become their established custom and policy. (**Danger Creation Theory for State-Creat Danger**)

Accordingly, the public written communications from the Office of the Chief of Police described how the participation of an “unknown citizen” with specific prior knowledge of an “outstanding warrant” and the “exact location” of where Mr. Rodgers would be at 5:00 AM assisted the police in the flawless execution of an arrest. Upon arrival at 2505 NW 20th Street, in the darkness, officers recognized Mr. Rodgers standing in a group on a balcony. Patiently, the officers waited for Mr. Rodgers to walk downstairs and cross a parking lot before announcing themselves when approaching. It is at this point the publicly shown edited body-

cam footage begins. Policymakers and LPD willingly and knowingly decided to construct a false narrative by showing part of a police interaction that is ubiquitous over social media, print media, and telecommunications once it was officially released to the public.

Disappointingly, in an attempt to view the entire video-based evidence to analyze the totality of the circumstances, LPD did not honor our Oklahoma Open Records Act (ORA) requests. Our team sought precise evidence from the City that included the entire dash-cams and body-cams officers on the scene until Mr. Rodgers was released into the custody of Comanche County Detention Center (CCDC). The City did not adequately comply with our ORA requests.

Viewed in the light most favorable, LPD Patrolmen were dangerously seeking to engage in unconstitutional policing by seeking to arrest Mr. Rodgers during the cover of darkness in what LPD has labeled a high-crime neighborhood in the City. We claim that LPD officers already had knowledge of Mr. Rodgers before the unlawful arrest that took place on Aug. 15, 2023. Moreover, best practices were not followed. Recklessly, LPD officers committed a hot foot pursuit, without announcing a “verbal warning” before firing a CED while the suspect was running away.

Notwithstanding, a document from the “Office of the Chief of Police” was created and designed to deceive the public about what had taken place after the LPD had infringed on Mr. Rodgers’s Fourth and Fourteenth Amendment constitutional right to be free from illegal searches and seizures. The LPD officers routinely engage in unlawful searches and seizures of the Fourth Amendment of the U.S. Constitution.

The Policymakers of the City and department heads of LPD knew or should have known

that their “conscious decision” to acquiesce in their current unconstitutional City policies and procedures would de facto become their policies.

In conclusion, please contact me as soon as possible. I want to know the results of your internal affairs investigation.

Respectfully,

Justine Howard
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Lawton, Oklahoma 73505
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E: mawscott1@yahoo.com

(Enclosed: Constitutional Provision Involved 3pgs)

Cc: Department of Justice; Media Outlets; NAACP; Oklahoma Disability Law Center;
Oklahoma Poor People’s Campaign

Constitutional Provision Involved

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The precedent setting case on use of force is the 1989 Supreme Court decision in *Graham v. Connor*. The Court held, "...that all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its *objective reasonableness standard*..." See 490 U.S., at 395.

The Court stated that a seizure occurs when a law enforcement officer terminates a free citizen's movement by a means intentionally applied. An officer may seize a person in numerous ways, such as traffic stops, investigative detentions, and arrests are all seizures under the Fourth Amendment. To seize a person, an officer may shout, "stop!" The officer may use handcuffs, a chemical agent, a taser, a baton, or firearm to stop the suspect. Every seizure must be objectionably reasonable, i.e., reasonable at its inception, in the manner in which it was effected, and in its duration.

Making a determination whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. *Id.*, at 8, quoting *United States v. Place*, 462 U.S. 696, 703 (1983).

More than half a century ago, the U.S. Supreme Court recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. See *Terry v. Ohio*, 392 U. S., at 22-27. Because “[It]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” *Bell v. Wolfish*, 441 U. S. 520, 559 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the (1) severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, 471 U.S., at 8-9 (the question is “whether the totality of the circumstances justifie[s] a particular sort of ... seizure”).

Question: Was Mr. Rodger’s Fourth Amendment Constitutional Right to Be Free from Unreasonable Search and Seizure Violated When an Officer from the Lawton Police Department Deployed a Taser on Him?

When applying the three-pronged “objective reasonableness” standard articulated by the Graham Court, the officer that deployed his taser on Mr. Rodgers violated his Fourth Amendment Constitutional Right to be free from unreasonable search and seizure.

In order for the officer that deployed his taser on Mr. Rodgers to prevail on an assertion that his deployment of his taser on Mr. Rodgers was reasonable, he must meet all three of the aforementioned considerations articulated by the Graham Court.

Whether the suspect is “an immediate threat to the safety of the officer or others is” generally considered the most important Graham factor. The general rule: The greater the threat, the greater the force option.

In this instance, the officer that deployed his taser clearly fails to meet the standard that Mr. Rodgers “posed an immediate threat to the safety of the officers or others.” Mr. Rodgers asserts the officer deployed his taser merely because he was attempting to evade arrest by flight on foot and “not” because he “posed an immediate threat to the safety of the officers or others” as articulated by the Graham Court.

Mr. Rodgers' assertion is supported by a statement released by the Lawton Police Department detailing the officer's reason for deploying his taser on Mr. Rodgers:

“When officers arrived, they noticed two males standing on the balcony in front of apartment #10. Officers recognized one of the males as Mr. Rodgers. Mr. Rodgers eventually walked down the stairs from the balcony and began walking across the parking lot. Officers identified themselves, and that's when Mr. Rodgers took off running.” Officers told Mr. Rodgers to stop, but he refused. Despite officers' commands, Mr. Rodgers did not comply, to which an officer deployed his taser...” See Statement Released by Office of the Chief of Police, Lawton Police Department (See attachment #1).

In other words, neither the officer that deployed his taser, nor the Lawton Police Department allege that Mr. Rodgers “posed an immediate threat to the safety of the officers or others” as articulated by the Graham Court.

As such, Mr. Rodgers contends that his Fourth Amendment Constitutional Right to be free from unreasonable search and seizure was violated when the officer from the Lawton Police Department deployed a taser on him when he did not pose an immediate threat to that officer, other officers or the community at large.

-END-