



STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

FILED

JUN 29 2015

In The Office of the  
Court Clerk RHONDA HALL

**IN THE DISTRICT COURT FOR CLEVELAND COUNTY  
STATE OF OKLAHOMA**

(1) JUSTIN MORRIS, as administrator for  
the Estate of George Morris,

Plaintiff,

v.

Case No.: CJ-2014-490

(2) KEITH L. HUMPHREY, in his official  
and individual capacity as Chief of  
Norman Police Department,

(3) OKLAHOMA HIGHWAY PATROL,  
a law enforcement agency,

(4) CITY OF NORMAN, OKLAHOMA, a  
Political subdivision,

ATTORNEY'S LIEN CLAIMED

(5) NORMAN POLICE DEPARTMENT, a  
law enforcement agency,

(6) LARRY SHELTON,

(7) AARON LANCASTER,

(8) JONATHON HICKS,

(9) JANSEN IDLETT,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT  
CITY OF NORMAN'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Justin Morris, as administrator for the Estate of George Morris,  
("Plaintiff"), by and through his attorney of record D. Mitchell Garrett, Jr., of Garrett Law  
Center, PLLC, and responds to Defendant City of Norman's Motion for Summary Judgment as  
follows:

## I. FACTUAL BACKGROUND AND ARGUMENTS

1. That as to the Factual Background alleged in Defendant City of Norman's Motion for Summary Judgment, the facts are clearly disputed. In the Plaintiff's Petition, Plaintiff states "On December 16, 2012, NPD's employee Shelton was driving north on Interstate 35 (I-35) drive when he could see Morris, who was naked, running south on I-35. Shelton turned around and started driving south-bound. He met up with Morris and drove behind him while he was running; Shelton yelled from the window for him to stop. When it appeared that Morris was going to stop, Shelton exited the vehicle. Morris began running again, and Shelton asked him to stop. The officer was then able to then speak with Morris, announce himself as an officer of the Norman police department, and then requested Morris sit on the curb. Morris resisted, yelled, and stated incoherent statements. He then looked at the road, and when officer, Shelton turned as well to see what he was looking at, Morris ran across the south-bound lanes towards the median of I-35. During these events, Officer Lancaster had arrived on the scene to assist. According to the Norman Police Department's Criminal Investigations Division Investigative Report ("CIDIR"), "Shelton stated that he was not able to reach George to prevent him from jumping into the north bound lanes. At this time Officer A. Lancaster deployed his taser and made contact with [Morris]. **Once the taser was deployed on [Morris], he fell to the ground and curled up.**" Further the CIDIR stated, Shelton asked George to identify himself, " he stated, 'George, Juanita, Justin.' . . . then started yelling "help me" several times." The officers had informed Morris they were there to assist him. They attempted to get Morris on his stomach to place him in hand restraints, but Morris proceeded to resist, and during the time Idlett arrived on the scene and gave assistance. "Officer Al Lancaster announced to Trooper Idlett and MPO L. Shelton that he was going to deploy his Taser again." Morris

then stopped, curled up, and stopped resisting the officer, and at this time Hicks arrived to assist as well. All four were attempting to restrain Morris, and then Lancaster used "a dry stun method and placed the Taser on George's front left shoulder and applied the Taser." As stated in the CIDIR. Then when Morris was put onto his stomach, "Idlett secured George's right arm with a handcuff and then . . . Shelton secured George's left arm and he was placed into hand restraints." Then Idlett retrieved leg restraints from his vehicle and placed them on Morris. According to the CIDIR, Captain Praizner's taser report showed that Lancaster, "did have three (3) firings that lasted for five (5) second on 12/16/2012. His approximate time of discharges was 02:05:04, 02:07:33, and 02:07:59." After the Morris was restrained, both the Captain Eric Spor and Fireman Taylor Hendrix noted that Morris was laying face-down, on the ground, with blood around his mouth and nose area. When the medic Valen Little arrived, Morris already ceased breathing and had a faint pulse. Attempts were made to resuscitate Morris including, breathing tubes, CPR, and cardiac medication."

First, the officers failed to cease discharge of the third taser when Morris was yelling for help and had stopped resisting arrest. Second, when Morris was lying still on the ground, the officers did not check to see if he was still responsive. Instead, they continued to place hand cuffs around his wrists and ankles. After this, they then noticed that Morris was not responsive and was bleeding out of his nose and ears. This is when they decided to call for medical assistance. Third, the medic noticed that Morris has such a shallow heartbeat. They should have made the decision to rush Morris to the hospital to seek professional medical treatment. Instead, they negligently tried to salvage the situation themselves without the proper medical education

and equipment, resulting in the death of Morris. Should Morris had the opportunity to receive competent medical treatment, there was still a chance that he would have survived.

2. That based on the argument above, Plaintiff still hold the claim of a negligence- based duty to provide Morris with medical care against the City of Norman.

3. That yes, it is undisputed that paramedics were dispatched after Morris was arrested. However, it is clear that the medical state of Morris was out of the officers and medic's scope of expertise and therefore, Morris should have been transported to a medical facility immediately.

4. That the Standard of Review will clearly provide sufficient evidence that the last taser deployed was unnecessary and after the last taser was deployed, the officers neglected to see proper medical treatment for Morris.

5. That Defendant's Argument and Authority do not apply to this case for the following reasons: (a) they are basing their argument off of *Prichard v. City of Oklahoma City, 1999 OK 5, 975 P.2d 914*. In the cited case, the officers transported Prichard to a medical facility to receive proper medical treatment. (b) In this case, officers neglected to transport Morris to a medical facility. (c) Therefore, the officers in the cited case were complying within their scope of employed while the officers in this case were not. They tried to take matters into their own hands, resulting in Morris' death. Because of the significant differences between the case law cited in the Defendant's Motion for Summary Judgment and the clear facts of this case, it is in the best interest the Plaintiff for the Court to deny Defendant City of Norman's Motion for Summary.

## **II. AUTHORITY: SUMMARY JUDGMENT IS NOT PROPER IN THIS CASE**

Furthermore, in considering a motion for summary judgment, all evidence of the non-moving party is deemed true and all inferences are drawn in favor of the non-moving party. Redding v. Marsh, 750 F. Supp. 473, 477 (E.D. Okla. 1990). Summary Judgment is appropriate only if there is no genuine issue of material fact. Longsteth v. Maynard, 961 F. 2d 895, 901 (10<sup>th</sup> Cir. 1992). Inquiry on summary judgment is whether evidence presents sufficient disagreement to require submission to the jury or whether it is so one sided that one party must prevail as a matter of law. Tatum v. Phillip Morris, Inc., 809 F. Supp. 1452, 1467 (W.D. Okla. 1992).

Upon making a motion for summary judgment, the burden is on the movant to demonstrate that there is no genuine issue of material fact. Further, the facts themselves, and the permissible inferences to be drawn therefrom, are viewed in the light most favorable to the non-movant. The Court in Ross v. Communications Satellite Corp., 759 F. 2d 355, 364 (4<sup>th</sup> Cir. 1985), held:

The non-moving party is in a favorable posture, being entitled "to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf; and finally to be given the benefit of all favorable legal theories invoked by the evidence as considered. quoting Charbonnages de France v. Smith, 597 F.2d 406, 414 (4<sup>th</sup> Cir. 1979).

In Ross v. Jacobs, 684 P.2d 1211, 1214 (Okla. App. 1984), the court held that:

The critical question then is whether a genuine issue exists as to the inferences or conclusions that may be properly drawn from the evidence. These inferences must be viewed in the light most favorable to the [non-movant] and the judgment reversed if inferences contrary to those drawn by the trial court might be permissible. (Emphasis added).

...facts concerning any issue raised by the pleadings and materials are such that reasonable men, in the exercise of fair and impartial judgment, might reach different conclusions upon consideration of the same...

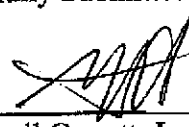
If reasonable men might reach different conclusions, the summary judgment "must be denied." *Id.*, see also, Anderson v. Falcon Drilling Co., 695 P.2d 521, 524 (Okla. 1985); Farmers State Bank in Afton v. Ballew, 626 P.2d 337, 338-9 (Okla.App. 1981); Smith v. American Flyers, Inc., 540 P.2d 1212, 1214 (Okla.App. 1975).

Under Oklahoma law, issues of negligence are ordinarily not fit subjects for summary adjudication. Malson v. Palmer Broadcasting Group, 936 P.2d 940, 942 (Okla. 1997). The degree of care that an ordinarily prudent person should exercise in a given scenario presents an issue for the jury. Salazar v. The City of Oklahoma City, 976 P.2d 1056 (Okla. 1999).

Under Title 12, O.S., Rule 13(d), "Should it appear from an affidavit of a party opposing the motion that for reasons stated the party cannot present evidentiary material sufficient to support the opposition, the court may deny the motion for summary judgment or summary disposition without prejudice or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." See Exhibit C. There has been no discovery performed at this stage to allow plaintiff to respond to the facts of this motion. Parties have only been reviewing medical records of the Plaintiff at this stage.

**WHEREFORE**, premises considered, Plaintiff respectfully requests that the Court deny Defendant City of Norman's Motion for Summary Judgment and award Plaintiff all other relief deemed just and equitable.

Respectfully Submitted,



D. Mitchell Garrett, Jr., OBA#20704  
THE GARRETT LAW CENTER  
401 S. Boston, Suite 2201  
Tulsa, OK 74103  
(918) 895-7216  
(918) 895-7217 facsimile  
*Attorney for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of June 2015, the above and foregoing Response to Defendant City of Norman's Motion for Summary Judgment was mailed, with proper postage thereon fully prepaid, to:

Rickey J. Knighton II  
Assistant City Attorney  
Kristina L. Bell  
P.O. Box 370  
201 West Gray  
Norman, Oklahoma 73070  
*Attorneys for Defendants City of Norman, Norman Police Department,  
Keith Humphrey, Larry Shelton, Aaron Lancaster, and Johnathon Hicks*

Devan A. Pederson  
Assistant Attorney General  
Oklahoma Attorney General's Office  
Litigation Section  
313 N. E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105  
*Attorney for Defendants Jansen Idelett and State of Oklahoma,  
ex rel., Department of Public Safety*



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D. Mitchell Garrett, Jr.