

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF BUNCOMBE 2018 MAR -5 P 3:17 File No. 18CV 00941

BUNCOMBE CO., G.S.C.

In Re: Petition of the City of Asheville Wx
for the Release of Asheville Police)
Department Recordings Related to the)
August 2017 Arrest of Johnnie)
Jermaine Rush)

PETITION
(N.C. GEN. STAT. § 132- 1.4A)

NOW COMES Petitioner, the City of Asheville (the “City” or “Petitioner”), by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 132-1.4A(g) and other applicable law, and hereby petitions the Court for an Order requiring the release of certain law enforcement agency body-worn camera recordings of the City of Asheville Police Department (“APD”), related to the arrest of Johnnie Jermaine Rush (“Rush”), in August of 2017, to the general public, as follows:

JURISDICTION, VENUE, STANDING, PARTIES AND RELEVANT AFFECTED INDIVIDUALS

1. This is a Petition for the release of audio and visual “recordings,” as that term is defined in N.C. Gen. Stat. § 132-1.4A(a)(6), captured between approximately 11:45 P.M. and 12:45 A.M., on August 24 and 25, 2017, by body-worn cameras (the “Recordings”) operated by APD personnel present during and/or after the arrest of Rush.

2. The Recordings were made in Buncombe County, and jurisdiction and venue are proper in this Court, pursuant to N.C. Gen. Stat. § 132-1.4A(g).

3. The City is a “person” with standing to file a Superior Court action seeking an Order directing the release of the Recordings, pursuant to N.C. Gen. Stat. § 132-1.4A(g).

4. The individuals listed below are APD law enforcement personnel whose image or voice is in the Recordings. These individuals, along with Rush, are receiving notice of this Petition, and will be provided with notice of any court proceedings related to the same, pursuant to N.C. Gen. Stat. § 132-1.4A(g):

- a. Officer Justin Burns
- b. Officer Colby Davis
- c. Officer Luis Delgado
- d. Officer Josh Gibson
- e. Former APD Officer Christopher Hickman
- f. Officer Heavan Mitchell
- g. Officer Shawn Parker
- h. Officer Verino Ruggiero
- i. Lieutenant Charles Sams
- j. Sergeant Lisa Taube
- k. Officer Douglas Williams

5. APD Chief Tammy Hooper (“Chief Hooper”), is the head of the applicable custodial law enforcement agency (APD) under N.C. Gen. Stat. § 132-

1.4A. Chief Hooper is also the head of the law enforcement agency which employed the law enforcement personnel, at the time of the Recordings, whose images or voices are in the Recordings. Id. Chief Hooper is receiving notice of this Petition, and will be provided with notice of any court proceedings related to the same, pursuant to N.C. Gen. Stat. § 132-1.4A(g).

6. Todd Williams (“Williams”) is the Buncombe County District Attorney. Williams is receiving notice of this Petition, and will be provided with notice of any court proceedings related to the same, pursuant to N.C. Gen. Stat. § 132-1.4A(g).

BACKGROUND

7. On the evening of August 24, 2017, Christopher Hickman (“Hickman”), formerly employed by the APD, and Verino Ruggiero, an APD officer then in field-training, encountered Rush on or near Biltmore Avenue. The officers conducted a stop of Rush which culminated in the use of force to arrest Rush shortly after midnight on August 25, 2017 (also hereinafter referenced as the “Incident”). The arrest and its aftermath were captured on Hickman’s body-worn camera, as well as the body-worn cameras of other officers who responded to the scene after the arrest, between approximately 11:45 P.M. on August 24 and 12:45 A.M. on August 25. Portions of the Recordings show that the force used by Hickman when arresting Rush was clearly excessive.

8. Rush was charged with “2nd degree Trespass; Impeding Traffic” and “Resisting Public Officer; [Assault on Government Official.]” After learning the circumstances of Rush’s arrest from the APD, District Attorney Williams dismissed all criminal charges against Rush.

9. Hickman has been separated from employment with the City since on or about January 5, 2018.

10. The Recordings are not public records subject to public inspection, except in very limited circumstances, per N.C. Gen. Stat. § 132-1.4A. To date, none of the enumerated circumstances allowing for release under § 132-1.4A have been met. The personnel records of APD employees are likewise not public records, and are protected from disclosure except in the limited circumstances set forth in the North Carolina General Statutes, including N.C. Gen. Stat. § 160A-168.

11. Body-worn camera recordings are maintained by the APD according to state law and the requirements contained in the APD’s Body-Worn Cameras Policy, and may only be disclosed or released to persons outside the APD, per North Carolina law, under very specific circumstances. See, N.C. Gen. Stat. § 132-1.4A. Members of the Asheville City Council, the press and the public may not view or receive copies of law enforcement recordings without a court order obtained pursuant to that statute. Id.

12. Despite the foregoing, on or about February 28, 2018, a copy of Hickman's body-worn camera recording was taken from the APD by an unknown source and provided to a reporter with the Asheville Citizen-Times, Joel Burgess ("Burgess"). Upon information and belief, Burgess was also provided with other confidential personnel information by this same unknown source.

13. Late on February 28, 2018, Burgess published a story about the Incident and posted a copy of Hickman's body-worn camera recording on the Asheville Citizen-Times website. Since that date, the Citizen-Times has continued to regularly publish additional stories about the Incident, on both its website and in print.

14. The degree of force employed by Hickman in the already disclosed recording, together with other aggressive and unprofessional behavior and language displayed by Hickman in the recording, which has now been viewed by the public at-large, has been a source of extensive questions, concerns and anger for the City's residents and City officials.

15. It is the City's position that, under the circumstances of this case, it is critical that the public be provided with a complete picture of the Incident in order to be fully informed and gain full knowledge of what occurred and the City's actions in response thereto.

BASIS FOR RELEASE OF BODY-WORN CAMERA FOOTAGE

16. The factors set forth N.C. Gen. Stat. § 132-1.4A(g), which the Court must consider in deciding whether to release the Recordings described herein, justify and support an order for disclosure for the following reasons:

- a. Release is necessary to advance a compelling public interest. See N.C. Gen. Stat. § 132-1.4A(g)(1). Specifically, body-worn camera footage related to the Incident has already been released and provided to the press. Many members of the public have seen this recording, which has caused public distrust, concern and fear. Allowing all of the recordings to be released to the public will advance the compelling public interest of allowing the public to have a complete picture of what occurred, prevent public unrest and distrust of City government, and to dispel any belief that relevant information related to the Incident has been withheld.
- b. Body-worn camera recordings are ordinarily confidential and exempt from disclosure under North Carolina law. See N.C. Gen. Stat. § 132-1.4A. In this circumstance, however, Hickman's body-worn camera recording has already been provided to the press and made public, and is currently available to the public on-line, so any

interest in such confidentiality no longer exists in this case. See N.C. Gen. Stat. § 132-1.4A(g)(2).

- c. Upon information and belief, there is no information in the Recordings that would reveal information of “a highly sensitive personal nature,” or that “would harm the reputation or jeopardize the safety of a person.” See N.C. Gen. Stat. § 132-1.4A(g)(4) and (5). As explained above, Hickman’s body-worn camera recording of the Incident has already been made available to the public, and to the extent there could be harm caused as contemplated by N.C. Gen. Stat. § 132-1.4A(g)(4) and (5), this would have been accomplished by the initial release of Hickman’s recording. Releasing additional footage of the Incident, captured from different angles and which provides further transparency about the Incident, would not cause any additional harm, but would be beneficial to provide a complete picture.
- d. While the City acknowledges there is an ongoing criminal investigation into the Incident, release of the requested body-worn camera footage would not create a “threat to the fair, impartial, and orderly administration of justice,” or compromise that investigation, because a recording has already been released which

shows the Incident, and the release of the remaining footage would simply allow the public to observe the Incident from all angles, and be secure that all relevant information has been made available and total transparency is achieved. See N.C. Gen. Stat. § 132-1.4A(g)(4) and (5).

- e. For the reasons set forth above, and in the interest of providing the public with full disclosure of the events surrounding the Incident, “good cause” exists to release all of the recordings surrounding the Incident as allowed by state law. See N.C. Gen. Stat. § 132-1.4A(g)(8)

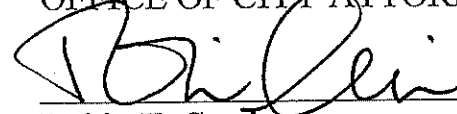
CONCLUSION

WHEREFORE, for the reasons set forth above, Petitioner respectfully requests that this Court enter an Order granting the Petition and ordering the Asheville Police Department to release the Recordings of the Incident to the general public as requested herein.

RESPECTFULLY SUBMITTED this the 5th day of March, 2018.

CITY OF ASHEVILLE
OFFICE OF CITY ATTORNEY

By:



Robin T. Currin

City Attorney

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CERTIFICATE OF SERVICE

This is to certify that the foregoing *Petition* was duly served on the *Head of the Custodial Law Enforcement Agency* and *Head of the Employing Law Enforcement Agency* by depositing a copy of the same in the United States Mail, first class, postage pre-paid, to the following:

Tammy Hooper
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

This is to certify that the foregoing *Petition* was duly served on the *District Attorney* by depositing a copy of the same in the United States Mail, first class, postage pre-paid, to the following:

Todd Williams
Buncombe County District Attorney's Office
60 Court Plaza
Asheville, NC 28801

This is to certify that the foregoing *Petition* was duly served on *all law enforcement agency personnel and other persons whose image or voice is in the Recording* by depositing a copy of the same in the United States Mail, first class, postage pre-paid, to the following:

Officer Justin Burns
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Colby Davis
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Luis Delgado
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Josh Gibson
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Christopher Hickman
1400 Turtle Creek Drive
Apt. 306
Asheville, NC 28803

Officer Heavan Mitchell
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Shawn Parker
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Verino Ruggiero
Asheville Police Department
100 Court Plaza
Asheville, NC 28801


Lieutenant Charles Sams
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Sergeant Lisa Taube
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Officer Douglas Williams
Asheville Police Department
100 Court Plaza
Asheville, NC 28801

Johnnie Jermaine Rush
50 Wilbar Avenue, 4E
Asheville, NC 28801

This the 5th day of March, 2018.

By: 
Robin T. Currin