

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 034879-910

Amir Abboud,)
Marian Ibrahim Abboud,)
THE ASSEMBLY, and)
INDY WEEK)
)
v.)
)
Raleigh Police Department)

COMPLAINT

The Plaintiffs, Amir Abboud, Marian Ibrahim Abboud, *The Assembly*, and *INDY Week*, by and through undersigned counsel, pursuant to N.C. Gen. Stat. § 132-1.4A(g), respectfully bring this action against the Respondent, Estella Patterson, Chief of the Raleigh Police Department (“RPD”). As described more specifically in the numbered allegations set out below, Plaintiffs seek a full, general, and public release of all law enforcement recordings pertaining to an incident on April 7, 2021, in which Raleigh Police Department Officers (“RPD”) wrongfully executed a “Quick Knock” warrant on the Abbouds’ home. Though Mr. and Mrs. Abboud were not and are not suspected of any criminal activity, and both are innocent and law-abiding civilians, RPD officers knocked down the front door of their home without warning and invaded the privacy of their house with long guns drawn, terrorizing them and their child, all due to erroneous police work and a case of mistaken identity, mixing up one person of Arab descent with another who bears him little resemblance. To take control of their own narrative, and to provide the public with relevant information about the operation of a government-funded police force, the Abbouds join with two North Carolina news outlets to seek this full general release of footage.

The Parties

1. Plaintiffs Amir Abboud and Marian Ibrahim Abboud are married residents of Raleigh, NC.
2. Plaintiffs, *The Assembly* and *INDY Week*, are North Carolina-based news organizations that regularly report on issues surrounding police conduct.
3. Defendant Estella Patterson is the Chief of the Raleigh Police Department. Among other powers delegated to her by state law, the Chief of Raleigh Police exercises the police power within Wake County through the Raleigh Police Department, a custodial law enforcement agency possessing law enforcement recordings that are the subject of this action. *See* N.C. Gen. Stat. § 132-1.4A(a)(2) and (6). Chief Patterson is the custodian of those recordings.
4. Pursuant to N.C. Gen. Stat. § 132-1.4A(g), Chief Patterson is both the “head of the custodial law enforcement agency” (i.e., RPD) and is the “designated representative” of the “law enforcement agency personnel whose image or voice is in the recording.” Chief Patterson and the officers appearing in the recording must be notified and given an opportunity to be heard at any proceeding regarding the public release of the requested footage.

Jurisdiction, Standing, and Venue

5. This Court has subject matter jurisdiction in this action pursuant to N.C. Gen. Stat. § 132-1.4A.
6. This Court has personal jurisdiction over the parties pursuant to N.C. Gen. Stat. §§ 1-75.4 and 132-1.4A.

7. Plaintiffs have standing to institute and pursue this action pursuant to N.C. Gen. Stat. § 132-1.4A. By enacting N.C. Gen. Stat. § 132-1.4A, the North Carolina General Assembly has waived the defense of sovereign immunity to Plaintiffs' requested relief.
8. The Superior Court of Wake County is the proper venue for this action pursuant to N.C. Gen. Stat. §§ 1-77, 1-82 and 132-1.4A(g) because Wake County is the "county where any portion of the recording was made...."

Background and General Allegations

9. On the morning of April 7, 2021, Mr. Abboud returned home from work to his wife, Marian Ibrahim Abboud, who was pregnant at the time, and their 11-month-old son.
10. Mr. Abboud was making coffee when RPD officers, who appeared to be SWAT agents wearing military-style gear, suddenly and without warning, broke and busted open the Abbouds' front door with a battering ram, pointing their long, AR-styled firearms at Mr. Abboud, Mrs. Abboud, and their 11-month-old son, who was screaming in fear.
11. Mr. Abboud attempted to console his crying son, but RPD officers forcibly instructed Mr. Abboud to "put his hands on his head."
12. Officers handcuffed Mr. Abboud and separated him from his family, taking him outside for questioning.
13. State Bureau of Investigation ("SBI") Agent R.C. Cox repeatedly asked Mr. Abboud about a man named "Abdullah." Agent Cox showed Mr. Abboud a picture on his phone of an Arab man who bore little resemblance to Mr. Abboud.
14. Mr. Abboud was disoriented and confused but realized, after Agent Cox zoomed in and out on the picture several times, that Agent Cox was referring to his neighbor, who was of the same build and race as Mr. Abboud but looked nothing like him.

15. Mr. Abboud informed Agent Cox that he had only spoken to his neighbor once prior to that day, and that his interactions with his neighbor were confined to exchanging simple pleasantries.
16. Agent Cox insisted that Mr. Abboud had some form of a relationship with his neighbor, stating his neighbor had been seen coming in and out of the Abbouds' residence on multiple occasions.
17. Mr. Abboud informed Agent Cox that this was not possible, as Mr. Abboud has multiple cameras around his property and would have been made aware if his neighbor was coming in and out of his residence.
18. Agent Cox told Mr. Abboud he needed to speak with his supervisor, and left Mr. Abboud to worry about the safety and emotional state of his family.
19. The agents then retreated from his home quickly.
20. Mr. Abboud searched for answers on why his family's home was wrongfully raided, contacting the SBI, Attorney General's Office, and RPD.
21. RPD released the warrant to Mr. Abboud, which listed Mr. Abboud's residence, with his neighbor as the warranted individual.
22. This warrant was obtained based on a false and erroneous statement made by agents saying they observed the neighbor entering and exiting the Abbouds' residence.
23. The Abbouds' door frame was badly damaged in this operation.
24. RPD refused to pay for the damage done to the Abbouds' door and door frame because the damage was done during a search authorized by a valid search warrant, despite the fact the warrant was obtained using false statements by investigating agents. The door, which customarily is the object in a home that makes its occupants feel safer and secure

from the outside world, has served as an everyday reminder of the trauma RPD inflicted on this family. Mr. Abboud paid out of pocket to repair the door.

25. Mr. Abboud and his family were left traumatized by the actions of the Raleigh Police Department.
26. Mrs. Abboud was eight months pregnant at the time of the incident. Following the incident, she experienced stomach pains and insomnia. The delivery of their second child was made more difficult by this experience, and she has trouble staying home alone with their children due to anxiety about the police invasion.
27. The Abbouds have been left shocked by this incident and wish to be able to take control of their own narrative.
28. Mr. Abboud's attorney in the underlying civil suit has publicly released security footage from outside the front door of the Abbouds' home, which depicts RPD's execution of the "Quick Knock" raid. *See* @AbeSchewel, Twitter (Feb. 21, 2022, 7:15 PM), [Link](#).
29. Mr. Abboud petitioned the court previously for release of the bodycam footage obtained by RPD of this incident. The court ordered the video to be released to Mr. Abboud and his attorney without general, public release.
30. Now, Mr. Abboud, *The Assembly*, and *INDY Week* seek a general and public release of the footage, so that Mr. Abboud can take control of his narrative and share this story with others, for purposes of emotional recovery, accountability, transparency, and policy advocacy.

Statutory Action for Release

31. N.C. Gen. Stat. § 132-1.4A(g) governs the general, public release of police body camera recordings.

32. Pursuant to N.C. Gen. Stat. § 132-1.4A(g) Plaintiffs seek release, as defined in N.C. Gen. Stat. § 132-1.4A(a)(7), of all law enforcement recordings made by or on behalf of the Raleigh Police Department, including, and without limitation, all body camera recordings, dashboard camera recordings, cell phone recordings, or any other recording related to this incident as defined by N.C. Gen. Stat. § 132-1.4A(a)(6). The scope of this request begins with the arrival of RPD on the Abbouds' property on April 7, 2021, and continues until all law enforcement personnel left their property on that date.
33. Plaintiffs have no means to determine the identities of all law enforcement personnel whose image or voice appears in the recordings requested for release. Thus, Plaintiffs respectfully request that the Court order the Defendants to notify all their personnel whose image or voice appears in the requested recordings of this action and an opportunity to be heard at a hearing on Plaintiffs' statutory request for relief via the entry of an order on form AOC-CV-281 substantially similar to model Exhibit A attached.

There are Eight Factors Under the Statute That Courts Consider in Determining Release

34. The Eight factors that the statute considers are the following:
- a. Release is necessary to advance a compelling public interest.
 - b. The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
 - c. The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
 - d. Release would reveal information regarding a person that is of a highly sensitive personal nature.
 - e. Release may harm the reputation or jeopardize the safety of a person.

- f. Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- g. Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- h. There is good cause shown to release all portions of a recording.

(a) Release is necessary to advance a compelling public interest.

35. The operations of RPD are matters of public interest, with news outlets, including Plaintiffs *The Assembly* and *INDY Week*, regularly reporting on RPD’s activities. *See, e.g.,* Jeffrey Billman, *Raleigh’s Thin Blue Line*, ASSEMBLY (Mar. 2, 2023), [Link](#); Jasmine Gallup, *Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police’s ‘No-Knock’ Warrant Debacle*, INDY WEEK (Dec. 14, 2022), [Link](#).
36. RPD is a government agency, funded with taxpayer dollars. Oversight of such a public entity is paramount to keep citizens informed on where their taxpayer dollars are going, and how the entity that is designed to protect them is upholding their duties. Oversight of governmental agencies is essential to American democracy.
37. RPD has admitted to the practice of entering homes via “Quick Knock” warrants and has acknowledged that there is no standard protocol for “Quick Knocks.”
38. The use of “Quick Knock” warrants, which typically result in the breach of a home within just 0–3 seconds of law enforcement’s knock and announcement, are currently deployed by the RPD multiple times per week. Utilizing “Quick Knock” warrants as a default is not constitutionally permissible under the Fourth Amendment because it does not take into account the individualized circumstances in a given scenario. *See United States v. Banks*, 540 U.S. 31, 38 (2003) (concluding that 15 to 20 seconds is a reasonable

wait time when executing a search warrant before forcing entry to prevent the destruction of drugs or contraband).

39. By entering one or two seconds after the knock, RPD creates a perilous and volatile situation, endangering residents who are caught by surprise. RPD also endangers themselves with this practice given that North Carolina embraces the so-called Castle Doctrine, which allows homeowners to use deadly force when they have “reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.” N.C. Gen. Stat. § 14-51.2.
40. The execution “No Knock” and “Quick Knock” warrants is an issue of profound national importance, which was heightened after Breonna Taylor was killed by police who were executing a “No Knock” warrant. *See Brad Polumbo, Don’t Forget Breonna Taylor: Her Death Shows Why ‘No-Knock’ Warrants Need to Go*, FEE STORIES (June 11, 2020), [Link](#).
41. The execution of “Quick Knock” warrants is also an issue important to the Raleigh community, with news outlets reporting on RPD’s illegal raids involving “Quick Knock” warrants and members of the community demanding RPD end the practice. *See Virginia Bridges, Federal Lawsuit Demands Raleigh Police Change No-Knock and Quick-Knock Raid Policies*, NEWS & OBSERVER (May 6, 2022), [Link](#).
42. News coverage depicted ten Black women and children whose homes were illegally raided by RPD in May 2020 using “No Knock” tactics and who were unlawfully detained by RPD because of evidence fabricated by RPD and the use of an unreliable confidential informant. *See Joel Brown, Their Homes Were Mistakenly Raided by Police, Now They’re Suing the City of Raleigh*, ABC NEWS (Feb. 22, 2022), [Link](#); Virginia Bridges,

Letter Condemns City of Raleigh's Tactics in Lawsuit After Police Raided Wrong Home, NEWS & OBSERVER (Jan. 30, 2023), [Link](#).

43. Another example of a “Quick Knock” execution on the wrong home occurred in February 2020 when RPD forcibly entered the home of Kesha Knight at the same moment that they knocked and “announced” their presence. Knight, a disabled woman who struggles with movement after a stroke, was shocked and in fear given the difficulty of complying with instructions that she keep her hands above her head. *See* Sean Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*, ROLLING STONE (Apr. 9, 2023), [Link](#)
44. Several news outlets have reported on RPD’s illegal raid of Mr. Abboud’s home, including *Rolling Stone* and *INDY Week*. *See* Sean Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*, ROLLING STONE (Apr. 9, 2023), [Link](#); Jasmine Gallup, *Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police’s ‘No-Knock’ Warrant Debacle*, INDY WEEK (Dec. 14, 2022), [Link](#).
45. Security footage of the raid was released to the public, *see* @AbeSchewel, Twitter (Feb. 21, 2022, 7:15 PM), [Link](#), but the public has yet to see traumatizing impact of this “Quick Knock” warrant from the vantage point of the Abbouds, which depicts the violent disruption of the sanctity of their home and their persons. The public has also not seen what happened after the forceful entry and the interaction between police and the Abboud family.
46. Moreover, Mr. Abboud believes that he was racially profiled, as law enforcement officers erroneously mixed-up Mr. Abboud, a man of Arab descent, with another man of Arab

descent who bears little resemblance to Mr. Abboud. This kind of sloppy police work is reflective of the national issue of racial profiling in law enforcement.

47. Erroneous police work that leads to the wrongful execution of a “Quick Knock” warrant is of serious public concern. As the U.S. Supreme Court has stated, “[i]t bears repeating that it is a serious matter if law enforcement officers violate the sanctity of the home by ignoring the requisites of lawful entry.” *Hudson v. Michigan*, 547 U.S. 586, 603 (2006).

48. Police use of body cameras is “an issue of importance to the public generally, and to public health and safety specifically.” *Harmon v. City of Santa Clara*, 323 F.R.D. 617, 625 (N.D. Cal. 2018) (quotations omitted)

49. *The Assembly* and *INDY Week* have joined Mr. Abboud in this lawsuit to inform the public of this incident with the goal of promoting accountability and transparency.

50. There is a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

51. The media serves a vital role in society, providing citizens with information they need and want to know, ideally promoting transparency, accountability, and understanding. Speech pertaining to matters of public concern “occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Connick v. Meyers*, 461 U.S. 138, 145 (1983) (citation omitted)

52. The public has a right to be fully informed of issues concerning current events. *In re Custodial Law Enforcement Agency Recording Sought by the News & Observer Pub. Co.*, No. 20 CVS 2779, 2020 WL 13043345, at *4 (N.C.Super. July 31, 2020) (concluding that the “release of the recording is necessary to advance a compelling public interest”

regarding “a matter of significant local, state and national public interest”) (attached as Exhibit 9).

53. Moreover, there are multiple trial court orders in North Carolina—some of which include cases with news organizations seeking release—finding that the public has a compelling interest in officer involved shootings, chases, and other incidents. *See In re Doug Miller Petition for Release of a L. Enf’t Agency Recording*, No. 17 CVS 553, 2017 WL 1838872 (N.C. Super. Ct. Jan. 26, 2017); *In re Doug Miller Petition for Release of a L. Enf’t Recording*, No. 17 CVS 17546, 2017 WL 6415898 (Oct. 3, 2017); *In re Custodial L. Enf’t Agency Recording Sought by Capitol Broad. Co., Durham County*, 17 CVS 3909 (Feb. 20, 2018); *In re Custodial L. Enf’t Agency Recording Sought by Capitol Broad. Co., Lee County*, 18 CVS 316 (April 24, 2018); *In re Custodial L. Enf’t Agency Recording Sought by Capitol Broad. Co., Moore County*, 18 CVS 902 (Sept. 7, 2018); *In re Custodial L. Enf’t Agency Recording Sought by Capitol Broad. Co., Nash County*, 19 CVS 255 (March 7, 2019); *In re Custodial L. Enf’t Agency Recordings Sought by Queen Mosley*, No. 20CVS3383, 2021 WL 5430944, at *2 (N.C. Super. Jan. 25, 2021) (attached as Exhibits 2–8).

(b) The recording contains information that is otherwise confidential or exempt from disclosure or release under state or federal law.

54. There is not one universal definition of confidentiality as the precise “meaning, nature, and scope of confidentiality varies from case to case.” John L. Saxon, *Confidentiality and Social Services (Part III): A Process for Analyzing Issues Involving Confidentiality*, SOC. SERVS. L. BULL., No. 35, 2002, at 2, [Link](#).

55. A countervailing interest that limits confidentiality is the general public interest in governmental accountability. For example, “both the federal Freedom of Information Act and North Carolina’s Public Records Law are based on the principles that the public has ‘a right to know about [the] basic workings of its government’ ...” John L. Saxon, *Confidentiality and Social Services (Part I): What is Confidentiality?*, SOC. SERVS. L. BULL., No. 30, 2001, at 7, [Link](#) (quotation omitted). Denying the public access to body camera footage because of confidentiality concerns is counterproductive and defeats the purpose of “deploying the cameras in the first place.” See Steven Zansberg, *Why We Shouldn't Hide What Police Body Cameras Show*, GOVERNING MAG. (Aug. 2016), [Link](#).
56. In North Carolina, N.C. Gen. Stat. § 132-1.4A governs the release of body camera footage and requires a court to balance confidentiality against factors weighing in favor of public release. Here, the facts indicate there are minimal, if any, confidentiality concerns present because (1) there is no active investigation involving Mr. Abboud; (2) the Abbouds waive any confidentiality concerns regarding their home or their family; and (3) RPD has been public about its investigatory practices involving warrant execution. See Joe Fisher, *RPD Says They Don't Use No-Knock Warrants Amid Criticism from Civil Rights Groups*, WRAL NEWS (Feb. 23 2022), [Link](#).
57. Moreover, Mr. Abboud has already publicly released the security footage from outside the family’s front door, and it shows RPD’s execution of the “Quick Knock” warrant on the home, containing audio of the officers’ voices in the lead-up to the raid and visuals of their faces. The public release of this security footage further undercuts any confidentiality concerns. See [@AbeSchewel](#), Twitter (Feb. 21, 2022, 7:15 PM), [Link](#).

58. To the extent that the Court determines any confidential information exists from the body camera footage, such as, in particular, the voices or faces of the officers who executed the warrant, the Court is authorized to blur the faces and voices of all such officers. *See In re Custodial L. Enf't Agency Recording Sought by News & Observer Pub. Co.*, No. 20 CVS 2779, 2020 WL 13043345 (N.C.Super. July 31, 2020) (Exhibit 9).

(c) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.

59. This factor is not applicable because Mr. Abboud has already obtained the recording for his personal use, and, therefore, Plaintiffs are not currently seeking that the body camera recordings be disclosed and released to determine any legal issue in an ongoing case.

60. There are no ongoing criminal or disciplinary proceedings to which the body camera footage would apply. Mr. Abboud was never charged with any crime.

(d) Release would reveal information regarding a person that is of a highly sensitive personal nature.

61. Mr. Abboud and Mrs. Abboud contend that there is nothing of a highly sensitive personal nature contained in the videos, and, in any case, they waive any confidentiality concerns that pertain to them or their home or their family.

62. Moreover, Mr. Abboud has already discussed the raid with media outlets who have written about the incident. This fact weighs in favor of release. One Alabama court granted release of body camera footage in part because local news coverage had written about the contents of the footage and because “the release of the footage itself thus [did] not implicate privacy concerns that weigh[ed] significantly against disclosure.” *Robinson*

v. City of Huntsville, No. 5:21-CV-00704-AKK, 2021 WL 5053276, at *4 (N.D. Ala. Nov. 1, 2021) (Exhibit 10).

63. Should the Court determine that there are any matters involving information of a highly sensitive personal nature, however, the Court is authorized to blur faces and/or voices and/or redact any such information prior to releasing the video footage. *See In re Custodial L. Enf't Agency Recording Sought by the News & Observer Pub. Co.*, No. 20 CVS 2779, 2020 WL 13043345 (N.C.Super. July 31, 2020) (Exhibit 9).
64. Ultimately, the need for oversight regarding police misconduct outweighs any privacy interests at stake. *See Jay Stanley, Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (Oct. 9, 2013), [Link](#).

(e) Release may harm the reputation or jeopardize the safety of a person.

65. Mr. Abboud has already publicly released the home security footage of the raid, which contains audio of the officers' voices and visuals of their faces. *See @AbeSchewel*, Twitter (Feb. 21, 2022, 7:15 PM), [Link](#). Thus, the officers' identities—to the extent the security footage depicts them—have already been released to the public.
66. The release of the body camera footage would not jeopardize RPD officers' safety or reputation, as police-release videos, pictures, and audio recordings are released to the public regularly to identify and/or report on the actions committed by police suspects. Releasing the body camera footage showing the officers' wrongful actions here is no different.
67. In other states, courts have limited the ability to withhold security and dash cam footage without "specific, articulable safety concerns." *See Chris Pagliarella, Police Body-Worn Camera Footage: A Question of Access*, YALE L. & POL'Y REV. 533, 540 (2016).

68. If the court is concerned about the reputation or safety of RPD officers, it has the authority to blur their faces and voices. *See In re Custodial L. Enf't Agency Recording Sought by News & Observer Pub. Co.*, No. 20 CVS 2779, 2020 WL 13043345 (N.C.Super. July 31, 2020) (Exhibit 9).
69. However, the identity of police officers is not supposed to be secret when they are on duty. North Carolina law requires police officers to display their badge in plain view and wear a uniform when on duty. 12 N.C. ADMIN. CODE 2I.0306.
70. Citing the importance of transparency and accountability, one Ohio city has decided to no longer blur the faces of officers appearing in body camera footage. The memo announcing this decision stated, "Officer privacy must be respected but also must be balanced against constituents' demands for accountability." Rachel Dissell, *Cleveland to Stop Routinely Blurring Police Officer Faces in Body Camera Videos Released to the Public*, SIGNAL CLEVELAND (July 27, 2023), [Link](#).

(f) Release would create a serious threat to the fair, impartial, and orderly administration of justice.

71. This factor weighs in favor of release assuming that there are no pending criminal proceedings and no jury to be tainted.
72. Courts have considered the issue of whether "local media attention" or "pre-trial publicity" has or might have "tainted the jury pool." *See, e.g., State v. Rogers*, 355 N.C. 420, 429, 562 S.E.2d 859, 866 (2002); *United States v. Miller*, 54 F.4th 219, 227 (4th Cir. 2022).
73. However, in the present matter, concerns that public release of footage might taint a jury pool are not relevant given that Mr. Abboud is not standing trial and has never been

charged with a crime, because he is an innocent man who was targeted based on a mistake predicated on racial profiling.

(g) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

74. Because no active internal or criminal investigations are ongoing concerning Mr.

Abboud, there are no confidentiality concerns applicable to Plaintiffs' request for the public release of the body camera recordings.

(h) There is good cause shown to release all portions of a recording.

75. Community members and media outlets have demanded that RPD discontinue its use of

“Quick Knock” warrants. *See, e.g.,* Joe Fisher, *RPD Says They Don't Use No-Knock Warrants Amid Criticism from Civil Rights Groups*, WRAL NEWS (Feb. 23 2022), [Link](#).

76. “No Knock” and “Quick Knock” warrants are “a violation of the sanctity of the home and

the individual's right to protect it.” Brad Polumbo, *Don't Forget Breonna Taylor: Her Death Shows Why 'No-Knock' Warrants Need to Go*, FEE STORIES (June 11, 2020), [Link](#).

77. Under North Carolina law, an “officer executing a search warrant must, before entering

the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched.” N.C. Gen.

Stat. § 15A-249. An officer may break and enter any premises only if (1) the officer has previously announced their “identity and purpose and reasonably believes either that

admittance is being denied or unreasonably delayed” or that “the premises is

unoccupied”; or (2) “The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.” *Id.* § 15A-251.

78. The U.S. Supreme Court has unanimously held that “the common law ‘knock and announce principle’ forms a part of the reasonable inquiry under the Fourth Amendment.” *Wilson v. Arkansas*, 514 U.S. 927, 929 (1995). North Carolina courts have found “Quick Knock” entries to be noncompliant with the knock-and-announce requirement. *See State v. Sumpter*, 150 N.C. App. 431, 434 (2002) (finding that a police officer violated the knock-and-announce requirement when he “announced his presence and purpose simultaneously with the opening of the door and entry into the dwelling”); *State v. Willis*, 58 N.C. App. 617, 622 (1982) (finding that “a police officer, at best, announced his identity as he entered the front door” and did not state his purpose, which “violated the statutory requirements for execution of the search warrant”).
79. Releasing the footage would shed light on a prominent and important issue implicating the Fourth Amendment and the Raleigh community—the dangers and traumatizing effects of RPD’s execution of “Quick Knock” warrants—via the perspective and experience of the Abboud family.
80. Releasing the footage would also provide transparency to members of the community. *See, e.g.,* Developments in the Law, *Considering Police Body Cameras*, 128 HARV. L. REV. 1794 (2015).
81. Providing transparency increases the public trust in law enforcement. If the public is to trust law enforcement, it must be able to “see for itself” what actually happened during the incident subject to release. *See* Steven Zansberg, *Why We Shouldn't Hide What Police Body Cameras Show*, GOVERNING MAG. (Aug. 2016) (“Policies that deny public access to body-worn camera recordings are fundamentally counter-productive. They defeat the very purpose for deploying the cameras in the first place.”), [Link](#).

82. Releasing body camera footage is also useful for the public because it can clear up discrepancies between how police say an operation was conducted, and how it actually was conducted. *See e.g., Joe Hernandez, Police Statements Tell the First Version of an Incident. Then Video Footage Comes Out*, NPR (Jan. 31, 2023), [Link](#). Here, releasing this footage will allow the public to compare RPD’s statements on how they execute home search warrants, and how the operation in the Abbouds’ home was conducted.
83. As former U.S. Supreme Court Chief Justice Warren Burger famously put it, “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers Co. v. Virginia*, 448 U.S. 555, 572 (1980).
84. And as Justice Douglas noted, “The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information...Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health.” *New York Times Co. v. United States*, 403 U.S. 713, 724 (1971).
85. *The Assembly* and *INDY Week*, in conjunction with the Abbouds, have a vested interest in informing the public of RPD’s practice of using “Quick Knock” warrants in contravention of Fourth Amendment requirements.

WHEREFORE, THE PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

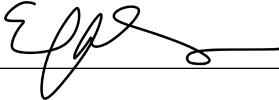
1. A court order pursuant to N.C. Gen. Stat. § 132-1.4A(a)(6) authorizing a general, public release of all law enforcement recordings pertaining to an incident on April 7, 2021, in

which Raleigh Police Department (“RPD”) officers wrongfully executed a “Quick Knock” warrant on the home of Amir and Marian Abboud.

2. A hearing on Plaintiffs’ request for public release as soon as practicable and priority given to any subsequent hearings in this matter. (a modified form AOC-CV-281 is attached hereto as Exhibit A)
3. Such other and further relief as the Court deems just and proper.

Respectfully submitted, this 7 day of December, 2023.

UNC CIVIL LEGAL ASSISTANCE CLINIC

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Pursuant to N.C. State Bar Rule,
Ch. 1 Subch. C. § .0201-.0207

INDEX OF EXHIBITS

North Carolina Law Enforcement Agency Recording Statute

1. N.C. Gen. Stat. § 132-1.4A

Trial Court Orders Granting Release

2. *In re Doug Miller Petition for Release of a L. Enf't Agency Recording*, No. 17 CVS 553, 2017 WL 1838872 (N.C. Super. Ct. Jan. 26, 2017)
3. *In re Doug Miller Petition for Release of a L. Enf't Recording*, No. 17 CVS 17546, 2017 WL 6415898 (Oct. 3, 2017)
4. *In re Custodial L. Enf't Agency Recording Sought by Capitol Broad. Co.*, Durham County, 17 CVS 3909 (Feb. 20, 2018)
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6. *In re Custodial L. Enf't Agency Recording Sought by Capitol Broad. Co.*, Moore County, 18 CVS 902 (Sept. 7, 2018)
7. *In re Custodial L. Enf't Agency Recording Sought by Capitol Broad. Co.*, Nash County, 19 CVS 255 (March 7, 2019)
8. *In re Custodial L. Enf't Agency Recordings Sought by Queen Mosley*, No. 20CVS3383, 2021 WL 5430944, at *2 (N.C.Super. Jan. 25, 2021)
9. *In re Custodial L. Enf't Agency Recording Sought by News & Observer Pub. Co.*, No. 20 CVS 2779, 2020 WL 13043345 (N.C.Super. July 31, 2020)
10. *Robinson v. City of Huntsville*, No. 5:21-CV-00704-AKK, 2021 WL 5053276 (N.D. Ala. Nov. 1, 2021)

News Articles Discussing RPD and the Raid on the Abbouds' Home

11. Sean Campbell, *This Cop Unleashed a Reign of Terror, Say the Wrongfully Accused*,

ROLLING STONE (Apr. 9, 2023), [Link](#)

12. Jasmine Gallup, *Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police's*

'No-Knock' Warrant Debacle, INDY WEEK (Dec. 14, 2022), [Link](#)

Exhibit A

Order After Civil Action Filed To Provide Custodial Law Enforcement Agency Recording for In-Camera Review and Order to Provide Notice of Hearing (AOC-CV-281)

1

[N.C. Gen. Stat. § 132-1.4A](#)

Current through Session Laws 2023-122 of the 2023 Regular Session of the General Assembly.

General Statutes of North Carolina > Chapter 132. Public Records. (§§ 132-1 — 132-11)

§ 132-1.4A. Law enforcement agency recordings.

(a) Definitions. — The following definitions apply in this section:

(1) Body-worn camera. — An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.

(2) Custodial law enforcement agency. — The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.

(3) Dashboard camera. — A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.

(4) Disclose or disclosure. — To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.

(5) Personal representative. — A parent, court-appointed guardian, spouse, or attorney licensed in North Carolina of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney licensed in North Carolina; or the parent or guardian of a surviving minor child of the deceased.

(6) Recording. — A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.

(7) Release. — To provide a copy of a recording.

(8) Serious bodily injury. — A bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) Public Record and Personnel Record Classification. — Recordings are not public records as defined by *G.S. 132-1*. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, [G.S. 160A-168](#), or [G.S. 153A-98](#).

(b1) Immediate Disclosure. — When requested by submission of the notarized form described in subsection (b2) of this section to the head of a law enforcement agency, any portion of a recording in the custody of a law enforcement agency which depicts a death or serious bodily injury shall, upon order of the court pursuant to subsection (b3) of this section, be disclosed to a personal representative of the deceased, the injured individual, or a personal representative on behalf of the injured individual. Any disclosure

N.C. Gen. Stat. § 132-1.4A

ordered by the court pursuant to subsection (b3) of this section shall be done by the agency in a private setting. A person who receives disclosure as ordered by the court pursuant to subsection (b3) of this section shall not record or copy the recording. Except as provided in subsection (b3) of this section, the portion of the recording relevant to the death or serious bodily injury shall not be edited or redacted.

(b2) Notarized Form. — A person requesting disclosure pursuant to subsection (b1) of this section must submit a signed and notarized form provided by the law enforcement agency. The form shall be developed by the Administrative Office of the Courts and shall include notice that, if disclosed, the recording may not be recorded or copied, or if unlawfully recorded or copied may not be knowingly disseminated, and notice of the criminal penalties provided in subsection (b4) of this section.

(b3) Immediate Disclosure Review. — No later than three business days from receipt of the notarized form requesting immediate disclosure pursuant to subsection (b1) of this section, a law enforcement agency shall file a petition in the superior court in any county where any portion of the recording was made for issuance of a court order regarding disclosure of the recording requested pursuant to subsection (b1) of this section and shall also deliver a copy of the petition and a copy of the recording, which shall remain confidential unless the court issues an order of disclosure pursuant to this section, to the senior resident superior court judge for that superior court district or their designee. There shall be no fee for filing the petition. The court shall conduct an in-camera review of the recording and shall enter an order within seven business days of the filing of the petition instructing that the recording be (i) immediately disclosed without editing or redaction; (ii) immediately disclosed with editing or redaction; (iii) disclosed at a later date, with or without editing or redaction; or (iv) not disclosed to the person or persons seeking disclosure. In determining whether the recording may be disclosed pursuant to this section, the court shall consider the following factors:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive and personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the portion of the recording requested to be disclosed and the head of that person's employing law enforcement agency, (iii) the District Attorney, (iv) the investigating law enforcement agency, and (v) the party requesting the disclosure. The court may order any conditions or restrictions on the disclosure that the court deems appropriate.

Petitions filed pursuant to this subsection shall be scheduled for hearing as soon as practicable, and the court shall issue an order pursuant to the provisions of this subsection no later than seven business days after the filing of the petition. Any subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

If disclosure of a recording is denied based on subdivision (6) of this subsection, the court shall schedule a subsequent hearing, to be held no more than 20 business days after the issuance of the order, to reconsider whether the recording should be disclosed.

(b4) Any person who willfully records, copies, or attempts to record or copy a recording disclosed pursuant to subsection (b1) of this section shall be guilty of a Class 1 misdemeanor. Any person who knowingly disseminates a recording or a copy of a recording disclosed pursuant to subsection (b1) of this section is guilty of a Class I felony.

(c) Disclosure; General. — Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. Recordings depicting a death or serious bodily injury shall only be disclosed as provided in subsections (b1) through (b3) of this section.

A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. — Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. — If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may

only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. — Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. — Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.

- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. — Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) for any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.
- (4) For suspect identification or apprehension.
- (5) To locate a missing or abducted person.

(i) Retention of Recordings. — Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. — Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. — A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. — The court may not award attorneys' fees to any party in any action brought pursuant to this section.

History

[2016-88, s. 1](#); [2019-48, s. 1](#); [2021-138, s. 21\(a\)](#).

Annotations

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for the challenged statements. Foytlin, for example, referenced in and attached to her affidavit a series of articles appearing in scholarly journals and reputable newspapers, and other Internet blog postings. These articles and blog postings provide factual support for the defendants' characterizations of ChemRisk's practices, and also contain assertions similar to those made by the defendants concerning those practices.¹⁷ Foytlin further averred that the journal that had published the ChemRisk study, criticized by the defendants in their Huffington Post piece, later retracted the article. Given ChemRisk's failure to offer evidence that would establish the absence of any reasonable factual support for the challenged statements, it cannot withstand the defendants' special motion to dismiss ChemRisk's defamation suit brought against them. That motion must be allowed.

3. *Conclusion.* The denial of the special motion to dismiss is reversed, and the case is remanded to the Superior Court for the entry of a judgment consistent with this opinion and for the award of reasonable attorney's fees and costs. The defendants also may file an appropriate application for appellate fees and costs in this court, pursuant to *Fabre v. Walton*, 441 Mass. 9, 10, 802 N.E.2d 1030 (2004).

¹⁷ See Heath, Center for Public Integrity, How Industry Scientists Stalled Action on Carcinogen (Mar. 13, 2013); Egilman, Commentary: Corporate Corruption of Science—The Case of Chromium(VI), 12 Int'l J. Occup. Envtl. Health 169 (2006); Waldman, Medical Journal to Retract Study: Firm's Consultants Conducted Research, not Chinese Doctors, Wall St. J. (June 6, 2006); Waldman, Study Tied Pollutant to Cancer; Then Consultants Got Hold of It: "Clarification" of Chinese Study Absolved Chromium-6; Did Author Really Write It?, Wall St. J. (Dec. 23, 2005); Chrome-Plated Fraud: The ChemRisk Documents, Environmental Working Group (Dec. 23, 2005), <http://www.ewg.org/research/chrome-plated-fraud> [<https://perma.cc/B7WT-A9PW>]; Michaels, A Chrome-Plated Controversy, The Pump Handle (Dec. 7, 2006), <https://thepumphandle.wordpress.com/2006/12/07/a-chrome-plated-controversy> [<https://perma.cc/3EPD-D84M>]. See also Roe & Callahan, "Flat-out Deceptive": Distortion of Science Helped Industry Promote Flame Retardants, Downplay the Health Risks, Chicago Tribune (May 9, 2012) (Pulitzer Prize-nominated article accusing ChemRisk of distorting different study on behalf of clients); Lane, Weakened Rules a Boon to 3 Polluters: Work of Scientist Paid by the Firms Viewed Skeptically by Other Experts, Newark Star-Ledger (Mar. 7, 2004) (reporting on ChemRisk's chromium research in other context).

So ordered.

In re Miller

**North Carolina Superior Court
Mecklenburg County**

IN THE MATTER OF: DOUG MILLER
PETITION FOR RELEASE OF A LAW EN-
FORCEMENT AGENCY RECORDING

No. 17-CvS-553

January 26, 2017

2017 BL 35115

NEWSGATHERING

[1] Access to records — Law enforcement
— In general (§ 38.1701)

Statutory right of access — State open
records acts (§ 44.17)

Newspaper editor is entitled to police vehicle dashboard camera recordings of incident in which police officer fatally shot armed robbery suspect, since recordings arise from matter of significant public interest, and release is necessary to advance compelling public interest, since North Carolina public records law specifically provides for release of recordings in accordance with statutory procedures, which have been followed here, since petitioner is not seeking release of recordings in order to obtain evidence to determine legal issues in current or potential court proceedings, since recordings contain sensitive personal information, but would not harm reputation of any individual, and police officer's mother's name and telephone number will be redacted, since release would not create serious threat to fair, impartial and orderly administration of justice, given that there is no civil action pending or anticipated arising from this incident, since confidentiality of recordings is not necessary to protect either active, inactive or potential internal or criminal investigation, and since there is good cause shown to release recordings.

Petition by newspaper editor seeking access to police car dashboard camera recordings.

Granted; recordings ordered released with certain redactions.

Jonathan E. Buchan, of EssexRichards P.A., Charlotte, N.C., for petitioner.

Judy Emken, Charlotte-Mecklenburg Police Department attorney, for CMPD.

Michael Greene, of Goodman, Carr, Laughrun, Levine & Greene, Charlotte, for police officer A.J. Holzhauser.

Daniel Roberts, of Goodman, Carr, Laughrun, Levine & Greene, Charlotte, for police officer Ryan Shields.

George Laughrun, of Goodman, Carr, Laughrun, Levine & Greene, Charlotte, for unnamed police officer.

R. Andrew Murray, district attorney, for Mecklenburg County District Attorney's Office.

Bell, J.

THIS MATTER came on for hearing on January 23, 2017 before the undersigned Superior Court Judge presiding in Courtroom 6310 in Mecklenburg County on the Petition for Release of a Law Enforcement Agency Recording which was filed January 12, 2017 by Doug Miller pursuant to N.C.G.S. 132-1.4A.

The Petition sought access to the recordings in the possession of the Charlotte-Mecklenburg Police Department ("CMPD") related to a July 2, 2012 incident in which CMPD Officer A.J. Holzhauser fatally shot Michael Laney in Charlotte, North Carolina.

Petitioner, the deputy city editor and investigations editor of the *The Charlotte Observer*, was represented at the hearing by Jonathan E. Buchan. Also appearing were Judy Emken, counsel for CMPD; Michael Greene, counsel for A.J. Holzhauser, whose voice and/or image is contained in the recordings; Dan Roberts, counsel for Officer Ryan Shields, whose voice and/or image is contained in the recordings; and George Laughrun, counsel for an unnamed CMPD official whose voice is audible on the recordings. Also appearing were Ernestine Laney, the mother of Michael Laney and Antoine Laney, the brother of Michael Laney.

The Court, having reviewed the recordings provided to the Court by CMPD as well as the provisions of N.C. G. S. 132-1.4A(g) and having heard statements and argument from counsel for the parties and in-court statements of Ernestine Laney and Antoine Laney, makes

the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. CMPD has provided to the Court for its review pursuant to N.C.G.S. 132-1.4A(g) a memory stick with the recordings from dashboard cameras from CMPD vehicles assigned on July 2, 2012 to Officer Holzhauser and to Officer Shields, and the Court has carefully reviewed those recordings. The recording from the Shields vehicle is referred to herein as the "Shields Recording," and the recording from the Holzhauser vehicle is referred to herein as the "Holzhauser Recording."
2. These recordings relate to the July 2, 2012 attempted arrest and pursuit by these two officers of Michael Laney, a suspect in a then-recent armed robbery. This encounter resulted in the death of Michael Laney from a gunshot wound to the head fired by Officer Holzhauser.
3. Mr. Miller seeks release of these recordings pursuant to N.C.G. S. 132-1.4A (g).
4. The parties required to be served under this statute were properly served and received notice of this hearing.
5. Ernestine Laney, who is the mother of Michael Laney and acted as administratrix of his estate, and Antoine Laney, the brother of Michael Laney, support release of the recording to Mr. Miller and to the public.
6. The CMPD does not object to release of the recordings in light of the fact that there are no civil or criminal proceedings pending or anticipated, and in light of the necessary scrutiny under which law enforcement functions and CMPD's interest in fostering transparency regarding its operations.
7. The District Attorney for the 26th Prosecutorial District was served with a copy of the Petition and a notice of this hearing, but did not appear in person. Ms. Emken, counsel for CMPD, informed the Court that she had spoken with Assistant District Attorney Bill Steizer, who had authorized her to inform the Court that the District Attorney's Office does not object to the release of the recordings.

8. Officer Shields does not object to the release of the recordings, and the unnamed CMPD official represented by Mr. Laughrun does not object to the release of the recordings.
9. Officer Holzauer does not object to the release of the recordings, with the exception of the release of the portions of the recordings which include: (1) Officer Holzauer's telephone conversation with his mother that occurred subsequent to the shooting, (2) the name of his mother, and (3) the mother's telephone number if it is included on the recording. This information is found at approximately time 23:35:09 (11:35:09 p.m.) on the Holzauer Recording. Officer Holzauer contends that release of these portions of the recordings would disclose information that is of a highly sensitive and personal nature and may jeopardize the safety of the officer's mother.
10. The Court noted the presence on the Shields Recording of a telephone number of a police officer which should also be redacted pursuant to N.C.G.S. 132-1.7(b1).
11. Petitioner does not object to the redaction from the recordings of the name of Officer Holzauer's mother or of her telephone number if it appears on the recording but does object to the redaction of any portions of the recordings containing the telephone conversation between Officer Holzauer and his mother. Petitioner does not object to the redaction of the telephone number of the police officer on the Shields Recording.
12. On or about August 20, 2012, the District Attorney for the 26th Prosecutorial District released his office's review of the investigation surrounding the death of Michael Laney which determined that there was no evidence that Officer Holzauer acted unlawfully in connection with the July 2, 2012 shooting incident. There are, therefore, no pending criminal actions regarding this incident.
13. There are no pending civil actions arising from the July 2, 2012 shooting of Michael Delaney.

CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. 132-1.4A(g), Mr. Miller is a "person" with standing to file a Superior Court action seeking an order directing release of dashboard camera recordings.
- [1] 2. In applying the balancing test set forth in N.C.G.S. 132-1.4A(g), I have concluded as follows:
 - (a) The recordings at issue, related to an officer-involved shooting that occurred approximately four and one-half years ago, arise from a matter of significant public interest, and release is necessary to advance a compelling public interest. This factor weighs in favor of release of the recordings.
 - (b) The recordings at issue are, pursuant to N.C.G.S. 132-1.4A, not public records or personnel records, and are exempt from disclosure except as provided by the statute. Because this statute specifically provides for release of such recordings in accordance with the statutory procedures which have been followed in this matter, this factor is neutral.
 - (c) The Petitioner is not seeking release of the recordings in order to obtain evidence to determine legal issues in a current or potential court proceeding. This factor is, therefore, a neutral factor.
 - (d) The recordings contain information that is of a highly sensitive personal nature, in that they: (1) involve the shooting death of Michael Laney, and (2) involve at least one of the responding officer's reactions and emotional state at the time of the incident. This factor therefore weighs both against release from the standpoint of the officer and in favor of release from the standpoint of the Petitioner, particularly in light of the support of the Petition by Ernestine Laney and Antoine Laney.
 - (e) Release of the recordings would not harm the reputation of any individual. Release of the Holzauer Recording in its entirety could, however, jeopardize the safety of Officer Holzauer's

mother to the extent that her name and telephone number are released. This factor weighs in favor of release of the recordings, but against release of the specific portions of the Holzhauser Recording that identify Officer Holzhauser's mother and her telephone number,

- (f) Release of the recordings would not create a serious threat to the fair, impartial and orderly administration of justice, in light of the fact that the District Attorney has declined to bring criminal charges against Officer Holzhauser, and the fact that there is no civil action pending or anticipated arising from this incident. This factor weighs in favor of release of the recordings.
- (g) Confidentiality of the recordings is not necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation. This factor weighs in favor of release.
- (h) There is good cause shown to release the recordings, as noted in Paragraph (a) above. This factor weighs in favor of release of the recordings.

3. Having considered the factors specifically required or otherwise permitted to be considered by the Court pursuant to N.C.G.S. 132-1.4A(g), I have concluded that the recordings should be released in their entirety with the exception of the following:

- (a) The portions of the Holzhauser Recording that appear at approximately time 23:35:09 (11:35:09 p.m.) and contain the name and/or the telephone number of Officer Holzhauser's mother. Those specific portions, but not the portions that contain the telephone conversation between Officer Holzhauser and his mother, shall be redacted prior to release of the recordings. If CMPD is unable to redact just these specified portions, the Court will hear all parties to this proceeding to discuss alternative arrangements.
- (b) The portion of the Shields Recording that appears at approximately time

00:14:49 (12:14:49 a.m.) on that recording and contains a telephone number of a CMPD officer.

4. Copies of the recordings, as redacted, shall be released to Petitioner and CMPD, who may, among other uses they deem appropriate, post the recordings on their websites and provide copies to other media entities who request them.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Charlotte-Mecklenburg Police Department, the custodian of the July 2, 2012 dashboard camera recordings here at issue, shall release to Petitioner within five days of the entry of this Order copies of the Holzhauser Recording and the Shields Recording, redacted to remove only (1) the name of Officer Holzhauser's mother and/or her telephone number, and (2) the telephone number of the CMPD officer found on the Shields Recording. Those portions to be redacted appear at approximately time 23:35:09 (11:35:09 p.m.) of the Holzhauser Recording and at approximately time 00:14:49 (12:14:49 a.m.) of the Shields Recording.
2. The portions of the recordings that contain the telephone conversation between Officer Holzhauser and his mother shall not be redacted from the recordings.
3. CMPD and Petitioner are authorized to use these recordings as they deem appropriate, including the posting of the recordings on their websites and the providing of copies of the recordings

Brady v. Klentzman

Texas Supreme Court

WADE BRADY, Petitioner v. LEANNE KLENTZMAN and CARTER PUBLICATIONS INC. d/b/a THE WEST FORT BEND STAR INC., Respondents

No. 15-0056

January 27, 2017

2017 BL 24250

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OPINIONS IN THIS ISSUE

FREE SPEECH—COURTHOUSE STEPS

A reporter, who was injured when a district attorney struck him after he asked the D.A. questions on the local courthouse steps, stated a cause of action for violation of 42 U.S.C. § 1983 and various torts, the U.S. District Court for the Eastern District of California rules (*Gonzalez v. Morse*, 10/10/17).

ACCESS—BODY CAMS

The North Carolina Superior Court, Mecklenburg County, orders the county police department to release a body camera recording requested by the Charlotte Observer and a human rights organization (*In re Miller and Dawkins*, 10/3/17).

ALSO IN THIS ISSUE—

The U.S. District Court for the Southern District of Indiana rules that online fantasy sports gaming sites may use college athletes' names and images without permission (*Daniels v. Fanduel, Inc.*, 9/29/17). An NBC "Dateline" episode focused on sales of annuities to seniors, which included footage from a

secretly recorded sales seminar held by Brokers' Choice of America, wasn't defamatory, the U.S. Court of Appeals for the Tenth Circuit holds (*Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 6/28/17).

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TABLE OF CASES

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Miller and Dawkins, <i>In re</i> (N.C. Super. Ct.)	2480

CONCLUSION

For all of the reasons set forth above, defendant's motion to dismiss (Doc. No. 8) is denied and this case will proceed on plaintiff's lone cause of action.

IT IS SO ORDERED.

In re Miller

North Carolina Superior Court
Mecklenburg County

IN THE MATTER OF PETITIONS OF
DOUG MILLER and ROBERT DAWKINS
for the release of September 6, 2017 law enforcement agency recording

Nos. 17-CVS-17546, 17-CVS-16991

October 3, 2017

2017 BL 362412

NEWSGATHERING

[1] Access to records — Law enforcement — In general (§ 38.1701)

Law enforcement agency body camera recording is ordered released, with images of any minor children blurred or redacted so that they are not identifiable, since recording is related to officer-involved shooting, arose from matter of significant public interest, and release is necessary to advance compelling public interest, since release of recording will not harm reputation of any individual, since release of recording will not create serious threat to fair, impartial, and orderly administration of justice, in light of availability of extensive voir dire at trial and other alternatives for ensuring fair and impartial jury, and since release of recording will not interfere with active investigations, in light of fact that inves-

erson v. Central Point Sch. Dist. No. 6, 746 F.2d 505, 508 (9th Cir. 1984) (noting that damages in § 1983 actions "must be tailored to the particular interest protected"); *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 996 F. Supp. 2d 942, 969 (S.D. Cal. Jan. 21, 2014) ("[W]hether a plaintiff has sufficiently pled a causal connection between the damage and the alleged harm is a question of law."). There does not appear to be a causal connection between any business lost due to defendant's "black balling" and the alleged retaliatory strike by defendant.

tigators have had sufficient time to interview material witnesses to shooting.

Petition for release of law enforcement agency body camera recording.

Granted.

Jonathan E. Buchan, of EssexRichards P.A., Charlotte, N.C., for petitioner Miller.

Robert Dawkins, petitioner pro se.

William Stetzer, assistant district attorney, Charlotte, for Mecklenburg County District Attorney.

Jessica Battle, Charlotte, for Charlotte-Mecklenburg Police Department.

George V. Laughrun II, of Goodman, Carr, Laughrun, Levine & Greene, Charlotte, for Officer David Guerra.

Michael J. Greene, of Goodman, Carr, Laughrun, Levine & Greene, Charlotte, for Officer Courtney Suggs.

Pomeroy, J.

ORDER GRANTING PETITIONS FOR RELEASE OF LAW ENFORCEMENT AGENCY RECORDING

THIS MATTER came on for hearing on September 28, 2017 before the undersigned Superior Court Judge presiding in Courtroom 6310 in Mecklenburg County on the Petition for Release of a Law Enforcement Agency Recording which was filed September 21, 2017 by Doug Miller and on the Petition for Release of a Law Enforcement Agency Recording which was filed September 19, 2017 by Robert Dawkins, a representative of SAFE Coalition NC (the "Petitions"). Both Petitions were filed pursuant to N.C. Gen. Stat. § 132-1.4A(g).

The Petitions sought access to certain law enforcement agency recordings in the possession of the Charlotte-Mecklenburg Police Department ("CMPD") relating to events which took place on September 6, 2017 involving a police-involved shooting which resulted in the death of Rueben Galindo (the "Recordings").

Petitioner Doug Miller, the Deputy City Editor and Investigations Editor of *The Charlotte Observer*, was represented at the hearing by Jonathan E. Buchan. Petitioner Robert Dawkins represented himself; Jessica Battle appeared as legal counsel for CMPD; William Stetzer appeared on behalf of the Mecklen-

burg County District Attorney; George Laughrun appeared as counsel for CMPD Officer David Guerra; and Michael Greene appeared as counsel for CMPD Officer Courtney Suggs.

The Court, having reviewed the Petitions, having heard arguments from Mr. Dawkins and from counsel for Petitioner Miller, CMPD, Mr. Guerra, Ms. Suggs, and from the District Attorney's Office, having reviewed extensively the body camera recordings provided to the Court prior to the hearing by CMPD, and having reviewed materials provided to the Court for its review, including CMPD's September 8, 2017 Media Release/Case Update, *The Charlotte Observer's* September 15, 2017 news article regarding the September 6, 2017 shooting, the Charlotte City Council's October 3, 2016 Letter to the Community, and WCNC's September 18, 2017 article on CMPD's response to the Charlotte Citizens Review Board's recommendations regarding police conduct and training, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- 1. On September 19, 2017, Petitioner Robert Dawkins sought release of the Recordings pursuant to N.C.Gen.Stat. § 132-1.4(A)(g).
- 2. On September 21, 2017, Petitioner Doug Miller sought release of the Recordings pursuant to N.C.Gen.Stat. § 132-1.4(A)(g).
- 3. The parties required to be served under this statute were properly served and received notice of this hearing.
- 4. The head of the custodial law enforcement agency did give notice of the petitions and hearing to all law enforcement agency personnel whose image or voice is in the recording.
- 5. Each person entitled to be notified of this proceeding was given an opportunity to be heard, either individually or by such person's designated representative.
- 6. The CMPD provided copies of the law enforcement agency recordings to the Court on September 22, 2017.
- 7. The recording was made in Mecklenburg County.

CONCLUSIONS OF LAW

- 1. Pursuant to N.C. Gen. Stat. § 132-1.4(A)(g), each Petitioner is a "person" with standing to file a Superior Court action seek-

ing an Order directing the release of these Recordings.

2. In applying the balancing test set forth in N.C.G.S. § 132-1.4(A)(g) the Court concludes as follows:

[1] (a) The Recordings, related to an officer-involved shooting that occurred on September 6, 2017, arise from a matter of significant public interest, and release of the Recordings is necessary to advance a compelling public interest.

(b) The Recordings contain information that is of a highly sensitive personal nature to the extent that they reveal the images of any minor children who might be depicted in the Recordings.

(c) Release of the Recordings will not harm the reputation of any individual.

(d) Release of the Recordings would not create a serious threat to the fair, impartial and orderly administration of justice, in light of the availability of extensive *voir dire* at trial, as well as other alternatives available to a trial court for ensuring a fair and impartial jury in the event any criminal charges are brought. *See In Re: The Charlotte Observer*, 882 F. 2d 850, 855-56 [16 Med.L.Rptr. 2032] (4th Cir. 1989) (stating "[i]ncreasingly the courts are expressing confidence that *voir dire* can serve in almost cases as a reliable protection against juror bias however induced.").

(e) While there is an active internal investigation and an active external criminal investigation into the September 6, 2017 shooting, the Court finds that release of the Recordings at this time will not interfere with such investigations because investigators have had sufficient time to interview the material witnesses to the shooting.

3. Having considered and applied the factors specifically required by N.C. Gen. Stat. § 132-1.4A(g), or otherwise permitted to be considered by the Court, the Court has concluded that the Recordings should be released in their entirety, except that CMPD shall redact the Recordings prior to their release in a manner which blurs or omits any images of any minor children so that they are not identifiable.

4. Copies of the redacted Recordings should be released to Petitioners and to CMPD, who may, among other uses they deem appropriate, post the Recordings on their websites and may provide copies to others who request them.

5. Release of the redacted Recordings shall occur on Friday, October 6, 2017 with the understanding that the District Attorney's Office shall provide Mr. Galindo's close friends and family an opportunity to review the Recordings prior to that time.

IT IS, THEREFORE, ORDERED, AS FOLLOWS:

1. Petitioners' requests for release of the Recordings, as described herein and redacted as directed herein, are hereby GRANTED, and the Charlotte-Mecklenburg Police Department is authorized to release the recording.

2. The Charlotte-Mecklenburg Police Department, the custodian law enforcement agency, shall redact the Recordings by blurring portions of the Recordings depicting a minor child.

3. The Charlotte-Mecklenburg Police Department, the custodian of the Recordings sought by Petitioners, shall release to Petitioners copies of the Recordings as described herein and redacted as directed herein, on October 6, 2017. Petitioners may, among other uses they deem appropriate, post the Recordings on their websites and may provide copies to others who request them.

4. All parties have stipulated and agreed, and the Court so directs, that neither CMPD nor the Petitioner will post the redacted Recordings to any website or otherwise release them until three (3) hours have expired after release of the redacted Recordings to Petitioners.

IT IS SO ORDERED.

Brokers' Choice of Am., Inc. v. NBC Universal, Inc.

**U.S. Court of Appeals
Tenth Circuit**

BROKERS' CHOICE OF AMERICA INC. and TYRONE M. CLARK, Plaintiffs-Appellants v. NBC UNIVERSAL INC., GENERAL ELECTRIC CO., CHRIS HANSEN, STEVEN FOX ECKERT and MARIE THERESA AMOREBIETA, Defendants-Appellees

No. 15-1386
June 28, 2017
2017 BL 224134
861 F.3d 1081

REGULATION OF MEDIA CONTENT

[1] Defamation — Pre-trial procedures — In general (§ 11.1201)

"Law of the case" doctrine does not preclude district court's consideration of defendant's motion to dismiss defamation action, stemming from investigative television segment about plaintiff's "Annuity University" seminar for insurance agents, even though this court previously determined that plaintiff's complaint stated plausible defamation claim, since law of case doctrine applies to cases involving same issue in subsequent stages in same case, but plaintiff effectively amended its operative complaint when it received defendants' hidden-camera recording of seminar, which had previously been withheld as privileged, and inserted that recording as exhibit, and since addition of seminar recording to plaintiff's amended complaint qualifies as new evidence precluding application of law of case doctrine; motion to dismiss is also proper under Fed. R. Civ. P. 12(g)(2), which prevents party from raising defense or objection that it omitted in its earlier motion to dismiss, since plaintiff effectively amended its complaint by adding seminar recording as exhibit, such that defendant's motion to dismiss was permissible response to that amended complaint, and since exception in Rule 12(h)(2) permits consideration of motion as motion for judgment on pleadings under Rule 12(c).

[2] Defamation — Pre-trial procedures — In general (§ 11.1201)

Federal district court, on remand, did not err in failing to convert defendant's motion to dismiss to motion for summary judgment, in defamation action stemming from investigative television segment about plaintiff's "Annuity University" seminar for insurance agents, since district court considered only pleadings, defendants' hidden camera recording of plaintiff's seminar, and episode at issue, and seminar recording and episode were attached to or referenced in amended complaint, were central to plaintiff's claim, and were undisputed as to their accuracy and authenticity, and since alleged errors regarding district court's analytical tools need not be addressed because review on appeal is de novo.

4

DURHAM COUNTY

FILED

FEB 20 2018

17 CVS 3909

STATE OF NORTH CAROLINA

DURHAM County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

AT 12:15 O'CLOCK P M
BY AMAS
CLERK OF SUPERIOR COURT

ORDER ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner
CAPITOL BROADCASTING COMPANY INC DBA WRAL-TV

Address
C/O STEVENS MARTIN VAUGHN & TADYCH, PLLC
ATTN: MIKE TADYCH
1101 HAYNES STREET, SUITE 100

City, State, Zip
RALEIGH, NC 27604-1455

G.S. 132-1.4A(f) - Person authorized to receive disclosure

G.S. 132-1.4A(g) - General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On 08/10/2017 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to CAPITOL BROADCASTING COMPANY, INC. DBA WRAL-TV
2. Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
3. The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
4. Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.
5. The Court conducted an in-camera review of the recording on 02/20/2018 (date).
6. The recording was made was made in some portion was not made in this county.
7. Request made pursuant to G.S. 132-1.4A(f)
The Court determined that the person to whom release of the recording is sought is the following:
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)
 A person whose image or voice is in the recording.
 A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
 A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 A personal representative of a deceased person whose image or voice is in the recording.
 A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
 None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(Over)

- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

8. Request made pursuant to G.S. 132-1.4A(g)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

CONCLUSIONS OF LAW

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- The Court concludes that CAPITOL BROADCASTING CO INC., DBA WRAL-TV is authorized to the release of the recording.
- The Court concludes that _____ is not authorized to the release of the recording.

ORDER

It is therefore Ordered that (check one)

Petition Granted:

The custodial law enforcement agency shall release to CAPITAL BC INC., DBA WRAL-TV the following portions of the recording: (list, and indicate if all portions are to be released) PRINCIPAL VIDEO PLUS ENHANCEMENT

The court places the following conditions/restrictions on the release of the recording: NEXT OF KIN TO BE ALLOWED TO VIEW PRINCIPAL VIDEO PLUS ENHANCEMENT PRIOR TO ANY PUBLICATION OF THE VIDEO OR ENHANCEMENT; THIS RESTRICTION TERMINATES AT 12 NOON ON THURSDAY FEBRUARY 22, 2018.

Petition Denied:

The custodial law enforcement agency shall not release any portion of the recording to _____

SIGNATURE OF SUPERIOR COURT JUDGE

Date <u>20 FEB 18</u>	Name Of Superior Court Judge, (type or print) <u>BRETT R. GAY</u>	Signature Of Superior Court Judge <i>[Signature]</i>
--------------------------	--	---

*mailed copies to attny Todych + DA Echols on 2/20/18.
- A.M. Agee

5

LEE

County

2018 APR 25 AM 8:29

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

ORDER ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner

Capitol Broadcasting Company, Incorporated, d/b/a WRAL-TV

Address

c/o Stevens Martin Vaughn & Tadych, PLLC
c/o Michael J. Tadych
1101 Haynes Street, Suite 100

City, State, Zip

Raleigh, NC 27604

G.S. 132-1.4A(f) - Person authorized to receive disclosure

G.S. 132-1.4A(g) - General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On 04/11/2018 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to Capitol Broadcasting Company, Incorporated, d/b/a WRAL-TV
 2. Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
 3. The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
 4. Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.
 5. The Court conducted an in-camera review of the recording on 4/20/18 (date).
 6. The recording was made was made in some portion was not made in this county.
 7. Request made pursuant to G.S. 132-1.4A(f)
The Court determined that the person to whom release of the recording is sought is the following:
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)
 A person whose image or voice is in the recording.
 A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
 A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 A personal representative of a deceased person whose image or voice is in the recording.
 A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
 None of the above.
- and
- The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:
- Release is necessary to advance a compelling public interest.
 - The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(Over)

- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

8. Request made pursuant to G.S. 132-1.4A(g)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

CONCLUSIONS OF LAW

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- The Court concludes that NC SBI and/or the Sanford Police Department are _____ is authorized to the release of the recording.
- The Court concludes that _____ is not authorized to the release of the recording.

ORDER

It is therefore Ordered that (check one)

Petition Granted:

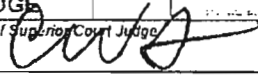
The custodial law enforcement agency shall release to Petitioner the following portions of the recording: (list, and indicate if all portions are to be released) All

The court places the following conditions/restrictions on the release of the recording: The face of a minor child visible in the recordings shall be blurred by Petitioner to remove their identification prior to publication or other dissemination.

Petition Denied:

The custodial law enforcement agency shall not release any portion of the recording to _____

SIGNATURE OF SUPERIOR COURT JUDGE

Date <u>4/24/18</u>	Name Of Superior Court Judge (type or print) <u>C. Winston Gilchrist</u>	Signature Of Superior Court Judge 
------------------------	---	--

6

STATE OF NORTH CAROLINA	MOORE COUNTY FILED	File No.
	MOORE County	SEP 7 2018
IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:		In The General Court Of Justice Superior Court Division

**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

12:20 O'CLOCK
CLERK SUPERIOR COURT

Name Of Petitioner
SEE ATTACHED LIST

Address
c/o Stevens Martin Vaughn & Tadych, PLLC
Attn: Michael J. Tadych
1101 Haynes Street, Suite 100

City, State, Zip
Raleigh, NC 27604

**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**

G.S. 132-1.4A(f) – Person authorized to receive disclosure

G.S. 132-1.4A(g) – General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

- On Aug 14, 2018 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to Petitioners on Attached List
- Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
- The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
- Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.
- The Court conducted an in-camera review of the recording on Sept. 6 + 7, 2018 (date).
- The recording was made was made in some portion was not made in this county.
- Request made pursuant to G.S. 132-1.4A(f)**
The Court determined that the person to whom release of the recording is sought is the following:
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)
 - A person whose image or voice is in the recording.
 - A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
 - A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 - A personal representative of a deceased person whose image or voice is in the recording.
 - A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
 - None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

8. Request made pursuant to G.S. 132-1.4A(g)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

CONCLUSIONS OF LAW

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- The Court concludes that Aberdeen Police Dept. / Pinchurst Police Department is authorized to the release of the recording.
- The Court concludes that _____ is not authorized to the release of the recording.

ORDER

It is therefore Ordered that (check one)

Petition Granted:

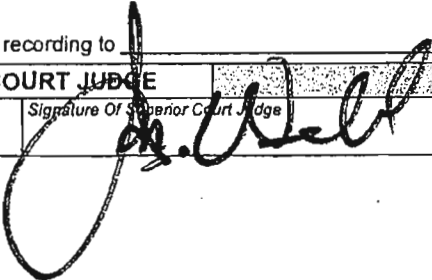
The custodial law enforcement agency shall release to Petitioners the following portions of the recording: (list, and indicate if all portions are to be released) (1) Recording made by Aberdeen Police officer A. Whitley; (2) Body cam recording of Sgt. Jason Caulder of Pinchurst Police Dept.; (3) car camera of Sgt. Caulder; (4) car camera of Ptl. Michael Puse of the Pinchurst Police Dept.

The court places the following conditions/restrictions on the release of the recording: None of these recordings shall be published or otherwise disseminated prior to 3:00p.m. EDT on Friday 7 Sept. 2018

Petition Denied:

The custodial law enforcement agency shall not release any portion of the recording to _____

SIGNATURE OF SUPERIOR COURT JUDGE

9/7/2018 Name Of Superior Court Judge (type or print) James M. Webb Signature Of Superior Court Judge 

STATE OF NORTH CAROLINA

File No.

MOORE County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner
SEE ATTACHED LIST

Address
c/o Stevens Martin Vaughn & Tadych, PLLC
Attn: Michael J. Tadych
1101 Haynes Street, Suite 100

City, State, Zip
Raleigh, NC 27604

Phone No. 919.582.2300 Fax No. 866.593.7695

Email Address
mike@smvt.com

- G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)
- G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Petitioners
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:
On July, 28, 2018 shortly before 3:00 a.m., law enforcement officers were called to 106 Forest Place Drive in Aberdeen to respond
to a domestic dispute. According to reports, after police arrived, Arthur Kenzie Garner was shot and killed near the doorway of the
home. Four deputies with the Moore County Sheriff's Office are believed to have been present: Sgt. Sean Ballard;
Corporal Dustin Hussey; Stephanie Griffin and Justin Mack. In addition, Officer Austin Whatley of the Aberdeen
Police Department and Sgt. Jason Caulder and Officer Michael Muse of the Pinehurst Police Department are believed to have been
present.
It is believed that video recordings were made and are either in the custody of the Aberdeen Police Departments and/or the Pinehurst
Police Department, or in the custody of the State Bureau of Investigation, currently investigating this matter.

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

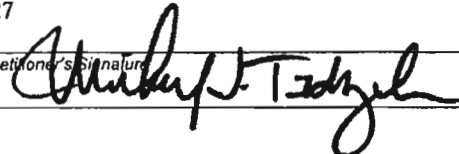
I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- Personal Delivery
- By Regular Mail, US postage prepaid, addressed as follows:
- | | | | |
|---|---|---|--|
| Joseph P. Dugdale
Chief Deputy General Counsel
Dept. of Pub. Safety/ State Patrol
512 N. Salisbury St.
Raleigh, NC 27699-4231 | Earl Phipps
Police Chief
Pinehurst Police Dept.
420 Magnolia Road
Pinehurst, NC 28374 | Tim Wenzel
Police Chief
Aberdeen Police Dept.
804 N. Sandhills Blvd.
Aberdeen, NC 28315 | Sheriff Neil Godfrey
Moore County Sheriff's Office
P.O. Box 40
Carthage, NC 28327 |
|---|---|---|--|

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- Personal Delivery
- By Regular Mail, US postage prepaid, addressed as follows:
- Maureen Krueger
Moore County District Attorney
Post Office Box 429
Carthage, NC 28327

Date 13 Aug 2018 Petitioner's Signature 

7

NASH County

FILED

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

ORDER ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner

Capitol Broadcasting, Inc. d/b/a WRAL-TV, et al.* (see attached)

Address

c/o Stevens Martin Vaughn & Tadych, PLLC
Attn: Michael J. Tadych
1101 Haynes Street, Suite 100

City, State, Zip

Raleigh, NC 27604

2019 MAR - 7

NASH CO., C.S.C.

BY DPB

G.S. 132-1.4A(f) – Person authorized to receive disclosure

G.S. 132-1.4A(g) – General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

- On 25 February 2019 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to Capitol Broadcasting, Inc. d/b/a WRAL-TV and additional petitioners on attached list.
- Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency and the District Attorney.
- The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
- Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.

5. The Court conducted an in-camera review of the recording on 27 February 2019 (date).

6. The recording was made was made in some portion was not made in this county.

7. Request made pursuant to G.S. 132-1.4A(f)

The Court determined that the person to whom release of the recording is sought is the following:

(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)

- A person whose image or voice is in the recording.
- A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
- A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
- A personal representative of a deceased person whose image or voice is in the recording.
- A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
- None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

(Over)

- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

8. Request made pursuant to G.S. 132-1.4A(g)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

CONCLUSIONS OF LAW

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- The Court concludes that Nash County Sheriff's Office + NC SBI is authorized to the release of the recording.
- The Court concludes that _____ is not authorized to the release of the recording.

ORDER

It is therefore Ordered that (check one)

Petition Granted:

The custodial law enforcement agency shall release to Petitioners the following portions of the recording: (list, and indicate if all portions are to be released) All

The court places the following conditions/restrictions on the release of the recording: The recordings shall not be released to petitioners until the family and counsel has reviewed the recordings which review shall take place within five (5) days of this order

Petition Denied:

The custodial law enforcement agency shall not release any portion of the recording to _____

SIGNATURE OF SUPERIOR COURT JUDGE

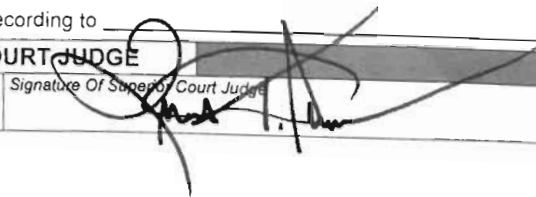
Date

7 March 2019

Name Of Superior Court Judge (type or print)

Quentin T. Summer

Signature Of Superior Court Judge



8

STATE OF NORTH CAROLINA

20 CVS 3383

Durham County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY: ~~FILED~~

ORDER ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING

Name Of Petitioner
Queen Mosley

Address
c/o attorney L. Allyn Sharp
P.O. Box 3640

City, State, Zip
Durham, NC 27702

JAN 25 2021
2:46
BY [Signature]

- G.S. 132-1.4A(f) – Person authorized to receive disclosure
- G.S. 132-1.4A(g) – General

This matter came before the undersigned Superior Court Judge to determine whether release of a law enforcement agency recording is warranted under Chapter 132 of the General Statutes. Following a hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On October 29, 2020 (date), the petitioner named above filed a petition for release of a custodial law enforcement agency recording to attorney L. Allyn Sharp.
2. Petitioner served did not serve a copy of the the petition on the head of the custodial law enforcement agency ~~and the District Attorney.~~
3. The head of the custodial law enforcement agency did did not give notice of the petition and hearing to all law enforcement agency personnel whose image or voice is in the recording and also to the head of each such person's employing agency.
4. Each person entitled to be notified of this proceeding was was not given an opportunity to be heard, either individually or by such person's designated representative.
5. The Court conducted an in-camera review of the recording on Jan. 25, 2021 (date).
6. The recording was made was made in some portion was not made in this county.
7. **Request made pursuant to G.S. 132-1.4A(f)**
The Court determined that the person to whom release of the recording is sought is the following:
(NOTE TO JUDGE: "Personal representative" is defined as "A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased." G.S. 132-1.4A(a)(5).)
 - A person whose image or voice is in the recording.
 - A personal representative of an adult person whose image or voice is in the recording and the adult person has consented to the disclosure.
 - A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.
 - A personal representative of a deceased person whose image or voice is in the recording.
 - A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.
 - None of the above.

and

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.

- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

8. Request made pursuant to G.S. 132-1.4A(g)

The Court considered the applicability of all of the standards in G.S. 132-1.4A(g) and determined the following:

- Release is necessary to advance a compelling public interest.
- The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- Release would reveal information regarding a person that is of a highly sensitive personal nature.
- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.
- Other (if applicable): _____

CONCLUSIONS OF LAW

In light of the foregoing findings of fact, (check one and write name of party authorized or not authorized to release of the recording)

- The Court concludes that Sheriff Clarence F. Birkhead is authorized to the release of the recording.
- The Court concludes that _____ is not authorized to the release of the recording.

ORDER

It is therefore Ordered that (check one)

Petition Granted:

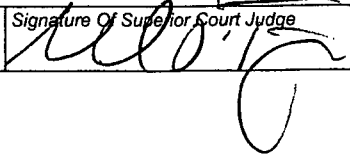
The custodial law enforcement agency shall release to attorney L. Allyn Sharp the following portions of the recording: (list, and indicate if all portions are to be released) all portions of any and all recordings of the incident involving and between Petitioner Queen Mosley and Durham County Sheriff's Detention Officers at the Durham County Detention Facility on or about September 16, 2020.

The court places the following conditions/restrictions on the release of the recording: _____

Petition Denied:

The custodial law enforcement agency shall not release any portion of the recording to _____

SIGNATURE OF SUPERIOR COURT JUDGE

Date <u>1/25/2021</u>	Name Of Superior Court Judge (type or print) <u>MICHAEL D'FOGLUONA</u>	Signature Of Superior Court Judge 
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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 20 CVS 2779

FILED

2020 JUL 31 A 11: 54

IN THE MATTER OF:

FORSYTH CO., N.C.S.C.

BY *Melvinia Welch*

CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING SOUGHT BY:

THE NEWS & OBSERVER PUBLISHING CO.,
d/b/a "THE NEWS & OBSERVER"; CAPITAL
BROADCASTING COMPANY, INC., d/b/a
"WRAL-TV"; WTVD TELEVISION LLC, d/b/a
"ABC 11"; HEARST PROPERTIES INC., d/b/a
"WXII-TV"; GRAY MEDIA GROUP, INC.,
d/b/a "WBTB"; WUNC PUBLIC RADIO LLC,
d/b/a "WUNC-FM"; CAROLINA PUBLIC PRESS;
LEE ENTERPRISES d/b/a "THE WINSTON-
SALEM JOURNAL" and "THE NEWS & RECORD";
THE NEW YORK TIMES COMPANY; and
THE ASSOCIATED PRESS,

ORDER

Petitioners.

This matter came before the undersigned on July 29, 2020 upon Petitioners' Petition for Release of Custodial Law Enforcement Agency Recordings pursuant to N.C.G.S. §132-1.4A(g). Based upon a review of the court file, consideration of oral and written arguments tendered, and applicable law, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On June 17, 2020, Petitioner The News & Observer Publishing Co. filed a Petition for Release of Custodial Law Enforcement Agency Recordings. The Petition sought release of any recordings in the custody of the Forsyth County Sheriff's Office and the North Carolina State Bureau of Investigation concerning events surrounding the death of Mr. John Neville on or about December 2, 2019. Mr. Neville was, at the time, being held in custody of the Forsyth County Detention Center;
2. Petitioner thereafter filed an Amended Petition on July 23, 2020, for the purpose of adding the additional Petitioners named above;
3. Petitioners served copies of the Petition on the Forsyth County Sheriff and the District Attorney;

4. The head of the custodial law enforcement agency gave notice of the Petition and hearing to all law enforcement personnel whose image or voice is depicted in the recording;
5. The Court conducted an *in camera* review of all recordings received pursuant to an Order entered on June 30, 2020. Specifically, the Court received and reviewed a single thumb drive containing multiple recordings from the NC SBI. Further, the Court received and reviewed two separate thumb drives each containing multiple recordings from the Forsyth County Sheriff's Office legal counsel. Having fully reviewed the submissions from both agencies, the Court finds the separate submissions contained the same video footage;
6. All recordings were made in Forsyth County and specifically within the Forsyth County Detention Center;
7. Mr. John Neville was arrested by the Kernersville Police Department on December 1, 2019 on an outstanding warrant from Guilford County. While being held at the Forsyth County Detention Center, Mr. Neville suffered an unknown medical condition on December 2, 2019 that caused him to fall from a top bunk and onto the concrete cell floor. Detention officers and a nurse responded to the cell and interacted with Mr. Neville. Mr. Neville was then moved to an observation cell by jail personnel. Eventually emergency medical assistance was called to the Detention Center to render medical assistance to Mr. Neville. He was transported to the hospital and passed away on December 4, 2019;
8. On July 8, 2020, District Attorney Jim O'Neill announced that five detention officers and a nurse had been charged with Involuntary Manslaughter related to death of Mr. Neville. All defendants have received notice of the present Petition and hearing;
9. All defendants were given an opportunity to be heard, by and through counsel, at the present hearing. In addition, the Court heard from the District Attorney, legal counsel for Sheriff Kimbrough, and from Sheriff Kimbrough himself. In the exercise of its discretion, the Court also heard from Michael Grace, Esquire on behalf of the family and the estate;
10. The District Attorney objects to release of the recordings at this time citing concerns that any release at this stage would create a serious threat to the fair, impartial and orderly administration of justice (N.C.G.S. §132-1.4A(g)(6)). The District Attorney appropriately cites Rule 3.8 of the Rules of Professional Conduct regarding the special responsibility of prosecutors in seeking justice. He also contends that while charges have now been filed, that the investigation is necessarily ongoing until final disposition of each criminal case (N.C.G.S. §132-1.4A(g)(7));
11. Defense counsel are united in their objection to release of the recordings at this time also citing factor (g)(6) and specifically contending that any pretrial release would substantially impair the defendants' ability to receive a fair trial in the pending criminal charges. Also, multiple counsel contend that the criminal charges are only weeks old

- and the defense is just now beginning to investigate the allegations and prepare their defenses. Finally, two counsel cite client safety concerns if the recordings are released;
12. Mr. Neville's family initially opposed release of the recordings and requested that Sheriff Kimbrough not release the recording or other information regarding their Father's death. However, the family, by and through counsel, now joins the Petitioners in requesting that the recordings be released to the public;
 13. Sheriff Kimbrough defers to the family's wishes regarding release of the recordings;
 14. The Court has carefully considered and balanced the applicability of all the N.C.G.S. § 132-1.4A(g) standards.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter;
2. The Petitioners have standing to seek release under N.C.G.S. §132-1.4A(g);
3. In applying the balancing test set forth in N.C.G.S. §132-1.4A(g), the Court concludes as follows:
 - a. All parties acknowledge, and the Court concludes, that there is a compelling public interest in this case. This public interest is only furthered by the fact that the death was not publicly reported for at least six months after it occurred (see exhibits attached to Petitioners' brief). Certainly, there was an SBI investigation initiated on or about December 5, 2019 at Sheriff Kimbrough's request. The results of that investigation together with the autopsy have now resulted in the present criminal charges. And while the Court acknowledges that the decision to not publicly report the death was made by Sheriff Kimbrough at the request of the grieving family, this extended delay in reporting only deepens the compelling public interest in a death allegedly caused by the actions of Forsyth County detention officers or personnel. These alleged actions, occurring while Mr. Neville was in custody, relate to a matter of significant local, state and national public interest and the release of the recording is necessary to advance a compelling public interest. This factor weighs heavily in favor of release of the recordings;
 - b. The recordings do not contain information that is otherwise confidential or exempt from disclosure or release under State or Federal law. This is a neutral factor;
 - c. Petitioners are not seeking release of the recordings in order to obtain evidence to determine legal issues in a current or potential court proceeding. This factor is, therefore, neutral;
 - d. There are portions of the video where Mr. Neville is receiving emergency medical care and some of those depictions are of a highly sensitive personal nature. However, the Court can redact those portions to alleviate this concern. Accordingly, this factor weighs in favor of release of the recordings;

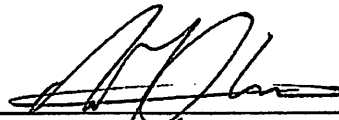
- e. There were generalized concerns raised about possible safety issues to the Defendants if the recordings were released. Any safety issues would also have been present at the time the charges were announced and the defendants publicly identified at the July 8, 2020 press conference and in the subsequent media coverage. The Court has considered this standard and finds that it weighs in favor of not releasing the recordings;
 - f. Release of the recordings would not create a serious threat to the fair, impartial and orderly administration of justice. The Court has carefully weighed this factor and the arguments made by counsel. The Court concludes that by utilizing tools such as juror questionnaires, extensive jury *voir dire* as well other statutory and discretionary alternatives available to include appropriate limiting instructions and admonishments, the trial court can ensure a fair and impartial jury panel. This factor is, therefore, neutral;
 - g. Confidentiality is not necessary to protect an active criminal investigation. Having reviewed the SBI investigative report and the autopsy, the District Attorney has initiated and publicly announced charges. This factor weighs in favor of release of the recordings;
 - h. There is good cause shown to release the recordings or some portion thereof as noted in paragraph (a) above. This factor weighs in favor of release of the recordings;
 - i. The Court has also considered, and deems relevant, the family's request that the video be released.
4. Having considered the standards specifically required or otherwise permitted to be considered by the Court pursuant to N.C.G.S. §132-1.4A(g), the Court concludes that the recordings sought by Petitioners should be released in part;
 5. As stated above, the Court has reviewed multiple video recordings. It appears to the Court that the recordings were made by a combination of body-worn cameras, at least one hand-held video camera, and fixed dormitory cameras. The Court will order release of two videos with limited redactions as determined in the Court's discretion (see subparagraph (d) above). The remaining videos capture the same events but at different angles depending upon the individual camera location. In the exercise of the Court's discretion, these additional videos will not be released pursuant to the present Petition;
 6. The videos ordered released are as follows: (As identified on the Forsyth County Sheriff's Department storage device)
 - a. "Woodley" MP4 File – From time mark 0:00 to 19:55 only.
 - b. "Crosby EQV" MTS File – From time mark 0:00 to 25:40 only.
 7. Petitioners are required to blur any image of buttocks or genital area. Further, an unidentified inmate is briefly shown seated in a chair in an adjoining room on the Woodley tape at approximately 19:02. This person's face is to be blurred as well to protect his identity.

IT IS, THEREFORE, ORDERED, as follows:

1. Petitioners' request for release of video recordings of the December 2, 2019 incident is granted in part;
2. The Forsyth County Sheriff's Office, the custodian of the recordings sought by Petitioners, shall release to Petitioners, by and through counsel Michael Tadych, the video recordings as specified and limited in paragraph 6(a) and (b) above (namely, "Woodley" MP4 File – From time mark 0:00 to 19:55 only and "Crosby EQV" MTS File – From time mark 0:00 to 25:40 only). This release shall occur on Wednesday, August 5, 2020 by 12:00 PM;
3. The Petition as to all other video recordings as contained on the thumb drives submitted to the Court for *in camera* review is denied. The single thumb drive received from the NC SBI and the two thumb drives received from the Forsyth County Sheriff's Office are hereby placed under seal by order of the Court. The items shall remain under seal pending further order by a Superior Court Judge or the North Carolina Appellate Courts;
4. The Forsyth County Sheriff's Office counsel and Petitioners' counsel are directed to confer to make sure that any technical issues regarding format, transfer or any unspecified technical issues are resolved prior to release;
5. Petitioners are ordered to make the privacy adjustments as described in Conclusion #7 above prior to any public release.

IT IS SO ORDERED.

This the 31st day of July, 2020.



R. Gregory Horne
Superior Court Judge Presiding

10

Robinson v. City of Huntsville, Not Reported in Fed. Supp. (2021)



KeyCite Yellow Flag - Negative Treatment

Distinguished by [Pettaway v. Barber](#), M.D.Ala., December 9, 2022

2021 WL 5053276

Only the Westlaw citation is currently available.

United States District Court, N.D.
Alabama, Northeastern Division.

Brandie ROBINSON, as personal representative of
the estate of Crystal Ragland, deceased, Plaintiff,

v.

CITY OF HUNTSVILLE, et al., Defendants.

Civil Action Number 5:21-cv-00704-AKK

Signed 11/01/2021

Attorneys and Law Firms

[Martin E. Weinberg](#), Martin Weinberg, PC, Shannon, AL,
[Richard Allan Rice](#), The Rice Law Firm LLC, Birmingham,
AL, for Plaintiff.

[C. Gregory Burgess](#), [Lauren A. Smith](#), Stephanie Margaret
Gushlaw, Lanier Ford Shaver & Payne, P.C., Huntsville, AL,
for Defendant City of Huntsville.

[C Gregory Burgess](#), Lanier Ford Shaver & Payne, P.C.,
Huntsville, AL, for Defendants Officer Brett Collum, Officer
Jonathan Henderson.

MEMORANDUM OPINION AND ORDER

ABDUL K. KALLON, UNITED STATES DISTRICT
JUDGE

*1 This case arose from Crystal Ragland's death at the hands of Huntsville police officers. Ragland, an Army veteran suffering from PTSD, was killed by officers who were responding to reports that Ragland had a gun and was pointing it at her neighbors. Doc. 48 at 4-7. Though the court dismissed plaintiff Brandie Robinson's lawsuit, *see id.* at 13-14, public interest in the shooting remains understandably high. Now before the court is AL.com's request for public access to bodycam footage filed in support of the defendants' motion

to dismiss.¹ For the reasons stated below, the request is due to be granted.

A.

In the early stages of this case, the parties jointly proposed a consent protective order which would permit the parties to designate materials as confidential prior to production. Doc. 7. The proposed order stipulated that “no materials designated as confidential shall be disclosed ... to the media or otherwise published or disseminated,” but provided that the parties could file a motion objecting to any confidentiality designation to bring the matter before the court. *Id.* at 5-6. The proposed order also allowed for its terms to be modified or limited “either by written agreement of the parties or by motion of any party for good cause shown.” *Id.* at 8. The court adopted the parties' proposed order verbatim. Doc. 8.

Relying on this protective order, the defendants then moved for leave to file evidence – specifically, bodycam footage from the defendant officers who shot Ragland and a compilation of screenshots from the videos – under seal in support of their motion to dismiss. *See docs.* 28, 32. Robinson, the personal representative of Ragland's estate, objected:

I understand that [unsealing the case] would allow evidence surrounding this death to be consumed by the public. I understand that some of this evidence including videos, audio, [and] written reports are extremely sensitive and graphic. However, I have weighed those concerns and believe it is clearly in the best interest of my family and the public interest for this case to be unsealed. We believe unsealing this case will ensure transparency and accountability in the pursuit of justice.

Docs. 29, 29-1. In light of the then-pending motion to dismiss, the court temporarily granted the defendants' motion to file under seal, but promised to “revisit the issue after ruling on the motion to dismiss.” Doc. 35. That time has now come.

Robinson v. City of Huntsville, Not Reported in Fed. Supp. (2021)

B.

*2 The defendants urge the court to maintain the confidentiality of the officers' bodycam footage despite AL.com's request.² In support, they cite both the protective order itself and [Alabama Code § 12-21-3.1\(b\)](#), which maintains that law enforcement investigative materials, including bodycam footage, "are not public records" and "are privileged communications protected from disclosure." Exhibit 2. The court treats Robinson's previous objection, doc. 29, as a motion objecting to the confidentiality designation, and Robinson has responded in support of AL.com's request, *see* doc. 50. Therefore, the issue of unsealing the footage is now properly before the court under the explicit terms of the protective order. *See* doc. 8 at 2.³ And because the bodycam videos were filed in support of a substantive motion that required judicial resolution on the merits, and are therefore judicial records, this court is bound by the federal common law – not Alabama state law – in determining whether disclosure is proper. *See Comm'r, Alabama Dep't of Corr. v. Advance Loc. Media, LLC*, 918 F.3d 1161, 1167 (11th Cir. 2019).

1.

"The common-law right of access to judicial proceedings, an essential component of our system of justice, is instrumental in securing the integrity of the process." *Chicago Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001). Accordingly, the media and public have a presumptive right to access judicial records. *Id.* This right is not absolute, and when deciding whether to withhold a judicial record from the public, the court must balance the competing interests of the parties to determine whether there is good cause to deny public access. *F.T.C. v. AbbVie Prod. LLC*, 713 F.3d 54, 62 (11th Cir. 2013). Among the relevant factors in this analysis are "whether the records are sought for such illegitimate purposes as to promote public scandal or gain unfair commercial advantage, whether access is likely to promote public understanding of historically significant events, and whether the press has already been permitted substantial access to the contents of the records." *Newman v. Graddick*, 696 F.2d 796, 803 (11th Cir. 1983)

(citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598, 602-03, n.11 (1978)). In addition to these factors, "a judge's exercise of discretion in deciding whether to release judicial records should be informed by a sensitive appreciation of the circumstances that led to the production of the particular [record] in question." *Chicago Tribune*, 263 F.3d at 1311 (citing *Nixon*, 435 U.S. at 598, 602-03).

2.

In their initial motion to file under seal, the defendants argued only that the bodycam footage contained "confidential and sensitive information that should not be shared with the general public." Doc. 28 at 2. The defendants now argue also that the "identities of the officers involved in this case—names and faces—are readily discernable from the [bodycam] videos," and that to "law enforcement officers routinely involved in police-citizen encounters and investigative assignments requiring anonymity and surprise, minimizing the public disclosure of officer identities is significant to job performance and personal safety." Exhibit 3. Thus, the defendants contend, "the release of these videos as proposed by AL.com could compromise the safety of the defendant officers and foreclose them from serving (or continuing to serve) in any undercover capacity now or in the future." *Id.*

In response, Robinson notes that the public already has considerable access to the contents of the bodycam footage via the court's memorandum opinion, including the identities of the officers, and that the "City of Huntsville has concluded its internal investigation and there are no other ongoing investigations into the matter at this time that would outweigh the public's need to have access to the contents of the videos." Doc. 50 at 4-7. Robinson also references multiple examples of recent police misconduct in Huntsville and argues that "[g]iven the ongoing disputes regarding the matter of policing as it relates to mentally disabled in the City of Huntsville, the public has a right to be informed as to important matters of public concern." *Id.* at 10.

3.

Robinson v. City of Huntsville, Not Reported in Fed. Supp. (2021)

*3 Analysis of these legal arguments would not be complete without acknowledging their broader societal context. Crystal Ragland's killing, and this subsequent lawsuit and request for records, comes during a time of important reckoning in our country. To state the obvious, alleged systemic issues in policing are at the forefront of the public consciousness, sparked by countless instances of excessive force by police officers in recent years.⁴ Particularly relevant to this case, African Americans and those experiencing mental health crises are victims of police violence at disproportionately high rates.⁵ Because of this violence, community members, both nationally and here in Alabama, have organized to demand transparency and accountability in how law enforcement officers police their communities.⁶ Such transparency is crucial to maintaining trust in our criminal justice system and in our democratic society as a whole, especially because police use-of-force incidents are historically underreported or miscategorized by police departments.⁷ And because of the many doctrinal barriers that plaintiffs face in pursuing judicial remedies for alleged police misconduct,⁸ public access to videos like those at issue here, even where there is no constitutional violation, is imperative to foster dialogue about whether structural reforms in policing are needed.

4.

The *Newman* factors weigh in favor of disclosure. To begin, AL.com does not seek the bodycam footage for an illegitimate purpose, but instead requests access for the precise goal of “promot[ing] public understanding of historically significant events.” *Newman*, 696 F.2d at 803. As Ashley Remkus writes in her request, “[u]se of force has been of great public and political interest in Huntsville in 2021,” following the murder conviction of another police officer “for the shooting of a suicidal man.” Exhibit A. As to this case, Remkus states, “the public once again has a great interest in seeing the videos that show the operation of the city police department and what happened when officers Jonathan Henderson and Brett Collum encountered Crystal Ragland on May 30, 2019.” *Id.* And, as Remkus notes, “[i]n the more than two years since [Ragland's death], public tax dollars have funded the litigation resulting from the fatal encounter, yet the public has been mostly kept in the dark.” *Id.*

*4 The court agrees that releasing the bodycam footage will allow the public to gain a better understanding of the officers’ conduct, which is especially significant given the broader context in both Huntsville and the country at large. Moreover, since the court's memorandum opinion already discussed the events surrounding the shooting in detail, “the press has already been permitted substantial access to the contents of the records.” *Newman*, 696 F.2d at 803. Indeed, local news coverage has already quoted portions of this retelling,⁹ and the release of the footage itself thus does not implicate privacy concerns that weigh significantly against disclosure.

In sum, based on a sensitive appreciation of the circumstances and a balancing of the parties’ interests, there is no good cause to deny public access to the bodycam footage in this case. See *AbbVie*, 713 F.3d at 62; *Chicago Tribune*, 263 F.3d at 1311. Therefore, because all three *Newman* factors weigh in favor of public access and such access is vital in an open democratic society – including for the scrutiny of judicial decisions dismissing cases alleging excessive force – AL.com's request is due to be granted.

5.

The defendants request alternatively that the court orders redaction of the defendant officers’ identities because “the widespread dissemination and publication of their names, faces, voices, and other identifying characteristics over the internet ... [is] a much larger and very specific threat to officer safety and privacy.” Exhibit 3. The defendant officers were public officials acting under the authority of the City of Huntsville, and the footage depicts the officers performing their duties in a public space in front of multiple witnesses. As such, the officers’ actions are rightfully the subject of public scrutiny, and their limited right to privacy in these actions does not override the public's right of access to the full contents of the footage. See *Toole v. City of Atlanta*, 798 F. App'x 381, 388 (11th Cir. 2019) (citing *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000)) (discussing diminished privacy expectations of police officers acting in their official capacity on matters of public concern).¹⁰, ¹¹ Therefore, because the officers are already named in the complaint and other court filings, and due to the importance of public access here, the court will decline the defendants’ request.

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C.

*5 Accordingly, the court's order temporarily granting the defendants' motion for leave to file evidence under seal, doc. 35, is **REVISED**, and the defendants are **ORDERED** to file exhibits A-C of their motion to dismiss, doc. 32, with the court by **November 5, 2021**, redacted only insofar as is necessary to remove identifying information of non-party individuals. The defendants are also **ORDERED** to produce these exhibits to Brandie Robinson and AL.com by the same date.

DONE the 1st day of November, 2021.

Exhibit 1

Oct. 26, 2021

Honorable Abdul K. Kallon
United States District Judge, Northern District of Alabama
Hugo L. Black United States Courthouse
1729 5th Ave. N.
Birmingham, Alabama 35203

Subject: Request for exhibits

DELIVERED VIA EMAIL

Dear Judge Kallon:

I am a reporter for the Alabama Media Group, which publishes AL.com, *The Huntsville Times*, *The Birmingham News* and the *Press Register* in Mobile. I am writing to you to request that the bodycam footage in *Robinson v. City of Huntsville*, be made public.

Use of force has been of great public and political interest in Huntsville in 2021, following the trial of another officer, William Ben Darby, who was convicted of murder this

summer for the shooting of a suicidal man. The mayor and chief have said that shooting was within policy.

In the Ragland case, the public once again has a great interest in seeing the videos that show the operation of the city police department and what happened when officers Jonathan Henderson and Brett Collum encountered Crystal Ragland on May 30, 2019.

In the more than two years since, public tax dollars have funded the litigation resulting from the fatal encounter, yet the public has been mostly kept in the dark.

Specifically, I am seeking copies of two body-worn camera videos that were identified as Exhibits A and B and described in detail in the memorandum opinion filed on Oct. 15, 2021.

Ms. Ragland's family supports making the videos available for public viewing. In an affidavit filed in this case on Aug. 19, 2021, Ms. Brandie Robinson, who is Ms. Ragland's sister and the representative of her estate, asked that the videos be unsealed. "We believe unsealing the case will ensure transparency and accountability in the pursuit of justice," Ms. Robinson said in the affidavit.

To mitigate any burden on the Court, I am willing to pay reasonable fees for copies, or to provide any necessary equipment, such as flash drives or disks.

Sincerely,

Ashley Remkus

/s/ Ashley Remkus

Investigative reporter
Alabama Media Group
200 West Side Square
Huntsville, Alabama 35802
aremkus@al.com

Exhibit 2

From: Greg Burgess
Sent: Tuesday, October 26, 2021 4:18 PM
To: ALNDdb_Kallon_Chambers
Cc:

Robinson v. City of Huntsville, Not Reported in Fed. Supp. (2021)

Subject: RE: Request for exhibits

CAUTION - EXTERNAL:

Dear Judge Kallon:

Thank you for your email. We appreciate the opportunity to respond before the Court rules on AL.com's request.

Defendants object to the release of the body-worn camera (“BWC”) videos that have been filed under seal in this case. Pursuant to [section 12-21-3.1\(b\) of the Alabama Code](#), the BWC videos are “not public records” and therefore “privileged” law enforcement investigative materials. *Id.* (“Law enforcement investigative reports and related investigative material **are not public records**. Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings **are privileged communications protected from disclosure.**”) (emphasis added); see also [Something Extra Publ'g, Inc. d/b/a Lagniappe Weekly v. Mack, No. 1190106, 2021 WL 4344346 \(Ala. Sept. 24, 2021\)](#) (reaffirming that [section 12-21-3.1\(b\)](#) exempts law enforcement investigative materials, including videos, from requests under Alabama Open Records Act). Furthermore, the BWC videos are subject to a consent protective order entered by this Court which designates them as “confidential” and expressly prohibits their disclosure to, among other third parties, the media. (Doc. 8, §§ 1, 5). Importantly, the filing of the BWC videos with the Court as evidence does not strip their confidentiality designation under the protective order. (See *id.* at § 7). Lastly, these protections survive the conclusion of this case. (*Id.* at § 10).

From: Greg Burgess
Sent: Wednesday, October 27, 2021 2:01 PM
To: ALNDdb_Kallon_Chambers
Cc:
Subject: RE: Request for exhibits

CAUTION - EXTERNAL:

Dear Judge Kallon:

*6 If the Court would like defendants to file a written objection beyond this email or address any particular issue, we will gladly do so.

C. Gregory Burgess

LANIER FORD

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Post Office Box 2087 | Huntsville, Alabama 35804-2087

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Exhibit 3

Please accept this supplement to defendants’ objection to the release of the BWC videos.

Beyond the reasons stated previously, there are other legitimate concerns with releasing the BWC videos to the

Robinson v. City of Huntsville, Not Reported in Fed. Supp. (2021)

media and, ultimately, the public. The identities of the officers involved in this case—names and faces—are readily discernable from the BWC videos. To law enforcement officers routinely involved in police-citizen encounters and investigative assignments requiring anonymity and surprise, minimizing the public disclosure of officer identities is significant to job performance and personal safety (including the safety of officer families). This is especially true where, as here, one of the police officer defendants now holds a position with the Department of Justice. In this role, the defendant officer locates and apprehends fugitives, an inherently dangerous endeavor which regularly requires him to serve in an undercover capacity. As a result, it is imperative that the BWC videos are not disclosed because such disclosure carries with it the very real danger of displaying the officers' names, faces, voices, and other identifying characteristics in a public, permanent, and uncontrolled forum. In other words, the release of these videos as proposed by AL.com could compromise the safety of the defendant officers and foreclose them from serving (or continuing to serve) in any undercover capacity now or in the future. Indeed, as this Court can imagine, it would take only a little determination, but not extraordinary skill, for someone with ill will toward these officers to then connect their identities with their personal residences, such as through a probate records search. That risk, albeit a difficult one to fully assess, is extremely troubling to my clients. Accordingly, for these additional reasons as well as the ones explained yesterday, we object to the release of the BWC videos as requested by AL.com. See [Bennett v. United States, No. 12-61499-CIV, 2013 WL 3821625, at *6 \(S.D. Fla. July 23, 2013\)](#) (relying on [Romero v. Drummond Co., 480 F.3d 1234, 1246 \(11th Cir. 2007\)](#) and rejecting request to unseal documents); see also generally [Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 \(11th Cir. 2001\)](#) (“[A] judge’s exercise of discretion in deciding whether to release judicial records should be informed by a ‘sensitive appreciation of the circumstances that led to ... [the] production [of the particular document in question].’ ”) (quoting [Nixon v. Warner Comm’ns, Inc., 435 U.S. 589, 603 \(1978\)](#)).

*7 To the extent the Court is inclined to overrule our objections, we would respectfully request that the names and faces of the defendant officers depicted in the BWC videos be fully redacted. In this event, we would be willing to pay the reasonable cost of such redaction or handle that task internally. We recognize that the names of the officers have already been disclosed through certain public filings accessible through Pacer. Nonetheless, we view the widespread dissemination and publication of their names, faces, voices, and other identifying characteristics over the Internet—which will occur when AL.com runs its story with the BWC videos and from there that information will inevitably be shared extensively via social media platforms and so on—as a much larger and very specific threat to officer safety and privacy.

C. Gregory Burgess

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All Citations

Not Reported in Fed. Supp., 2021 WL 5053276

Footnotes

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- 1 See Letter from Ashley Remkus, Investigative Reporter, Alabama Media Grp., to the undersigned (Oct. 26, 2021), which is attached herein as Exhibit 1.
- 2 See E-mails from Greg Burgess, Att'y for Defendants, to the undersigned (Oct. 26, 2021, 16:18 CDT; Oct. 27, 2021, 14:00 CDT), attached herein as Exhibits 2 and 3.
- 3 See also *F.T.C. v. AbbVie Prod. LLC*, 713 F.3d 54, 61 (11th Cir. 2013) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978)) ("District courts are in a superior position to decide whether to enter or modify protective orders, and it is well established that 'the decision as to access is one best left to the sound discretion of the trial court.'").
- 4 See Cheryl W. Thompson, *Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns*, NPR (Jan. 25, 2021), <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>; Nicole Dungca et al., *A dozen high-profile fatal encounters that have galvanized protests nationwide*, Washington Post (June 8, 2020), https://www.washingtonpost.com/investigations/a-dozen-high-profile-fatal-encounters-that-have-galvanized-protests-nationwide/2020/06/08/4fdbfc9c-a72f-11ea-b473-04905b1af82b_story.html.
- 5 See *Police Shootings Database*, Washington Post (Oct. 26, 2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database>; *2020 Police Violence Report*, Mapping Police Violence (2020), <https://policeviolencereport.org>.
- 6 See Elliott C. McLaughlin, *How George Floyd's death ignited a racial reckoning that shows no signs of slowing down*, CNN (Aug. 9, 2020), <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>; Ashley Remkus, *Rubber bullets, tear gas, pepper spray: What happened in Huntsville through the eyes of protesters*, AL.com (June 8, 2020), <https://www.al.com/news/2020/06/rubber-bullets-tear-gas-pepper-spray-what-happened-in-huntsville-through-the-eyes-of-protesters.html>.
- 7 See Tim Arango & Shaila Dewan, *More Than Half of Police Killings Are Mislabeled, New Study Says*, New York Times (Sept. 30, 2021), <https://www.nytimes.com/2021/09/30/us/police-killings-undercounted-study.html>; Rob Barry & Coulter Jones, *Hundreds of Police Killings Are Uncounted in Federal Stats*, Wall Street Journal (Dec. 3, 2014), <https://www.wsj.com/articles/hundreds-of-police-killings-are-uncounted-in-federal-statistics-1417577504>.
- 8 See generally Sunita Patel, *Jumping Hurdles to Sue the Police*, 104 Minn. L. Rev. 2257 (2020).
- 9 See Ashley Remkus, *Judge dismisses lawsuit against Huntsville officers who shot and killed Crystal Ragland*, AL.com (Oct. 19, 2021), <https://www.al.com/news/2021/10/judge-dismisses-lawsuit-against-huntsville-officers-who-shot-and-killed-crystal-ragland.html> (quoting the court's memorandum opinion); *Judge dismisses lawsuit against Huntsville Police officers who killed Army veteran Crystal Ragland*, WHNT (Oct. 19, 2021), <https://whnt.com/news/judge-dismisses-lawsuit-against-huntsville-police-officers-who-killed-army-veteran-crystal-ragland> (same).
- 10 See also *Perez v. City of Fresno*, 482 F. Supp. 3d 1037, 1048-49 (E.D. Cal. 2020) (citing *In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417, 425 (9th Cir. 2011)) (denying request to blur non-party ambulance employees' faces in wrongful death lawsuit where (1) disclosure of bodycam footage was proper under a common law analysis and (2) the non-party employees were acting in a public capacity alongside the defendant police officers); *Sampson v. City of El Centro*, 2015 WL 11658713, at *7 (S.D. Cal. Aug. 31,

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2015) (permitting release of bodycam footage, despite privacy interests weighing against disclosure, where non-parties' identities were redacted from the relevant videos and photographs).

- 11 The Alabama Supreme Court, albeit it in a different context, has similarly held that “the right to privacy does not prohibit the broadcast of matter that is of legitimate public or general interest, [and] [t]his concept is based upon the rationale that a right of action for invasion of privacy must give way to the interest of the public in being informed.” *McCaig v. Talladega Pub. Co.*, 544 So. 2d 875, 879–80 (Ala. 1989) (internal citations omitted). And, as the Court put it in another case, “the white light of publicity safeguards the public[,] and free disclosure of truth is the best protection against tyranny.” *Smith v. Doss*, 37 So. 2d 118, 120 (Ala. 1948).

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11

Reign of Terror in Raleigh

For years, people were wrongfully arrested on drug charges. Now, they're demanding answers

By SEAN CAMPBELL

THE AFTERNOON of May 21, 2020, Yolanda Irving was relaxing in her bedroom in East Raleigh, North Carolina. The city was in the throes of the Covid-19 pandemic, so her three kids milled around the apartment. Irving's teenage daughter, Cydneea, was in her room across the hall, and her 20-year-old son, Juwan, was in his wheelchair playing video games. Outside, Irving's youngest, Jalen, then 12, sat on the stoop with three teenage neighbors.

Suddenly, more than a dozen officers from the Raleigh Police Department's Vice and Selective Enforcement Unit (SEU, the department's version of SWAT) ran at the boys with riot shields and assault rifles, according to interviews and multiple lawsuits against the city of Raleigh. Thinking they were about to be shot, the boys ran inside for safety. Jalen darted into his mother's apartment with his 16-year-old neighbor Ziyel. Jalen screamed, "SWAT! SWAT! Please don't shoot! Please don't shoot!"

As a few officers burst through Irving's door, other agents pursued the two other boys, 15-year-old Ziquis and 18-year-old Dyamond, into the apartment of neighbor Kenya Walton. There, they held Ziquis, Walton's pregnant 20-year-old daughter, and her autistic 15-year-old son at rifle point. They did the same thing in Irving's apartment, even screaming at the wheelchair-bound Juwan to get on the floor.

"I kept trying to tell them that my son is handicapped, please don't shoot," Irving says. The officers didn't relent until Juwan pulled up his pants to reveal

SEAN CAMPBELL is an investigative journalist focusing on social justice. This story was produced in partnership with the Garrison Project, an independent, nonpartisan organization addressing the crisis of mass incarceration and policing.

the brace on his leg, showing them that it was impossible for him to comply. Down the hall, Irving's daughter pleaded with the officers not to shoot their dog.

Walton, who was out picking up groceries for dinner, got a call from a friend that her apartment was under siege. When she arrived back home, an officer approached her with his gun drawn. He escorted her through the back door of her home.

Confused, Walton asked her kids, "What did y'all do?" She turned to the officers and repeatedly asked, "What did they do?"

The officers searched the apartments for an hour and a half for heroin. They found nothing. Kenya Walton and Yolanda Irving are drivers for special-needs children. They aren't heroin dealers. They've never even seen the drug.

Afterward, Omar Abdullah, the lead detective on the raid, briefly spoke with Irving and handed her the search warrant for her home. When Irving saw the photo for the residence attached to Abdullah's warrant, she knew immediately: He had the wrong address. And Abdullah didn't have a warrant at all for Walton's home.

As Irving screamed curses at Abdullah for tearing up the wrong home, he simply turned and walked away. The RPD didn't help her or Walton clean up, and the women say they have yet to receive an apology for the invasion.

The Vice and SEU raid was in fact meant for a man named Marcus Vanirvin, who lived a few hundred feet away in Irving's apartment complex. As their homes were searched, the women saw police arrest him for heroin trafficking when he took out the trash. Then the cops searched his home but found no drugs. The Vanirvin arrest was supposedly based on controlled buys – undercover operations in which a confidential informant is sent to purchase heroin to form the

basis for drug arrests – over the two prior months, incident reports show. Vanirvin denied ever selling – or even using – heroin, and after spending more than two weeks in jail, the charges were dropped.

OMAR ABDULLAH was once considered RPD's finest. He joined the department in 2009 and was named RPD Employee of the Year for 2012. In 2017, Abdullah was in his early forties when he was promoted to detective in one of the department's Drug and Vice units. Once a detective, lawsuits allege, he terrorized the Black community in Raleigh through a series of narcotics arrests built on lies and fabricated evidence, with the help of an equally unreliable confidential informant. Nearly two dozen people are known to have been swept up in these arrests. All of his alleged victims were Black.

At least six men have had their convictions vacated after pleading guilty to drug charges in cases brought by Abdullah, and three federal civil rights lawsuits – including one stemming from the Irving and Walton raids – have been filed related to his police work.

Attorneys for one of Abdullah's alleged victims estimate in a lawsuit that from Aug. 16, 2018, through May 21, 2020 – when Abdullah was suspended following the raid on the Irving and Walton homes – the officer and an informant "conspired to make at least 29 separate controlled buys, most if not all of which involved fake drugs or real narcotics that were planted on the alleged sellers." The attorneys say that about half of these controlled buys resulted in cases that were dismissed because fake heroin was planted on people. In the case of the Irving raid, the "heroin" that was used to secure the warrant was likely brown sugar.

"It's not just Abdullah who's doing this, but there is evidence that a number of other officers either did



NIGHTMARE IN THEIR OWN HOMES

Kenya Walton (left) and Yolanda Irving stand in front of the doors of their former apartments, where Raleigh cops raided their homes while executing a search warrant at the wrong address.

it or knew it was being done and did nothing about it,” says prominent North Carolina civil rights attorney Bradley Bannon, who is not involved in the Raleigh lawsuits. “When there’s no consequence for something, the only thing you’re left with is just individual personal moral codes or consciences, and that’s never been relied upon by any society I’m aware of to regulate conduct.”

Specialized police units focused on narcotics and violent crime have been a fixture of modern policing since at least the 1980s, and have been notorious for violating people’s constitutional rights. In Atlanta, the Red Dog Unit (an acronym for Run Every Drug Dealer Out of Georgia), formed around 1988, was known for violence – including the killing of a 92-year-old woman during a botched drug raid in 2006 – before it was retired in 2011 and later rebranded as Titan. In Baltimore, the notorious Gun Trace Task Force ran the streets until a series of indictments ranging from robbery to drug dealing brought down the unit in 2017, and pulled the Baltimore Police Department into a federally mandated overhaul due to its civil rights abuses. (This miscon-

duct is the subject of two books as well as an HBO limited series from David Simon.) Last fall, an internal probe of a “crime suppression team” in the Washington, D.C., police force led to prosecutors dropping charges in 65 gun cases. And in January this year, five police officers in Memphis’ Scorpion Unit were charged with murder for beating Tyre Nichols, a 29-year-old Black man, to death after a traffic stop. The furor over Nichols’ death prompted the Justice Department to launch an investigation into specialized units nationwide in March.

In Raleigh, lawsuits claim that multiple residences have been breached on faulty or fabricated evidence with no-knock or quick-knock warrants obtained in search of narcotics and executed with the aid of the SEU’s paramilitary officers – the same kinds of raids that led to the deaths of Amir Locke in Minneapolis last year and Breonna Taylor in Louisville in 2020. And since 2013, at least 12 people have been killed by RPD officers, all but one of them a person of color. In mid-January, a Black man was tased to death by Raleigh cops in a parking lot after police initiated a search because they thought he might have drugs.

(The six officers were placed on administrative leave. Investigations by the police department and North Carolina State Bureau of Investigation are ongoing.)

ASIDE FROM Abdullah, the other constant in each of the dismissed cases is his confidential informant, Dennis Williams, who was unhouse in 2018 and desperate for cash.

That summer, Williams was arrested by Abdullah and another RPD officer for passing off aspirin as cocaine to a confidential informant. Despite having a lengthy and violent criminal history, Williams, then 24, was recruited to be an informant himself and paid for his services. The officers nicknamed Williams “Aspirin” and set him to work scouring the city for heroin peddlers virtually unchecked, according to lawsuits.

On Feb. 28, 2020, Gregory Washington drove with his brother to pick up his friend Diontre Greene and take him to work. Greene asked to pick up Williams on the way. They met Williams outside a Food Lion supermarket in East Raleigh, and he got into the back seat. Within moments, Washington says, Williams

PHOTOGRAPHS BY **Cornell Watson**

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opened his door and frantically dashed across an open field near the parking lot. Washington threw his car in reverse to get away from whatever bad thing he assumed was coming his way, then heard gunfire and felt bullets hitting his car. "I'm looking at the people in my car, and they looking at me, and we all feel like we're about to die," Washington recalls.

When Washington looked up, he says, he saw three police officers pointing their guns at him. Another officer pulled Greene from the back seat by his dreadlocks and threw him to the ground. Washington got out and saw the parking lot filled with unmarked police cars. "It's looking like a movie scene," he says. The officers cuffed Washington, sat him on the curb, and then tore the speakers out of his car. "I'm looking at my brother like, 'What's going on?'"

Things clicked into place for Washington: The van driver who stared him down when he was picked up, the feeling that they were being followed, picking up Williams in a grocery parking lot – Williams had set them up.

Washington was taken to a satellite RPD facility in Northeast Raleigh where, he says, he was strip-searched and interrogated. There, he met Abdullah. The officer's eyes were piercing and shaky. "He kind of looked like a drug addict," Washington says. "I'm just looking like, 'What's wrong with this dude?'" Washington was charged in Wake County court with trafficking heroin and conspiracy to traffic heroin, and he spent six days in jail before posting bond with the help of friends and family. But the charges remained.

As Washington's case made its way through the court system, Greene's case was on a different and far more consequential track. He was a convicted felon, and the officers had found a gun on him, which exacerbated his trafficking charge. His case was given to then-Wake County assistant public defender Jackie Willingham. She asked Greene if he was selling heroin – there were plea deals available for people who cooperate with law enforcement. He told her he was innocent.

Willingham was given two more Abdullah cases based on evidence provided by Williams. Both clients maintained their innocence and said they didn't know where the heroin found on them had come from. Willingham notified an assistant district attorney with the Wake County DA's office that something seemed off about her three cases – they were Black men arrested by Abdullah, and their stories were oddly similar.

Willingham also looked up other Abdullah cases and called the defense attorneys assigned to them. They said their clients had all told them the same story: They didn't touch heroin. Willingham emailed a Wake County ADA about the irregularities. The ADA emailed her back,

insisting that her clients were all part of the same "Blood set," meaning they were in the same gang. Not satisfied, Willingham asked a private investigator in the public defender's office, who is a former RPD Vice member, to look into her clients. The PI pulled reports, cross-referenced databases, and made some calls. He couldn't identify any current gang affiliation with the men.

On June 5, 2020, the lab results on the substance found in Greene's case, which Abdullah had claimed was heroin, came back negative for drugs. A couple of weeks later, Willingham got an email from an ADA who questioned the videos submitted as evidence for the drug purchases. By June 30, the DA's office was dismissing Willingham's Abdullah cases and a dozen others, often because the informant – Williams – was deemed unreliable.

Though her cases were over, Willingham wanted to warn other defense attorneys to be on the lookout for cases with Abdullah's name attached, and she wanted a notice appended to his file. So that July, she wrote a letter to the RPD and Wake County DA's office saying she was bothered by what she had uncovered, and that "there are more cases that need to be investigated."

That September, Abdullah was placed on administrative leave. The North Carolina State Bureau of Investigation also launched an independent review of his cases a month later.

As investigations brewed behind the scenes, the men who'd allegedly been framed began to coalesce and look for accountability.

Shortly after the cases were dismissed in the summer of 2020, Washington reached out to a friend of his named Blake Banks, who had also been arrested by Abdullah, to see if he might be interested in filing a lawsuit.

Banks, who'd gone to high school with Williams, had been in and out of jail and prison, mostly for crimes related to selling weed. The men ran into each other once while incarcerated, but otherwise hadn't been in touch. After Banks was paroled on a gun charge in November 2018, he worked hard to rebuild his life. He got two jobs after he was released from prison, then moved on to construction, and finally transitioned to freight-truck hauling.

About a year after he was released from prison, Banks says, Williams hit him up on Facebook and asked where he could buy heroin. Banks told Williams he didn't get down with people like that, adding in a polite brushoff that he would see what he could do. But Williams kept texting about drugs, Banks says. One time, Williams said he was at the spot where they agreed to do a buy. "I said, 'Bro, I never said that I had anything for you,'" Banks remembers. Eventually, Banks stopped responding to Williams' messages.

On a late-December morning in 2019, after driving with his godmother to drop off her daughter at work, their car was swarmed by the RPD. Officers pulled Banks from the car, and handcuffed him in front of his family.

"It brought me to tears, man, because I thought my life was over," Banks says. "I thought I was really about to be guilty for something that I don't even know what I did."

According to Abdullah's incident reports, Banks had set up a heroin buy with informant Williams on Nov. 26, 2019. Abdullah wrote that on Dec. 11, 2019, he also watched Banks and another man sell heroin to Williams.

When Abdullah moved in for the arrest that day with other officers, he claimed, Banks sped off in a red Dodge Charger, and the other man simply ran away.

"When there's no consequence for something, you're left with individual personal moral codes or consciences, and that's never been relied upon by any society I'm aware of to regulate conduct."



TELLING THEIR STORY

Gregory Washington (top) and Blake Banks stand where they were wrongly arrested by the Raleigh Police Department. Banks says, "It brought me to tears, man, because I thought my life was over."



RECOVERING FROM THE RAID

Amir Abboud was with his then-pregnant wife and young son in their suburban Raleigh home when their door was knocked down during the execution of a search warrant intended for another person.

But Banks didn't arrange a drug buy on Dec. 11; his receipts show he was out of the state on a truck delivery. And as for the supposed sale that occurred in November, lab tests came back negative for drugs.

Banks was able to post bond with the help of family, but his relationships with them were strained. His mom thought he was back to selling; his girlfriend broke up with him. And social media was hell – his mug shot was everywhere.

For Washington's part, with the bond and legal fees resulting from his case, he owed more than \$22,000 in court debt. Over the next year, he worked up to 12 hours a day between construction and driving for Lyft to dig himself out of debt.

He still suffers from intense anxiety from that day his car was shot in the supermarket parking lot with what he later learned were rubber bullets. And he's never sure what might set him off.

"I could be parked somewhere and it could be dark outside and I'll think about it," he says. "I remember the shots, how I felt at that moment.

"Bro, I don't know if you ever felt like you was about to die. That's a feeling you'll never forget."

ONCE WILLINGHAM'S Abdullah cases were dismissed, she referred those clients to Abraham Rubert-Schewel, a civil rights attorney in Durham who got his start clerking for Jack Weinstein, then the last living member of Thurgood Marshall's legal team that prepared *Brown v. Board of Education*.

After he gathered five plaintiffs who said they were framed by Abdullah, Rubert-Schewel reviewed the state's investigation into the detective.

"It was all these people who had had large parts of their lives taken away by blatant, clear misconduct, and it was kept away in this secret file where no one could really know about it," Rubert-Schewel says.

Through depositions and discovery, he says he confirmed that at least six other officers knew that Abdullah's arrests were bogus – but didn't stop him. Abdullah's supervising sergeant, William Rolfe, provided little oversight, according to the federal civil rights lawsuits. In his deposition, Rolfe said he routinely broke with written RPD oversight policies for supervisors because that was the norm. "It was just status quo," he said in a deposition. "[T]here was no

body around saying, "This is OK, that's OK." You just do it. You've learned to do from your predecessors."

Four other officers told Abdullah that the heroin Williams turned in looked like brown sugar. And the lawsuits and depositions indicate they allowed arrests to occur after field tests came back negative. In a text thread among the officers, they joked about taking "bets" on whether Aspirin would again produce "fake heroin," according to a recent court filing. One of the officers did report Abdullah's pattern of false arrests to Rolfe and a supervising lieutenant. He stated in his deposition that he believed no action was taken because Abdullah is Muslim and Black, and the supervisors were afraid of being called out for discrimination. (The officers named in the lawsuits deny the allegations against them.)

Based on all the facts he had gathered, Rubert-Schewel filed a suit on April 26, 2021, on behalf of 12 people who were swept up in Abdullah's cases, including Washington and Banks. And five months later, the city reached a \$2 million settlement with the plaintiffs. Williams was indicted by the Wake County DA on five counts of obstruction of justice.

That September, Wake County District Attorney Lorrin Freeman told The Assembly, a local nonprofit news outlet: “We do not have evidence of criminal wrongdoing by Officer Abdullah or others with the Raleigh Police Department.” The RPD fired Abdullah in October 2021, more than a year after his scandal broke.

At this point, word was out that Rubert-Schewel could get results. And people who had given up on accountability from the RPD were reaching out.

People like the sister of David Weaver, who told Rubert-Schewel that her brother was wrongfully convicted on cocaine-trafficking charges by Abdullah and was serving time in prison. On Aug. 23, 2018, Abdullah had pulled Weaver in for selling nearly three grams of crack cocaine – then tried to flip him to become an informant, according to Weaver’s lawsuit. Weaver didn’t budge, and Abdullah strip-searched him and went through his clothes with another officer. Abdullah turned his back on Weaver and then produced a brown paper towel that contained 36 grams of crack cocaine, roughly the equivalent of 120 large crack rocks. Abdullah claimed in his incident report that he’d found it “tucked inside the subject’s underwear.” Weaver spent 16 months in pretrial jail and ran through multiple lawyers while maintaining his innocence. He eventually accepted a plea deal from prosecutors and was sentenced to 35-to-51 months in prison.

Rubert-Schewel was also connected with Yolanda Irving and Kenya Walton. He showed them the body-cam footage from the raid on their apartments as he built the case. Both women were overwhelmed when they saw the scene from the officers’ perspective. “It was so disgusting to see five to six police officers chasing my 12-year-old down, like he was a dog,” Irving says.

But Irving wasn’t the only person who’d said she had her home breached by the RPD based on faulty evidence. Kesha Knight, now 43, has been disabled since 2011 from multiple strokes and needs a cane or walker for mobility. Her federal civil rights complaint states that on Feb. 12, 2020, she had just gotten out of the shower in her apartment in Northeast Raleigh and was wearing only pajama bottoms and a bra when SEU officers broke into her home. She was later hospitalized with chest pains and anxiety from the incident, and currently suffers from PTSD.

On April 7, 2021, Amir Abboud was at home in the East Raleigh suburbs when video from a home-security camera shows the RPD breaking through his door on a joint narcotics raid with the State Bureau of Investigation. All they found in his home was Abboud’s then-pregnant wife and 11-month-old son playing on the living room floor. The boy cried when he saw the RPD point their rifles at him and his mother. After the officers seemed to realize they had the wrong person, they packed up their gear and left, Abboud said.

“You got pictures, you got videos, look at ‘em and make sure you’re doing the right thing,” Abboud says. “They’re getting paid by our tax money. I’m paying their salary.”

The State Bureau of Investigation and RPD have denied wrongdoing in the incident. Abboud reached out to lawyers in hopes of being compensated, but no one wanted to take his case. He said he was told he’d spend more money fighting it than he would get in a settlement. He had given up on getting accountability until he saw details of Irving’s home invasion while scrolling through YouTube at work.

Public records obtained by Rubert-Schewel show that the RPD Drugs and Vice Unit executed 438 search warrants between 2018 and 2021. A review of North Carolina search-warrant practices done by law professor Jeffrey Welty out of the University of North Carolina found that quick-knock warrants – warrants where officers announce themselves then break down the door, similar to no-knock warrants – seem to be standard practice in narcotics cases in North Carolina.



Earlier this year, protesters rallied for accountability from the Raleigh Police.

In February 2022, Rubert-Schewel, with his firm the Tin Fulton Walker & Owen Law Offices, and attorneys from Emancipate NC, a local legal-support and civil rights nonprofit, filed a lawsuit on behalf of Irving and Walton against the city of Raleigh, Abdullah, and the implicated officers. Weaver was released from prison in March 2022; his civil rights complaint was filed that June. Knight’s complaint was filed against the city of Raleigh and the officer who obtained the warrant in her case, on Nov. 30, 2022. Abboud’s claim against the State Bureau of Investigation was filed in February. Irving and Walton’s lawsuit has yet to reach a settlement and is on track for a trial.

The city of Raleigh, the Raleigh Police Department, the North Carolina State Bureau of Investigations, and the North Carolina Department of Justice declined to comment for this story, and District Attorney Lorrin Freeman did not respond to multiple calls, voicemails, and emails.

MORE THAN TWO YEARS after former public defender Jackie Willingham wrote her complaint about Omar Abdullah, the former officer was indicted in July 2022 by the Wake County district attorney’s office on just one count of obstruction of justice. The indictment stems from the May 21, 2020, raids on Irving, Walton, and Vanirvin’s apartments.

Prosecutors allege that in the Vanirvin case, Abdullah provided false statements and “falsely represented” the substance in the controlled buy leading up to the arrest. “This offense was infamous, was committed with secrecy and malice, and was done with deceit and intent to defraud,” according to the indictment. Attorneys for Abdullah and Williams did not respond to requests for comment.

Abdullah turned himself in days after the indictment. He’s pleaded not guilty to the charge. “He plans on vigorously defending himself in the criminal action,” his defense lawyer Christian Dysart wrote in a recent court filing. In a March 16 filing in one of the civil rights lawsuits against Abdullah, his attorney wrote that “Abdullah expressly denies any allegation that he fabricated evidence.” Williams has also pleaded not guilty to his charges.

This alleged deception wasn’t even the impetus for stopping the scheme, in Rubert-Schewel’s view. Rather, it was the apparent theft of some of the cash used in the controlled buy. Rubert-Schewel says \$800 was given to Williams to buy heroin from Vanirvin, but only \$60 was recovered by the RPD. “They knew what was happening, and they knew that the informant was producing fake heroin,” he says of Abdullah’s RPD Vice team. He laments that nearly two dozen Black people were wrongfully imprisoned, people lost jobs, parents were separated from their children, relationships were destroyed, but “no one stopped it until [Williams] stole buy money.” He believes there’s a good chance most of the false-arrest cases involving Abdullah and Williams have been found, but for cases where Abdullah performed his police work without Williams, there may be dozens more that could be dismissed.

Christy Lopez, a former head of civil rights litigation in the U.S. Department of Justice, who has investigated numerous police departments, including the Ferguson Police Department after the killing of Michael Brown Jr., says every case connected to Abdullah should be investigated.

“These are people’s lives. They’re in jail, they have criminal records because of, potentially, this guy lying. It should go back as far as the guy’s been on the force,” she says. “If you want to do justice, you have to be aggressive about it. You have to send a strong message: This is intolerable.”

Howard Jordan, a former Oakland police chief who was an expert consultant on Rubert-Schewel’s first lawsuit, believed Abdullah suffered from “herocop syndrome” and cut corners to make arrests. “They’re in a position where they’re rewarded for it,” Rubert-Schewel says. “You add all that up and it creates kind of this toxic environment where, who cares if you get the wrong person’s house on a raid? Who cares if you arrest a weed dealer for heroin trafficking? Because at the end of the day you got somebody off the street who probably was bad anyways.” He gives a melancholic laugh at the absurdity of it and says, “It just so happened that they were wrong about it all.”

CORNELL WATSON

12

**WAKE COUNTY**

Trauma and Lawsuits: Questions Linger in the Wake of Raleigh Police's 'No-Knock' Warrant Debacle

Two families traumatized by a raid of their homes with the use of a no-knock warrant are suing RPD for damages. Their story raises questions about the Raleigh Police Department's ability to achieve reform.

by **Jasmine Gallup**

12/14/2022



It's a familiar scenario: Police burst into a home with no warning. Someone draws a weapon. Shots are fired. Next thing you know, there's a body on the ground.

Nationwide, the use of “no-knock” or “quick-knock” search warrants has proved problematic, with police officers subject to higher risks and innocent people often caught up in the crossfire. It's no different in North Carolina where, two years ago, Raleigh police officers raided the wrong home, terrorizing the Black family who lived there.

The “no-knock” warrant officers executed in May 2020 didn't have fatal consequences, but it easily could have. And despite the fact that there were no deaths, Yolanda Irving and her children are still traumatized.

The case itself is a **tangle of mishaps and mistakes**. First, the warrant was not for Irving's home. Raleigh police officers intended to search a different house on the same street. On the warrant, the picture of the house is correct, but the address is wrong.

Second, in addition to illegally raiding Irving's home, police also entered the home of Irving's next-door neighbor Kenya Walton, for which they had no warrant at all. After following several teenagers into both homes, officers pointed assault rifles at the two families, put handcuffs on Walton's 15-year-old son, Ziyel, and held everyone under watch for more than an hour as their homes were ransacked.

Third, it was disgraced former Raleigh police officer Omar Abdullah who procured the warrant. Abdullah was fired last year after he worked with a corrupt informant to jail a dozen Black men on false drug charges. The warrant fabricates a drug buy in what seems to be yet another attempt by Abdullah to make a wrongful arrest.

Much of this is old news. Abdullah's conspiracy and his subsequent firing, as well as the **\$2 million settlement** the Raleigh Police Department (RPD) reached with the wrongfully incarcerated men, was widely reported. Fewer people know, however, that Irving and Walton are also bringing a lawsuit against RPD. And recently, new developments in the case have raised serious doubts about the RPD's willingness to reform.

The raid

Two years ago, on a Thursday afternoon in the spring, Irving was getting ready to relax with some TV before dinner when her 14-year-old son Jalen ran upstairs, screaming about SWAT.

"We thought that he was joking. Me, my kids ... we thought he was just playing," she says. "First I [saw] him dive on his bed, with his arms like, 'I'm not moving, I'm not moving.' And then going around the corner and seeing SWAT with guns pointing our way—" Irving pauses here, her voice trembling. When she says the word "guns," it's with a heavy sigh as she holds back tears.

"I was scared," she says. "I thought my son was going to die The way he was running, he was running for his life. It's like every step he made, they made. So it was like they could have just took the shot at any time."

What Irving saw when she turned the corner were members of RPD's Selective Enforcement Unit, the department's equivalent of a SWAT team, carrying automatic weapons. They made Irving get on the floor, separated her from her daughter, and surrounded them.

They shouted at Jalen to get on the floor, a command impossible for him to obey since he is partially paralyzed. Eventually, they relented and let him remain on the bed, Irving says.

“I finally asked them, ‘What is this about?’” she says. “They said it was a search warrant, they’re looking for drugs or money. And I’m like, ‘What drugs? What money? I don’t know what you’re talking about.’”

The officers brought Irving and her children downstairs, where she saw her next-door neighbor’s son Ziyel in handcuffs. Officers held them there for about an hour and a half as they ransacked the house, Irving says, turning over furniture and looking for contraband that wasn’t there. They searched her kitchen cabinets for heroin. At that point, Abdullah came in.

“I’m guessing that he finally looked at us and realized that he had made a bad mistake,” Irving says. “But nobody’s telling us anything. They’re not talking to us. I am actually trying to make conversation with the other police officers so my kids won’t be so scared, because I am petrified.”

Irving says the officers continued to search her house before eventually filtering out. Abdullah showed her the search warrant, which had the wrong address. Now, she’s angry. Officers are walking away without answering her questions.

“You could have shot my son, you could have shot my daughter,” Irving says. “Then you’re having us on the ground for an hour or two, not telling us anything, and then you’re going to just walk away from me? No. Somebody needs to tell us something.”

The fallout

Despite the raid, the Raleigh Police Department remained reluctant to answer Irving’s questions, she says. In February, Irving and Walton—with the help of Emancipate NC, a nonprofit fighting for criminal justice reform—filed a lawsuit seeking compensation for their “loss of liberty ... physical pain and injuries, serious psychological and emotional damage, and loss of quality of life,” according to the complaint.

After the raid, Irving felt unsafe in her own home, she says. Her son Jalen’s grades dropped and he wouldn’t leave the house. She and her family were already distrustful of the police, but now they avoid them at all costs.

“Jalen doesn’t really go outside anymore. He doesn’t talk to a lot of people [any] more. He’s just really standoffish,” Irving says. “I was scared, so I broke my lease and just left, because I was afraid they [were] going to come back. I really was.”

Walton's family felt the effects as well, she says. Her son Ziyel, who was handcuffed, is also afraid to leave the house. His fear of crowds is so bad that he was unable to attend school in person, she says. When he gets a haircut, Walton pays to clear out the barbershop for an hour.

"Ziyel has it worse than everybody," Walton says. "His anxiety is really bad. He used to be outside playing with the kids. Every time we had a family outing, he used to participate. [Now] he can't stand being in pictures."

RPD's use of no-knock warrants

In addition to seeking damages for Irving and Walton, the lawsuit includes Emancipate NC as an "organizational plaintiff." The nonprofit joined in an effort to compel the RPD to stop its widespread practice of using no-knock and quick-knock warrants, says lawyer Elizabeth Simpson.

The lawsuit has raised questions about RPD's policy on no-knock warrants. In the two years since the lawsuit was filed, the RPD has continued to serve warrants in a no-knock or quick-knock style, Emancipate NC argues. The nonprofit cites the raid of Amir Abboud's home in April of 2021, which is captured on video.

The day the suit was filed, in February, police chief Estella Patterson told WRAL the RPD does not execute no-knock warrants, although she did not point to a specific policy.

At that time, the RPD's policy on searches of residences (enacted January 11, 2021) did not include any language about no-knock or quick-knock warrants, merely stating that "a uniformed police officer shall be present if there is reason to believe that forcible entry may be required."

In response to the INDY's request for comment in late November, RPD spokesman Lt. Jason Borneo pointed to a revised version of the search policy, apparently adopted in May, three months after the lawsuit was filed. Borneo declined to comment on the lawsuit, citing RPD's policy of not commenting on pending litigation.

"The officer must give notice of the officer's authority and purpose before entering," the policy reads. "The Raleigh Police Department will not seek or serve 'No-Knock' search warrants."

This revised policy was only made public, however, months after Patterson's statement to WRAL. Earlier versions of the policy document (from late May and August) do not include any language about "no-knock" warrants.

Last month, Emancipate NC asked Chief Patterson to participate in a deposition to answer questions about the RPD's policy. In response, the RPD legal team quickly moved for a protective order to prevent the deposition. No decision has yet been made in favor of either party, but the move was one more step in an ongoing campaign of resistance from the RPD, which has tried to keep information about the raid (and its policies) under wraps.

Earlier this year, the RPD's legal team successfully fought to prevent body camera footage of the raid from being publicly released. They also tried to get Emancipate NC removed from the case in November, a motion that was denied.

The dangers of quick-knock warrants

Regardless of RPD's policy on no-knock warrants, further reforms around quick-knock warrants are needed, says Simpson.

"While Raleigh police may have ended the official policy of using no-knock warrants, they continue to enter private homes way too quickly after they knock," Simpson says. "The purpose of the 'knock and announce' requirement is to give people an actual opportunity to realize what is happening and to voluntarily permit entry. By entering one or two seconds after the knock, Raleigh police officers are still creating a very risky situation where residents are caught by surprise."

That element of surprise "needlessly risks the lives of both police and civilians, who may react out of fear and stress, rather than rationality," Simpson adds. "Police departments that operate under best practices prioritize the sanctity of human life over the small chance someone could destroy evidence during a brief pause to permit voluntary entry."

Emancipate NC wants the RPD to implement reforms to its search policies like the ones put in place by the Charlotte-Mecklenburg Police Department and the Buncombe County Sheriff's Department. Both agencies require officers to "ascertain that they are being *denied entry* before they forcibly enter a home, unless there are special extenuating circumstances, like risk to life," Emancipate NC wrote in a news release.

Nobody wants to apologize

Before the lawsuit was filed, Irving had basically given up on justice being done, she says. Abdullah's involvement, which brought many of his wrongful actions to public light, continues to shape the case. Irving and Walton each say the most frustrating thing for them is the RPD's refusal to admit wrongdoing.

Before the raid, Walton had some respect for law enforcement, she says. Now, not so much. During her deposition, Walton says she felt like the RPD was trying to make it seem like her family was at fault.

"It made me look at the police force and law enforcement completely different," Walton says. "I'm going to be honest, I'm not even looking for money. If they would just give me a genuine apology, it would sit well with me. Instead, they're trying to make everybody a monster."

Irving also wants the RPD to demonstrate some remorse, she says, although she's still seeking justice for her children.

"I still feel like the city of Raleigh and Abdullah owe us an apology, and nobody wants to apologize," she says. "I want them to understand that things could have gone sideways real quick. Then what would have happened? Then you apologize, if one of my sons was killed or hurt? Then you [were] going to say, 'Oh, I'm sorry'? No, you need to say that now."

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A

STATE OF NORTH CAROLINA

File No.

23 CV 034879-910

Wake County

In The General Court Of Justice
Superior Court Division

Name Of Plaintiff

Amir Abboud et al.

VERSUS

Name Of Defendant

Raleigh Police Department

**ORDER AFTER CIVIL ACTION FILED TO
PROVIDE CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING FOR IN-CAMERA REVIEW
AND ORDER TO PROVIDE NOTICE OF HEARING**

G.S. 132-1.4A(e), (g)

This matter is before the undersigned Superior Court Judge on a:

- civil action for release of a custodial law enforcement agency recording under Chapter 132 of the N.C. General Statutes.
- civil action for review of denial or delay of disclosure of a custodial law enforcement agency recording under Chapter 132 of the N.C. General Statutes.

NOTE: This form is for use after a civil action is filed. Form AOC-CV-274 is for use after a Petition For Release Of Custodial Law Enforcement Agency Recording (form AOC-CV-270) is filed.

ORDER

- The head of Raleigh Police Department (custodial law enforcement agency) is ordered to provide to the Court a copy of the custodial law enforcement agency recording identified in the attached Complaint.
- The copy of the custodial law enforcement agency recording shall be provided to _____ (court official), on or before _____, along with a list of all law enforcement agency personnel whose image or voice is in the recording. In the event the head of the custodial law enforcement agency is unable to identify all voices or images of law enforcement agency personnel in the recording, the head of the custodial law enforcement agency shall identify to the Court where in the recording the unidentifiable voice or image appears.
- The copy of the custodial law enforcement agency recording and the list of all law enforcement agency personnel whose image or voice is in the recording delivered to the Court pursuant to this Order shall not be open to inspection or copy by any person except to and by the Superior Court Judge conducting the hearing, unless and until ordered released or disclosed by the presiding Superior Court Judge. The copy of the custodial law enforcement agency recording and the list of all law enforcement agency personnel whose image or voice is in the recording shall be delivered to the court official in a sealed envelope with a copy of this Order attached to the outside of the sealed envelope.
- The head of the custodial law enforcement agency is ordered to provide to the Court, at least one business day prior to the hearing date set forth below, appropriate software and/or means to conduct an in-camera review of the custodial law enforcement agency recording.
- The head of the custodial law enforcement agency is hereby ordered upon receipt of this Order, to give notice of the Complaint and hearing to any law enforcement agency personnel whose image or voice is in the recording, to the head of that person's employing law enforcement agency, and to the District Attorney. In the event the head of the custodial law enforcement agency is unable to give notice to all law enforcement agency personnel whose image or voice is in the recording, the head of the custodial law enforcement agency shall file a statement with the Court explaining why notice was not given, but the head of the custodial law enforcement agency shall not identify said personnel by name.
- Other (if applicable): _____

NOTICE OF HEARING

It is hereby ordered that a hearing on the Complaint in this matter is set for the date, time, and place shown below:

Date Of Hearing	Time Of Hearing <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing
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SIGNATURE OF SUPERIOR COURT JUDGE

Date	Name Of Superior Court Judge (type or print)	Signature Of Superior Court Judge
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