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§ 132-1.4A. Law enforcement agency recordings, NC ST § 132-1.4A

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's North Carolina General Statutes Annotated  
Chapter 132. Public Records (Refs & Annos)

N.C.G.S.A. § 132-1.4A

§ 132-1.4A. Law enforcement agency recordings

Effective: December 1, 2021

[Currentness](#)

(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

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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 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.

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- (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.

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- (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.

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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:

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- (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.

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(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.

**Credits**

Added by S.L. 2016-88, § 1, eff. Oct. 1, 2016. Amended by S.L. 2019-48, § 1, eff. June 26, 2019; S.L. 2021-138, § 21(a), eff. Dec. 1, 2021.

**Notes of Decisions (3)**

N.C.G.S.A. § 132-1.4A, NC ST § 132-1.4A

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

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STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE  
ORANGE COUNTY SUPERIOR COURT DIVISION

21 CVS 1454

IN THE MATTER OF: 2022 JAN 20 P 4: 11

CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY: ORANGE COUNTY S.S.C. *[Signature]*

CAPITOL BROADCASTING COMPANY, INCORPORATED, D/B/A WRAL-TV; NEXSTAR BROADCASTING, INC., D/B/A WNCN-TV; WTVD TELEVISION LLC, D/B/A WTVD-TV; THE MCCLATCHY COMPANY D/B/A THE NEWS & OBSERVER; and GANNETT NC, D/B/A WILMINGTON STARNEWS,	)	ORDER ON PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING PURSUANT TO G.S. § 132-1.4A(g) (14 November 2021 recordings)
Petitioners.	)	

This matter came before the undersigned Superior Court Judge on 14 January 2022 to determine whether release of law enforcement agency recordings is warranted pursuant to N.C. GEN. STAT. § 132-1.4A(g). Michael J. Tadych of Stevens Martin Vaughn and Tadych, PLLC appeared on behalf of Petitioners. James Woodall, District Attorney for Prosecutorial District 18, Bettina Roberts, Assistant Attorney General, DPS/NCSHP, and James Rainsford of Coleman, Gledhill, Hargrave, Merritt & Rainsford, P.C., counsel for Michael Saravino also appeared. The Court, having reviewed the Petition, other matters of record in the file, and hearing the arguments of counsel, makes the following

FINDINGS OF FACT

1. On 17 December 2021, Petitioners filed a Petition for Release of custodial law enforcement agency recordings pursuant to N.C. GEN. STAT. § 132-1.4A(g) relating to the 14 November 2021 traffic stop and ultimate arrest of Michael Saravino and Paolo Banchemo at approximately 1:00 a.m. Messrs. Saravino and Banchemo are members of the Duke University Men's Basketball Team.

2. As required by N.C. GEN. STAT. § 132-1.4A(g), Petitioners served a copy of the Petition on the head of the custodial law enforcement agency and the District Attorney.

3. Per the representations of Ms. Roberts of the Attorney General's Office at the hearing, notice of the petition and the opportunity to appear and be heard was given to all State Highway Patrol personnel whose image or voice is in the recordings and also to the head of each such person's employing agency and all such personnel declined to appear.

4. Each person entitled to be notified of the hearing was given an opportunity to be heard, either individually or by such person's designated representative.

5. The Court, despite there being no standing provided in N.C. GEN. STAT. § 132-1.4A and over Petitioners' counsel's objection, heard from defense counsel for Mr. Saravino who opposed release.

6. Neither Mr. Branchero, nor anyone on his behalf, appeared at the hearing.

7. The Court conducted an in-camera review of the recordings prior to the hearing.

8. The recordings were made in Orange County, North Carolina.

9. The Court considered the applicability of all of the standards of N.C. GEN. STAT. § 132-1.4A(g) and determined the following:

a. The video-only portions of all recordings are to be released WITHOUT AUDIO by Friday 21 January 2022 at 5:00 p.m. The Court finds release is necessary to advance a compelling public interest. It is with regret that the Court finds that Messrs. Saravino's and Branchero's participation as collegiate athletes compels this result, and that the better course of action would be to permit young persons to make mistakes, suffer consequences, and hopefully learn from those mistakes but to do so largely outside of the public arena; and

b. The video and audio portions of all recordings shall be released in 60 days on Monday 21 March 2022. The Court finds that this delay is necessary to protect the defendants' right to a fair trial and avoid any threat to the fair, impartial, and orderly administration of justice. However, should the defendants' cases not be resolved in sixty days, this Court finds that a trial court may employ other methods to ensure a fair trial and the video and audio portions of the recordings shall still be released.

10. There is good cause to release the video of the recordings immediately and the audio of the recordings under the circumstances described above; except

that, if there is any personally identifiable information in the audio or video, it shall be muted or blurred prior to release.

CONCLUSIONS OF LAW

In view of the foregoing Findings of Fact, the Court concludes that the North Carolina State Highway Patrol and Department of Public Safety are authorized to release the recordings to Petitioners and/or Petitioners' counsel as provided herein.

It is therefore ORDERED that:

1. Petitioners' Petition is GRANTED;
2. The North Carolina State Highway Patrol and Department of Public Safety shall release to Petitioners and/or their counsel as follows:
  - a. The video-only portions of all recordings provided for *in-camera* review shall be released WITHOUT AUDIO to Petitioners and/or Petitioner's counsel no later than Friday 21 January 2022 at 5:00 p.m.; and
  - b. The video and audio portions of all recordings provided for *in-camera* review shall be released to Petitioners and/or Petitioner's counsel on Monday 21 March 2022.

This the 7<sup>th</sup> day of January, 2022.



R. Allen Baddour  
Superior Court Judge Presiding

3

STATE OF NORTH CAROLINA  
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS 5374

FILED

IN THE MATTER OF:

CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:

2018 NOV -8 A 10:07

FORSYTH CO., N.C.

BH MEDIA GROUP, INC.  
PUBLISHER OF THE WINSTON-  
SALEM JOURNAL, HEARST  
TELEVISION d/b/a WXII 12,  
TRIBUNE MEDIA d/b/a MYFOX8, and  
WFMY TELEVISION LLC d/b/a  
WFMY NEWS 2,

*K. Calloway*

ORDER ON PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT  
RECORDINGS

Petitioners.

This matter came before the undersigned on 5 and 6 November 2018, upon Petitioners' Petition for Release of Custodial Law Enforcement Agency Recordings pursuant to N.C. GEN. STAT. § 132-1.4A(g). The Court makes the following findings of fact:

- On 16 October 2018, Petitioners BH Media Group, Inc. publisher of the *Winston-Salem Journal*, Hearst Television d/b/a WXII 12, Tribune Media d/b/a MyFox8 and WFMY Television LLC d/b/a WFMY News 2, through their attorneys, filed a Petition for the Release of Custodial Law Enforcement Agency Recordings from the Winston-Salem Police Department regarding the 5 October 2018 arrest of Rockell Baldwin by school resource officer Tyler McCormick at Hanes Magnet Middle School in Winston-Salem (the "Petition").
- Petitioners served copies of the Petition on the Chief of the Winston-Salem Police Department and the District Attorney.
- 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.
- The Court conducted an *in camera* hearing of all recordings on 5 November 2018. Specifically, the Court reviewed the following files containing body camera recordings from Officer McCormick's body camera:
 

a.	Disorderly_Conduct-1 mp4	1,846,916 KB
b.	Disorderly_Conduct mp4	408,194 KB
c.	Disorderly_Conduct-file_2. mp4	350,819 KB
- The recordings submitted by the Winston-Salem Police Department were made in Forsyth County.

6. Prior to the filing of the Petition, Tamkea McLean, the mother of Rockell Baldwin, and Ms. Baldwin, herself, confirmed that Ms. Baldwin was the individual being arrested by Officer McCormick on 5 October 2018 at Hanes Magnet Middle School.

7. Counsel for Officer McCormick appeared at the hearing and voiced no objection to release.

8. Counsel for Petitioners informed the Court that through counsel, Ms. McLean, Ms. Baldwin's mother, supported release.

9. The City Attorney for the City of Winston-Salem appeared at the hearing and voiced no objection to the release of the recordings and acknowledged that the timing of release was subject to the Court's discretion.

10. The District Attorney objected to release on a number of grounds, one of which includes its reading of N.C. GEN. STAT. § 7B-3100(a) and (b). The District Attorney further objected that release would compromise an active ongoing criminal investigation that could result in a potential juvenile petition for the female juvenile whose image and conduct is depicted in the video." The Court considered all of the District Attorneys' concerns and legal arguments.

11. The Court also considered the applicability of all of the standards set forth in N.C. GEN. STAT. § 132-1.4A(g), along with reports of another recording by a bystander of part of the interaction at issue being published, and determined that the release of portions but not all of the recordings is necessary to advance a compelling public interest and good cause has been shown to release the portions of the recordings as provided herein.

12. Based upon the foregoing findings of fact, the Court concludes that it has both authority and discretion to require the Winston-Salem Police Department to release the recording submitted to the Court for *in camera* review that contains body camera video of Officer McCormick's interactions with Rockell Baldwin which is designated **Disorderly\_Conduct-1 mp4 1,846,916 KB**. Based on the above findings of fact, the Court concludes that the other files containing body camera recordings from Officer McCormick's body camera are not to be released.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

1. The recording, designated **Disorderly\_Conduct-1 mp4 1,846,916 KB**, and described above in Paragraph 12, is hereby ordered to be released subject to the provisions set forth in Paragraph 2.

2. The Winston-Salem Police Department, through the City's Marketing and Communications Department, shall blur the faces of any individual depicted or shown in the above designated recording except for the images of Rockell Baldwin and Officer McCormick, make inaudible and incapable of being viewed the telephone numbers of Rockell Baldwin's mother and aunt, and redact any names or other identifying information of any gang members,

such as nicknames and street names of any alleged gang members, and release the recording as authorized and redacted above (the "redacted recording") by downloading and emailing the aforementioned recording in mp4 format to Petitioners' counsel, the District Attorney and counsel for Officer McCormick, with permission hereby granted to the attorneys appearing before this Court and their clients, including the City, to disseminate the redacted recording as they deem appropriate, no later than 3:00 p.m. on 9 November 2018.

3. Further requests for release of the recordings pursuant to N.C. GEN. STAT. § 132-1.4A(g) that are the subject matter of this order may be made by Motion to Intervene in this case. A copy of the Motion to Intervene shall be delivered to the Forsyth County Trial Court Administrator, who will provide all required parties five days' notice to object to release and/or request a hearing prior to the Court making a decision to release the same.

SO ORDERED, this the 8<sup>th</sup> day of November 2018.



Anderson D. Cromer  
Presiding 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 "WBTV"; 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;

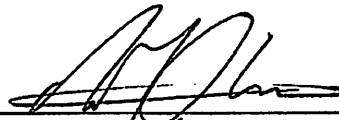
- e. There were generalized concerns raised about possible safety issues to the Defendants if the recordings were released. Any safety issues would also have been present at the time the charges were announced and the defendants publicly identified at the July 8, 2020 press conference and in the subsequent 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 31<sup>st</sup> day of July, 2020.



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R. Gregory Horne  
Superior Court Judge Presiding