

FILED

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 18 CVS 00941

2018 MAR 29

BUNCOMBE CO., C.S.C.

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

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ORDER

THIS CAUSE came on for hearing before Mark E. Powell, Superior Court Judge Presiding, during the March 26, 2018 Civil Session of Buncombe County Superior Court, upon the City of Asheville's Petition, pursuant to N.C. Gen. Stat. § 132-1.4A, to release the law enforcement agency body-worn camera recordings of the City of Asheville Police Department ("APD") personnel, related to the arrest of Johnnie Jermaine Rush ("Rush"), captured between 11:45 P.M. on August 24, 2017 and 2:00 A.M. on August 25, 2017.

Robin Tatum Currin, City Attorney, and John Maddux, Assistant City Attorney, of the Asheville City Attorney's Office, appeared on behalf of the City; the Buncombe County District Attorney, Todd Williams, appeared in opposition to the Petition on behalf of the District Attorney's Office; and Thomas Amburgey, appeared on behalf of former APD officer Christopher Hickman, also in opposition to the Petition. Upon consideration of, inter alia, the Petition, the arguments of counsel, the materials provided to the Court in advance of the hearing, and the Court's in camera review of the videos, the Court holds as follows:

1. This is a Petition for the release of audio and visual “recordings,” as that term is defined in N.C. Gen. Stat. § 132-1.4A(a)(6), captured between 11:45 P.M. on August 24, 2017 and 2:00 A.M. on August 25, 2017, by body-worn cameras operated by APD personnel who were present before, during and/or after the arrest of Rush on those dates (the “Recordings”).

2. The Recordings were made in Buncombe County, and jurisdiction and venue are proper in this Court, and the City is a “person” with standing to file a Superior Court action seeking an Order directing the release of the Recordings. See N.C. Gen. Stat. § 132-1.4A(g).

3. Notice was properly given to APD Chief, Tammy Hooper, the District Attorney, Todd Williams; and all APD law enforcement personnel whose image or voice is in the Recordings. These individuals were provided with notice of the Petition and the hearing, and were given the opportunity to be heard.

4. The Petition arises from an incident which occurred late in the evening of August 24, 2017 and the early morning of August 25, 2017. Specifically, on August 24, 2017, Christopher Hickman (“Hickman”), a former APD officer, and Verino Ruggiero, an APD officer then in field-training, encountered Rush on or near Biltmore Avenue. The officers conducted a stop of Rush which culminated in what has now been determined by APD to be an excessive use of force by Hickman, in arresting Rush. The arrest and its aftermath,

(also hereinafter referenced as the "Incident") were captured on Hickman's body-worn camera, as well as the body-worn cameras of other officers who responded to the scene.

5. Rush filed a complaint with APD alleging excessive force in his arrest later in the day on August 25, 2017. Upon reviewing the body-worn camera recordings, Chief Hooper immediately took Hickman's gun and badge and placed him on administrative duty. Following an internal investigation, Chief Hooper made a decision to terminate Hickman's employment with APD based on his use of excessive force and other violations of APD policy in apprehending and arresting Rush. However, before the decision to terminate could be communicated to Hickman, he resigned from the APD. Hickman has not been employed by the City since his resignation on January 5, 2018.

6. All criminal charges against Rush related to his August 2017 arrest were dismissed by the District Attorney in September 2017, following a review of body-worn camera videos of the Incident.

7. Criminal charges have now been filed against Hickman in Buncombe County, and include: assault by strangulation; communicating threats; and assault inflicting serious injury.

8. There are a total of nine body-worn camera videos captured on cameras of APD personnel between 11:45 PM on August 24, 2017 and 2:00 AM

on August 25, 2017 which relate to the Incident. These Recordings are not allowed to be viewed or released outside of APD, except in very limited circumstances. Members of the Asheville City Council, the press and the public may not view or receive copies of law enforcement body-worn camera recordings without a court order obtained pursuant to N.C. Gen. Stat. § 132-1.4A.

9. Despite the foregoing, on or about February 28, 2018, a copy of one of Hickman's body-worn camera videos from the night of Rush's arrest was taken from the APD by an unknown source and provided to the Asheville Citizen-Times (the "ACT"). That video has been posted on the ACT's website since that time, and the ACT has continued to regularly publish additional stories about the Incident, with a link to the released Hickman video.

10. The actions and degree of force employed by Hickman in the already-disclosed video, along with other behavior and language displayed by Hickman in arresting Rush, has caused significant concerns for the City Council and City residents. This video has caused public distrust, and has raised questions which could be answered by releasing all of the available body-worn camera videos surrounding the Incident. That only a single video was released makes it more of a compelling interest for all of the videos to be seen, to provide transparency to the public relating to the Incident.

11. The Court has reviewed the City's Petition and the factors set forth in N.C. Gen. Stat. § 132-1.4A(g), and has viewed portions of the nine body-worn camera Recordings, in camera, and finds, in its discretion, that the Petition should be granted for the following reasons:

a. Release of all of the Recordings is necessary to advance a compelling public interest. Specifically, body-worn camera footage related to the Incident has already been released and provided to the press. Many members of the public have now seen this recording, which has caused public distrust, concern and fear. Allowing the Recordings to be released, so that all of the circumstances surrounding Rush's arrest can be viewed, furthers the compelling public interest of transparency and will allow the public to have a complete picture of what occurred, prevent public unrest and distrust of City government, and dispel any public perception that relevant information related to the Incident has been withheld. Again, the fact that one of the videos has been released makes the public interest more compelling.

b. Body-worn camera recordings are ordinarily confidential and exempt from being released under North Carolina law. In this circumstance, however, one of Hickman's body-worn camera recordings has already

been provided to the press and made public, so any damage from the release of the additional Recordings has been lessened and minimized.

c. The Court's in camera review of the body worn camera videos reveals that there is no information in the Recordings that is highly personal or sensitive in nature, or that could jeopardize the safety of any person, especially now that one of the Recordings has already been released by the ACT.


d. While the Court acknowledges there is an ongoing criminal investigation, and that criminal charges have been filed against Hickman, the risk of jeopardizing Hickman's right to a fair trial is offset by the compelling public interest in transparency and the fact that one video has already been released. The already-released video clearly shows Rush's arrest and Hickman's conduct, and the release of the remaining footage would simply allow the public to observe the Incident from all angles, provide transparency and assure that all relevant information has been made available. At the time of the criminal trial, if the District Attorney or the Defendant files the applicable motions, the presiding judge can order a change in venue, or bring in jurors from outside Buncombe County, if that is deemed necessary.

WHEREFORE, for the reasons set forth above, the Court, in its discretion, finds that, upon weighing the factors set forth in N.C. Gen. Stat. § 132-1.4A(g), good cause exists to release the nine body-worn camera Recordings related to the Incident, and the release would further a compelling public interest.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

The City's Petition is allowed, and the nine body-worn camera videos captured on the cameras of Asheville Police Department personnel before, during, and/or after the arrest of Johnnie Jermaine Rush between 11:45 PM on August 24, 2017 and 2:00 AM on August 25, 2017, be made available to the general public upon request, beginning at 2:00 PM on Monday April 2, 2018.

This the 29th day of March, 2018.



Mark E. Powell
Superior Court Judge Presiding