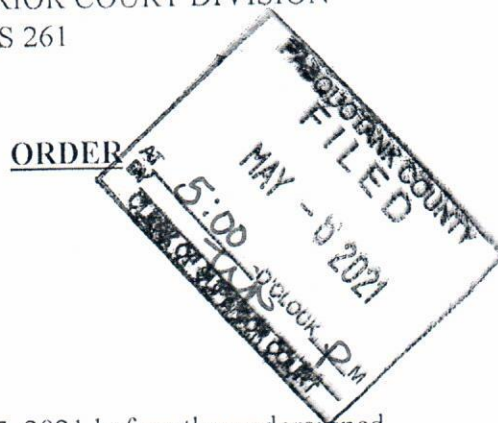


STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 261

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

PASQUOTANK COUNTY SHERIFF'S OFFICE



THIS MATTER, coming on for hearing on April 27, 2021 before the undersigned Superior Court Judge presiding in Pasquotank County Superior Court, on the Petition for Release of Custodial Law Enforcement Agency Recordings, filed April 26, 2021 on behalf of Tommy Wooten, III, Sheriff of Pasquotank County by Michael Cox, attorney for Pasquotank County, pursuant to N.C. Gen. Stat, 132-1.4A(g).

The Petition seeks the release to Khalil Ferebee, the adult son of Andrew Brown, Jr. (deceased) of certain body worn camera recordings (PCSO recordings) as the term recordings is defined by N.C. Gen. Stat, 132-1.4A (a)(1); 132-1.4(a)(2); and 132-1.4(a)(6), which capture an incident occurring on April 21, 2021 wherein deadly force was used by the Pasquotank Sheriff's Department and which resulted in the death of Brown.

The Petitioner seeks release of the recordings in the public interest.

Appearing at the hearing on this Petition were:

For the Pasquotank County Sheriff's Department: Michael Cox

For the Judicial District 1 District Attorney's Office: District Attorney Andrew Womble

For the Officers whose images appear in the videos: H.P. Williams

No Attorney appeared on behalf of the family of Andrew Brown, Jr.

Present also were attorneys for the media petitioners Michael Tadych and Amanda Martin, who did not participate in this hearing.

The Court, upon hearing the arguments of counsel, reviewing the relevant statutory and case law, viewing the five (5) videos taken from the body cameras and dash camera of the officers involved, and considering the positions of all counsel before the Court, makes the following

FINDINGS OF FACT:

1. On April 21, 2021 at approximately 8:30 am deputies of the Pasquotank and Dare County Sheriff's Departments attempted to serve Andrew Brown, Jr. with a felony warrant for drug related charges;
2. Upon the arrival on the scene of the deputies, Brown attempted to flee the scene and escape apprehension;
3. As a result of Brown's attempt to flee the scene, at least one and as many as three officers fired their weapons into the vehicle operated by Brown;
4. Brown died as a result of injuries he received during the encounter with the Deputies on the scene;
5. During the attempted apprehension and subsequent events, several officers were wearing body cameras, which were operating to film the encounter with Brown;
6. These videos recorded the events as they occurred on April 21, 2021;
7. On April 25, 2021, the family of Brown was shown a portion of one video depicting the encounter between Brown and the deputies. That video was approximately 20 seconds long;
8. The videos in the custody of the Pasquotank Sheriff's Department, which the Court has been petitioned to release, consist of:
 - a. Video 1: 3 min 01 sec. in length;
 - b. Video 2: 34 min. 58 sec. in length;
 - c. Video 3: 32 min. 22 sec. in length;
 - d. Video 4: 17 min. 35 sec. in length;
 - e. Video 5: 30 min. 08 sec. in length;
9. The Court has, prior to the hearing on this matter, viewed in their entirety the videos delineated above;
10. The release of the video evidence is governed by the provisions of N.C. Gen. Stat. 132-1.4A;
11. Under the Statute, videos may either be disclosed or released. Disclosure is the showing of the video to an authorized party; release is providing a copy to an authorized party;
12. Disclosure may only be provided to:
 - (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. N.C. Gen. Stat, 132-14A(c).

13. The statute goes on to provide that: "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;"
14. The statute further requires that the Court undertake an analysis under 132-1.4A (d) of factors weighing for or against disclosure. Those factors include:
 - (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.; N.C. Gen. Stat. 132-1.4A (d);
15. The Court, having performed the required review under the Statutory requirements for disclosure finds that the Petitioner is, under (c)(4), a personal representative of a deceased person whose image or voice is in the recording and is thus entitled to disclosure;
16. The Court further finds that, reviewing the statutory factors for consideration in making disclosure under (d):
 - (1) the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section. This factor weighs in favor of disclosure.
 - (2) the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law. This factor weighs against disclosure.
 - (3) disclosure would reveal information regarding a person that is of a highly sensitive personal nature. This factor weighs against disclosure.
 - (4) disclosure may harm the reputation or jeopardize the safety of a person. The court finds that this factor would not be relevant, and thus weighs in favor of disclosure.

(5) disclosure would create a serious threat to the fair, impartial, and orderly administration of justice. The court finds this factor will not be relevant to disclosure, and thus weighs in favor of disclosure.

(6) confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation. This factor would not be relevant, and thus does not weigh against disclosure.


17. The court finds that based upon the evaluation of the statutory factors to be considered, disclosure to the family, rather than release, would be appropriate under the statute.

THEREFORE, THE COURT CONCLUDES that DISCLOSURE of the videos to the family would be appropriate, and hereby ORDERS:

1. The videos listed in this Order be disclosed to Khalil Ferebee, the adult son of Andrew Brown, Jr. (deceased), and to his immediate family members, together with one attorney, licensed and admitted to practice law in the State of North Carolina.
2. Neither the family, nor their attorney, shall make any recording of the video while it is being disclosed.
3. The following portions of the videos shall be disclosed to the family, with the facial features of the deputies in the videos blurred to prevent identification pending the completion of any internal or criminal investigation into the actions of the deputies:
 - a. Video 1: 3 min 01 sec. in length; The video shall be released in its entirety.
 - b. Video 2: 34 min. 58 sec. in length; The first 1 min. 40 seconds shall be disclosed.
 - c. Video 3: 32 min. 22 sec. in length; The first 4 min. 50 sec. shall be disclosed.
 - d. Video 4: 17 min. 35 sec. in length; The first 4 min. 30 sec. shall be disclosed.
 - e. Video 5: 30 min. 08 sec. in length; The first 4 min. 40 sec. shall be disclosed.
4. The portions of the videos withheld are found to not contain images of the deceased, and thus are not appropriate for disclosure at this time. Nothing in this Order shall prevent the reconsideration for release of the videos at a later time, upon the conclusion of both internal and criminal investigations arising from these incidents.

Disclosure shall occur to the family within 10 days of the entry of this Order.

Entered this the 6th Day of May, 202.



Jeffery B. Foster
Superior Court Judge Presiding