

**VIRGINIA:**

**IN THE CIRCUIT COURT OF ROANOKE COUNTY**

Lori Hall

Petitioner,

v.

State of Virginia Police Department and  
Roanoke City Police Department,

Respondents.

Civil Action No. CL20001257

**VERIFIED PETITION FOR WRIT OF  
MANDAMUS AND INJUNCTIVE RELIEF**

Petitioner Lori Hall, by her undersigned counsel, pursuant to Va. Code § 2.2-3713, petitions this Court for a writ of mandamus directed to the Virginia Department of State Police and the Roanoke City Police Department, and in support thereof states as follows:

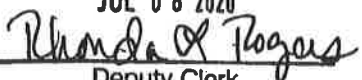
**INTRODUCTION**

1. Ms. Hall's son, Chase Austin, was killed by a Roanoke City Police Department officer who shot Chase four times in a Roanoke parking lot in October 2019.

2. Ms. Hall has spent the last several months trying to get information about the killing of her son from the Roanoke City Police Department and the Virginia Department of State Police. Both departments have refused to release, among other things, security camera footage of the incident collected from private businesses. Based on the one occasion, without counsel present, that Ms. Hall was allowed to view the surveillance footage of the incident, Ms. Hall believes that the footage contradicts the Roanoke Commonwealth's Attorney's conclusion that the shooting of Chase was justified.

Filed in the Clerk's Office  
Circuit Court of  
Roanoke County, VA

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Deputy Clerk

3. Recent events across the country have clearly established the necessity of allowing public access to footage of the use of force by police. The deaths of Rayshard Brooks, George Floyd, Eric Garner, and numerous others at the hands of police may never have been called into question were it not for the public release of videos of those incidents.

4. Police officers cannot be allowed to be above the law. Allowing police departments to collect video recordings from private entities and then suppress them by launching a brief criminal investigation gives them the ability to insulate officers from public scrutiny and effectively prevent the administration of justice. Certainly, if the video supports the Commonwealth's Attorney's and State Police's claims about the shooting, they should have no reason to keep the video from the public.

5. Numerous recent incidents across the country have demonstrated that law enforcement officials frequently put out narratives of incidents involving police use of force that are contradicted by video evidence.

6. Chase was shot to death—from behind—while running *away* from the police through a parking lot, with no actual evidence to suggest that he posed an immediate threat to any officer or civilian.

7. The Roanoke and Virginia State Police have so far managed to keep the surveillance footage in Chase Austin's case under wraps by claiming virtual immunity from the Virginia Freedom of Information Act.

8. Chase's mother and the public deserve to have access to the video evidence and decide for themselves whether the shooting was justified. There is no legitimate public purpose to be served by denying them that right.

## **PARTIES**

9. Petitioner Lori Hall is domiciled in Roanoke County, Virginia.

10. Respondents Roanoke City Police Department and Virginia Department of State Police, are public bodies subject to the Virginia Freedom of Information Act, Va. Code § 2.2-3700 *et seq.*

## **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction pursuant to Va. Code § 2.2-3713 because Petitioner was denied her rights and privileges conferred by the Virginia Freedom of Information Act.

12. Venue is proper in this Court under Va. Code § 2.2-3713 because Petitioner Lori Hall is a resident of Roanoke County.

## **FACTUAL ALLEGATIONS**

13. On October 16, 2019, Chase Austin was shot and killed by a Roanoke City Police Department (“Roanoke Police”) officer near a Krispy Kreme Doughnuts shop in Roanoke. The exact events leading up to his death are in question. Roanoke Commonwealth’s Attorney Donald Caldwell concluded that the shooting was justified. Ms. Hall disagrees with that conclusion and with many of the facts alleged in the Commonwealth’s Attorney’s news release summarizing his findings.

14. Ms. Hall’s understanding of the incident is based in part on surveillance video footage collected from private businesses and shown to her on one occasion by the Commonwealth’s Attorney’s Office and Virginia Department of State Police (“State Police”). Access to that surveillance footage is essential to answering the questions surrounding Chase’s death.

**I. The October 16, 2019 Shooting of Chase Austin by a Roanoke Police Officer**

15. At a general level, the facts of the shooting are as follows: Shortly before 1:00 pm on October 16, 2019, Officer Martinez of the Roanoke Police responded to a call about Chase Austin at a Krispy Kreme Doughnuts shop at 1625 Hershberger Road in Roanoke, Virginia. He encountered Chase in the shop and attempted to take him into custody, but Chase escaped his grasp and ran. Officer Martinez ran after Chase and ultimately shot and killed him.

16. Of course, the details are significant. And there are a number of discrepancies between the Commonwealth's Attorney's retelling of the details of this incident and Ms. Hall's understanding of the details based on news reports and her viewing of surveillance footage. Those discrepancies are outlined below.

**A. Officer Martinez is Called to the Krispy Kreme**

17. As noted, Officer Martinez arrived at the Krispy Kreme shortly before 1:00 pm. According to the Commonwealth Attorney's news release, Officer Martinez was responding to a call from Krispy Kreme employees reporting Chase as a trespasser. The news release claims that Officer Martinez encountered Chase immediately upon entering the store. It also claims that Officer Martinez recognized Chase from a photo disseminated to officers in that morning's "lineup" based on two upper arm tattoos and was aware that Chase had multiple outstanding felony and misdemeanor warrants.

18. In Ms. Hall's understanding, Chase—who was obsessive about cleanliness—entered the Krispy Kreme to use the restroom to wash up. Chase was wearing a hoodie with the hood up and did not look at the employees as he entered the establishment, meaning no employee would have recognized him to be able to determine that he was trespassing. Based on Ms. Hall's viewing of surveillance footage from inside the Krispy Kreme, Officer Martinez

entered the building as Chase was coming out of the restroom. Chase had changed his clothes in the bathroom and was carrying his boots, which he had not put back on yet.

19. As Officer Martinez approached him, Chase bent over to put his boots on and then put his empty hands in the air. Chase was wearing a sleeved shirt, making it impossible for Officer Martinez to see the distinctive tattoos on his upper arms.

20. After she learned of her son's death, Ms. Hall looked online to determine if Chase had outstanding warrants for his arrest; she saw no felony charges, only a warrant based on a failure to appear.

#### **B. Officer Martinez Attempts to Take Chase into Custody**

21. Next, according to the news release, Officer Martinez attempted to take Chase into custody, but a struggle ensued between the two men and Chase pointed a pistol at Officer Martinez. The news release claims that after Chase pointed the gun at him, Officer Martinez let go of Chase, who exited the Krispy Kreme and ran.

22. Meanwhile, based on Ms. Hall's viewing, the video shows Chase calmly talking to Officer Martinez. Chase kept his hands in the air—empty—throughout what appeared to be a peaceful conversation between the two men. At a certain point, Officer Martinez forced Chase into the wall. The two men struggled and Officer Martinez pushed Chase into the doorway. Chase broke away from Officer Martinez and ran. Ms. Hall did not see a gun in Chase's hand at any point in this.

#### **C. Officer Martinez Shoots and Kills Chase**

23. In the Commonwealth's Attorney's telling, as Chase ran through parking lots from Officer Martinez, he turned his upper body toward Officer Martinez, gun in hand, causing Officer Martinez to shoot him.

24. When she viewed the video, Ms. Hall saw Chase turn his head to his right while he ran as he reached the corner of the Krispy Kreme, but she did not see him turn to face Officer Martinez. Nor, again, did she see a gun in Chase's hand.

25. It is undisputed that Officer Martinez shot Chase four times. Three of the bullets hit Chase in the legs; the fatal bullet entered through Chase's back and went through his abdomen.

26. The order of the shots is in question, though. Ms. Hall believes—based on news reports and the autopsy report, because she was not shown video of the shooting itself—that Officer Martinez shot Chase in the back first, and then shot him three more times in the legs as he lay on the ground dying.

27. Meanwhile, the Commonwealth's Attorney's news release claims that Officer Martinez first shot Chase in the legs, causing him to fall to the ground in the property lot of a partially-constructed car wash. Officer Martinez then purportedly shot Chase in the back as Chase rolled over on the ground to face him.

28. Even in the Commonwealth's Attorney's telling, however, there is no claim that Chase brandished a weapon at Officer Martinez as he rolled over. The news release simply states that Chase "rolled to face [Officer Martinez] resulting in a final shot being fired."

29. A civilian eyewitness spoke on a video soon after the shooting and said that she could see Chase's hands and she did not see a weapon in them.

30. In fact, the news release never states that Chase pointed a gun at Officer Martinez or anyone else while running from the officer.

31. Despite this, the Commonwealth's Attorney concluded in the news release that Officer Martinez "was legally justified in the use of deadly force to protect his own life as well as the lives of others in this situation."

32. Ms. Hall saw nothing in the surveillance footage to suggest to her that the shooting was justified.

33. The result of the incident is not disputed. After being shot four times by Officer Martinez, Chase was taken to Carilion Roanoke Memorial Hospital, where he died soon after.

34. An autopsy found that the cause of death was a gunshot wound that went through Chase's lower back into his abdomen.

35. Ms. Hall learned that her son was dead not from the Roanoke Police, but from watching the news on television the day he was killed.

## **II. The Investigation**

36. The State Police and the Roanoke City Commonwealth's Attorney's Office opened a criminal investigation into Officer Martinez's shooting of Chase shortly after the shooting.

37. On or about February 5, 2020, the Commonwealth's Attorney's Office issued the news release announcing that it would not be pursuing criminal charges against Officer Martinez. The news release signified the end of any investigation into Officer Martinez's actions.

38. Throughout the investigation, Ms. Hall repeatedly attempted to get information from law enforcement officials about the shooting.

39. Officials repeatedly rebuffed her.

40. Neither the Roanoke Police nor the State Police, which handled the investigation, contacted Ms. Hall regarding the death of her son in the days or even weeks following the shooting.

41. Ms. Hall learned of developments in the investigation from the press—never from one of the police departments or the Commonwealth’s Attorney’s Office.

42. Law enforcement officials did not even provide Ms. Hall with her son’s autopsy report; she obtained the report through a WFXR news reporter.

43. Around the time they decided to close the investigation, the Commonwealth’s Attorney’s Office and the State Police contacted Ms. Hall and invited her to view security camera footage of the events leading up to the shooting, which had been collected from nearby businesses, including the Krispy Kreme.

44. Because Officer Martinez’s body camera was turned off during the incident—as frequently seems to be the case in officer-involved shootings in the Commonwealth—those private videos are the only existing footage of the incident.

45. When the Commonwealth’s Attorney’s Office and State Police extended the invitation to Ms. Hall, they informed her that if she brought anyone else with her to the meeting—even legal counsel—the meeting would be immediately canceled.

46. The police and prosecutors only allowed Ms. Hall to view the footage on that one occasion. They would not allow her to copy the footage or show it to anyone outside of that viewing.

47. In the meeting, when Ms. Hall became upset over her son’s death, Commonwealth’s Attorney Donald Caldwell told her: “You need to accept this and get over it.”



### **III. Ms. Hall's VFOIA Requests**

48. Based in part on her own viewing of the surveillance footage, Ms. Hall believed that Officer Martinez's shooting of her son was unjustified.

49. Because the police departments would not voluntarily give her a copy of the surveillance footage, Ms. Hall tried to obtain the footage through Virginia Freedom of Information Act (VFOIA) requests.

50. Ms. Hall first sent a VFOIA request to the Roanoke City Police Department, on February 17, 2020, demanding access to the video footage as well as other documents related to the incident.

51. The Roanoke Police denied the request on February 24, informing Ms. Hall in a letter from the Office of the City Attorney of Roanoke that releasing the documents would be "likely to jeopardize an ongoing investigation related to certain investigative files," and invoking its discretion not to release criminal investigative files under Va. Code § 2.2-3706.

52. This was despite the fact that the Commonwealth's Attorney's Office had announced nearly three weeks earlier that it would not be pursuing a criminal case against Officer Martinez.

53. The City Attorney's letter also informed Ms. Hall that the Virginia State Police was handling the "ongoing" investigation and directed her to contact the State Police.

54. Ms. Hall, therefore, filed a VFOIA request with the State Police on March 4.

55. A State Police attorney sent Ms. Hall a letter denying her request the next day.

56. The State Police, like the Roanoke Police, invoked the criminal investigative file exemption in Va. Code § 2.2-3706, informing Ms. Hall that the materials she sought were

“responsive of” a “case” and “would be contained in the criminal investigative files of the Virginia Department of State Police.”

57. The letter did not identify a specific criminal investigation that the files “would be” a part of, but the “case” that it said the files were “responsive of”—specifically, “case no. 19-27892”—is referenced elsewhere in the letter as a law enforcement file associated with Chase Austin, not Officer Martinez.

58. This letter was dated March 5, one month after the Roanoke City Commonwealth’s Attorney announced that no criminal charges would be pursued against Officer Martinez.

59. Neither the Roanoke Police nor the State Police identified to Ms. Hall the “volume and subject matter of withheld records” as required by Va. Code § 2.2-3704.

#### **COUNT ONE**

##### **Violation of the Virginia Freedom of Information Act, Va. Code § 2.2-3700 *et seq.***

60. Petitioner repeats and incorporates by reference the allegations in paragraphs 1 through 59.

61. The Virginia Freedom of Information Act (VFOIA or “the Act”), Va. Code § 2.2-3700 *et seq.*, guarantees citizens of the Commonwealth access to public records held by public bodies, public officials, and public employees.

62. A public record is any writing or recording—regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format—that is prepared or owned by, or in the possession of, a public body or its officers, employees, or agents in the transaction of public business. Va. Code § 2.2-3701. All public records are presumed to be open and may only be withheld if a specific statutory exclusion applies.

63. The purpose of the VFOIA is to promote an increased awareness by all persons of governmental activities. To further this policy, the Act requires that the law be interpreted liberally in favor of disclosure and that any statutory exemption allowing public records to be withheld be interpreted narrowly. Va. Code § 2.2-3700.

64. The statute exempting certain law enforcement records from disclosure under the Act defines the term “[c]riminal investigative files.” The definition does not cover surveillance video recordings obtained from private businesses.

65. Thus, at a minimum, the video footage withheld by the Roanoke Police and the State Police was wrongfully withheld. Petitioner is entitled to obtain the videos under the VFOIA.

66. Meanwhile, the State Police’s response to Ms. Hall’s VFOIA request purports to withhold the video footage and other documents on the grounds that they were “responsive of” a criminal file associated with Chase.

67. But in their responses to Ms. Hall’s VFOIA requests, neither the Roanoke Police nor the State Police claimed to have opened a criminal investigation into Chase based on the incident in question.

68. Thus, it is unclear what criminal file the State Police claims the documents are “responsive of.” In fact, it is clear the documents *cannot* lawfully be a part of any investigative file related to Chase.

69. In other words, the State Police improperly relied on an unrelated criminal file to invoke the criminal investigative file exemption in Va. Code § 2.2-3706 to withhold the video footage and other documents Ms. Hall seeks. Therefore, the criminal investigative file exemption

does not cover these records. The State Police violated the VFOIA by refusing to turn over the records Ms. Hall sought on this basis.

70. Requiring disclosure of the video footage and other documents Ms. Hall seeks would be consistent not only with the text of VFOIA, but also with the public interest as enshrined in the VFOIA.

71. Meanwhile, it is extraordinarily difficult to imagine any public interest that would be served by allowing law enforcement officials to withhold the surveillance videos Ms. Hall seeks.

72. If the State Police is allowed to withhold virtually any information from the public simply by collecting video footage or other files from private entities and instituting even a brief criminal investigation, then the only avenue for an individual like Ms. Hall to obtain critical evidence of police misconduct is to institute a civil lawsuit, survive a motion to dismiss, and obtain discovery, all of which flies in the face of any argument about fairness and judicial economy or efficiency.

73. Needless to say, this avenue is far more expensive than a VFOIA request, both for the individual and the Commonwealth.

74. The difficulty of obtaining public records through ordinary litigation is likely one of the reasons the General Assembly enacted the VFOIA. Allowing the Roanoke Police and the State Police to deny public access to the video footage and other documents in this case would undermine the purpose of the VFOIA and contradict the statute's own terms.

75. Petitioner seeks a writ of mandamus or an injunction directing the Roanoke Police and the State Police to turn over the surveillance videos and other documents pertaining to the shooting of her son.

76. Petitioner also requests an award of attorney's fees and costs pursuant to Va. Code § 2.2-7313(D).

## **COUNT TWO**

### **Violation of the Virginia Freedom of Information Act, Va. Code § 2.2-3700 *et seq.***

77. Petitioner repeats and incorporates by reference the allegations in paragraphs 1 through 76.

78. The VFOIA requires that where a public body withholds records entirely in response to a VFOIA request, the "response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records." Va. Code § 2.2-3704.

79. Both the Roanoke City Police Department and the Virginia Department of State Police responded to Ms. Hall's VFOIA requests that they were withholding the requested records in their entirety, but neither entity identified with particularity the volume and subject matter of the withheld records. This also constitutes a violation of the VFOIA.

80. Petitioner seeks a writ of mandamus or an injunction directing the Roanoke Police and the State Police to identify with reasonable particularity the volume and subject matter of withheld records.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

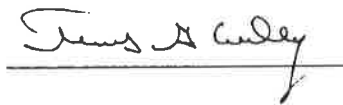
- A. Issue a writ of mandamus or an injunction requiring the Respondents to act as follows:
  - i. Within 5 days of the date of the writ, produce to Petitioner, at no cost, all records related to the investigation into the shooting of Chase Austin by Officer Martinez

on October 16, 2019, including all video surveillance footage collected from private businesses; and

- ii. Identify with particularity the volume and subject matter of the records withheld from Ms. Hall's VFOIA requests; and
  - iii. Submit a report to the Court within 90 days after the date of the writ certifying, under oath, Respondents' compliance with the Court's writ of mandamus or injunction.
- B. Award Petitioner attorneys' fees and other costs pursuant to Va. Code § 2.2-7313(D).
- C. Order such further relief as the Court deems just and proper.

Dated: July 8, 2020

Respectfully submitted,



Thomas G. Connolly (VSB # 29164)  
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Evan Marolf (*pro hac vice pending*)  
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VERIFICATION

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

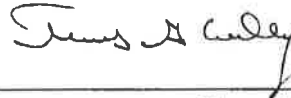
Lori Hall  
Lori Hall

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of July, 2020, a true and correct copy of the foregoing document was sent via First Class mail to the following:

Colonel Gary T. Settle, Superintendent  
Virginia Department of State Police  
PO Box 27472  
Richmond, VA 23261

Officer Sam Roman, Chief of Police  
Roanoke City Police Department  
348 Campbell Avenue SW  
Roanoke, VA 24016



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Thomas G. Connolly