

American Civil Liberties Union of Virginia
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Roanoke Branch NAACP
401 Gainsboro Road NW, Roanoke, Va. 24016

July 22, 2016

The Hon. Terry McAuliffe
Governor of Virginia
Office of the Governor
Patrick Henry Building, Third Floor
1111 E. Broad Street
Richmond, Va. 23219

Dear Gov. McAuliffe:

On behalf of the American Civil Liberties Union of Virginia and our members and supporters across the Commonwealth of Virginia, and the Roanoke Branch of the NAACP and its members, we respectfully urge you to exercise your authority to direct the Virginia State Police Bureau of Criminal Investigation (BCI) to investigate the fatal shooting of Kionte Desean Spencer by Roanoke County Police Department officers.

Facts of the Incident

Mr. Spencer, an 18-year-old African-American student at Hidden Valley High School, was walking along a busy public road early in the evening – around 7:15 p.m. – on Friday, Feb. 26, when a 911 caller reported “a man wearing headphones and a bandana over his face and carrying what appeared to be a gun while walking along the road near Walgreens.”

Two minutes after the 911 call, the first officer arrived on the scene and ordered Mr. Spencer to “put the gun down.” Mr. Spencer did not respond. Five additional officers soon arrived and several issued similar commands. Mr. Spencer, though turning several times in apparent awareness of the officers’ presence, still did not respond or release an object held in his left hand.

One officer requested that additional police bring a beanbag gun to the scene but was told the nearest officer who had one was three minutes away. Rather than wait, one officer deployed a Taser twice to no effect. Mr. Spencer turned toward the officers and two

of them shot him a total of three times, striking him in the hip and near his collarbone, according to initial reports.

Mr. Spencer was delivered by ambulance to Carilion Roanoke Memorial Hospital where he died. The object in his hand was discovered to be a broken BB pistol. The Roanoke Medical Examiner's Office announced on March 2 that Mr. Spencer's cause of death was a gunshot wound to the chest.

Investigation of the Incident

From his first statements following Mr. Spencer's killing, Roanoke County Police Chief Harvey Hall, citing privacy and security concerns for his officers, has refused to release either the names of the six officers involved or dashboard-camera footage of the incident. Since then, he has held true to that promise in spite of significant concerns and appeals from the family of the deceased, the Roanoke Valley chapter of the NAACP, the ACLU of Virginia and a protest group from the broader community calling itself "Justice for Kionte Spencer."

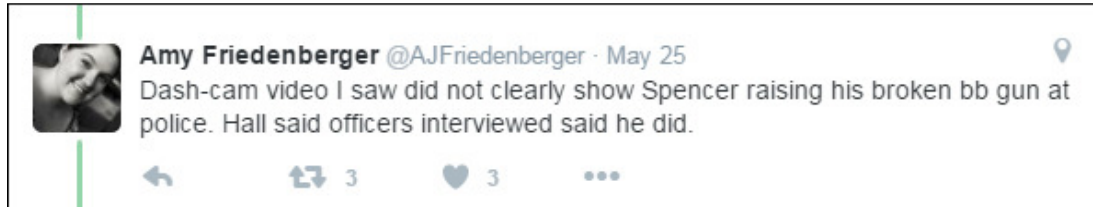
In a statement released March 2, Chief Hall at once stated that "transparency is very important to us" yet "there is no discernible benefit" to releasing the names of officers involved in the shooting. Nearly three months later, on May 27, Chief Hall and Roanoke County Commonwealth's Attorney Randy Leach held a news conference in which all officers were cleared of any wrong-doing. Still, the officers' names and dash-cam video have been withheld.

One day earlier, on May 26, selected members of the news media and county officials were allowed to view brief segments of the dash-cam video as well as still frames from the video which were purported to support officers' claims that Mr. Spencer pointed the BB pistol at them. However, individuals who saw the carefully screened images first-hand reported that they did not, in fact, corroborate the officers' version of events.

Still image from dash-cam provided by Roanoke County Police Department:



The Roanoke Times reporter Amy Friedenberger on Twitter:



Among other concerns, we are troubled that – in spite of the Chief’s stated concerns for the privacy of his officers, Mr. Spencer’s privacy is of no apparent regard. In fact, his difficult but unrelated past seems to have been used as justification for his shooting. At the news conference, the Chief and Commonwealth’s Attorney went to great lengths to detail Mr. Spencer’s purported mental health issues, personal and family history and previous interactions with police which, incidentally, never resulted in any law enforcement action. Mr. Spencer was characterized as “troubled” and blamed for his own death.

“His own actions led to a police use of deadly force against him,” the Roanoke Times newspaper quoted Chief Hall as saying. “Had he acted responsibly or followed our directions, this incident could have been avoided.”

Community Response

Immediately following the incident, the Roanoke Branch of the NAACP called for release of the names of the officers involved, release of full, unedited dash-cam video of the incident and an independent investigation. Numerous others have joined in these demands, including:

- Community vigils, March 2, 4 and 13, 2016, as reported by the Roanoke Times.
- ACLU of Virginia, op-ed in the Roanoke Times, “Release the Names Now: Transparency without Accountability Won’t Build Trust,” March 4, 2016.
- Letters to the editor of the Roanoke Times, March 16, 22, 25 and 26, May 31, June 2 and 11, 2016.
- Editorial, The Roanoke Times, “Why isn’t there an Independent Investigation in Spencer Case?” March 26, 2016.
- Opinion column, Dan Casey, The Roanoke Times, “Many Questions, Few Answers in Kionte Spencer Killing,” May 4, 2016.
- Opinion column, Dan Casey, The Roanoke Times, “Readers React to Column About Kionte Spencer Shooting,” May 9, 2016.
- ACLU of Virginia, ACLUVA.org blog, “Should Independent Review of All Police-Involved Killings be Mandated?” May 31, 2016.
- Editorial, The Roanoke Times, “Why Aren’t There Automatically Outside Investigations in Police Shootings?” June 22, 2016.

In addition, several residents of the Roanoke community who are part of the protest group “Justice for Kionte Spencer” met on June 13, with U.S. Attorney for the Eastern District of Virginia John Fishwick to present a petition signed by more than 400 individuals and organizations demanding the release of the names of involved officers and dash-cam video as well as for an independent federal investigation. The ACLU of Virginia and the Roanoke Branch NAACP were co-signers of this petition. While we do hope a federal investigation will be undertaken by the U.S. Attorney or the Department of Justice, we also believe it is within your power to understand the urgency of this matter and act without any further delay.

Requested Actions

- ***Direct the Virginia State Police BCI to conduct an independent investigation.*** We do not, at this stage, have sufficient information to conclude that wrongful use of deadly force occurred in Mr. Spencer’s killing. Nonetheless, the withholding of information from the public at the same time that involved officers have been exonerated solely by an internal investigation by their own department makes it impossible to conclude otherwise. Given the Roanoke County Police Department’s handling of this matter, the community’s faith is broken. It is up to you to help restore it.

- ***Release the names of the officers involved.*** We sympathize with and share the concerns of the Roanoke County Police Department regarding the safety and privacy of involved officers and their families immediately following police-involved shootings. This concern, however, does not and cannot justify keeping the names of the involved officers secret forever. The names of these public employees about whose conduct in fulfilling their public duties there are questions should be made available to the public they serve as soon as any reasonable and legitimate concern for the safety of officers and their families is addressed. The names of officers involved in a shooting should be released no later than 48 hours after a critical incident, unless there are case-specific valid safety concerns that warrant a longer period. Like the law enforcement author of an article in *The Police Chief* magazine, the self-described “professional voice of law enforcement,” we believe that this is the “best policy” for all law enforcement agencies to follow, particularly if they wish to retain the trust of the communities and people they police. Two days is sufficient time for any law enforcement agency to do what is reasonably necessary to ensure that issues regarding credible threats to the safety of an officer or his or her family are addressed. In Kionte Spencer’s case, it is now five months after the fact and the community still does not know who killed him. In addition to requesting that you direct the State Police to release the names of the involved officers as a part of their investigation, we urge you as Governor to use your authority and “bully pulpit” to advocate for a statewide disclosure policy that is consistent with the 48 hour best practice and applies to all law enforcement agencies in the state.

- ***Release all dash-cam video related to this incident.*** Because Virginia's open records law allows for withholding of officer names and dash-cam video does not mean they should be withheld. We understand that the Roanoke County Police Department may well be within its legal rights to withhold these records and information from the public under specific exemptions of the Virginia Freedom of Information Act (FOIA). Nonetheless, as you know, there is no requirement that the department do so. We believe it is consistent with Chief Hall's stated commitment to transparency as well as the public interest that all facts and evidence in Mr. Spencer's killing be disclosed to the public as soon as possible, and we urge again that you direct the State Police to disclose this information as a part of their investigation.

In closing, we believe any use of deadly force, particularly use of force resulting in death, should be subject to an outside, objective investigation, and not merely a self-examination by the department involved and the Commonwealth's Attorney with whom it regularly works. The need for such an outside review is particularly clear where, as here, the self-investigation has lacked transparency, failed to acknowledge or respond to the public's interest and where significant questions remain. Mr. Spencer, his family and the greater community deserve better.

We urge you to order the Virginia State Police to investigate fully the Feb 26 death of Kionte Desean Spencer at the hands of the Roanoke County Police Department. At the close of the investigation, we would ask that a full report of the state police's complete findings be released to the public that includes the names of the involved officers and all related dash-cam footage and any other video or written reports.

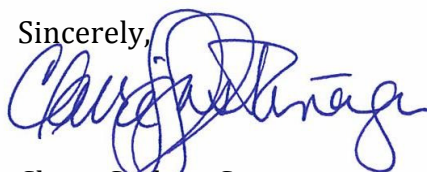
Beyond the Kionte Spencer situation, police-involved shootings rapidly have become of critical concern across the Commonwealth and the nation and must be pro-actively addressed. From Harrisonburg and Norfolk to Buckingham County and Culpeper in 2016 alone, these same issues have arisen again and again, with the lack of subsequent transparency fueling community fear of police and eroding trust in law enforcement. These cases and the increasingly tense relationships between law enforcement and the communities they serve should compel you to exercise your executive authority immediately to require independent BCI investigations of all incidents in which persons are killed or seriously injured by law enforcement use of force, whether in custody or on the street and regardless of method.

Please do not allow Virginia to join Louisiana, Minnesota, Florida and so many other states in which instances of police violence have been revealed only by third-party video rather than law enforcement's own due diligence. We cannot afford to wait to repair the clear, identifiable and systematic failures of our criminal justice system. Even as some Virginia localities appear to be taking voluntary steps in this direction – Fairfax County is considering appointing an "independent auditor" to review all police incidents involving use of force resulting in bodily injury or death, the Westmoreland Sheriff's Department is the process of finalizing a use of force policy that will commit it to seeking an outside

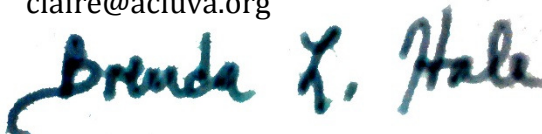
investigation of any deadly use of force, and the City of Norfolk, where police have killed five people so far this year, is considering a new policy to release body-worn camera footage from critical incidents to the public – it is up to you to ensure that the Commonwealth itself is a leader in adopting policies and practices that protect the lives for both the people being policed and the police who ensure our public safety.

Thank you in advance for your consideration. We will be calling your office shortly to seek a meeting with you and other appropriate executive branch officials at which we can discuss our concerns and proposed solutions. In the interim, please let us know if we may be of any further assistance or if there is any additional information we may provide in advance of the meeting.

Sincerely,



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cc: The Hon. Brian Moran, Virginia Secretary of Public Safety
Col. W. Steven Flaherty, Superintendent, Virginia State Police