

For Immediate Release: 7/26/2020

OccupyWSNC Day 12

Note: This Press Release contains an Appendix titled "Sheriff Bobby Kimbrough and the FCSO Use-of-Force Policy"

On day 12 of #OccupyWSNC, demonstrators gathered at Bailey Park at 10am. Occupiers worked together to send emails to Winston-Salem Mayor Allen Joines, Sheriff Bobby Kimbrough, DA Jim O'Neill, WSPD Chief Catrina Thompson, City Council Members, and County Commissioners. A link to the email templates is here:

https://docs.google.com/document/d/1Hjnvss32y25CP2IN4Hli6KQk6gibLKmm_AUaTmFELoM/e/dit?usp=sharing. The emails read:

I am writing to call on you to implore your colleagues to meet the very reasonable demands made by the constituents who elected you regarding the murder of John Elliott Neville. We are on day 12 of our occupation and intend to maintain our efforts until these demands are met. As a reminder, our demands are:

1. Answer the questions posed by the Triad Abolition Project regarding Mr. Neville's murder. If in fact county officials are not covering up a murder, this should be a very simple request. (These questions have been sent county officials' offices as well as published in several media outlets. You can find them at

<http://triadabolitionproject.org/demands>.)

2. Ban the prone restraint and commit to sanctions for any law enforcement personnel who uses it on any citizens, incarcerated or not.

3. Pledge to notify the public of any deaths of incarcerated people.

4. Dismiss all charges against peaceful protesters practicing our Constitutionally protected rights.

As you may know, the North Carolina ACLU is in full support of our demands and has repeatedly called on you to respond to our efforts. Support for our occupation has continued to grow among community members, funders, and justice-oriented organizations, as well as among the family of Mr. Neville as you may have seen recently published in the Winston Salem Journal. Now is the time to do the right thing.

Best wishes,

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In addition, occupiers wrote to Judge Menefee and Judge Hines. Here is that message:

I am writing to draw your attention to an unjust practice currently occurring with arrests of peaceful protesters in Winston Salem. During the arrests which occurred on both July

24th and July 25th, one single demonstrator on each night was booked into general population even though their bond was paid. These individuals were held for several hours despite Forsyth County Bail Fund immediately posting their bonds and despite there being others with whom they were arrested whose bonds were paid and were not processed into the jail. This is a clear intimidation tactic used in an attempt to scare an individual by unjustly holding them, and also to "send a message" to other individuals that they too may be unjustly held. This should be not allowed and we call on you to call for the end of this practice of intimidation by your magistrates. The North Carolina ACLU has been notified of these incidents and is closely monitoring the situation for potential violations of the rights of protesters. Thank you for your time.

At approximately 6PM, demonstrators from #OccupyWSNC marched from Bailey Park down Fourth Street, and then to the Forsyth County Detention Center. Demonstrators were then provided with dinner, given the option of attending an Empathy Workshop led by Molly Grace, and private reiki sessions.

Organizers intend to maintain the occupation until our demands are met. Those demands are as follows:

1. Respond to all questions posed by TAP and UC (outlined below).
2. Ban the use of the prone restraint (hogtie) on ANY civilian, incarcerated or not, sick or not). Make relevant policy changes in the FCDC around protocol for inmates in medical distress.
3. Notify the public of any death involving an officer or deputy immediately. Make relevant policy changes around transparency and accountability in deaths of citizens in custody of the county (including in FCDC and other guardianship situations).
4. Dismiss all charges against arrested peaceful protesters.

Our Questions

Why are you covering up a murder?

We demand answers to all of the following questions: Was Sheriff Bobby Kimbrough at any time on the scene during the hogtying of Neville? Why has the hogtie remained an acceptable restraint in Forsyth County when it has been banned in the majority of police precincts across the country years ago? Have there been any changes in the medical provider since Neville's death? How many other deaths have occurred at the detention center since the death of Neville? Have there been changes to the handcuff policies of sick inmates? When was the last time the FCSO conducted an overall use of force training and handcuffing training for its deputies and detention officers? Were the detention officers that handcuffed Neville certified to handcuff him? Have there been any policy changes for how to handle handcuffs when the key breaks, for when bolt cutters are necessary? When did Sheriff Kimbrough and DA O'Neill

become aware and view of the contents of the video footage, specifically viewing Mr. Neville being hogtied and calling out, "I can't breathe"?

Why was Guilford County never notified of John Neville's death? What would have happened had Guilford County ADA Spiker known that John Neville was resuscitated after losing his pulse in FCDC custody when she was asked to release his unsecured bond? Would these staff members have still been charged had SB 168 not been vetoed by Governor Cooper? Why were these staff members allowed to continue working with our incarcerated siblings for seven months after their involvement in a murder? Would the public have been notified of this murder had SB168 not been vetoed by Governor Cooper? Was the passing of SB168 intended to shield the murder that took place in the FCDC from the public? What involvement did Sheriff Bobby Kimbrough have in the proposal of SB 168 the night before news reports on the death of John Neville were to become publicly available?

Furthermore, according to the Grace, Tisdale, & Clifton website, "Mike and the firm Grace, Tisdale & Clifton are one of the two local firms who represent local law enforcement through the Police Benevolent Association." Michael Grace, the lawyer for the John Neville estate, has been representing the Sheriff's Department since Sheriff Shatzmen's tenure, and presented Sheriff Bobby Kimbrough to the court and to the public at his swearing in ceremony. What rules of professional conduct under the NC State Bar Rule 1.7 Conflict of Interest are implicated by Michael Grace representing both the estate and the Sheriff's Office?

Why are you, Sheriff Bobby Kimbrough and DA Jim O'Neill, covering up a murder?

For further information, please see @TriadAbolitionProject and @_theunitycoalition_ on Instagram. All press release documents can be found at www.triadabolitionproject.org.

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APPENDIX

Sheriff Bobby Kimbrough and the FCSO Use-of-Force Policy

We seek transparency and accountability from Sheriff Bobby Kimbrough and FCSO specifically on the topics of 1) the illegal use of the hogtie (prone) restraint, 2) the required presence of Sheriff Kimbrough based on “chain of command,” 3) public access to any Incident Review Board (IRB) reports, 4) public access to any “Use-of-Force” analysis, 5) specificity on FCSO training, 6) “Duty-to-Intervene,” and 7) the exact quantity of FCSO personnel and staff members present during the death of Mr. Neville.

On July 8, 2020, five FCSO detention officers and one Wellpath nurse were charged with involuntary manslaughter by Forsyth County District Attorney Jim O’Neill: Lt. Lavette Maria Williams, Cpl. Edward Joseph Roussel, Officer Christopher Bryan Stamper, Officer Antonio Woodley Jr., Officer Sarah Elizabeth Poole, and Wellpath nurse Michelle Heughins. All six of the accused received \$15,000 bonds. They are all scheduled to appear in court on November 6, 2020, 11 months after the death of Mr. Neville.

1. The Hogtie (Prone Restraint) (374.5 USE-OF-FORCE CONSIDERATIONS, K)

2. Resisting individuals, who must be placed into a prone (face down) position to be subdued, should be repositioned to a sitting position or placed on their side as soon as restraining devices are applied.

3. Once a subject is controlled and handcuffed or otherwise restrained, officers are responsible for monitoring the person’s color, breathing and level of consciousness. If an individual claims physical distress, medical personnel must be immediately requested to evaluate.

4. Officers who must use their body weight to control an individual who is in the prone position shall exercise extreme caution and shall immediately remove their weight as soon as restraining devices are applied and potential weapons that may be accessible to the individual are secured. Officers should avoid sitting or placing their knee on an individual’s head or neck.

In the autopsy report, it is clearly stated that Mr. Neville was prone and positioned with “his legs flexed in a trifold position” for 4 minutes and at minute 5, his legs were straightened and he stopped moving and verbalizing. At minute 12, still prone, Mr. Neville was checked by the nurse and then left alone in the cell, still in the prone position, while the nurse spoke outside with FCSO officers to say that she could not find a pulse. Officers and the nurse entered the cell again and removed Mr. Neville from the prone position in order to begin CPR.

The SBI investigation, itself, was completed by April of 2020; the evidence of Mr. Neville’s murder was compiled and available to the Sheriff in reports, documents, videos, and medical records since at least April, but the cause of death from the Medical Examiner was withheld until July 7th, the day after SB168 was vetoed. The delay in revealing his death to the public was clearly an effort to suppress the information in this investigation and in the autopsy. Mr. Neville’s cause of death: “Complications of hypoxic ischemic brain injury due to cardiopulmonary arrest (resuscitated) due to positional and compressional asphyxia during prone restraint.”

2. Chain of Command (374.6 (A) REQUIRED REPORTING)

A. If the use-of-force involves a lethal weapon or results in serious bodily injury or death, other than the use-of-force on an animal, the on-duty supervisor shall promptly notify the Watch Commander, who shall in turn pass notification to the Sheriff via the chain of command. (Refer to SOP 202 FCSO Organization.)

Based on the fact that Mr. Neville suffered “serious bodily injury” while still in FCSO custody on December 2, 2019, the on-duty supervisor should have notified the Watch Commander, who should have notified Sheriff Bobby Kimbrough. Sheriff Bobby Kimbrough has repeatedly stated that he did not know the cause of death of Mr. Neville, but had he been notified of Mr. Neville’s “serious bodily injury” while in FCSO custody, which resulted in his death, then Sheriff Bobby Kimbrough is lying to the public.

3. Missing IRB Reports (374.8 INCIDENT REVIEW BOARD)

A. Any staff member involved in a use-of-force incident, or other critical or traumatic incident, resulting in serious bodily injury or death to a person while acting in an official capacity shall be reviewed to determine if the affected staff member should be placed on administrative leave or reassigned to administrative duties pending review by the Incident Review Board (IRB) or any Internal Affairs investigation.

B. The Incident Review Board (IRB) shall conduct use-of-force incident reviews to establish responsibility, identify remedial training as appropriate, improve agency operations, and recommend corrective action to the Bureau Commanders.

C. The State Bureau of Investigation (SBI) may be notified and requested to conduct an investigation in any use-of-force incident resulting in death or serious bodily injury. However, an investigation by the SBI does not relieve officers or supervisors of the requirements of this directive and an administrative investigation shall be completed as specified above.

FCSO “Use-of-Force” policy clearly states that an SBI report does not negate IRB reports. Furthermore, policy clearly states that an IRB is required for “any staff member involved in a use-of-force incident...resulting in serious bodily injury;” however, Sheriff Bobby Kimbrough and his office failed to complete IRB reports in the case of Mr. Neville. Furthermore, *News & Observer* reported in “Forsyth County detention officer received merit-based raise after inmate’s death” (July 17 2020) that Officer Sarah E. Poole:

Received an “above standard” evaluation dated Jan. 11 that came with a raise of 61 cents per hour. That increased her hourly wage to \$19.42.” That was 38 days after John Neville, 56, died from injuries sustained from being placed in prone restraint for 14 minutes at the Forsyth County Jail, and 40 days after the State Bureau of Investigation opened an investigation into the incident at the jail.

Furthermore, in the *Winston-Salem Journal's* article, "[Three of five detention officers were either suspended or placed on administrative leave in the weeks before charges were announced in John Neville's death, according to records.](#)" (July 18, 2020), indicates that:

Records requested by the *Winston-Salem Journal* show that Roussel was placed on administrative leave with pay on June 2 and Williams was placed on administrative leave with pay on July 2. Poole was suspended without pay for three days, starting on June 26, the first day that the sheriff's office publicly acknowledged Neville's death after getting questions from the *Winston-Salem Journal*. According to the records, Poole was then placed on a probationary period for 12 months after the three-day suspension.

It was not immediately clear whether these actions against Roussel, Poole and Williams were related to Neville's death. Woodley and Stamper were not suspended or placed on administrative leave, according to the records.

Christina Howell, the spokeswoman for the sheriff's office, has said that no disciplinary action was taken against the detention officers during an investigation into Neville's death by the State Bureau of Investigation.

Local media sources have diligently emphasized that the detention officers and nurse were not only not placed on administrative leave following the "serious bodily injury" of Mr. Neville, but were also continuing with employment at the capacity to receive raises. The gross negligence towards conducting an IRB for each FCDC employee following the "serious bodily injury" of Mr. Neville is evidence of Sheriff Bobby Kimbrough's complicity and actions in covering up the murder of Mr. Neville.

4. Use-of-Force Analysis (374.6 REQUIRED REPORTING (D))

D. The Professional Standards Division Commander shall submit a comprehensive Use-of- Force Analysis to include intentional discharge of firearms for other than training purposes, incidents resulting in a person's injury or death, and frequency of the intentional use of lethal and less-lethal weapons or unarmed self-defense force for review on an annual basis or as directed by the Sheriff.

Due to Mr. Neville's "serious bodily injury" while in FCSO Custody, there should be a "comprehensive Use-of-Force Analysis," which should be made public, and should have also been read by Sheriff Bobby Kimbrough even without the Medical Examiner's administering of the autopsy on July 7, 2020.

5. Training (374.5 USE-OF-FORCE CONSIDERATIONS (C))

C. All officers authorized to carry or use lethal and less-lethal weapons shall receive annual in- service training and instruction in regard to the circumstances under which lethal and less-lethal force may be used. Training shall include agency prohibition of "warning shots" or any other specific unauthorized use-of-force. Instruction shall also include the circumstances

when medical personnel should be summoned to the scene involving use-of-force incidents. Training and instruction shall be documented in the individual's training file.

In the *WS Chronicle* article from June 23, 2020, "Kimbrough also mentioned instead of annually, the FSCO conducts training quarterly. He said training is something that should be ongoing. 'This once a year ... all that is to me is a seminar training, it has to be an ongoing continuous thing,' Kimbrough said." However, in this Use-of-Force policy document, dated and signed by Sheriff Kimbrough on July 9, 2020, it clearly states that training occurs annually.

In addition, Sheriff Bobby Kimbrough has stated that FCSO has plans to begin [medical training](#) for 50 detention officers, including members of FDCD's Special Response Team (SRT).

6. Duty to Intervene (374.5 USE-OF-FORCE CONSIDERATIONS (L))

L. Duty to Intervene

1. Any staff member present and observing another staff member using excessive force that is clearly beyond that which is objectively reasonable under the totality of the circumstances shall, when it is safe and reasonable to do so and by any means necessary, intervene to stop the use of excessive force.

Additionally, if a staff member observes an individual in medical distress he/she has an explicit duty to ensure medical personnel is immediately called to the scene and to render aid consistent with their level of training.

2. When a staff member exercises their duty to intervene, they shall promptly notify their supervisor of the incident and the actions taken. The supervisor shall promptly forward the information via the chain of command. (Refer to SOP 229 Code of Conduct.)

In the *WS Chronicle* article titled "[Local law enforcement discuss recent demonstrations, internal "No Snitch" rule](#)," published on June 23, 2020, "Kimbrough and Miles briefly discussed their "Duty to Intervene" policies. According to Kimbrough, the policy means if any officer sees wrongdoing and doesn't report it, they could be in jeopardy of losing their jobs." Bearing this in mind, we believe that had the FCSO "Use-of-Force" Duty to Intervene policy been followed, according to this updated policy signed by Sheriff Bobby Kimbrough, on the night of Mr. Neville's medical distress and subsequent death by the hands of FCSO employees. In addition, an FCSO employee should have used Duty to Intervene when the prone restraint was improperly and illegally used. According to Kimbrough's quote in the *WS Chronicle*, FCSO employees should be in "jeopardy of losing their jobs."

7. Quantity of FCSO Staff Members and Personnel Present during Mr. Neville's Injury and Death (374.2 DEFINITIONS, (K, L, M))

K. Officer – For the purposes of this policy, *officer* shall refer to deputies and detention officers.

L. Staff Member – For the purposes of this policy, *staff member* shall refer to all FCSO personnel, sworn and non-sworn.

M. Medical Personnel – For the purposes of this policy, “medical personnel” shall include, but is not limited to: employees of the inmate health care provider contracted by Forsyth County; Forsyth County Emergency Medical Services (EMS) together with such other health care service providers duly licensed by the State of North Carolina to evaluate and care for patients.

According to the Autopsy Report, there are specific mentions of FCDC Staff and FCDC Personnel. Specifically, 10 “FCDC Staff” mentions, 4 “FCDC Personnel” mentions, and 1 Special Response Team mention; however, there is no language within the Autopsy Report that could differentiate the specifics of who committed which acts of restraint and movement of Mr. Neville. In addition, in 374.3 Authorization for Use-of-Force (C), it is clearly stated that “Detention officers are authorized to use the degree of force that they reasonably believe is necessary;” however, *officers*, as defined in the definitions section, do not include staff members. In the Autopsy Report, it states that “FCDC staff” applied a spit mask to Mr. Neville, which is a restraint device. There is no mention in the Report of the spit mask being removed. Furthermore, there are multiple mentions of FCDC staff restraining Mr. Neville, which should have only been the responsibility of FCDC Officers, known as “FCDC personnel” in the Report.

Our legal and law enforcement offices, across Forsyth County, Guilford County, and the state, need to come together and not only ban the use of the prone restraint, also known as the hogtie, but also dedicate extensive time and effort in relevant policy changes which prioritize caring for the lives which are legally in their care. This blatant silence and complicity in the death of Mr. Neville is not only unacceptable, it is the epitome of how an unjust system cannot be just without full transparency and accountability.