



STATE OF NORTH CAROLINA
GENERAL COURT OF JUSTICE
TWENTY-SIXTH PROSECUTORIAL DISTRICT
CHARLOTTE, NORTH CAROLINA
Mecklenburg County

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January 28, 2013

Chief Rodney D. Monroe
Charlotte Mecklenburg Police Department
601 East Trade Street, 3rd Floor
Charlotte, NC 28202

Re: Spencer Mims, III, Death Investigation

Dear Chief Monroe:

Pursuant to N.C.G.S. 7A-61, my office has reviewed the investigation surrounding the death of Spencer Mims, III, under complaint number 2013-0107-0019-01. The purpose of this review was to examine whether Officer J.B. Donaldson's use of deadly force on January 6, 2013, was unlawful. Based on the information presented to the District Attorney's Office, we agree that Officer Donaldson was justified in using deadly force.

Homicide Team Assistant District Attorney Jay Ashendorf was present at the incident scene and monitored the witness interviews at the law enforcement center. The facts, as observed, and ascertained through reviewing the file, are as follows: On January 6th, 2013, Spencer Mims, III, age 55, (hereinafter "Mims III"), was living with his father, Spencer Mims, Jr., age 82, (hereinafter "Mims Jr.") in Mims Jr.'s residence at 309 Cooper Drive, Charlotte, North Carolina. Mims III regularly saw a psychiatrist and was on medication for bipolar disorder. Over the last month, Mims Jr. had noticed on a couple of occasions that Mims III seemed abnormal, as if intoxicated. On the evening of January 6th, father and son were watching a football game on tv and Mims III began cursing at one of the teams, to an extent that Mims Jr. had never seen before. After the game, Mims III slammed a pizza box down, cursed his father, and slammed his bedroom door. Mims Jr. was afraid to stay alone with his son that evening and left the house. He did not tell his son that he was going to look for a police officer.

Mims Jr. drove for just a few minutes before coming upon an officer who was involved in a traffic stop. Mims Jr. told the officer that he would like a police officer to help him get some

things from the house so he could spend the night elsewhere. At 10:54 p.m., the officer put in a call and Mims Jr. was told to go back to the neighborhood, away from the house, and wait for an officer. Officer Donaldson responded to the call and found Mims Jr. down the street from the residence. Donaldson and Mims Jr. then drove to the residence. Officer M.D. Whitlock also responded to the call and arrived as Donaldson and Mims Jr. were speaking in front of the residence.

Donaldson asked Mims Jr. if there were any weapons in the house. Mims Jr. informed Donaldson that his son had mental health issues and that there was a prior incident where police took two handguns out of the house. Unbeknownst to Mims Jr. and the two officers, Mims III was sitting on the front porch. Mims III had turned off the porch light that his father had left on, so the porch was now dark. Mims III then spoke up, letting them know he could hear what they were saying. Donaldson then saw that Mims III was sitting on the front porch with a box cutter to his neck, blade extended. Donaldson asked Mims III to put it down and that they could talk. Donaldson told him that he would be glad to just listen if Mims III wanted to talk. Donaldson asked Mims III if Mims Jr. could go inside and get some clothes, and Mims III said, "No." Donaldson also offered to take Mims III to get help if Mims III so desired.

Mims III got angry and stood up with the box cutter blade at his throat. Donaldson repeatedly told Mims III to drop the box cutter. Mims III refused, yelling, "I know your games. I know what you're trying to do." Mims III related that on a prior occasion he had a gun and the police told him to drop it and he did drop it. He said, "I'm not making that mistake this time." At this point, Donaldson was on the porch with Mims III. Whitlock and Mims Jr. were in front of the residence. Whitlock got his Taser out and prepared to fire it. Mims III looked at Donaldson and asked him if he (Donaldson) was going to shoot him. Donaldson said no and Mims Jr. said, "Son, he ain't trying to shoot you." At some point during the confrontation, Mims III pointed to his forehead and said, "Put it right here." Mims III said, "Go ahead and shoot me. I've been putting up with this for forty years and I'm tired."

Whitlock fired the Taser but only one prong hit Mims III. Donaldson had moved in to cuff Mims III and had placed a hand on Mims III. Mims III yelled, "No" and held the box cutter out and pointed at Donaldson. Donaldson began backing up and Mims aggressively walked toward Donaldson. Donaldson then yelled twice for Mims III to drop the knife. Donaldson then realized that he was running out of room on the porch and was unable to back up any further. Mims III kept advancing, the box cutter pointed upward. When Mims III was within about five feet of Donaldson, Donaldson fired two shots. Mims III kept advancing, and Donaldson fired a third shot when Mims III was only an arm's length from Donaldson. Mims III fell and the officers called dispatch to request MEDIC. The call to dispatch was made at 11:09pm. Mims III was pronounced deceased at the hospital.

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Donaldson told detectives that he felt that Mims III was about to stab him or cut him in the face. Whitlock told detectives that at the point that Donaldson fired, Whitlock felt that Donaldson's life was in danger. Whitlock said that Donaldson had no other options, because Donaldson had retreated and Mims III was coming at him with a knife and was almost on top of him.

It is clear from the information available to this Office that Officer Donaldson had no choice but to use deadly force. His actions were justified under North Carolina law.

If you have any questions, please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Andrew Murray". The signature is fluid and cursive, with the first name "R." and last name "Murray" clearly distinguishable.

R. Andrew Murray
District Attorney

RAM/jwm