



State of North Carolina  
General Court of Justice  
Twenty-Sixth Prosecutorial District  
MECKLENBURG COUNTY

R. ANDREW MURRAY  
DISTRICT ATTORNEY

MECKLENBURG COUNTY  
DISTRICT ATTORNEY'S OFFICE  
700 EAST TRADE ST.  
CHARLOTTE, NC 28202  
TELEPHONE: 704-686-0700  
FAX: 704-686-0712  
OR 704-686-0718

March 24, 2016

Chief Kerr Putney  
Charlotte-Mecklenburg Police Department  
601 E. Trade St.  
Charlotte, NC 28202

RE: Daquan Westbrook death investigation

Dear Chief Putney,

Pursuant to N.C.G.S. 7A-61, my office has reviewed the investigation surrounding the death of Daquan Westbrook under complaint number 20151224141000. The purpose of this review was to determine whether Officer T.E. Ferguson's conduct on December 24, 2015, was unlawful.

I was present at the scene on December 24, 2015, and present later for interviews at the Law Enforcement Center to personally observe the initial phase of the Charlotte-Mecklenburg Police Department (CMPD) investigation. Additionally, the entire investigation completed by CMPD's Homicide Unit has been thoroughly reviewed by my Homicide Prosecution Team. We find the following facts regarding the incident:

1. Daquan Westbrook ("Westbrook") was shot and killed by Officer T.E. Ferguson ("Ofc. Ferguson") on December 24, 2015, inside of Northlake Mall.
2. Ofc. Ferguson was hired by the CMPD on July 31, 1996.
3. Ofc. Ferguson was working an off-duty job at Northlake Mall in his capacity as a sworn law enforcement officer.
4. Ofc. Ferguson was wearing a CMPD uniform.
5. Ofc. Ferguson responded to a loud disturbance coming from the area of the Journeys store. Ofc. Ferguson was in close proximity to Journeys when he first heard the disturbance.
6. As he approached Journeys, Ofc. Ferguson saw a man, later identified as Westbrook, standing at the threshold of the store, facing into the store, with his back to the public mall area, with a gun raised and pointed into the store. Ofc. Ferguson saw Westbrook take a step into Journeys and fire the gun into the store. Because of his visual angle, Ofc. Ferguson could not see into the back of the store at this time; however, he could hear people inside the store screaming.
7. Northlake Mall was especially busy with shoppers – men, women and children – during this incident, which occurred in the afternoon of the day before Christmas.
8. Westbrook was armed with a 9mm caliber handgun, with an after-market extended magazine inserted, loaded with more than twice the ammunition that the gun manufacturer's stock magazine holds.
9. The physical evidence confirms that Westbrook fired his gun at least once.

10. Upon seeing Westbrook shooting a gun into the occupied store, Ofc. Ferguson immediately fired his CMPD-issued .40 caliber handgun at Westbrook.
11. Westbrook immediately fell to the ground while turning toward Ofc. Ferguson, with the 9mm handgun still in his hand and pointed at Ofc. Ferguson. Ofc. Ferguson continued firing.
12. In total, Westbrook was shot four times by Ofc. Ferguson. According to the Medical Examiner, he was shot twice in the back and twice in the chest and the cause of death was "gunshot wounds of the chest."
13. During the shooting, no other CMPD officers were present.
14. Westbrook never voluntarily released the 9mm handgun from his hand.
15. Just after the shooting, another officer arrived and carefully approached Westbrook, who was face down and unresponsive in the store. To ensure everyone's safety, that officer removed the gun from Westbrook's hand, which was then partially underneath his chest.
16. Westbrook was shortly thereafter pronounced deceased at the scene by responding MEDIC personnel.
17. Ultimately, it was determined that Westbrook shot and wounded a man inside the Journeys store. During the incident, Ofc. Ferguson saw the shooting victim running from the Journeys store and police later located him at a hospital. The shooting victim survived but refused to cooperate with the police investigation.
18. Multiple witnesses consistently report that just prior to the shooting, there was a physical fight involving Westbrook and other young men inside the Journeys store.
19. Ofc. Ferguson was not wearing a body camera. He is not issued one for his typical duties as a burglary detective. Further, even if he had been assigned a body camera to wear while on-duty, he would not have been wearing it during this incident because CMPD policy does not allow officers to wear body cameras while working off-duty.
20. A visual depiction of the shooting is not captured on video. Some video exists before and after the shooting from various sources, including video from a mall patron's personal cell phone and mall security cameras. The available video reveals a chaotic scene with mall patrons scurrying for cover. On the mall patron's video, Westbrook is seen reaching into his waistband (where a holster was later located) before he goes off camera and the phone video captures audio evidence of gunfire. No known video footage captures either Westbrook or Ofc. Ferguson discharging their weapons.

Criminal liability is established only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by North Carolina law and that the offense was committed without any legally recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or murder in North Carolina, there are certain circumstances in which the use of physical force, deadly or otherwise, is justified. As there is generally no dispute in officer-involved shootings that the officer intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question about legal justification. The same is true in this case.

Therefore, the question presented is whether, when Ofc. Ferguson used deadly force by firing the shots that killed Westbrook, Ofc. Ferguson reasonably believed, and in fact believed, that he or another person was in imminent danger of great bodily injury or death as a result of Westbrook's actions. In order to establish criminal responsibility for knowingly and intentionally shooting another, the State must prove beyond a reasonable doubt that Ofc. Ferguson did not actually believe he or another was in such danger, or, if he did hold such belief, that the belief was unreasonable in light of the circumstances.

After a thorough review of all available evidence, the District Attorney's Office concludes that there is not sufficient evidence to prove that Ofc. Ferguson acted unlawfully in shooting Westbrook. Therefore, I agree with your decision not to charge Ofc. Ferguson with a crime. In keeping with my Office's standard

operating procedures, we have not reviewed whether Ofc. Ferguson followed internal police department directives or procedures.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Andrew Murray". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

R. Andrew Murray