



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

R. ANDREW MURRAY
DISTRICT ATTORNEY

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March 31, 2016

Chief Kerr Putney
Charlotte-Mecklenburg Police Department
601 East Trade Street, 3rd floor
Charlotte, NC 28202

Re: Germonta Wallace Death Investigation

Dear Chief Putney,

Pursuant to N.C.G.S. 7A-61, my office has reviewed the investigation surrounding the death of Germonta Wallace under complaint number 20160103205400. The purpose of this review was to examine whether any CMPD officers who discharged their weapons at Germonta Wallace acted unlawfully while attempting to effectuate his arrest on January 3, 2016. Based on the information presented to the District Attorney's Office, we agree with CMPD's decision not to charge any of the involved officers with a violation of North Carolina law. This letter specifically does not address issues relating to whether officers followed correct police procedures or CMPD directives.

I personally responded to the scene of this incident and watched the interviews of all pertinent witnesses. I also reviewed the investigative file provided by CMPD. This case was also presented to the entire Homicide Prosecution Team, which is comprised of the District Attorney's Office's most experienced prosecutors.

The Role of the District Attorney under North Carolina Law

The District Attorney (DA) for the 26th Prosecutorial District is a State official, and as such, is independent of City or County governments within the prosecutorial district. The DA is the

chief law enforcement official of the 26th Judicial District, the boundaries of which are the same as the County of Mecklenburg. The DA has no administrative authority or control over the personnel of the CMPD or other police agencies within the jurisdiction. That authority and control resides with each City or County government.

Pursuant to North Carolina statute, the DA's obligation is to advise law enforcement agencies within the prosecutorial district. The DA does not arrest people or charge people with crimes. When police charge a person with a crime, the DA decides whether or not to prosecute the charged crime. Generally, the DA does not review police decisions not to charge an individual with a crime. However, in officer-involved shooting cases, the DA reviews the complete investigative file of the investigating agency. The DA then decides whether he agrees or disagrees with the decision made by police. If the DA concludes that uncharged conduct should be prosecuted, the case will be submitted to a Grand Jury.

Legal Standards

The same standard that is used in all criminal cases in Mecklenburg County is applied to the review of officer-involved shootings. The analysis involves reviewing the totality of the facts developed in the criminal investigation and applying the pertinent law to those facts.

For criminal charges to be pursued, the District Attorney must find there is a reasonable likelihood that all elements of the crime can be proven beyond a reasonable doubt to 12 unanimous jurors at trial after considering reasonable defenses. If this standard is met, criminal charges will be pursued.

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 that the officers intended to shoot at the person who is wounded or killed, the determination of whether the conduct was criminal is primarily a question of legal justification.

Therefore, the question presented in most officer-involved shooting cases is whether, at the instant the officer fired the shot that wounded or killed the person, the officer reasonably believed, and in fact believed, that he or another person was in imminent danger of great bodily injury or death from the actions of the person who is shot. In order to establish criminal responsibility for knowingly or intentionally shooting another, the State must prove beyond a reasonable doubt that the shooter either did not really believe he or another was in imminent danger, or, if he did hold such a belief, that this belief was unreasonable in light of the circumstances.

The Officer-Involved Shooting of Germonta Wallace

The facts, as ascertained through my personal observations and from reviewing the file, are as follows: On January 3, 2016, CMPD's Violent Criminal Apprehension Team (VCAT) attempted to apprehend and serve warrants on Germonta Wallace for murder, robbery, conspiracy to commit robbery, kidnapping and possession of a firearm by a convicted felon. Wallace was known to be armed and dangerous and believed to be in the company of other defendants who were also known to be armed and dangerous. VCAT detectives held a briefing, which included the information that Wallace had previously been charged with murder and that he was the shooter in a murder that occurred four days earlier on December 30, 2015.

VCAT detectives gathered information that led them to believe Wallace was located at 2723 Watson Drive in Charlotte. Dressed in clothing identifying them as police officers, the VCAT detectives and other supporting police officers responded to 2723 Watson Drive. This address is a single-story duplex that faces Watson Drive. To the left of the duplex is 2617 Watson Drive, a duplex with doors facing the side yard and driveway of 2723 Watson Drive. A team of VCAT detectives conducted surveillance on the suspect address and eventually knocked on the door of 2723 Watson Drive. Wallace was not located at that address. The occupants at that address cooperated with police and spoke with the detectives. Detectives showed them a photo of Wallace and were trying to determine whether they had seen him in the area.

Because they weren't certain that Wallace was inside the 2723 Watson Drive address, other detectives also watched the adjacent duplex located at 2617 Watson Drive. While the detectives were knocking on the door and speaking to the occupants of 2723 Watson Drive, Detective Jessica Zinobile and other detectives held positions of cover that allowed them to watch both addresses. Detective Zinobile was positioned adjacent to the 2617 address, which allowed her a view of the entrances of both addresses. Detective Zinobile watched as detectives made contact with the occupants of 2723 Watson Drive while also watching for any threats from the secondary address. As this occurred, Detective Zinobile observed two men exit the secondary address. "I saw the two males come out a door on the delta side of the house I was watching . . . and they walked out and they just froze and then I heard one of [the detectives] say 'police.'" In her interview at CMPD headquarters after the incident, she went on to state:

I didn't know who it was, but the front person pulled out a gun and started shooting at my guys on the primary house. I don't know how many times he fired but . . . he started running more towards the street which was in my line of sight . . . and he was still firing, so I engaged and started shooting back at him and then he turned my way and started firing at me . . . and we were exchanging [gunfire] and then he went back to [firing at the other officers.]¹

¹ Recorded interview of Detective Jessica Zinobile, conducted on January 7, 2016, page 9.

Zinobile fired at Wallace while moving toward a position that had better cover from Wallace's line of fire. As she ran laterally and returned fire at Wallace, she was struck with one round in the ankle. Despite being shot, she continued to engage Wallace and provide back-up for her fellow detectives. After Wallace was killed, Zinobile was treated on the scene and later taken to a hospital for further treatment.

Detective Towe was the first person to encounter Wallace, and he also described the events observed by Detective Zinobile. Towe was positioned in the driveway of 2723 Watson Drive. He was watching the detectives interact with the occupants of 2723 Watson while also trying to watch for any movement of other individuals. He saw the two men come out of 2617 Watson Drive. Not knowing who they were or what information they could provide, he began to approach them. He noticed that one of the men, later identified as Wallace, had his hands in his pockets. Consequently, he paid particular attention to that person. At that moment, he had not determined that one of the men was Wallace. With his pistol holstered, he approached the men to determine who they were and to learn whether they had any information that would assist the investigation. Towe called out to the men and used his flashlight to better see the one subject who had his hands concealed. As soon as Towe shined his flashlight on the subject with his hands in his pockets, he recognized him to be Wallace. Wallace immediately pulled a gun and began shooting at Towe. Detective Towe took cover, drew his weapon and returned fire.²

Officer Acker-Estes also witnessed the encounter. Acker-Estes is a K-9 handler who was assigned as perimeter security at the scene. She observed the two men walk out of the adjacent unit and heard officers identify themselves as police.³ Immediately, "the one guy started shooting at those officers," she said. She observed "the exchange of gunfire" and saw the other male run back inside the house. Akers-Estes further stated: "I saw the guy run towards the street and he fell, he was on his back and he was still shooting at the officers who were still engaging."⁴

It is likely that Wallace was struck during the initial exchange of gunfire between him and the police. This conclusion is based upon the fact that after moving a short distance, while still firing at police, he fell to the ground. However, even after Wallace fell, he reengaged the police by shooting at them from the ground. At that point, multiple detectives fired at Wallace until he was no longer a threat. It is important to the analysis of this case that each officer present had a lawful right to fire at Wallace until he was no longer a threat. Multiple detectives fired at Wallace. It is unclear which officer's round(s) killed Wallace. Eight officers fired at Wallace, and he was struck 25 times. The police rounds struck multiple parts of Wallace's body,

² Recorded interview of Detective J.E. Towe, conducted on January 4, 2016, page 16-20.

³ It is unclear whether the detectives had time to identify themselves as police officers before Wallace opened fire on the detectives. It may be that Akers-Estes heard the officers identify themselves as police to the occupants of 2723 Watson Drive.

⁴ Recorded interview of E. Akers-Estes, conducted on January 4, 2016, page 6.

including his head, chest, abdomen, legs, arms and back. The location of the gunshot wounds on Wallace was consistent with the fact that Wallace was initially in motion and was fired upon from multiple directions.

In addressing the number of shots fired by the police, the only question considered by this office is whether the use of deadly force in this case was appropriate. In this case, Wallace fired at police officers who returned fire. Then, after it appeared Wallace was *potentially* neutralized as a threat, Wallace again fired at officers. Each officer was lawfully justified in shooting at Wallace until he was no longer a threat. In this situation, each officer had the right of self-defense and also the right to defend the other officers and civilians nearby. It would be unreasonable to expect anything except that each officer in a position to do so would fire at the threat. In this case, eight officers fired at Wallace. The number of shots from the officers ranged from one shot to 16 shots.⁵

Eric Peterson is a SWAT sergeant who was present at the scene to assist VCAT in locating and apprehending Wallace. He observed Towe approach Wallace, as Towe described, and Peterson saw muzzle flashes from Wallace firing at Detective Towe. Peterson stated, "At that point it was very clear to me that this guy was an imminent threat to everybody out there, he was engaging us, we had officers that were. . . directly in the line of fire to include myself and Officer Towe."⁶

Peterson also provided details of the threat posed by Wallace. Per Peterson, some of the officers had their backs to Wallace when he began firing at them, and one of the rounds from Wallace stuck a vehicle near Detective Towe.

As officers returned fire at Wallace, he eventually fell to the ground on his back. Peterson and Towe began to approach Wallace to take him into custody. As Peterson and Towe cautiously approached Wallace, Wallace suddenly sat up and began firing at the police again.⁷ Towe, Peterson and others returned fire until Wallace was no longer a threat. Peterson and Towe approached the body of Wallace and determined that he was deceased. Next to Wallace's right hand was a semi-automatic Glock 23 handgun. That gun was matched through ballistic testing to projectiles and casings found at the scene. In 2009, the gun was reported stolen in a residential break-in that occurred in Charlotte.

At that point, the detectives and officers did not know the whereabouts of Marquez Springs-Owens, the individual who was with Wallace. Therefore, Peterson requested Medic, SWAT and additional units to secure the area. Once the scene was secured, occupants from both dwellings were transported to CMPD Headquarters and interviewed. In addition, the dwelling from which

⁵ Based a count of police ammunition after the incident, it was determined that the police fired a total of 64 rounds at Wallace.

⁶ Recorded interview of Sergeant E. Peterson, conducted on January 4, 2016, page 14.

⁷ Multiple police rounds entered Wallace from a low angle, including though the bottom of his feet. This is consistent with him sitting up and firing at the officers.

Wallace and Springs-Owens exited was searched. During that search, police located a Colt M4 Carbine 5.56 rifle. This assault rifle was loaded, and the safety was set to the fire position. The carbine rifle was previously reported stolen from a break-in that occurred in Charlotte in 2014.

The only person among the civilians present at the scene who provided useful information concerning the exchange of gunfire between Wallace and the police was Marquez Springs-Owens. The other civilians present inside both of the residences were transported to CMPD Headquarters and interviewed, but those witnesses did not observe what occurred outside between Wallace and the police.

Springs-Owens was taken to CMPD Headquarters and interviewed about both the shooting incident and his role in the murder on December 30, 2015. He told detectives that he was inside the 2617 Watson Drive address with Wallace prior to the shooting. According to Springs-Owens, he walked out of the duplex with Wallace because they were going to the store. After they stepped out a few feet, Springs-Owens turned back toward the house to close the door. He heard gunshots and immediately ran back inside the house. It does not appear that Springs-Owens fired at police, and there is no ballistic evidence to support that he was armed. Springs-Owens has been charged for the unrelated murder of Norris Martin that occurred on December 30, 2015.

The crime scene evidence in this case is consistent with the accounts told by the police officers. Police recovered a handgun next to Wallace's body. That gun was test-fired and compared to other evidence collected at the scene. Investigators recovered five shell casings and five projectiles at the scene that were fired from Wallace's gun. The locations of the shell casings are consistent with the locations of Wallace as described by the police officers who encountered him. The projectiles recovered were all consistent with Wallace shooting at the police officers.

As it relates to Detective Zinobile, the physical evidence supports that Wallace fired at her several times. Using dowel rods to approximate the bullet trajectory, investigators determined that Wallace tried to shoot Detective Zinobile. When Detective Zinobile was shot in the ankle, the bullet passed through the ankle. Therefore, forensics cannot prove that particular bullet was from Wallace's gun, but forensic testing does establish that Wallace fired rounds in her direction. Three of the rounds struck the ground near Detective Zinobile.⁸ In addition, one projectile matching Wallace's gun struck the wall behind Detective Zinobile at torso level.

In the case of Detective Towe, there was a bullet hole in a car directly behind where he was walking as he approached Wallace. That projectile was not suitable for comparison to Wallace's gun. However, the trajectory of the projectile supports the conclusion that Wallace fired at Detective Towe.

⁸ This is important since Zinobile was shot in the ankle.

VCAT detectives are not equipped with body-worn cameras. The officers present who were equipped with body-worn cameras did not have their cameras activated during the firefight. Therefore, the body-worn camera videos reviewed were not helpful in the analysis of this incident.

From the physical evidence at the scene, it is clear that Wallace fired at least five rounds at police during this encounter. When his gun was examined after the scene was secured, it was empty.

In conclusion, the CMPD officers present were fully justified in the use of deadly force against Wallace. Wallace was an armed felon charged with murder who opened fire on the VCAT detectives. The use of deadly force by the VCAT arrest team to protect themselves, each other and the public was both objectively and subjectively reasonable. The officers present acted with valor while attempting to arrest a dangerous, violent felon.

If you have any questions, please contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Andrew Murray", with a long horizontal flourish extending to the right.

R. Andrew Murray
District Attorney