



SATANA DEBERRY
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PROSECUTORIAL DISTRICT 16
DURHAM COUNTY

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VIA EMAIL (original to follow)

June 6, 2022

John Dailey
Chief
Duke University Police Department
502 Oregon Street
Durham, NC, 27708

Chief Dailey:

I have reviewed the investigation surrounding the use of force by Duke University Campus Police 1st Sgt. Lex Allan Popovich on January 14, 2022. This case was investigated by the North Carolina State Bureau of Investigation, Case File Number 2022-00170. The purpose of this review was to determine whether the conduct of 1st Sgt. Popovich was unlawful when Raishawn Steven Jones was shot.

This letter specifically does not address law enforcement tactics nor whether 1st Sgt. Popovich followed proper Duke University Police Department procedure or directives.

1. OVERVIEW

On January 14, 2022, the North Carolina State Bureau of Investigation (NCSBI) was requested to investigate the officer-involved shooting of Raishawn Steven Jones. On this same date, the NCSBI responded to Duke University Medical Center, Durham, North Carolina, and began the investigation. During the investigation, NCSBI agents interviewed both civilian and law enforcement witnesses and reviewed the following:

- Video and audio footage (including body worn cameras of officers)
- 911 calls
- Law enforcement radio transmissions
- Autopsy photographs and findings
- Duke University Police Department records
- Durham Police Department records
- Law enforcement and crime scene reports related to the incident

After a thorough review of the NCSBI case file, the Durham County District Attorney's Office will not seek criminal charges in this matter.

2. STATEMENT OF FACTS

On the afternoon of January 14, 2022, Durham Police Department responded to a traffic incident involving a pedestrian hit by a car. The driver of the car was combative and determined to be impaired. He was placed under arrest and transported to the Emergency Department at Duke University Medical Center where he was identified as Raishawn Steven Jones. Due to his arrest, level of impairment, and large size, Jones was placed in restraints





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inside an exam room in the Emergency Department. Durham Police Department Officer Christopher Stone was assigned to guard the door of the exam room.

Sometime between 9:30 and 10 p.m., Mr. Jones' restraints were removed so that he could use the bathroom. Officer Stone escorted Jones to the bathroom along with a medical tech. Jones indicated to medical staff that if he was under arrest, he was ready to go to jail. At this point, medical personnel began an evaluation of Jones to determine if he could be discharged. During this evaluation, Jones became increasingly agitated and indicated that he wanted to leave the hospital. As Jones began to leave the room, medical personnel motioned for Officer Stone to enter the exam room.

Officer Stone asked Mr. Jones to step back into the room several times. Jones refused. Finally, Stone used his hands to guide Jones back into the exam room and asked him to sit down. Jones again refused. Officer Stone then moved to handcuff Jones. On footage from Officer Stone's body worn camera, Jones can be seen looking down at Officer Stone's duty belt. Jones then started to mumble "Glock. Glock." Officer Stone responded, "Don't go for my gun. Don't go for my gun!" Jones and Stone then become involved in a struggle over Stone's weapon.

Duke Medical Center personnel called for a "Red BET" as the struggle between Jones and Stone began. "BET" is a code that calls for the Behavior Emergency Team – a group of medical staff trained to deal with patients experiencing a mental health crisis. A "Red BET" indicates someone has become violent or physically assaulted someone. The "Red BET" alerted Duke University Campus Police on site at the Medical Center to respond. Officers that responded were:

- 1st Sgt. Lex Allan Popovich
- Officer Justin Wilson

The first Duke University Campus Police officer to respond to the "Red BET" call and arrive on scene was 1st Sgt. Popovich. When 1st Sgt. Popovich arrived, Jones and Officer Stone were engaged in a struggle for Stone's weapon. Jones had unsecured the weapon from Officer Stone's duty belt and was holding it in his right hand with his finger on the trigger. Officer Stone was trying to control Jones' wrist to keep him from using the weapon. According to witnesses at the scene, Jones had already managed to fire one shot from Stone's weapon.

When 1st Sgt. Popovich arrived at the scene, the door to the exam room was closed and medical personnel were yelling that "he's going to kill the cop!" He could observe the struggle through the window in the exam room door. First Sgt. Popovich opened the door and fired twice in the direction of Jones. Jones fell against the wall but still maintained control of Stone's weapon. Popovich then fired a third time into the center mass of Jones' body. Officer Stone was then able to subdue Jones. At this time, Duke University Campus Police Officer Justin Wilson entered the exam room and removed the weapon from Jones' right hand.

First Sgt. Popovich then called for medical attention for Jones. He can be heard on video saying "Call a doctor. He's shot. I shot him." Medical personnel entered the room to treat Mr. Jones, who later died from his injuries.

3. LEGAL STANDARD

The use of force by a law enforcement officer in North Carolina is governed by N.C. Gen. Stat§ 15A-401(d)(2), which states in pertinent part:

(d) Use of Force in Arrest.





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(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;
- b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or
- c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.

Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. .. [T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation" *Graham v. Connor*. 490 U.S. 386, 396-97 (1989) (citing *Scott v. United States*. 436 U.S. 128, 137-139 (1978)); *Scott v. Harris*. 550 U.S. 372, 383-387 (2007).

4. ANALYSIS AND CONCLUSION

The prosecution of any crime related to the death of Mr. Jones would require proof beyond a reasonable doubt that 1st Sgt. Popovich was not legally justified in using deadly force pursuant to the provisions of N.C. Gen. Stat§ 15A-401(d)(2).

The question, therefore, is whether a reasonable officer in 1st Sgt. Popovich's position would have felt that it was "reasonably necessary" to use deadly force to defend Durham Police Department Officer Christopher Stone from what he reasonably believed to be the use or imminent use of deadly physical force by Mr. Jones.

The evidence in this case shows that Mr. Jones had suffered from mental and emotional impairment from PCP and marijuana on January 14, 2022. Interviews with medical personnel at Duke University Medical Center indicated that he had been unstable at admittance and restless and irritable right before the incident.

By the time 1st Sgt. Popovich arrived at the exam room, Mr. Jones had not only gained control of Officer Stone's service weapon, but Jones also seemed to be physically overpowering Stone. Officer Stone self-reported himself to be six feet, two inches tall and 290 pounds. On video, Jones is visibly larger than Officer Stone. The struggle between the two men was not only a danger to them but the presence of the weapon made it dangerous for everyone in the Emergency Department.

The evidence from this investigation establishes that a reasonable officer in 1st Sgt. Popovich's position would have believed that not only Officer Stone was in danger of imminent deadly physical force from Jones, but everyone in the Emergency Department would have been at risk.





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Because the totality of the evidence in this case establishes that a reasonable officer in 1st Sgt. Popovich's position would have reasonably believed that Mr. Jones had the ability to harm Officer Stone and that his actions constituted an imminent threat of deadly physical force, the force used by 1st Sgt. Popovich was not excessive under the circumstances.

Therefore, it is my conclusion that there is insufficient evidence to support the filing of criminal charges.

However, it is worth noting that the presence of guns in the Emergency Department dramatically increased the level of risk of harm to others that night. Officer Stone reported having 18 rounds in his service weapon and an additional 36 rounds on his person in his duty belt. Jones had gained control and possession of the weapon when 1st Sgt. Popovich arrived. Had Officer Stone been required to secure his weapon when entering the ED, the physical altercation between the two very large men would have little risk of injuring other people in the area that night. Duke University Medical Center and Duke University Police should strongly consider a policy that requires guns be stored securely before entering the Emergency Department.

Please feel free to contact me with any further questions or concerns.

Sincerely,

Satana Deberry
District Attorney, 16th Prosecutorial District

cc. ASAC P.A. Stevens, NC SBI
SAC M.T. Denning, NC SBI
Patrice Andrews, Chief, Durham Police Department

