

**State of North Carolina
General Court of Justice
Eighteen Prosecutorial District**

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To: All Media Outlets

From: Jeff Nieman, District Attorney, Chatham and Orange Counties

Date: December 19, 2023

Re: August 25, 2023, Officer-Involved Shooting resulting in serious injury to Derick Williams in Orange County (six pages total)

This press release is divided into three parts. The first portion is a review of the role of the District Attorney, the legal standards considered, and a short statement about the law under federal and United States Supreme Court decisions. The second portion of this press release addresses the August 25, 2023, officer involved shooting of Derick Williams by a deputy with the Orange County Sheriff's Office. The third portion of the press release is a copy of the letter sent to Special Agent Patrick Childress of the N.C. State Bureau of Investigation (SBI) and Sheriff Charles S. Blackwood of the Orange County Sheriff's Office (OCSO) earlier today informing them of my decision. The letter, in large measure, repeats much of the material in this press release.

-I-

The role of the District Attorney under North Carolina law

The District Attorney (DA) for Prosecutorial District 18 is a state official and does not answer to county governments within the prosecutorial district. The District Attorney is the chief law enforcement official of Judicial District 18, which includes Chatham and Orange Counties. The District Attorney has no administrative authority or control over the personnel of the Orange County Sheriff's Office or other police agencies within the jurisdiction. That authority and control resides with each county or city government. Pursuant to North Carolina statute, one of the District Attorney's obligations is to advise law enforcement agencies within the prosecutorial district. The DA does not arrest people or charge people with crimes. When law enforcement agencies charge a person with a crime, the DA decides whether or not to prosecute the charged

crime. Generally, the DA does not review law enforcement decisions whether to charge or 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 charges are warranted. If the DA concludes that conduct should be prosecuted, the case will be submitted to a Grand Jury. If no criminal charges are filed, that does not mean the District Attorney's Office believes the matter was in all respects handled appropriately from an administrative or tactical viewpoint. It is simply a determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt unanimously to a jury. This is the limit of the DA's statutory authority in these matters. Even if the DA believes a shooting was avoidable or a deputy or officer did not follow expected procedures or norms, that does not make it criminal. In these circumstances, remedies (if any are appropriate) may be pursued by administrative or civil means. The DA has no administrative or civil authority in these matters. Those remedies are primarily in the purview of county and city governments, police departments, and private civil attorneys.

Legal standards

The law recognizes an inherent right to use deadly force to protect oneself or others from death or great bodily harm. This core legal principle is referred to as the right to "self-defense." A sheriff's deputy or police officer does not lose the right to self-defense by virtue of becoming a law enforcement officer. They are entitled to the same protections of the law as every other individual. An imminent threat to the life of a deputy or police officer entitles the deputy or police officer to respond in such a way as to stop that threat. Under North Carolina law, the burden of proof is on the State to prove beyond a reasonable doubt that a defendant did not act in self-defense. The Supreme Court of North Carolina defined the law of self-defense in State v. Norris, 303 N.C. 526 (1981). A killing is justified under North Carolina law if it appeared to a person that it was necessary to kill in order to save himself from death or great bodily harm. The law requires that the belief in the necessity to kill must be reasonable under the circumstances. *Id.* at 529.

Use of deadly force by a law enforcement officer

The same legal standards apply to law enforcement officers and private citizens alike. However, officers fulfilling their sworn duty to enforce the laws of this State are often placed in situations in which they are required to confront rather than avoid potentially dangerous people and situations. Federal court decisions have established standards that provide useful guidelines for assessing the reasonableness of police use of deadly force. These civil cases address when the use of deadly force is reasonable and articulate the meaning of the term "imminent threat." "[The Constitution] does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists . . . No citizen can fairly expect to draw a gun on police without risking tragic consequences. And no court can expect any human being to remain passive in the

face of an active threat on his or her life.” Elliott v. Leavitt, 99 F.3d 640, 643–644 (4th Cir. 1996). Put another way, the Court said, “The Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm.” Id. at 641. The United States Supreme Court stated, “[t]he ‘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.” Graham v. Connor, 490 U.S. 386, 396 (1989). The Court further explained that “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” Id. at 396–97.

-II-

Findings of Fact

- On August 25, 2023, Deputies with the Orange County Sheriff’s Office were attempting service on Derick Andre Engram Williams for Wake County arrest warrants for felony intimidating a witness, misdemeanor harassing phone calls, and misdemeanor cyberstalking.
- Prior to August 25, Deputies had received an inter-agency awareness bulletin regarding Mr. Williams. The bulletin from Raleigh Police Department and disseminated through the ISAAC program provided the known address for Mr. Williams, which was within Orange County, and included information that Mr. Williams had sent a message to the victim in his Wake County case stating, “I told you drop the charges or I’m going to have a shootout with the police and die,” accompanied by a photo of Williams holding a firearm.
- OCSO personnel responded to Williams’ address, where they observed a vehicle he was known to drive parked outside the residence. All of the personnel were in marked patrol vehicles. Believing that he was home, Deputies approached the front and rear of the residence on foot.
- Deputy Kern drove his marked patrol vehicle a short distance to St. Mary’s Road, which is the next street over from the back of Williams’ residence. Deputy Kern believed that if Mr. Williams left the residence on foot, he would emerge on St. Mary’s.
- While Deputy Kern was on St. Mary’s, he saw an individual, described as a black male in a grey shirt and dark pants, jogging toward the road near 1220 St. Mary’s. When the individual spotted Deputy Kern’s vehicle, he stopped. This individual was later identified as Derick Williams.
- Deputy Kern pulled into a nearby driveway. Before Deputy Kern exited his car, Mr. Williams raised a handgun, pointed it at Deputy Kern, and attempted to fire. The gun appeared to malfunction, and Mr. Williams attempted to clear the malfunction. He then began running back up the driveway toward the residence at 1220 St. Mary’s Rd.
- Deputy Kern exited his vehicle and gave multiple verbal commands for Mr. Williams to drop the gun. Deputy Kern saw Mr. Williams raise the gun and try to fire again while he was running up the driveway. Again, Mr. Williams was unable to get the gun to fire.

- After Mr. Williams failed to heed Deputy's Kern's verbal instructions and Deputy Kern observed this second attempt to fire, Deputy Kern fired several rounds at Mr. Williams.
- Deputy Kern indicated that he was in fear for his life, as well as afraid for the safety of other officers, at the time he employed force against Mr. Williams. Mr. Williams was running back in the direction of his residence where several other Deputies and other civilians were located. Mr. Williams was still in possession of the handgun.
- Mr. Williams was struck by three bullets. All three were fired by Deputy Kern. Deputies provided medical assistance to Mr. Williams until EMS personnel arrived and he was transported for further treatment.
- Where Mr. Williams fell, Deputies located a Ruger .380 handgun. Upon a search of where Mr. Williams was standing when Deputy Kern observed the original attempt to fire, Deputies located a live .380 caliber round.

It is always tragic for all involved when law enforcement officers must use deadly force to protect themselves or the public. This incident underscores the potential danger faced by law enforcement officers each day. Deputy Kern reasonably feared for his life and the lives of other deputies and civilians present at the scene and therefore acted reasonably under the circumstances to protect the public, himself, and his fellow deputies. The use of deadly force on this occasion was lawful and reasonable. Nonetheless, the shooting of Mr. Williams is a tragic event, which fortunately did not result in the loss of his life.

-III-

Letter sent to Special Agent Patrick Childress of the SBI and Sheriff Charles Blackwood of the OCSO earlier today informing them of my decision in this case.

December 19, 2023

Special Patrick Childress
N. C. State Bureau of Investigation
1705 Tryon Park Dr.
Raleigh, N.C. 27610

Sheriff Charles Blackwood
Orange County Sheriff's Office
106 E. Margaret Lane
Hillsborough, N.C. 27278

Re: Derick Williams Shooting Investigation

Dear Special Agent Childress and Sheriff Blackwood:

Pursuant to N.C.G.S. 7A-61, my office has reviewed the investigation surrounding the shooting of Derick Williams. The purpose of this review was to examine whether the conduct of Orange County Sheriff's Office deputies, specifically Deputy Brandon Kern, was lawful on August 25, 2023. This letter does not address issues relating to tactics or whether deputies followed correct law enforcement procedures or OCSO Directives.

The N. C. State Bureau of Investigation (SBI) was requested to conduct the investigation into the shooting of Derick Williams.

Both the SBI and the OCSO provided full cooperation and information throughout the investigation. I spoke on several occasions with SBI personnel involved in the investigation and I consulted with Special Agent Childress regularly about the status and findings of the investigation.

As the investigation progressed, I discussed the case with my most senior prosecutors for their counsel, input, and perspective. All the evidence and information gathered during the course of the investigation was considered in reaching my decision.

After a comprehensive review of the applicable law, evidence, and circumstances surrounding the use of deadly force, it is my conclusion that Deputy Kern acted lawfully on August 25, 2023. I will note several of the key findings:

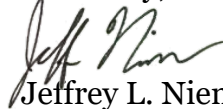
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- Deputy Kern drove his marked patrol vehicle a short distance to St. Mary's Road, which is the next street over from the back of Williams' residence. Deputy Kern believed that if Mr. Williams left the residence on foot, he would emerge on St. Mary's.
- While Deputy Kern was on St. Mary's, he saw an individual, described as a black male in a grey shirt and dark pants, jogging toward the road near 1220 St. Mary's. When the individual spotted Deputy Kern's vehicle, he stopped. This individual was later identified as Derick Williams.

- Deputy Kern pulled into a nearby driveway. Before Deputy Kern exited his car, Mr. Williams raised a handgun, pointed it at Deputy Kern, and attempted to fire. The gun appeared to malfunction, and Mr. Williams attempted to clear the malfunction. He then began running back up the driveway toward the residence at 1220 St. Mary's Rd.
- Deputy Kern exited his vehicle and gave multiple verbal commands for Mr. Williams to drop the gun. Deputy Kern saw Mr. Williams raise the gun and try to fire again while he was running up the driveway. Again, Mr. Williams was unable to get the gun to fire.
- After Mr. Williams failed to heed Deputy's Kern's verbal instructions and Deputy Kern observed this second attempt to fire, Deputy Kern fired several rounds at Mr. Williams.
- Deputy Kern indicated that he was in fear for his life, as well as afraid for the safety of other officers, at the time he employed force against Mr. Williams. Mr. Williams was running back in the direction of his residence where several other Deputies and other civilians were located. Mr. Williams was still in possession of the handgun.
- Mr. Williams was struck by three bullets. All three were fired by Deputy Kern. Deputies provided medical assistance to Mr. Williams until EMS personnel arrived and he was transported for further treatment.
- Where Mr. Williams fell, Deputies located a Ruger .380 handgun. Upon a search of where Mr. Williams was standing when Deputy Kern observed the original attempt to fire, Deputies located a live .380 caliber round.

This letter will be included in a press release to be made public immediately.

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

Sincerely,



Jeffrey L. Nieman
District Attorney
18 Prosecutorial District
Chatham and Orange Counties