



## OFFICE OF THE DISTRICT ATTORNEY

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### NEWS RELEASE

**September 26, 2017**

My office has reviewed the State Bureau of Investigation's (SBI) complete investigation into the shooting death of Kenneth Lee Bailey, Jr. The SBI conducted an external and objective investigation of this matter. The purpose of our review was to examine whether or not the conduct of Durham Police Department (DPD) Officers Allen D'Meza, Thomas Greathouse, and John Lloyd were criminally unlawful.

This release does not specifically address issues related to tactics employed by the officers, Durham Police Department procedures or whether the officers followed Durham Police Department procedures. I assigned five experienced prosecutors to review the complete investigative file produced and provided by the SBI and I personally reviewed the completed SBI file.

#### **Role of the District Attorney under NC Law**

District Attorneys in North Carolina are state officials and therefore do not answer to city or county governments. As District Attorney, I have no administrative authority or control over the personnel of the DPD or other law enforcement agencies.

The law in North Carolina requires District Attorneys to advise law enforcement agencies within their respective prosecutorial district. District Attorneys do not arrest or charge individuals with crimes. When law enforcement officers charge a person with a crime, the District Attorney decides whether or not to prosecute the crime or crimes charged. Generally, the District Attorney does not review an officer's decision not to charge a crime. However, in officer-involved shootings, the District Attorney reviews the complete investigative file of the investigating agency. After review of the complete investigation, the District Attorney decides whether or not the officer has committed crimes that can be proven beyond a reasonable doubt. If the District Attorney concludes that the officer's conduct should be prosecuted, then the case would be submitted to a Grand Jury.

If no criminal charges are filed, that does not necessarily mean that the District Attorney believes the matter was handled appropriately in all respects from an administrative or tactical standpoint. The decision not to charge is a professional determination that there is not a reasonable likelihood of proving criminal charges beyond a reasonable doubt unanimously to a jury. If appropriate, remedies may be pursued through administrative or civil means. The District Attorney has no administrative or civil authority in these matters. These remedies are primarily in the purview of city and county 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, which is commonly referred to as the right to self-defense. A police officer does not lose the right to claim self-defense by virtue of becoming a police officer. Law enforcement officers are entitled to the same protections of the law as every other individual. An imminent threat to the life of a police officer entitles the officer to respond in such a way as to stop that threat. Additionally, North Carolina General Statute § 15A-401(d) states that a law enforcement officer is justified in using deadly physical force upon another person when and to the extent that he believes it necessary to defend himself or a third person from what he believes to be the use or imminent use of physical force 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 injury to others unless apprehended without delay.

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.

While the same legal standards apply to law enforcement officers as to private citizens, officers fulfilling their sworn duties may find themselves in situations where they are required to confront rather than to avoid dangerous people and situations. Federal courts, including the 4<sup>th</sup> Circuit Court of Appeals, have established standards in determining the reasonableness of police use of deadly force. [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. Elliot v. Leavitt, 99 F.3d. 640, 643-644 (4<sup>th</sup> Cir. 1996).

### **Officer-Involved Shooting of Kenneth Lee Bailey, Jr.**

On September 9, 2016 a Durham County Grand Jury returned a true bill of indictment against Kenneth Lee Bailey, Jr. charging him with robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. Mr. Bailey was released from custody on a pretrial release order that included electronic monitoring and a 7:00 pm to 7:00 am curfew. On the days prior to February 15, 2017, Mr. Bailey was in violation of the conditions of his pretrial release order, specifically his curfew. Accordingly, an order for Mr. Bailey's arrest was issued.

Pursuant to the electronic monitoring condition of pretrial release, Mr. Bailey was required to wear an ankle bracelet with a GPS tracking device that allowed Mr. Bailey's very specific location to be continuously monitored. It was also Mr. Bailey's responsibility to keep that monitoring device charged. DPD officers began their attempt to serve Mr. Bailey with the warrant for his arrest around 2:00 pm on February 15. At that time, with the aid of the electronic monitoring devices, Durham County Pretrial Services was able to see that Mr. Bailey was in the area of NC Hwy. 55 and Alston Ave. and that Mr. Bailey was moving as well as the fact that Mr. Bailey's ankle bracelet needed charging. Through coordination with Durham County Pretrial Services, DPD officers were able to determine that Mr. Bailey had traveled from NC Hwy. 55 to 2512 Glenbrook Dr. and that Mr. Bailey's ankle bracelet was being charged. DPD officers arrived at 2512 Glenbrook Dr. minutes later around 2:20 pm.

Three officers, Allen D'Meza, Thomas Greathouse, and John Lloyd, attempted to serve the arrest warrant on Mr. Bailey at 2512 Glenbrook Dr. Mr. Bailey fled the residence at 2512 Glenbrook Dr. leading to a foot chase with the officers pursuing Mr. Bailey. During the foot chase, officer(s) fired their weapons at Mr. Bailey striking him twice. Mr. Bailey died as a result of the gunshot wounds.

DPD Chief Cerelyn Davis and I requested that the State Bureau of Investigation criminally investigate the officer-involved shooting death of Kenneth Lee Bailey, Jr. The SBI initiated its objective criminal investigation on February 15, 2017 immediately after Chief Davis' request and my request to investigate. The investigation included a crime scene investigation, North Carolina State Crime Lab forensic testing, medical examiner's investigation, the attempt to locate and interview all witnesses.

#### **Crime Scene**

The crime scene can be generally described as the area on and around 2515 and 2517 Glenbrook Dr. 2512 Glenbrook Dr. (the address that officers first encountered Mr. Bailey) is located on the opposite side of the street facing west and slightly south of 2515 Glenbrook Dr. A handgun was observed in the front yard of 2515 Glenbrook Dr. Mr. Bailey was on the north side of 2515 Glenbrook Dr. The crime scene investigator noted a suspected gunshot wound on the left side of Mr. Bailey's torso. Investigators observed three cartridge (shell) casings that had been marked in the rear yard of 2517 Glenbrook Dr. Investigators collected the handgun and

the three cartridge cases. They also collected \$1540 cash from the pockets of Mr. Bailey as well as a Crown Royal bag, bundle of plastic baggies, a scale, one bag of green leafy substance and three baggies of white powder beside the right side of Mr. Bailey. Crime scene investigators also performed procedures related to collecting a gunshot residue kit from Mr. Bailey.

The crime scene investigator also performed procedures related to the three involved officers. This included taking photographs, collecting the clothes from all three involved officers and collecting the firearm from Officer D'Meza and Officer Greathouse.

#### **Medical Examiners Report**

The medical examiner determined that the cause of Mr. Bailey's death was gunshot wounds of the thorax and the left lower leg. The gunshot wound to the thorax is described as a penetrating gunshot wound to the thorax. The entrance wound is of the left side of the upper back and is centered 17" below the top of the head and 7 3/4" left of midline. The bullet lodged in the right anterior deltoid muscle 15" below the top of the head and 8 1/2" right of midline. The bullet perforated the left lung, pericardial sac, pulmonic trunk and aorta, and right lung. The direction of the bullet's travel was rightward, upward, and frontward.

The gunshot wound to the right lower leg is described as a perforating gunshot wound to the right lower leg. The gunshot entrance wound is of the anteromedial aspect of the right lower leg is centered 53 1/4" below the top of the head. The gunshot exit wound is of the lateral aspect of the right lower leg is centered 54 1/4" below the top of the head. The bullet fractured the right tibia and fibula. The direction of the bullet's travel was rightward, downward, and slightly frontward. Neither the gunshot wound to the right leg nor the gunshot wound to the thorax have any associated soot or stippling.

#### **Witness present inside 2512 Glenbrook Dr.**

Three people, in addition to Kenneth Lee Bailey, Jr. were in the residence at 2512 Glenbrook Dr. when officers arrived. All three individuals present were interviewed. The pertinent facts of their interviews are as follows:

The first witness within the house stated that Bailey called earlier in the day (Feb. 15) to say that he would stop by. They sat on the couches and discussed rolling weed and Bailey charged his phone. He (witness) heard the screen door open and a white male with a gun said, "Don't move, Durham Police!" About a minute later, Bailey ran and the officers chased. The witness went outside and saw the officers chase Bailey across the street and behind a house. The witness heard one shot, but could not see the officers. Bailey fell and said, "all right, y'all got it, y'all got it." The witness saw officers approach and fire two more shots. He said he never saw a gun in Bailey's hand or in his possession.

The second witness within the house said he/ she was in a room playing video games and did not see him (Bailey). The second witness heard gun shots but did not see anything.

The third witness within the house said that they were watching a movie and Bailey's ankle monitor needed to be charged. Two officers were at the door in vests and the witness saw an unmarked police truck. The officer knocked on the door two or three times and announced "Durham Police" before entering. The door was already partly opened. At least one officer had a handgun. He told Bailey, "Don't run or I'll shoot!" Bailey said he wouldn't run, but he did five seconds later. At least one officer ran after him. This witness went outside and saw Bailey fall and heard one shot with a pause, Bailey said, "I'm shot," and then two more shots. This witness told investigators that he knew Bailey sometimes carried a gun, but was unaware if he had one that day. He also told investigators that the first witness within the house (mentioned above) told him (third witness within the house) that he saw Bailey throw a handgun.

#### **Civilian Witnesses in Neighborhood around 2512 Glenbrook Dr.**

Investigators canvassed the neighborhood to locate witnesses and interviewed at least 19 civilian witnesses other than those within the residence at 2512 Glenbrook Dr. Some of the witnesses only heard what they believed to be gunshots. Some witnesses reported seeing some actions of the officers involved and or Mr. Bailey. The witness accounts varied significantly in many ways. Some witnesses reported hearing as few as one gunshot and others reported hearing upwards of 6 gunshots. Several witnesses saw an officer, officers and or Mr. Bailey for a limited period of the officers' foot chase of Mr. Bailey. The detail that these witnesses saw varied and in most cases was extremely limited. There were two witnesses who reported seeing a significant portion of the foot chase and or the shooting itself.

One witness reported seeing two trucks pull up and four officers approach 2512 Glenbrook Dr. The witness saw officers go to the front door and Bailey go out of a side door. As soon as Bailey's feet hit the ground, this witness reported seeing Bailey pull a silver gun from his waistband with his right hand and run towards the witness's address while three officers gave chase. According to this witness, the entire time the officers were chasing Bailey they were telling Bailey to drop the gun. This witness went to another door within the residence he/she was within and heard officers continue to tell Bailey to drop the gun. The witness reports hearing the officers shoot twice and then two to three seconds after the first shot, heard and saw the officers shoot three to four more times. The witness thought all three officers were shooting but could not see Bailey at that point and could not tell if he (Bailey) was shooting. This witness estimates he/she heard officers tell Bailey to drop the gun at least 10 times.

A second witness, who lives in the neighborhood, reported to investigators that he/she heard a pow and that he/she thought officers tazed and then shot. This witness said that Bailey had been on the ground when shot, after which the witness heard three more shots. The witness did not see Bailey with a gun. The witness heard Bailey say he gives up before the police shot three more times, including in the head.

## Officers Involved

The officers involved in the chase of Kenneth Lee Bailey, Jr. and subsequent shooting were Allen Georges D'Meza, Thomas Michael Greathouse and John Edward Lloyd, Jr. All three officers were interviewed by the SBI.

Allen Georges D'Meza is a member of the Selective Enforcement Team (SET). On February 15, 2017 he came onto shift at approximately 9:00 am. Officer D'Meza and other SET team officers were asked for assistance in serving warrants for armed robbery. The suspect was Kenneth Lee Bailey, Jr. The SET team officers were advised that Mr. Bailey was located at the Crossland Economy Hotel. While traveling to that location, they were advised that Mr. Bailey was traveling north on Hwy. 55. (As noted earlier, Mr. Bailey's location and movement was being tracked through the electronic monitoring equipment.) About ten minutes later, they were advised that Mr. Bailey was stationary at 2512 Glenbrook Dr. and that the electronic monitoring device was being charged. According to Officer D'Meza, he and Officers Greathouse and Lloyd proceeded to 2512 Glenbrook Dr. All three officers were in plain clothing and each had on a Durham Police Tactical vest that read "Police" on the front and back. D'Meza said Officers Greathouse and Lloyd went to the front door of the residence and that he went to cover a door on the left side of the residence. D'Meza said that he could hear Greathouse and Lloyd knock on the front door of the residence and twenty to thirty seconds later he heard Greathouse yell at him, "He is running out the back D!" He then noticed a black male later identified as Kenneth Lee Bailey, Jr., running out of the side door of the residence. That individual exited out the residence, looked at him (D'Meza), ran straight and then left.

Officer D'Meza said that he noticed that Mr. Bailey had his hands in the front waist of his pants, but could not tell if he had a gun in his pants. He began to chase Mr. Bailey and give him commands of, "get down, police and get down on the ground." He saw Mr. Bailey run across Glenbrook Dr. and he heard Officer Lloyd yell that he had a gun. D'Meza continued to give chase from a distance of four or five yards from Bailey, but slowed down a little to give himself more time to react in case Bailey turned around and started shooting. D'Meza moved to the right side of Bailey and continued to give commands.

Officer D'Meza said Bailey then ran between two houses and made a left and he heard Greathouse yell, "He's got a gun!" D'Meza still was not able to see a gun. According to D'Meza, after making a left Bailey began to look back towards his, Greathouse and Lloyd's direction. D'Meza was still to the right of Bailey; therefore, Bailey's body was blocking D'Meza's view of a gun, if there was a gun in Bailey's hand. All three officers continued to give commands. D'Meza then said he heard two consecutive shots. He did not know who shot but knew that they came from his left side. After hearing the gunshots, D'Meza said that he could see a dark in color, semi-automatic pistol in Bailey's right hand. D'Meza said Mr. Bailey continued to run and tripped down a hill and fell to his knees. While on his knees, Mr. Bailey reached under his left arm and pointed the gun at D'Meza. D'Meza said at that time he became in fear of his life and the lives of his fellow officers so he fired one shot from approximately fifteen to twenty

yards away from Bailey. He did not know if he had hit Bailey because Bailey was still moving. He said Mr. Bailey appeared to be giving up because he began to lay down. As he (Bailey) was laying down he threw his gun with his right hand about ten to fifteen yards away.

Officer Thomas Michael Greathouse gave information consistent to that of Officer D'Meza regarding the officers' actions before encountering Mr. Bailey. He said that he and Officer Lloyd went to the front door of the residence at 2512 Glenbrook Dr. and he knocked on the door and the door had come open. Greathouse said he saw a guy sitting 45 degrees inside the door to the left and then a gentlemen that he recognized to be Kenneth Bailey was sitting in front of him in a chair with a cord coming across the floor to his ankle. Greathouse asked what his name was and he said, "Kenneth." Greathouse had his gun out and he told him not to move. According to Greathouse, Mr. Bailey pulled the cord and unplugged his ankle bracelet and with his other hand grabbed his belt area. Greathouse went in and tried to grab Mr. Bailey but Bailey ran through the kitchen and out the door.

Officer Greathouse said that he gave chase but slowed down to call in on his radio. He then heard Officer Lloyd yell, "Gun, he's got a gun!" Greathouse said he saw something in Mr. Bailey's hand as Bailey turned. Greathouse described a gun with silver on top at the slide. He said that he could see the gun in Bailey's hand as he turned to look in their direction. Greathouse said that Mr. Bailey ran in a "wide moon" around the house and turned two to three times and pointed the gun at them. Greathouse stated that at the corner Bailey had been moving at an angle from left to right, and when Bailey turned, the gun had pointed at him first because he was behind. He stated that he thought Bailey was going to shoot him and that he was in fear for his life and in fear for his teammates. He stated that he fired two shots at approximately fifteen yards, plus, or minus five yards toward Bailey. He said Bailey took two or three steps, stumbled and went to the ground. He didn't know if Bailey had been hit or not.

Greathouse said that Bailey was on the ground on all "fours," but still had the gun. They gave Bailey commands to drop the gun. Greathouse said Bailey turned again with the gun. He stated that it sounded like D'Meza then fired one shot from about seven yards because of the distance.

Corporal John Lloyd gave information that was consistent with the information that both Officers D'Meza and Greathouse gave before their encounter with Mr. Bailey. Corporal Lloyd said he and Officer Greathouse went to the front door of the residence at 2512 Glenbrook Dr. He said Greathouse knocked on the door, the door opened as he knocked and Greathouse announced, "Police." He saw a black male sitting on a couch straight into the residence. Greathouse asked what his name was and a voice from the right said, "Kenneth." Lloyd saw Bailey sitting a few feet into the door on the right in a chair and it appeared that Bailey was charging his ankle bracelet. Lloyd said Greathouse told Bailey not to move and moved towards Bailey. Bailey ran toward the back of the house and Greathouse followed him. Lloyd yelled to D'Meza that they were running toward the rear/ side entrance. Lloyd said he ran back out the front of the door.

According to Corporal Lloyd all three officers chased Mr. Bailey across Glenbrook Dr. while yelling, "Police, stop," multiple times. He also said that Mr. Bailey was looking back at them while he was running with his hands in the front of his pants. Corporal Lloyd said Bailey's pants were falling down as he was running and his hands were in front of his body holding something and/or pulling his pants up. As they approached what Lloyd believed was 2517 Glenbrook Dr., Bailey's hand came out from the front of his waistband and a dark colored handgun was in his right hand as Bailey continued running. Lloyd said that he yelled, "He's got a gun!" Bailey continued to run while looking back at the officers. Lloyd says that he and the other officers yelled commands to Bailey to drop the gun. Lloyd said that he thought that Bailey was going to use the gun to hurt or shoot them.

Corporal Lloyd said that Mr. Bailey ran out wide making a left-hand turn to run behind the residence that he believed to be 2517 Glenbrook Dr. He said that Mr. Bailey pointed the gun at the officers across his body and then he heard two quick gunshots coming from his left. He believed that it was Greathouse who shot. Lloyd said that Bailey continued to run. They ran a short distance behind the residence at 2517 Glenbrook before Bailey fell down on all "fours." According to Lloyd, all the officers yelled for him to drop the gun. According to Lloyd, Mr. Bailey rose up to his knees and pointed the gun in his right hand across his body toward the left side at the officers. Lloyd then heard one shot coming from his right side which he believed to have come from D'Meza's gun. Lloyd estimated that they were twelve to seventeen yards away from Bailey at that time. He then said Bailey fell back down to his hands and knees and threw the gun fifteen to twenty yards forward towards Glenbrook.

#### **North Carolina State Crime Laboratory Testing**

SBI agents submitted items of evidence to five different sections of the lab for examination. The firearm seized from a yard on Glenbrook Dr. several yards from Mr. Bailey, Officer D'Meza's firearm, Officer Greathouse's firearm, the three fired cartridge (shell) cases seized from the scene, the fired copper bullet jacket removed from Mr. Bailey's body and a metal fragment removed from Mr. Bailey's body were submitted to the crime lab for firearms examination and identification. The results of that examination included the following: two recovered fired cartridge cases were fired from Officer Greathouse's firearm, one recovered fired cartridge cases was fired from Officer D'Meza's firearm, the fired copper-jacketed bullet was fired from Officer D'Meza's gun and the metal fragment contained no marks of value for microscopic comparison purposes.

A gunshot residue kit taken from procedures performed on Mr. Bailey was submitted for gunshot residue examination. The examination of the gunshot residue kit revealed the presence of particles characteristic to gunshot residue.

The firearm seized from the yard on Glenbrook Dr. was also submitted for latent print examination. There were no identifiable latent prints noted or developed on that firearm.

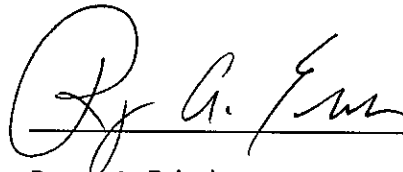


A plastic bag containing white powder, a plastic bag containing plant material, a plastic bag containing tan powder, a plastic bag containing off-white hard material and a digital scale were submitted to the lab to be examined for controlled substances. The results of those examinations included the following: the plastic bag containing white powder was positive for cocaine hydrochloride in the amount of 8.55 grams, the plastic bag containing plant material was not chemically analyzed, the plastic bag containing tan powder was positive for heroin in the amount of 2.91 grams, the plastic bag containing off-white hard material was not chemically analyzed and the digital scale was not chemically analyzed.

The firearm seized from the yard on Glenbrook Dr. was also submitted for DNA analysis. The DNA profile obtained from the swabbing from the Kahr CW 45 handgun (handgun seized from Glenbrook yard), magazine, and rounds (from the handgun) is inconclusive due to insufficient quantity and/or quality of recovered DNA. There were four or more contributors of DNA to the firearm which made it impossible to draw conclusions as to the DNA.

### Conclusion

Based on the evidence, there is no doubt that Officers D'Meza and Greathouse fired their firearms at Kenneth Lee Bailey, Jr., struck him and killed him. Therefore, the issue is whether the officers were justified in using deadly force. Anyone, including a law enforcement officer, is justified in using deadly force if they reasonably believed, and in fact believed, that he or a third person was in imminent danger of death or great bodily injury. In this case, there is no question that Kenneth Lee Bailey, Jr. resisted the officers' lawful authority to arrest him by running. There is significant evidence to believe Kenneth Lee Bailey, Jr. possessed a gun on this occasion. There is also ample evidence that Mr. Bailey displayed a firearm and pointed the firearm at the officers. Each officer stated that they were in fear of their own life and the lives of their fellow officers. The evidence supports the officers' belief of being in fear. If a person pulls a firearm, even if they are in flight, firing that weapon in any direction is potentially only a fraction of a second away. Therefore, the officers' reasonable fear of death and or great bodily injury was also imminent. As noted earlier, the factual accounts of the civilian witnesses were inconsistent with each other and in many respects inconsistent with the believable and physical evidence. Based on all of the evidence, probable cause does not exist to charge Officer D'Meza, Officer Greathouse or Officer Lloyd with a criminal offense.



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