

Prospective Grand Jury Questionnaire

January, 2007

The Presiding Superior Court Judge is required to select two Forepersons for the Grand Juries.
Please complete this questionnaire. Your answer will be confidential. **PLEASE PRINT**

1. Your Name: _____

Your Address: _____

Your Employer: _____

Length of Employment: _____

Position Title: _____

Appendix 1

2. Are You Married: YES____ NO____, If YES, please complete the questions below in Question #2.

Your Spouse's Name: _____

Your Spouse's Employer: _____

Length of Employment: _____

Position Title: _____

3. Education:

Are you a High School Graduate? YES____ NO____. If NO list highest grade completed _____

Have you attended College? YES____ NO____, If YES list highest grade or degree completed _____

4. Have you previously served on a Jury? YES____ NO____

If YES, list Month and Year _____ Length of Jury Service _____

5. Have you previously served on a Grand Jury? YES____ NO____

If YES, list Month and Year _____ Length of Grand Jury Service _____

6. Have you or any member of your family ever been charged with or convicted of a CRIMINAL offense?

Including Driving Under Influence (DUI) and Driving While License Revoked (DWLR). DO NOT INCLUDE MINOR TRAFFIC OFFENSES.

YES____ NO____,

If YES, list the name and relationship of the family member: _____

List the offense _____ and month and year of offense _____

If CONVICTED, state the sentenced received _____

and month and year of conviction _____

7. List any professional or civic organizations to which you belong and positions of leadership you have held:

Signature _____

Date _____

GRAND JURY

Foreperson questionnaires

a. Bench Book questionnaire

Source: NORTH CAROLINA TRIAL JUDGES' BENCH BOOK SUPERIOR COURT
VOL. 1, Orders & Forms at p. 13 (3rd ed.) (Institute of Government 1999)

Name: _____

Current Address: _____

Telephone Number: _____

Date of Birth: _____

Education: _____
(Grade Completed)

Occupation: _____
(Present employment or occupation prior to retirement)

Prior grand jury service: Yes () Date: _____ No ()

Prior petit jury service: Yes () Date: _____ No ()

Other information: _____

Would you be willing to serve as grand jury foreperson? Yes () No()

Signature

Date

b. Alternative questionnaire

Source: Superior Court Judge Donald Bridges

The presiding judge is required to select a foreperson for the Grand Jury. Please complete this questionnaire. Your answers will be sealed and can only be opened by order of the Court.

1. Name (please print) _____; Age _____

2. Number of years completed in school. _____

3. Have you ever served on a Grand Jury before (including the past six months)?

4. Have you ever served as foreperson of a Grand Jury? _____

If so, when? _____

5. Have you ever been convicted of a criminal offense (other than minor traffic convictions)?

6. Where are you employed? _____

7. How long have you worked there? _____

8. What position do you hold and/or what are your work duties?

9. Do you supervise other employees at work? _____

10. List any professional, religious, or civic organizations to which you belong.

11. List any offices or positions of leadership you have held in the above organizations.

12. Whom do you recommend (including yourself) to be the foreperson of this Grand Jury?

13. If chosen, would you be willing to serve as foreperson for the next six months?

Signature

NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

APPOINTMENT OF FOREPERSON OF
GRAND JURY

ORDER

The initial business conducted on the July 17, 2006 Term of the Criminal Session of Superior Court for the 27-A Judicial District, was selected from the jurors summoned for the sessions of Court in accordance with the prescribed statutory procedures.

Each juror selected for the Grand Jury was requested to complete a "Grand Jury Questionnaire" a copy of which is attached to this Order. The undersigned reviewed each questionnaire for the express purpose of selecting one person to serve as the Foreperson of the Grand Jury B for the six month period beginning with the 17th day of July, 2006 Session of Court.

The Court reviewed each of the Grand Juror Questionnaires for the purpose of selecting the foreperson.

**BASED UPON THE FOREGOING FACTS, THE COURT CONCLUDES AS A MATTER OF
LAW:**

1. That the presiding judge must appoint a member of the grand jury as foreperson for of Grand Jury B.
2. That the appointment of the foreperson must be racially neutral.

THEREFORE, the Court, in the exercise of informed discretion, having reviewed the various questionnaires, has appointed _____, the Foreperson of the **Grand Jury B** for the period from the date of his/her appointment through the month of December, 2006. The appointment of _____ was racially and gender neutral.

The foregoing **ORDER** was executed in Chambers, this 17th day of July, 2006.

Beverly T. Beal
Presiding Superior Court Judge
Superior Court Division
27-A Judicial District

GRAND JURY

Sample Orders For Appointment Of Grand Jury Foreperson

a. Sample Order from Bench Book

Source: Adapted from NORTH CAROLINA TRIAL JUDGES' BENCH BOOK, SUPERIOR COURT, VOL. 1, Orders and Forms, at pp. 11-12 (3rd ed.)(Institute of Government 1999)

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE: APPOINTMENT OF)
GRAND JURY FOREPERSON [AND) **ORDER**
ALTERNATE FOREPERSON])

This matter is before the undersigned Judge presiding at the _____
Session of _____ County Superior Court on [date]_____.
At this session the Court is required to impanel a new grand jury and to appoint a new
foreperson for the grand jury.

The Court finds as facts the following:

1. That nine (9) new grand jurors were randomly selected by the Clerk from the jurors regularly summoned for this session of court.
2. That each of the eighteen (18) grand jurors was requested to complete a "Grand Jury Questionnaire" that has been made a part of the Clerk's minutes.
3. That the undersigned has reviewed each questionnaire for the express purpose of selecting a foreperson [and an alternate foreperson].
4. That the undersigned does not know the race of any of the grand jurors and that no indication of race is listed on the questionnaire. No such indications were made by any of the persons with whom the Court consulted.
5. That of the eighteen (18) grand jurors who had completed questionnaires, ____[number]____ indicated that they would not be willing to serve as foreperson or alternate foreperson;
6. That considering the information from each questionnaire, this Court, in its discretion, determines that, based on the criteria of leadership ability, fairness, education, prior grand jury experience, and ability to follow instructions, ____[name of foreperson selected]____ is a fit and proper person to serve as foreperson of this grand jury, [and ____[name of alternate foreperson selected]____ is a fit and proper person to serve as alternate foreperson of this grand jury].

Based on the foregoing findings of fact, this Court concludes as a matter of law:

1. That the presiding Judge is required to appoint a member of the Grand Jury as foreperson;
2. That the presiding Judge chooses as well to appoint a member of the Grand Jury as alternate foreperson; and
3. That selection of both of these officers of the Grand Jury was made through a race- neutral procedure.

THEREFORE, the Court, in the exercise of its discretion, hereby appoints _____[*name of person selected*]_____ as foreperson of the grand jury for _____ County and appoints _____[*name of person selected*]_____ as alternate foreperson of the grand jury of _____ County.

The Court further ORDERS that the Clerk shall keep a copy of this Order with the permanent minutes of this Court.

It is further ORDERED that the Clerk shall place the eighteen (18) completed questionnaires in a sealed envelope, not to be opened except by Order of this Court; and that these be kept with the permanent minutes of this Court.

This the ____ day of _____, 20____.

Superior Court Judge Presiding

b. Alternative Sample Order

Source: Superior Court Judge Donald Bridges

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE: GRAND JURY FOREPERSON ORDER OF APPOINTMENT

This matter coming on to be heard before the undersigned Judge assigned to preside over the Superior Court of the above-captioned county. This is a session at which this court is required to impanel a new grand jury and to appoint a new foreperson of the grand jury.

It appears to the court and the court finds as facts the following:

That _____ new jurors were randomly selected by the clerk from the jurors regularly summoned from this session of court.

Upon selection and composition of the new grand jury as described above, the undersigned judge proceeded to explain to the grand jury the responsibilities of the foreperson and assistant foreperson of the grand jury. The court further informed the grand jurors that it is the responsibility of the court to appoint a foreperson and assistant foreperson, but that the court would entertain recommendations from the grand jury for the positions of foreperson and assistant foreperson. The grand jury also was informed by the court that, in making such recommendations, all members of the grand jury should be considered as possible candidates, that any recommendations should be based upon the leadership ability, fairness, education, prior grand jury experience and ability to follow instructions and that the persons recommended must be selected in a racially neutral manner. After receiving the recommendations of the grand jurors, the Court again inquired and was assured that the recommendations had been made in a racially neutral manner.

Considering the recommendations and other information received from the grand jurors, this court in its discretion determines that based on the criteria of leadership ability, fairness, education, prior grand jury experience, and ability to follow instructions, _____ is a fit and proper person to serve as foreperson of this grand jury and _____ is a fit and proper person to serve as assistant foreperson.

Based on the foregoing facts, the court concludes as matters of law:

That the presiding Judge must appoint a member of the grand jury as foreperson.

That this selection was made through a racially neutral procedure.

THEREFORE, the court in the exercise of its informed discretion hereby appoints
_____ as foreperson of the grand jury of this county, and
_____ as assistant foreperson.

It is further ORDERED that the clerk shall keep a copy of this Order with the permanent minutes of this Court.

This the ____ day of _____, 20____.

Superior Court Judge

1. WHAT IS A GRAND JURY?

In North Carolina, a Grand Jury is a group of not less than 12 or more than 18 citizens which is a part of a Superior Court.

The North Carolina Constitution provides that no person may be tried for a felony except upon an indictment found by a Grand Jury, without his consent.

2. HOW ARE GRAND JURIES CHOSEN?

At the first week of Superior Court in January and July, names of jurors summoned for duty at the session are drawn by lot from the venire. Those whose names are drawn replace the retiring members of the Grand Juries.

3. HOW MUCH IS A GRAND JUROR PAID?

The pay of Grand Jurors is determined by the General Assembly. It is presently \$12.00 per session. It is mailed to jurors by the Clerk of Court.

Ample Reserved Juror parking is available at the Courthouse. Please place your summons on the dashboard of your car to serve as a parking permit. If you need additional stickers see the Jury Coordinator.

4. HOW LONG DOES A GRAND JUROR SERVE?

As in most other counties of North Carolina, Grand Jurors in Gaston County serve for one year.

Terms of Grand Jurors are staggered, so that one half of the members are replaced each six months.

5. HOW OFTEN AND FOR HOW LONG DOES A GRAND JURY MEET?

The Gaston County Grand Juries meet on the first and third Mondays of each month of Superior Court. (If the first Monday of the week is a legal holiday, the meeting is on Tuesday.) Grand Jury A meets the first Monday, Grand Jury B meets the third Monday.

The Grand Jury convenes at 9:30 a.m., and usually completes their work by 4:00 p.m. However, it may be necessary for the Grand Jury to meet on more than one day a month.

6. WHERE DOES A GRAND JURY MEET?

The Grand Jury meets in the Grand Jury Hearing Room, Room 4012, on the fourth floor. There are restrooms solely for the Grand Jurors' use.

7. MAY A GRAND JUROR BE EXCUSED FROM ATTENDING SESSIONS?

The Forepersons of the two Grand Juries have the power to excuse not more than two jurors from attending a session for good cause. The Presiding Judge may excuse others.

If, during the term, a Grand Juror becomes disabled to serve, or if for some sufficient reason needs to be relieved of the duty, application must be made to the Judge Presiding in the Criminal Division of Superior Court.

8. WHO PRESIDES OVER A GRAND JURY?

The Foreperson of each Grand Jury is selected by the Superior Court Judge presiding over the Criminal Courtroom from among the entire Grand Jury membership (18 people for each individual Grand Jury). An Assistant Foreperson is selected by the vote of the Grand Jury members from its entire membership of 18.

If the Foreperson finds it necessary to be excused from a meeting, s/he must request the Judge presiding in the Criminal Division of Superior Court to excuse her/him. The Assistant Foreperson would then act as Foreperson.

9. WHAT DOES A GRAND JURY DO?

A Grand Jury has three duties imposed upon it by law.

- a. To consider and pass upon bills of indictment.
- b. To make presentments.
- c. To inspect certain public institutions and offices, and report to the Court the condition thereof.

10. WHAT IS A BILL OF INDICTMENT?

A bill of indictment is a formal accusation that a named person has committed one or more crimes.

It is prepared by the District Attorney, and submitted to the Grand Jury. Upon it appears the names of the witnesses the District Attorney considers it necessary for the Grand Jury to hear. Based upon the evidence presented, the Grand Jury determines whether probable cause exists.

A specimen of a bill of indictment is at the end of this handbook.

11. WHAT IS A PRESENTMENT?

If any member of the Grand Jury has knowledge that any person has committed a crime, and at least twelve members of the Grand Jury find that there is probable cause to support the charge, the Grand Jury may, in written form, present the matter to the District Attorney, who, after investigating the matter, may, if he deems it advisable, submit an indictment to the Grand Jury.

Presentments are rarely used.

12. WHAT PUBLIC DEPARTMENTS ARE INSPECTED?

The law requires that at least once during each six-month term, a Grand Jury must inspect the County Jail, and report on its condition to the Judge in writing.

A Grand Jury also has the right to inspect and report upon the condition of any other County building, department or institution, but is not required to do so. Other County buildings include the Courthouse and Schools while County departments would include, Dept. of Health, Dept. of Social Services, County Police and many others. A copy of an inspection report will be provided to the Grand Jurors.

13. WHAT PROCEDURE DOES A GRAND JURY FOLLOW?

- a. In order for a Grand Jury to transact any business, a quorum of at least twelve members must be present. If the number of members in the Commissioner's Conference Room is less than twelve, even for a brief period, all proceedings must cease until at least twelve are present.
- b. The District Attorney selects the witnesses to be heard by the Grand Jury and is responsible for subpoenaing witnesses.
- c. The Foreperson calls for a witness, and administers the oath to the person.
- d. The Foreperson first questions the witness, and then any other juror may do so.
- e. Formal rules of evidence do not apply.
- f. A witness must immediately leave the room after testifying. No juror should discuss the case until the witness does so.
- g. If, after hearing one or more witnesses named on the bill, twelve or more members vote to find probable cause, the Foreperson marks the bill as a "True Bill".
- h. If all of the witnesses named on the bill are not present for examination, and at least twelve members do not find probable cause after hearing the testimony of those who are present, the bill is to be returned to Court with an indication it could not be acted upon because all witnesses were not available.

- i. If, after hearing all of the witnesses named on the bill, at least twelve members do not find probable cause, the Foreperson marks the bill "Not a True Bill", and the defendant is released.
- j. If a "Not True Bill" is found, the Grand Jury, with the concurrence of at least twelve members, may return the bill with a request that the District Attorney submit a bill charging a lesser included or related offense.
- k. After all bills have been acted upon, the Foreperson signs the bills and takes them, and a report, to the Judge in the Criminal Division of Superior Court.

14. WHAT IS PROBABLE CAUSE?

The function of the Grand Jury is not to determine guilt or innocence, but only probable cause.

"Probable cause" means a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves, to warrant a cautious person in the belief that, (1) the crime charged was probably committed, and (2), that the defendant probably committed the crime.

15. WHO MAY BE IN THE GRAND JURY HEARING ROOM?

No one may be present with the members in the Grand Jury Hearing Room while they are hearing a witness, other than the witness, an interpreter for the witness, if necessary, or a law enforcement officer holding the witness in custody. Neither the District Attorney nor defense counsel is permitted in the room. No record is made of the proceedings.

16. MAY A DEFENDANT BE HEARD AS A WITNESS BY A GRAND JURY?

A defendant may not be called as a witness, or voluntarily appear before the Grand Jury.

17. MAY A WITNESS REFUSE TO TESTIFY BEFORE A GRAND JURY?

Under the Constitution, no person may be compelled to be a witness against himself. A witness before the Grand Jury has an absolute right to refuse to answer any question asked, if their answer would tend to incriminate him or herself.

18. MAY A GRAND JURY INVESTIGATE ANY MATTER ON ITS OWN MOTION?

Under North Carolina law, a Grand Jury has no power to investigate any matter on its own. It cannot summon witnesses or permit volunteer witnesses to appear before it.

If, in the course of acting upon bills of indictment, some other offense comes to the knowledge of the Grand Jury, or, if such knowledge is brought to the Grand Jury by one of its members, the Grand Jury, upon concurrence of twelve of its members, may request the Judge to call witnesses, and the Court will take the matter under advisement.

19. WHO ADVISES A GRAND JURY AS TO LEGAL MATTERS?

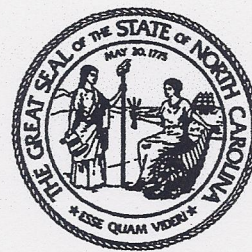
The Presiding Judge in the Criminal Division of Superior Court is the legal advisor to the Grand jury.

In most crimes, common sense will enable jurors to understand what elements are necessary to constitute most crimes. If there is any difference, the Foreperson should request the Judge's advice. It is the right of a Grand Jury to approach the Judge to obtain legal advice at any time.

20. MAY A GRAND JUROR REVEAL WHAT OCCURS DURING GRAND JURY SESSIONS?

The answer is an emphatic "NO". The proceedings of a Grand Jury are secret. No Grand Juror is EVER to reveal the identity of any person who appears before the body, or any information revealed during a session unless directed to do so by the Court.

Violation of this obligation of secrecy is punishable as contempt of court.



State of North Carolina

HANDBOOK FOR GRAND JURORS

Prepared by James C. Drennan
The Institute of Government
The University of North Carolina at Chapel Hill

Published by
N.C. Administrative Office of the Courts
Justice Building
Raleigh, N.C. 27602
1998

GRAND JURY

Oath of Grand Jury Foreperson

Source: G.S. 11-11

You, as foreperson of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep in secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unpresented for fear, favor, or affection, reward or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Oath of Grand Jurors

Source: G.S. 11-11

The same oath which your foreperson has taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Oath of Grand Jury Officer

Source: G.S. 11-11

You swear (*or affirm*) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof, so help you, God.

**SUGGESTED FORMAT
FOR THE
GASTON COUNTY GRAND JURY'S
SEMI-ANNUAL INSPECTION OF THE GASTON COUNTY JAIL FACILITIES REPORT
(AND OTHER COUNTY BUILDINGS IF INSPECTED)**

INSTRUCTIONS

The law requires that at least once during each six-month term, a Grand Jury must inspect the County Jail which includes the Gaston County Sheriff's Work Release Center, and report in writing on its condition to the Superior Court Judge. The Grand Jury may also inspect other County buildings or agencies reporting the results in writing.

Once the Grand Jury has decided upon a date and time to inspect the County Jail or other County buildings or agencies, the Foreperson is to contact the Trial Court Administrator, Kathy Dixon, in Room 4122, telephone number 852-3130, who will be responsible for making all appropriate arrangements for the inspection tour(s). The Trial Court Administrator's Office will also be responsible for providing secretarial support for the Grand Jury's preparation of their written inspection report.

The duties of inspection imposed upon the Grand Jury requires it to make a thorough and honest investigation, and if conditions are not as they should be, to so report, together with their recommendations as to how such conditions should be remedied.

The Grand Jury's written report is to be presented by the Foreperson at the time of presenting any Bills of Indictment in Open Court to the Superior Court Judge presiding over Criminal Court. A copy of the report will be given to the Clerk of Court to be kept as a permanent record. The report must be submitted within the six-month period all members of the Grand Jury are serving.

The Grand Jury is cautioned that the purpose of the inspection is not to unduly criticize individuals but to view and assess the adequacy of facilities.

SPECIAL REPORT OF
THE GASTON COUNTY GRAND JURY

A. Authority

1. Compliance with the statute.

State that the Grand Jury met in full session on specific dates in accordance with North Carolina General Statute 15A-628(5) and presents to the Court the following report.

B. Findings

1. Jail and County buildings or agencies inspected.

State that a tour and thorough inspection of the Gaston County Jail and Work Release Center, and if appropriate list all other County buildings or agencies inspected, was made by all the members of the Grand Jury.

2. Statement of findings.

State what deficiencies or matters needing improvement, if any, were found in which specific facility. If conditions are as they should be, state that.

C. Recommendations

1. If the inspection findings resulted in determining deficiencies or matters were in need of improvement, please list the recommendations of the Grand Jury as to how such conditions can be remedied.

D. Conclusion

1. The Foreperson of the Grand Jury is to date and sign the Grand Jury report.

E. Example Report

1. An example of a Grand Jury report is attached.

SPECIAL REPORT OF
THE GASTON COUNTY GRAND JURY

The Grand Jury for Gaston County in meeting its statutory responsibilities in accordance with North Carolina General Statute 15A-628(5), met in full session on Monday, July 17th, 2006 and presents to the Court the following report.

A tour and thorough inspection of the Gaston County Jail and of the Gaston County Sheriff's Work Release Center (also list other County buildings or agencies inspected if any) was made by all members of the Grand Jury. Below listed are our findings as they relate to each facility.

A. Gaston County Jail

1. Finding(s):

If conditions are as they should be

Based upon our inspection of the Jail, the Grand Jury is in total agreement that Jail facilities and operations are as they should be and there are no significant deficiencies or matters needing improvement.

Or

If conditions are not as they should be

Based upon our inspection of the Jail, the Grand Jury is in total agreement that Jail facilities and/or conditions are gravely inadequate. *(Detail each deficiency as thoroughly as possible and describe what if any consequences the problem poses to the citizens of Gaston County.)*

2. Recommendation(s):

Only needs to be addressed if unsatisfactory conditions were found

Based upon our inspection of the Jail, the Grand Jury is in total agreement that the following steps be taken to alleviate this situation.

(Detail the specific steps recommended to be taken.)

B. Other County Buildings or Agencies

Examples of other County buildings or agencies include the Courthouse, County Schools, Department of Social Services, Health, Finance, General Services and Personnel Departments to mention a few.

1. Finding(s):

2. Recommendation(s):

C. Conclusion

In conclusion, the Grand Jury finds that all facilities inspected were satisfactory (*or were not satisfactory.*)

Respectfully submitted, this _____ day of July, 2006.

GASTON COUNTY GRAND JURY

By: _____
Foreperson, Grand Jury A

By: _____
Foreperson, Grand Jury B

STATE OF NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN THE MATTER OF THE)
EXCUSAL OF TITO JERMAINE)
WILLIAMS,)
GASTON COUNTY)
GRAND JURY)
)
)
)
_____)

ORDER

IT APPEARING to the undersigned that good cause exists to excuse Tito Jermaine Williams from the Gaston County Grand Jury;

IT IS HEREBY ORDERED that Tito Jermaine Williams be excused as a member of the Gaston County Grand Jury beginning June 1, 2010, and extending through December 31, 2010, or the end of his term, whichever may come first.

This the ____ day of March, 2010.

Jesse. B. Caldwell, III
Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

PRESENTMENT BY GRAND JURY

The grand jury do present, that did, on or about the day of , 20 , in
said county, commit the following offense: Did unlawfully

Grand Jury Foreperson

Witnesses

of Gaston County

of Gaston County

9-9-10
302

STATE of NORTH CAROLINA

In the General Court of Justice
Superior Court Division

Case No. 10CRS055420

New Hanover County

Appendix 9

Indictment

State Versus

TERRY ANTONIO SHEPARD

Offense(s)

I. PWIMSD SCH VI CS

Date of Offense

05-26-2010

G.S. No.

90-95(A)(1)

CL

I. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did possess with the intent to manufacture, sell and deliver a controlled substance, to wit: Marijuana, more than one and one half ounces, which is included in Schedule VI of the North Carolina Controlled Substances Act.

Signature of Prosecutor

J. M. R. Coleman 8/17/10

Witnesses

☒ A.M. Lawson (WPD)

☐

☐

☐

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury, and after hearing testimony, this bill was found to be:

☐ **A TRUE BILL** by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☒ **NOT A TRUE BILL**

Date:

8/30/10

Signature of Grand Jury Foreman:

Claudia H. Rouse

**NOT A TRUE BILL
GRAND JURY A**

SE



Benjamin R. David
District Attorney

State of North Carolina
General Court of Justice
Fifth Prosecutorial District
Wilmington, NC 28402

Post Office Box 352
Phone: (910) 341-1401
Fax: (910) 815-3560

March 10, 2009

To Members of the Media:

Over the last two days, a New Hanover County Grand Jury has considered the criminal conduct of three people who were arrested by WPD on February 18, 2008. During the course of the pursuit of a vehicle driven by Anthony Pierce and occupied by Matthew Hendy and Eric Smith, Officer Richard Matthews of the Wilmington Police Department lost his life when he was involved in a one-car collision. Matthews was responding to render aid to a fellow officer, who was actively pursuing the vehicle for felony drug and gun offenses.

Within hours of this tragic event, the District Attorney's Office began working closely with members of the Wilmington Police Department as well as the State Highway Patrol and the State Bureau of Investigation to conduct a thorough and comprehensive investigation. Our working relationship has continued over these past two weeks to ensure that the facts were thoroughly developed and the law extensively researched. We have taken great pains to make certain that our actions are well supported by both the facts and law. We have followed a process, which today culminated in Grand Jury action.

Anytime an officer dies in the line of duty, it is a tragedy. The issue in this particular case is whether anyone should be held responsible in a legal sense for Officer Matthews' death. It was important that we acted slowly and deliberately to develop the facts and research the controlling legal authority from this State and around the country. We made an extraordinary effort to ensure that our decision to seek an Indictment rested on firm legal footing and is not borne out of the emotion of this event.

To protect the sanctity and neutrality of this process we put in place several safeguards. First, we effectively allowed the community, through the Grand Jury, to decide whether or not to bring forward any charge related to the death of Officer Matthews. This removed the WPD and any other law enforcement agency for having to make a charging decision based upon a tough case involving the tragic loss of one of its own.

Second, at the joint request of the WPD and the DA's Office, we involved investigators from outside the WPD to help conduct this investigation. We are grateful for the assistance of both the State Bureau of Investigation as well as the State Highway Patrol who rendered assistance in this case.

Third, prosecutors carefully researched the law from around the State and Country and detailed those findings in a 25 page brief that we filed with the Court. (A copy of the Brief is available, by either fax or e-mail, by contacting my assistant, Susan Greer, at 341-1427). Law enforcement officers have a very difficult and dangerous job and sadly many die in the line of duty each year in the pursuit of fleeing felons. Out of these tragedies, a whole host of cases reveal numerous instances where courts, and then ultimately the community, are confronted with the same issues: (1) Should the fleeing suspect be charged, and if so with what? (2) What is the role of the police in these crashes and what is the proper balance that must be struck by officers while they serve and protect? The brief discusses all of these issues.

Finally, the State sought and obtained permission from the AOC to have a visiting Judge, the Honorable Paul Gessner of Wake County, come to the District to preside over the Grand Jury proceedings. (Judge Gessner was here last week to rule on the media's request for the disclosure of videotapes from the in-car cameras of several chase officers.). During the course of their deliberations, the Grand Jury received legal advice from Judge Gessner, who carefully looked at the facts of the case and also researched the law before giving the jury instructions on the charges presented.

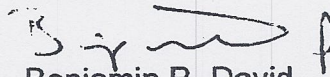
After deliberating for several hours, watching numerous videotapes, hearing from five witnesses from WPD and the SBI, and being instructed on the law, the Grand Jury determined that the driver of the fleeing vehicle could be held responsible for the death of Officer Matthews. He was indicted for the charge of Operating a Motor Vehicle to Elude Arrest, Resulting in Death. This is a charge that is significantly greater in punishment than the Fleeing to Arrest charge that Pierce was originally cited for by the WPD the night of the incident. Double Jeopardy does not bar the State from pursuing additional homicide offenses which arise out of the same set of facts.

The Grand Jury also indicted Anthony Pierce on the charge of Second Degree Murder under an implied Malice Theory for Officer Matthew's death. Implied Malice holds that a defendant who intentionally engages in reckless conduct that is inherently dangerous to human life can be charged with murder if he should have foreseen the actual harm his conduct may have caused. The Grand Jury carefully considered this charge and came out of their deliberations to ask Judge Gessner for jury instructions on the issue.

The Second Degree Murder conviction of a defendant has been upheld in North Carolina where a Deputy died when his car actually struck the fleeing defendant's vehicle. The present case involves a different set of facts that our high courts have not specifically addressed. While we have always been of the view that this was a factually complex case that would extend existing North Carolina precedent, we are prepared to try in this case. It is important to send a strong message that fleeing from police will not be tolerated and, if a death occurs, it will be vigorously prosecuted to the fullest extent provided by law. The Grand Jury has spoken and we respect their decision.

While there was not a sufficient legal basis to charge the passengers, Smith and Hendy, with the death of Officer Matthews, the State is also committed to prosecuting them to the fullest extent of the law. Like Pierce, they were indicted by this same Grand Jury for Possession With Intent To Sell and Deliver Marijuana and being Felons in Possession of a Firearm. We will continue to work closely with federal authorities to achieve this aim.

Sincerely,


Benjamin R. David
District Attorney

STATE OF NORTH CAROLINA

FILED

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF NEW HANOVER

2009 FEB -9 PM 11:06

STATE OF NORTH CAROLINA

FILE NO. 09CRS52056

V.

ANTHONY PIERCE

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)
)BRIEF IN SUPPORT OF
PROPOSED INSTRUCTIONS
TO GRAND JURY

Comes now the State, by and through the undersigned District Attorney and Assistant District Attorney, and files this Brief in Support of Proposed Instructions to Grand Jury. The requested instructions relate to the prosecution of defendant for the charge of second degree murder in the driving death of Officer Richard Matthews of the Wilmington Police Department. As grounds for the proposed instructions, the State shows the Court the following:

SUMMARY OF FACTS

In the early morning hours of February 18, 2009, Officer Richard Matthews of the Wilmington Police Department (WPD) was killed in the line of duty when his patrol vehicle struck a tree at a high rate of speed. He was 28 years old. Matthews had been a WPD officer since December 2006 and had also served two years with the NYPD in New York. At the time of the crash, at least six WPD officers from around the city were converging on a fleeing vehicle, operated by the defendant. Time records indicate that the chase was still on-going when the accident occurred.

The facts set forth herein will be presented to the Grand Jury through the introduction of videotapes from in-car cameras of several officers involved in the pursuit; the accident reconstruction done by officers with the WPD and North Carolina Highway Patrol; and the testimony of testifying witnesses, including an Agent with the State Bureau of Investigation and officers with the WPD.

A. THE STOP

In the early morning hours of February 18, 2009, Corporal Will Richards of the WPD was traveling in a marked patrol car together with his trainee, Officer Schwarz. Richards had recently transferred from the Narcotics Unit, where he was an experienced and seasoned drug detective. A directive at WPD from February 12 to the patrol division made Officer Richards the acting supervisor in charge of B Platoon on this night. Officer Matthews was a part of B Platoon and in direct radio communication with Richards.

At approximately 1:15 am, Richards and Schwarz observed a Sports Utility Vehicle, a GMC Yukon, speeding on South College Road. They followed the vehicle to initiate a traffic stop and activated the overhead lights and sirens of their patrol vehicle, which started a video recording device within the car. The contents of the stop and the ensuing pursuit are recorded on videotape.

The vehicle that was stopped was occupied by three people: The driver, Anthony Pierce, the front seat passenger, Eric Smith, and Matthew Hendy, who was located somewhere in the rear of the vehicle. Police later determined that the three suspects had approximately five pounds of individually packaged marijuana and a loaded handgun in the vehicle when first observed by Richards.

Anthony Pierce, born July 7, 1968, lived in Wilmington, and had been convicted of Felony Robbery, Felony Aggravated Assault, Criminal Conspiracy and Carrying Firearms in Philadelphia on August 11, 1994. Mr. Pierce was paroled on April 12, 2004 after serving a nearly 10 year sentence for these offenses. Defendant was still on parole at the time of this incident.

Eric Grant Smith, born January 19, 1984, who lived in the Winston-Salem area, was on federal probation, having been released from federal prison after serving a two year sentence for transporting drugs and firearms across the

Canadian Boarder. Smith was still on probation for this offense. Smith also had numerous marijuana and paraphernalia offenses throughout North Carolina. At the time of this incident, he was wanted out of Yadkin County for failing to appear in court on February 21, 2006 for Possession of Marijuana. He was also wanted for failure to appear in New Hanover County on February 12, 2009 for a speeding charge. Thus, there were active warrants for Smith's arrest at the time of this stop.

Matthew Gerard Hendy, born July 27, 1982, who lived in Hampstead, also had multiple prior contacts with the law. Just one week earlier, on February 12, 2009, Mr. Hendy pled guilty to Felony Fleeing to Elude Arrest in Johnston County. He was placed on probation for this offense, which arose out of an incident that occurred in March of 2008. At the time of that arrest, \$181,000 was seized from Mr. Hendy's vehicle and another \$10,000 was found on his person. Mr. Hendy has also been convicted of Trafficking in Cocaine on February 4, 2004 in Lenoir County. He has also been convicted of three separate marijuana offenses in Forsyth County.

A review of the criminal histories of Pierce, Smith and Hendy reveals that all three shared common traits. First, all three have had significant prior convictions. Next, all three individuals faced the prospect of returning to prison for either probation or parole violations if they were found to violate any of the criminal laws. Finally, the status of all three individuals as convicted felons barred any of them from possessing a firearm.

Defendant initially pulled over to the side of the road, in the Long Leaf Hills residential area just off South College Road, and remained parked for a few seconds. As Richards attempted to exit his vehicle, defendant took off unexpectedly. Richards and Schwarz gave chase. During the pursuit, defendant reached speeds of approximately 65 mph in a 25 mph zone, sped through 3 stop signs without slowing, and crossed into the oncoming traffic lane on several

occasions. Moreover, defendant swerved off of the road a couple of different times, onto the left hand side of the road toward peoples' yards. Five separate one pound bags of marijuana, with a street value of over \$30,000, were thrown from the vehicle at various points along the chase route. A review of the video reveals that these bags were thrown out of both the driver and passenger sides of the vehicle.

Given Richards' extensive experience with narcotics, he was immediately able to recognize the substance being thrown from the car, and he was able to appreciate the severity of the type of dealers that he was now in a chase with. In the course of his pursuit of defendant, Richards yelled "I need somebody." Matthews and numerous other officers with the WPD began driving from their locations to assist Richards with this high risk felony traffic pursuit.

The Defendant continued to flee from Richards around the Long Leaf residential area for approximately 5 miles. Defendant terminated the chase and pulled over after car was clean of contraband. Officers would later locate all five bags of Marijuana. The following day, a Good Samaritan called 911 to report that a Glock .40 caliber handgun was found near the Senior Center on South College Road. The location of the weapon was along the route the suspects had traveled immediately prior to Richards initiating a stop. An examination of the handgun, which was purchased in the Winston-Salem area, revealed that it was loaded with multiple rounds of hollow-point bullets.

It would be determined through later investigation that Pierce, Smith and Hendy had robbed other drug dealers of this same five pounds of marijuana approximately one hour before being stopped by Richards. The other drug dealers, who investigation reveals were also armed, gave chase to defendant, Smith and Hendy after the robbery. In essence, defendant, Smith and Hendy, were outrunning other criminals from a lucrative and very dangerous robbery when Richards first attempted to stop them.

B. THE PURSUIT

When Richards, the shift supervisor, broadcast a call for help to the other officers in his squad, several responded from different locations within the city limits, including Dave Pellegrino, a K-9 Officer. Pellegrino heard Richards notify dispatch that the vehicle was throwing narcotics out of the window, and Richards contemporaneously marked the approximate locations of where they were being discarded during the chase. Pellegrino immediately recognized the severity of this chase and the likelihood that defendants were also armed. As Pellegrino stated in his supplement report immediately after this incident: "Due to the large quantity of narcotics, I drove at speeds in excess of the posted speed limits on South College Road to get to Richards. It is my experience that narcotic traffickers and narcotic sellers usually are convicted felons and carry weapons either on their persons or in their vehicles. It was imperative that Corporal Richards receives assistance quickly due to the nature of the pursuit." This same concern was shared by other officers.

Officer Jason Worrell writes in his report, "I knew this was not a normal vehicle chase. In my three years as a police officer, I had not heard of subjects throwing this large amount of narcotics out of a vehicle. In the three years as a police officer, I have made approximately 100 narcotics related arrests. Through my experience and training, I knew these subjects were not normal street level dealers. This was a dangerous encounter with three subjects and the subjects would probably have guns to protect their product. It is normal for people with large amounts of narcotics to carry guns. I thought that when the chase ended there would be a shoot out with the subjects."

In response to this concern, Worrell, like Pellegrino, traveled in a high rate of speed to render assistance to Richards. A detailed investigation of the response times of all officers responding to the assistance of Richards discloses that many if not all were traveling at high rates of speed. For instance, Officer

Mike Knight traveled approximately 100 mph along South College Road to assist Richards. Two additional officers, S.D. Evans and Jason Worrell traveled in excess of 100 mph when they heard that Matthews had crashed.

C. CHASE POLICY

All Officers with the WPD receive training and are bound by the policies of the department regarding the times when a chase can be initiated and when a chase must be terminated. Matthews had extensive experience regarding the effective and efficient operation of his vehicle in high risk pursuit situations and had received a certification for precision driving one month prior to his death.

The WPD Policy Manual articulates the policy regarding pursuits and spells out the circumstances under which officers can both exceed the speed limit and ignore traffic control devices in their pursuit of criminal suspects. The manual does not put a limit on the speed an officer can travel to pursue a fleeing suspect but, instead, correctly notes that:

North Carolina General Statute 20-145 allows a law enforcement officer to exceed the speed limit in a police vehicle when operated with due regard for safety in the discharge of his/her official duties. North Carolina General Statute 20-156 allows a law enforcement officer to proceed through an intersection or other places where the officer is facing a stop sign, a yield sign, a flashing strobe signal, or a steady/flashing red light if the officer has both blue light and siren activated.

The manual further discusses the factors to be weighed by an officer in making the decision to both engage and continue a pursuit. The manual suggests a balancing test where the officer should weigh the interest of justice in apprehending the fleeing suspect against the interest of the public in not being subjected to unreasonable risks of injury. The manual tracks North Carolina case law in laying out several factors to be considered, among them:

- Whether the need for apprehension outweighs the risks to the officer or public;
- Pursuit location and direction (i.e. school zones, playgrounds, neighborhoods);
- Time of day;
- Pedestrian and vehicular traffic conditions;
- The speeds involved in the pursuit;
- Visibility and weather conditions;
- Road conditions;
- The capabilities and limitations of the police vehicle.

In addition to the factors that an officer should consider in deciding when and how to join a pursuit, the officer must consider his role in relation to this chase. The policy manual defines the various roles of different chase officers. A "secondary unit" is the police unit acting in a "backup" capacity. In most cases this vehicle is located in close and safe proximity to the "primary unit." This unit is authorized to follow and assist the primary unit for the safety of both the officer and the public. Officer Matthews was in the best position to assist Richards, as among all officers in the area, and is best described as the "secondary unit" in this particular incident.

D. THE ACCIDENT

When Richards radioed for help, Matthews and Officer Allison Jahreis, both of B Platoon, were parked alongside each other on Carolina Beach Road, near the intersection of Shipyard Boulevard. Both immediately responded to Richard's request by activating their blue lights and sirens and driving to the location of South College Road.

The in-car cameras from Matthew's vehicle and Jahreis' vehicle show their route of travel and driving during it. Matthews was in the lead vehicle, followed by Jahreis. For the 2.2 miles of Shipyard Boulevard from Carolina Beach Road to the point where Matthews ultimately wrecked, there are three intersections with traffic lights. Matthews traveled at high rates of speed between the lights, reaching up to 102 mph at one point. At all intersections, Matthews, who encountered red lights, slowed to a near stop to make sure there was no traffic, before proceeding through. Jahreis, who was following Matthews, initially at a distance of nine seconds, was able to close to a distance of only four seconds by the time of the crash since she did not encounter red lights.

Shipyard Boulevard is a straight road which is almost entirely flat, which affords a vehicle operator the ability to see safely, far into the distance. There are few side streets and very little vegetation blocking the view of parallel roadways. This is a commercial area with very light traffic at that time of night. There is an extensive network of street lights on either side of the roadway. On February 18, the roadway was dry. Officer Matthews passed very light traffic during the 2.2 mile stretch of road he traveled.

As Matthews reached a top speed of 102 mph, a cardboard box, empty as it turned out, suddenly came into view in the middle of the road. Instinctively, Matthews jerked the steering wheel to the left. The back end of the vehicle (which had recently been serviced and was working properly) slid out and the car bolted across the median. At this point, the feed for the in-car camera was lost. Matthews' vehicle continued to the other side of the road and continued until it struck a stand of trees. Jahreis pulled off the road in an attempt to assist Matthews. She immediately called for backup and medical assistance.

At the place where Matthews wrecked, he was only .6 miles from South College Road, the place from which defendant first fled. Time records from the WPD establish that the chase of defendant's vehicle was still on-going when

Matthews wrecked and did not terminate until 20 seconds afterward when defendant pulled over to the side of the road. Richards was able to stop defendant's vehicle without the assistance of the other pursuing officers. Defendant did not pass any of these other officers, including Matthews, during the chase.

Immediately following the accident, Officer Joe Fitzgerald of the WPD Traffic Division, was called to the scene for the purpose of preparing an accident reconstruction report. Fitzgerald has extensive experience in the field of accident reconstruction, and has previously been certified as an expert in court regarding this topic. In conducting this accident reconstruction, he was assisted by members of the North Carolina Highway Patrol. A copy of Fitzgerald's report is readily available for inspection by the Court and the facts therein are incorporated into this Brief.

LEGAL AUTHORITY

Second degree murder is the killing of another human being with Malice. Malice means not only hatred, ill will or spite, as it is commonly understood. To be sure, that is malice. But it also may be implied where the defendant does an intentional act in conscious disregard for the rights and safety of others. Where the defendant acts in a wanton manner that reflects a callous disregard for human life and social duty, he may be convicted of second degree murder under a theory of implied malice. State v. Snyder, 311 N.C. 391 (1984). As will be discussed below, the death that defendant created through his conduct must be foreseeable in order for a conviction of second degree murder to stand.

IMPLIED MALICE

The controlling authority is State v. Bethea, 167 N.C. App. 215 (2004). In Bethea, an officer was killed in the line of duty, after the car he was a passenger in crashed during a high speed pursuit of a suspect. The defendant was convicted of second degree murder under a theory of implied malice. In so holding the court of appeals noted that "defendant's actions in the instant case, motivated by an attempt to elude law enforcement by driving in an extremely dangerous manner, is an equally reckless and wanton act, which evinces a mind utterly without regard for human life and social duty and deliberately bent on mischief." Id. at 219. (quoting, State v. McBride, 109 NC APP. 64, 67-68, (1993).

The Bethea case was the first case in North Carolina where malice for second degree murder could be implied where the driver was not impaired by alcohol. Id. at 218-219. In fact, because the defendant was not impaired, his conduct was considered even more egregious. "Defendant's clear mind unclouded by intoxicating substances that might have hindered his ability to appreciate the danger of his actions, does not negate the presence of malice, but rather, tends to more clearly show 'intent to perform the act of driving in such a reckless manner as reflects knowledge that injury or death will likely result, thus evidencing depravity of mind.'" Id. at 220 (quoting, State v. Rich, 351 NC 386, 395 (2000)). The Bethea Court noted the following actions by defendant showed that he acted recklessly to the point that malice was implied:

1) Defendant was driving on a revoked license, 2) Defendant fled to elude law enforcement officers, 3) Defendant sped through a red light and several stop signs, 4) Defendant drove at speeds up to 100 mph, 5) Defendant crossed into the oncoming traffic lane several times, and 6) Defendant turned his car lights off on dark rural roads, decreasing his own visibility and making his car extremely difficult to see, while traveling at speeds between 90 and 95 mph. Id. at 219.

In the instant case, defendant's conduct is equally egregious and evinces a mind bent on mischief. Defendant was in possession of large quantities of controlled substances and, as a convicted felon, was prohibited from possessing a firearm. Additionally, within an hour of this incident, he had participated in a drug rip off. Defendant deliberately attempted to elude law enforcement officers by speeding through three stop signs and traveling at speeds more than two and one-half times the posted limit within a residential neighborhood. He failed to remain in the proper lane of travel even crossing over and off of the left hand lane. These acts show desperation to avoid the incarceration that defendant would inevitably face for parole violations and the numerous violations of the law he was in the process of committing.

Our courts have long held that in evaluating a defendant's intent it is necessary to look at his behavior before, during and after the incident. In this case, defendant's propensity to flee and the urgency of his actions are informed by the robbery incident which took place earlier that evening. This fact, together with defendant's extensive criminal record and that of his co-defendants, paints the picture of a man who was determined to flee from the police that evening at all costs. N.C.P.I. 206.10.

Courts from other states have implied malice onto the fleeing felon and convicted him of second degree murder where death occurred, not to the pursuing officer, but to an innocent bystander killed during the pursuit. See, People v. Olivas, 172 Cal. App. 3d 984 (1985)(Defendant convicted of second degree murder under malice theory where defendant who was high on PCP, hit another vehicle and killed infant passenger when chased by police.). In Michigan v. Galloway, 206 Mich. App 379 (2006), defendant was convicted of second-degree murder under an applied malice theory where he sped from police and wrecked into an innocent bystander. In so holding, the court noted that:

Defendant's acts of fleeing at high rates of speed while "buzzing" from marijuana, having no driver's training, and disregarding traffic signals and the safety of other vehicles supports an inference that he acted with a high probability that his acts would result in death and that he acted with wanton disregard for human life. Moreover, defendant made clear that he had no intention of getting caught by the police because he did not want to go to jail. Thus he had a base anti-social motive for his conduct. Id. at 9.

Our North Carolina Court of Appeals ruled similarly to the out of state precedent, cited above, in State v. Fuller, 138 NC App 481 (2000). In Fuller, the second degree murder conviction of a fleeing defendant who killed two people when he was running from police was upheld under an implied malice theory. Defendant, who had a blood alcohol level of .15, had led troopers on a sixteen and a half mile chase reaching speeds of 95 mph and running stop signs and red lights before colliding with a vehicle, killing two innocent bystanders. He was indicted for two counts of first-degree murder and ultimately convicted of two counts of second-degree murder. The court found ample evidence of implied malice, noting that "while some of these facts may suggest defendant did not possess the type of malice requiring express hatred or ill-will, there was substantial evidence at trial to prove that the type of malice manifesting a mind utterly without regard for human life and social duty." Id. at 484.

FORSEEABILITY

In all cases of second degree murder involving implied malice, the issue of malice turned not on the expressed desire of the defendant to do harm but on the foreseeability that his conduct might lead to some deadly result. It is axiomatic that a defendant can outrun an officer but he cannot outrun the officer's radio. It is not only foreseeable but expected that a defendant who flees from a traffic stop will be pursued by any officer, whether on land or in the air, who is close enough to join in the chase.

Several defendants who have been charged with the death of an officer, who died during a chase of these fleeing defendants, have raised the point that the death was not foreseeable, in some cases, because it occurred, away from where the defendants were at the time of the wreck. In Commonwealth v. Berggren, 398 Mass. 338 (1986), defendant led an officer on a high speed chase over six miles through residential, commercial and rural areas. The officer lost control of his vehicle at least one hundred yards behind defendant and died as a result of the impact. On the issue of foreseeability, the Berggren Court noted:

The Defendant had no idea of the accident which had occurred behind him. . . . The defendant essentially contends that since he was one hundreds yards ahead of the patrolman's cruiser and was unaware of the accident, the resulting death of the patrolman could not be viewed as directly traceable to the defendant's conduct." Id. at 341.

The Berggren court found that it was a jury question to decide whether the defendants conduct directly resulted in the officer's death, noting that the victim was "duty-bound to pursue [defendant], which duty arguably became more compelling with each vehicle code violation." Id. at 341. The court further held that defendant "knew or should have known that his actions, speeding and attempting to elude arrest, were likely to result in injury to someone: either to himself, an innocent third party, or to the pursuing police officer.....[and that] a jury could reasonably conclude, beyond a reasonable doubt, that [defendant's] conduct directly resulted in [the officer's] death. It was not a fortuitous or coincidental event unrelated to the direct result of his conduct." Id.

The facts in People v. Acosta, 232 Cal. App. 3d 1375 (1991), were even more remarkable. There, the defendant fled from police in a stolen vehicle and drove recklessly during the chase. Two police helicopters that were involved in the chase collided in mid-air, killing all three occupants. Defendant was charged with three counts of second degree murder. The court found that while the

defendant proximately caused the accident, malice could not be implied because there was not a high probability of a mid-air collision and the accident was not foreseeable. The Acosta court noted that for second-degree murder, malice may be implied only where there is a conscious disregard for life and defendant must have "actually appreciated the risk involved." Id. at 1392. (quoting, People v. Watson, 30 Cal. 3d 290 (1981):

Under the definition of implied malice, the defendant's conduct must carry a high probability of death. It is *that risk which the defendant must consciously disregard and which must result in the death*. Any other interpretation would allow a defendant to be held culpable for murder based upon a death which was barely foreseeable, and which had no conscious disregard associated with it. Id. at 1395 (emphasis in original).

While making it clear that malice could not be implied, given that the risk to people in the air was not one that could be appreciated by the defendant, the Acosta court specifically held that its ruling would have been different if an officer on the ground had died. This would be the case since, unlike in the air, defendant should foresee that his reckless driving will necessarily alter the driving characteristics of the pursuing officers on the ground:

The group of persons on the ground found near Acosta faced a high probability of death. But he did not kill someone there and the risk created for the group in the air was minimal. Acosta's flight only caused the helicopter pilots to "be there." There is not a jot of evidence his frenetic style of driving affected the helicopter's pursuit in any way, let alone caused the negligent flying of the [other] pilot. As to the victims, his conduct did not create a high probability of death. Id. at 1396.

Many courts, looking at facts similar to the case at bar, have upheld first degree murder convictions under the felony murder rule where an officer is killed during the pursuit of a fleeing felon. People v. McCarty, 329 Ill. App. 3d 969 (2002) (Defendant fled police after stealing vehicle; Defendant fled on foot and police officer pursued on foot. Pursuing officer hit by police vehicle and died. Defendant convicted of felony murder.); People v. Matos, 150 Misc. 2d 499

(1991); (Officer chased defendant on foot on rooftop and died. Roof's condition was not an intervening condition that made fall less foreseeable. Causal connection analysis same in felony murder cases as in intentional homicide or reckless homicide); O'Neal, Jr. vs. Missouri, 236 S.W. 3d 91 (2007)(Defendant fled from police after robbing motel. Victim died after pulling into roadway and being struck by officer. Victim's pulling into roadway did not rise to level of independent force. Risk was reasonably foreseeable. Defendant convicted of felony murder).

Unlike other states, however, North Carolina does not permit a charge of felony murder where an officer is killed during a chase of a fleeing felon. In State v. Woodard, 146 NC App 75 (2001), defendant sped at least 70 mph when he entered an intersection with a posted speed limit of 35 mph and collided with another vehicle killing an innocent bystander. Defendant was fleeing highway patrol officers at the time of the impact. Defendant was initially convicted of first-degree murder under the felony murder rule. On appeal, however, the conviction was set aside, the court noting that because the intent to elude an officer can be based on negligent conduct, it "falls short of the "actual intent to commit the felony" necessary for the first-degree murder conviction." Id. at 80 (quoting, State v. Jones, 353 NC 159, 168 (2000)). However, the Woodard Court also noted that "there is ample evidence in the record to support a charge of the lesser included offense of second-degree murder." Id. at 81. Accordingly, the highest charge supported by the law in the present case is second degree murder under the authority set forth above.

PROXIMATE CAUSE

If an officer who is pursuing a reckless driver complies with all traffic laws (e.g., safe speed, stopping at red lights and stop signs, etc.) it would be impossible in nearly every instance to apprehend the suspect. Yet when an officer dies in the performance of this very duty, the defendant who instigated the

chase is frequently quick to point to the officer's conduct as the cause for his own demise. This argument has been thoughtfully considered by numerous courts and roundly rejected, in part, because of the tension that our United States Supreme Court has recognized over a decade ago in County of Sacramento v. Lewis, 523 US 833, 1061-62 (1998):

The police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made "in haste, under pressure, and frequently without the luxury of a second chance. A police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders.

Richards was acting within his legal authority in executing a traffic stop immediately prior to the start of this incident. Defendant made the conscious, deliberate and intentional choice to flee from Richards. A dangerous pursuit ensued, which involved a high risk felony. Richards, the acting shift supervisor that evening, called to other members of his squad for assistance. Matthews was among the officers closest to Richards and immediately began proceeding to his area to render aid. It was during the time that Matthews was responding to this call, and while the chase was still actively in progress, that this tragic accident occurred. Like the other officers, Matthews traveled at a high rate of speed to render assistance—the reasonableness of his actions is informed by the actions of the other officers. The legal issue presented, is whether Matthew's fatal accident was a foreseeable consequence of defendant's intentional and reckless act of fleeing from Richards' valid arrest?

In the present case, the defendant will surely contend that Matthew's death was caused, in part, by the officer's high rate of speed. Put another way,

the defendant would contend that Matthews is responsible for his own death. This argument, when raised by similarly situated defendants, has been uniformly rejected around the country, including here in North Carolina.

In Bethea, supra, 167 N.C. App. at 221, defendant contended that the accident would not occurred but for the negligence of the two officers who were pursuing him. In assigning blame to the defendant, the North Carolina Court of Appeals noted that "Our Supreme Court has long held that "contributory negligence as such has no place in the law of crimes." Id. at 222 (quoting, State v. Foust, 258 NC 453, 459 (1963). Nonetheless, defendant noted four separate acts of negligence, on the part of the pursuing officers, namely that:

The officers were outside their respective jurisdictions and had the ability to arrest him the next day at his residence, 2) they were traveling at unsafe speeds on unfamiliar roads after their brakes showed signs of wear, 3) the victim's vehicle actually collided with defendants and 4) victim was not wearing his seatbelt. Id.

Because of these alleged acts of negligence on the part of the pursuing officers, Bethea's attorney requested that the jury receive four separate instructions on the issue of causation, including NCPI Civ. 102.19 (multiple causes); NCPI Civ. 102.27 (concurring acts of negligence); NCPI Civ. 102.60 (Concurring Negligence); and NCPI Civ. 102.28 (Insulating acts of negligence). In rejecting this request, the court of appeals noted that the standard instructions for proximate cause given by the trial court was sufficient and that "no reasonable person could conclude that the two officers' decisions and actions, viewed separately or together, so entirely intervened and/or superseded the operation of defendant's reckless flight and wanton traffic violations as to constitute the sole cause of the victim's death." Id. at 222. See also, NCPI Crim. 206.32.

Other cases in North Carolina have specifically addressed the issue of whether an officer who dies, or causes the death of an innocent bystander,

during the pursuit of a fleeing suspect should be held responsible in whole or in part for that death. In Roberson v. Burlington, 57 NC App. 227 (1982), the victim, Roberson, a police officer for the City of Graham, was killed when he was struck head on by a suspect who was fleeing a City of Burlington police officer. The Burlington officer had radioed for help and had been giving chase but terminated the chase because the speeds had gotten too high (over 100 mph). Id. at 236. Roberson collided with the fleeing suspect head on when he was coming from the opposite direction around sharp curves. Id. at 231.

Roberson's widow asserted that the chasing officer acted negligently, in part because he reached speeds of 85 mph in a 45 mph zone. Id. at 237-238. In rejecting the notion that the officer acted negligently as a matter of law, the court of appeals quoted from the North Carolina Supreme Court in Goddard v. Williams, 251 NC 128, 133-134 (1959):

"We do not hold that an officer, when in pursuit of a law breaker, is under no obligation to exercise a reasonable degree of care to avoid injury to others who may be on the public roads and streets, what we do hold, is that, when so engaged, he is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicles Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances. Id. at 238.

Similarly, in Parrish v. City of Hillsborough, 350 NC 231 (1999), police officers who pursued a defendant at over 100 mph, were sued by decedent's family member after the suspect vehicle careened off the road after a ten mile chase and crashed into a residence. The decedent's family claimed that the officers acted negligently in reaching these high speeds and not calling off the chase. The Court rejected the notion that the officers acted negligently, in part, because the chase occurred at approximately 2 am, during a time when the traffic was light and at no time did the officers attempt to overtake the defendant's vehicle or force him from the road. Id. 245. It went on to note that case law "clearly suggests that the emergency driver is accountable only for

reckless acts or gross negligence.” Id. at 237. (quoting, Peak v. Ratliff, 185 W. Va. 548, 552 (1991). The Parrish Court also found a statement from the Seventh Circuit, in Mays v. City of East St. Louis, 123 F.3d 999 (7th Cir 1997) cert. denied 524 US 904 (1998), to be worth repeating:

Death and disability haunt law enforcement. Lax law enforcement emboldens criminals and leads to more crime. Zealous pursuit of suspects jeopardizes bystanders and persons accompanying the offender. Easy solutions rarely work and ex post assessments – based on sympathy for those the criminal has injured, while disregarding the risks to society at large from new restrictions on how the police work – are unlikely to promote aggregate social welfare.

....

Society must consider not only the risks to passengers, pedestrians, and other drivers that high-speed chases engender, but also the fact that if police are forbidden to pursue, many more suspects will flee – and successful flights not only reduce the number of crimes solved but also create their own risks for passengers and bystanders. Id. at 244.

In People v. Pike, 197 Cal. App. 3d 732 (1988), the court again rejected the argument that an officer is to blame for his own demise when he dies in the pursuit of a fleeing suspect. In Pike, defendant was convicted of manslaughter in the death of a highway patrol officer during a high speed chase by two officers that collided during the chase. Defendant contended that the officer died as a result of the victim’s own negligence. In rejecting this contention, the court held that the victim’s “negligence could not be considered to have operated alone in causing his death because, but for defendants conduct, [the officer] would not have been driving negligently. Id. at 747.

Similarly, the court rejected the idea that an officer’s negligence was to blame when he struck an innocent motorist in pursuit of defendant’s vehicle in People v. Harris, 52 Cal. App. 3d 419, 427 (1975). In Harris, the defendant sped over 100 mph during a 4.4 mile chase in an attempt to evade law enforcement. The Court said “it was reasonably foreseeable that the officers would continue to

chase him as he speeded recklessly and circuitously over public thoroughfares and failed to stop at boulevard stops, thus setting in motion circumstances creating peril to others on the public streets in a high probability that collisions, injuries and deaths would occur in the course of the chase.” Id. at 427.

Defendants have also consistently been convicted of homicide when, in their flight from law officers, the police inadvertently kill innocent bystanders under the theory that defendants proximately caused the deaths and should have foreseen the tragic consequence that their fleeing might cause. See, Ohio v. Lovelace, 137 Ohio App. 3d 206 (1999) (Defendant led police on chase and police killed bystander. Speed, places, conditions and methods of driving dictated by Defendant; “defendant’s conduct was a cause that, in natural and continuous sequence, produced the victim’s death and without which that death would not have occurred.” Defendant should have reasonably foreseen danger of accident. Foreseeability of officer’s response must be viewed from the perspective of a person of ordinary experience—not an expert on police chases); People v. Schmies, 44 Cal. App. 4th 38 (1996) (Defendant fled police after traffic stop, patrol car struck third car and driver of third car died. Conviction of vehicular manslaughter affirmed because danger was reasonably foreseeable. Reasonableness of police officer’s actions was not in issue); People v. Harris, 52 Cal. App. 3d 419 (1975) (Police vehicle collided with third vehicle and killed passenger during chase of Defendant. Defendant convicted of vehicular manslaughter since it was reasonably foreseeable that the police would continue to chase Defendant as he sped recklessly, failed to stop at stop signs and set in motion circumstances which created peril on the streets and a high probability of collision, injury and death. Court noted negligence of the victim is not a defense to criminal liability).

Defendants in the cases cited above were held responsible for the ensuing deaths their chases caused even where the conduct of the officers was far more “negligent” than in the case at bar. Far from jumping into the chase on

his own accord, Matthews was responding to a request for immediate backup from a direct supervisor—as the closest officer in the area, his failure to act would have been insubordinate. Additionally, the reason for the pursuit is to be considered. Matthews was responding to a high risk felony traffic stop involving large quantities of illegal drugs and possibly weapons. Moreover, the fleeing suspects were in flight from a recent drug rip off.

As required, Matthews activated blue lights and siren before beginning the pursuit. Despite the exigency, Matthews stopped or slowed down before proceeding through the three intersections he encountered over the 2.2 miles he traveled. Given the time of night, the presence of almost no other vehicles or pedestrians and the straight away nature of Shipyard Blvd., Matthews acted within the spirit of WPD guidelines by balancing the need to apprehend the suspect while making sure that his conduct did not needlessly endanger others. His top speed of 102 mph is a speed many other officers would testify they have traveled on this same stretch of road under similar conditions and other pursuing officers that night exceeded 100 mph.

Even when he crashed, Matthews was not driving in a negligent manner—he instinctively acted as any trained driver would and swerved to avoid a box that suddenly appeared in the center of the road. His actions immediately prior to the accident were a measured and reasoned response to a split second determination made on his part. It does not appear that this fatal accident was in any way the product of careless or reckless driving on the part of Matthews. Simply put, Matthews would not have been speeding to assist a fellow officer but for the fact that defendant sped off and drove recklessly.

PROPOSED JURY INSTRUCTIONS

The State seeks indictments against Pierce, Smith and Hendy for the marijuana and guns that all of them constructively possessed. Accordingly, indictments charging each of the three defendants with Possession with Intent to Sell and Deliver Marijuana, as well as Felon in Possession of a Firearm, will be presented to the Grand Jury. Additionally, the State is indicting Pierce for an additional count of Felon in Possession of a Firearm for a loaded shotgun that was recovered in his home when officers executed a search warrant within hours of this incident.

With respect to defendant's driving and the resulting death of Officer Matthews, the State is seeking to Indict defendant for the Class E felony of operating a motor vehicle to elude arrest resulting in death. Out of this same conduct, the State is also seeing to indict defendant for second degree murder. For these charges, the Grand Jury may request the Court to instruct them on the law. As discussed above, the case at bar raises complex issues with respect to proximate cause, implied malice and foreseeability. In the event that the Grand Jury requests instructions on these issues, the State requests the following:

PROXIMATE CAUSE

For the Proximate Cause charge, the jury should receive an instruction on proximate cause contained in NCPI Crim. 206.32 (second degree murder by vehicle) as well as the case law set forth above, namely, State v. Foust, 258 NC 453, 459 (1963) and Goddard v. Williams, 251 NC 128 (1959) :

To be guilty of second degree murder you must find that the death of Richard Matthews was proximately caused by the unlawful acts of the defendant done in a malicious manner.

A proximate cause is a real cause, without which the victim's death would not have occurred. The defendant's acts need not have been the last, or nearest cause. It is sufficient if they concurred with some other cause acting at the same time which, in combination with it, proximately caused the victim's death.

The civil law concept of contributory negligence does not apply to criminal cases. This does not mean that an officer, when in pursuit of a law breaker, is under no obligation to exercise a reasonable degree of care to avoid injury to himself or others who may be on the public roads and streets. Rather, when so engaged, he is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicles Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances.

IMPLIED MALICE and FORESEEABILITY

For the Second Degree Murder charge, the jury should receive an instruction on implied malice, contained in NCPI Crim. 206.31A (second degree murder) and NCPI Crim. 206.32 (second degree murder by vehicle), and the case law set forth, namely, People v. Acosta, 232 Cal. App. 3d 1375 (1991):

To be guilty of second degree murder, you must find that the defendant acted unlawfully and with malice. Malice is a necessary element which distinguishes second degree murder from manslaughter. Malice means not only hatred, ill will, or spite, as it is ordinarily understood—to be sure, that is malice.

But Malice also arises when an act which is inherently dangerous to human life is intentionally done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief. To imply malice you must find that defendant's conduct carried a high probability of death. It is that risk which defendant must have actually appreciated and consciously disregard which must result in the death.

DOUBLE JEOPARDY

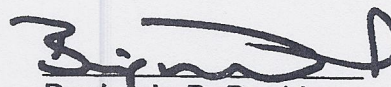
Finally, among the charges for which the State seeks an indictment of defendant is the class E felony of operating a motor vehicle to elude arrest resulting in death. NCPI Crim. Instruction 270.54B. The jury should be instructed that a separate indictment for second degree murder does not run afoul of the prohibition against double jeopardy since the two charges involve different elements. Blockburger v. United States, 284 U.S. 299 (1932); State v. Haynesworth, 146 N.C. App. 523 (2001).

Respectfully Submitted.

This the 9th day of March, 2009.



Jonathan M. David
Assistant District Attorney
Fifth Judicial District

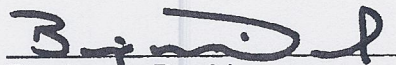


Benjamin R. David
District Attorney
Fifth Judicial District

CERTIFICATE OF SERVICE

This is to certify that, on this date, a copy of the foregoing Brief was served upon Andrew Waters, Attorney for Defendant, Anthony Pierce, *via hand delivery*.

This, the 9th day of March 2009.

A handwritten signature in black ink, appearing to read "Benjamin David", written over a horizontal line.

Benjamin David
District Attorney
5th Prosecutorial District
P.O. Box 352
Wilmington, North Carolina 28401

Ex-Deputy Charged With Murder in Durham Teen's Death

Appendix 12

Posted: December 11, 2006

Updated: December 12, 2006 A grand jury on Monday indicted a former New Hanover County deputy in connection with the shooting death of a Durham teen during a raid on a Wilmington home.

Cpl. Christopher Long, 34, who was fired Friday by the New Hanover County Sheriff's Office, was indicted on a charge of second-degree murder. The charge stems from the Dec. 1 death of 18-year-old Peyton Strickland.

Strickland, a Cape Fear Community College student, was shot to death at his Wilmington home by deputies serving arrest and search warrants. Strickland and two friends were charged with assaulting a University of North Carolina at Wilmington student last month and stealing two PlayStation 3 consoles from him.

Officers knocked on the front door and watched through a window as Strickland walked away from the door. Long fired his gun after an officer used a battering ram to hit the door, which Long misidentified as gun shots from inside the house, District Attorney Ben David said during Long's first court appearance Monday.

"When the ram hit the door, he thought it was gunfire," David said. "His belief that there was gunfire coming from the inside out was not shared by others."

Defense attorney Michael McGuinness said Long made a split-second decision and the shooting was "within the course and scope of his official duties."

UNC-W police asked for support from the New Hanover County Sheriff's Office during the arrests of the suspects in the case because of the potential that they were armed and dangerous, authorities said. Strickland had an earlier arrest on a felony assault charge.

Nine heavily armed deputies accompanied UNC-W police to Strickland's home to serve the warrants. Three deputies fired shots into the home, and sources close to the case said they believe several shots were fired before Strickland opened the door.

Strickland, who was unarmed, died of a gunshot wound to the head.

Several members of Long's family were in the courtroom Monday. Long has lived in the area his entire life and is a married father of two children who has taught law enforcement classes at a local community college, McGuinness said.

"He owns a home, but can't live in that home because he has been subjected to death threats. He is widely known, respected and loved in the law enforcement community as well as the general community," the attorney said.

Long cooperated with the investigation and volunteered to testify before the grand jury but wasn't allowed, McGuinness said.

Superior Court Judge Ernest Fullwood reduced Long's secured bond from \$250,000 to \$50,000.

Two other deputies -- Detective Larry Robinson, 34, and Sgt. Greg Johnson, 39 -- were placed on administrative leave a week ago pending the results of investigations by the State Bureau of Investigation and the New Hanover County Sheriff's Office.

Earlier Monday, Sheriff Sid Causey and David said that shots from the two deputies' guns killed Strickland's dog but that neither deputy fired their weapons at Strickland. Having been cleared of wrongdoing in the case, Robinson and Johnson have been reinstated and would return to work soon, Causey said.

Causey and David declined to answer questions about the case Monday and said they planned to make no more public comments about it until Long's trial.

"We try to do the best we can, but we're human beings and we make mistakes," Causey said.

Strickland's family has declined to speak publicly since his death, but they released a statement Monday through family friend Don Beskind in which they thanked David and the SBI for their quick work in the case but pressed for more action.

"This indictment is an important first step in holding accountable everyone responsible in Peyton's death, but it is only a first step," Beskind said. "Still to be held accountable are those who put a SWAT team at the door of an 18-year-old college student who was unarmed.

"None of these actions can bring Peyton back to us, but perhaps they can save the life of someone else's child," he said.

A second suspect in the case, Ryan David Mills, 20, of Durham, had a loaded shotgun and a ski mask in his car before his arrest, UNC-W Police Chief David Donaldson told WRAL. Investigators also found pictures of Mills on the Internet posing with guns.

Mills and Braden Delaney Riley, 21, of Apex, have been charged with armed robbery, assault with a deadly weapon and breaking and entering a motor vehicle, according to warrants. Both were arrested after the Dec. 1 raid on Strickland's house.

Reporters: Kelcey Carlson, Amanda Lamb
Photographers: Bobbie Eng, Chad Flowers
Web Editor: Matthew Burns

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Grand Jury: Deputy's Indictment in Teen's Slaying a Mistake

Posted: December 12, 2006

Updated: December 13, 2006 A day after authorities announced that a former New Hanover County deputy had been indicted in the shooting death of a Durham teen during a raid on a Wilmington home, members of the grand jury now say the indictment was a mistake.

The grand jury never intended to charge Cpl. Christopher Long with second-degree murder, but the foreman testified in court Tuesday that he inadvertently marked the bill of indictment improperly.

After the foreman's admission, Judge Ernest B. Fullwood dismissed the indictment.

There was no word Tuesday evening on whether New Hanover County District Attorney Ben David would bring the case back before a new grand jury next year. In a statement, however, David said he would be meeting with senior members of the state Attorney General's Office in Raleigh on Wednesday to evaluate all options.

Peyton Strickland, 18, a Cape Fear Community College student from Durham, was shot to death Dec. 1 at his Wilmington home by deputies serving arrest and search warrants. Strickland and two friends were charged with assaulting a University of North Carolina at Wilmington student last month and stealing two PlayStation 3 consoles from him.

UNC-W police asked for support from the New Hanover County Sheriff's Office during the arrests of the suspects in the case because of the potential that they were armed and dangerous, authorities said. Strickland had an earlier arrest on a felony assault charge.

Nine heavily armed deputies accompanied UNC-W police to Strickland's home to serve the warrants. Three deputies fired shots into the home, and sources close to the case said they believe several shots were fired before Strickland opened the door.

Long, 34, told investigators he mistook the sound of a battering ram officers were used to break open the front door to the house as gunfire.

Strickland, who was unarmed, died of a gunshot wound to the head.

Don and Kathy Strickland issued a statement Tuesday afternoon calling the latest twist in their son's death "bizarre."

"How can an indictment one day not be an indictment the next? How could this happen?," the statement said. "We are upset, confused and searching for answers."

The family demanded that the judge presiding over the grand jury hold an inquiry into the issue and make the results public.

"If it shows that anyone even attempted to influence the grand jury, we trust charges of obstructing justice will be filed," the statement said.

Michael McGuinness, Long's attorney, said he was relieved.

"He's a gentleman who had to go home last night under a cloud of falsely being accused of a murder charge," McGuinness said of his client. He also said he had questioned the severity of the charge from the beginning, saying also that the shooting was a tragedy, but not a crime.

"We believe that Chris's law-enforcement conduct was consistent with his training and consistent with the law. He acted responsibly and properly," McGuinness said.

The New Hanover County Sheriff's Office fired Long a week after the shooting.

Two other deputies -- Detective Larry Robinson, 34, and Sgt. Greg Johnson, 39 -- were placed on administrative leave a week ago pending the results of investigations by the State Bureau of Investigation and the New Hanover County Sheriff's Office. They were reinstated Monday after being cleared of wrongdoing in the case.

Ryan David Mills, 20, of Durham, and Braden Delaney Riley, 21, of Apex, have been charged with armed robbery, assault with a deadly weapon and breaking and entering a motor vehicle in connection with the alleged PlayStation robbery, according to warrants.

Web Editor: Matthew Burns

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Father of Slain Teen Speaks to Grand Jury

Posted: July 10, 2007

The father of a Durham teen killed last December during a botched police raid in Wilmington testified Tuesday before a grand jury investigating the case.

State officials have asked the 18-member grand jury to consider indicting Christopher Long, a former New Hanover County deputy, on a charge of voluntary manslaughter in connection with the death of 18-year-old Peyton Strickland.

The grand jury hearing is expected to continue Wednesday.

Strickland was killed by a shot to the head on Dec. 1 as New Hanover County deputies and University of North Carolina at Wilmington police raided his rented house in search of two PlayStation 3 video-game consoles.

Long testified before the grand jury Monday afternoon and Tuesday morning, admitting that he killed Strickland when he mistook the sound of a battering ram against the front door of the house for gunshots.

Strickland's father, Don Strickland, testified before the grand jury Tuesday afternoon.

The hearing is very unusual, according to legal experts, who note the investigating officers are usually the only witnesses before grand juries.

A different New Hanover County grand jury indicted Long for second-degree murder in the case, but the charge was dropped a day later when the jury foreman admitted that he mistakenly checked the wrong box on the indictment form.

New Hanover County District Attorney Ben David turned the case over to the state Attorney General's Office and the State Bureau of Investigation in February, saying he wanted to avoid the appearance of either a cover-up or a vendetta against Long.

Twelve of the grand jurors must agree on a charge to return an indictment. Voluntary manslaughter carries a prison term of at least three years.

Reporter: Bryan Mims

Photographer: Michael Joyner

Web Editor: Matthew Burns

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No Indictment for Ex-Deputy in Fatal Teen Shooting

Posted: July 11, 2007

A grand jury voted Wednesday not to indict a former New Hanover County deputy for the fatal shooting of a Durham teenager.

State prosecutors had asked the grand jury to indict Christopher Long on voluntary manslaughter in connection with the Dec. 1 death of 18-year-old Peyton Strickland. The charge could have carried a prison term of four to nine years.

After the 18-member grand jury's decision came down at around 9:45 a.m., Long and his relatives cried in the courthouse. One family member repeatedly whispered "thank you, Jesus" as family members hugged each other.

"It's very difficult for all concerned. We have had faith in the system and God," said Long's father, Harry Long, reading from a prepared statement after the grand jury's decision was announced. "We hope that we will be able to move forward from this situation."

Long declined to comment after the hearing. The Strickland family released a written statement shortly after the jury's decision:

"Our unarmed 18-year-old son, Peyton, was killed when Chris Long, a deputy sheriff, fired three bullets from a submachine gun through the front door of Peyton's house while he was answering the unlocked door. The failure of the grand jury to indict Long on any charge compounds our family's tragedy."

The grand jury's decision ends all criminal proceedings against Long, Attorney General Roy Cooper said.

"This was a tragic event for everyone involved. The grand jury has spoken, and we do not anticipate any further criminal proceedings by our prosecutors in this matter," Cooper said in a statement.

The case was turned over to the state Attorney General's Office in February after New Hanover County District Attorney Ben David said he wanted to avoid the appearance of a cover-up or a vendetta against Long.

The Strickland family might still pursue a civil lawsuit against Long.

Strickland was shot twice as New Hanover County deputies and University of North Carolina at Wilmington police raided a rental house in search of two stolen PlayStation 3 video systems. UNC-W police asked for support because they feared the residents of the house were armed and dangerous.

Long told investigators he shot Strickland when he mistook the sound of a battering ram against the front door for gunshots. Authorities said Strickland wasn't armed.

The teen was shot once in the head and once in the chest, and at least one of the bullets passed through the front door before hitting him, according to an autopsy report.

"This is what (law enforcement officers) fear the most," said Long's attorney, Michael McGuinness. "They fear most having a split-second decision and being drug into the judicial process. They don't have the reflection time reporters and lawyers do. We get to develop our arguments and think them out, and this is very typical of what they encounter on a regular basis."

Still Tommy Hicks, another attorney representing Long, said the former deputy and those who support him recognize the Strickland family's loss.

"This is still a tragedy. The Strickland family has been devastated, I'm sure, by the death of their son, and our hearts go out to them," Hicks said.

Long was fired by the New Hanover County Sheriff's Office a week after the shooting. He was later indicted on a charge of second-degree murder in connection with the shooting.

But the murder charge was dismissed a day after the indictment was returned. The foreman of the grand jury said he checked the wrong box on the indictment form and that members of the grand jury didn't find enough evidence to charge Long with murder.

Both Long and Don Strickland, Peyton Strickland's father, testified before the grand jury this week about the incident. Typically, only investigating officers are called to appear before grand juries.

Reporter: Bryan Mims

Photographer: Michael Joyner

Web Editors: Kamal Wallace, Matthew Burns

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Critics: Secret Grand Jury Process Raises Questions

Posted: July 12, 2007

Critics argue a secret grand jury process makes it difficult for the public to see both sides of a court case.

On Wednesday, a grand jury voted not to indict Christopher Long. The former New Hanover County deputy sheriff shot and killed 18-year-old Peyton Strickland while serving an arrest warrant as part of a team of heavily armed deputies.

"They (law enforcement officers) don't have the reflection time that reporters and lawyers do. We get to develop our arguments and think them out," attorney Michael McGuinness said to a group of reporters.

When a previous grand jury said it mistakenly had indicted Long on murder charges by checking the wrong box on a form, Long's brief time in custody allowed a glimpse into the prosecutor's evidence. At a bond hearing, it was discovered that Long told investigators he mistook the sound of his own officers breaking down a door as gunfire.

There are no transcripts of grand jury testimony, and jurors are sworn to secrecy. Attorney Robert Nunley said he believes the process should be more open.

"When there's not transparency, that plays into the conspiracy theorists," he said.

If special prosecutors took the case to a grand jury, he said, they must have believed criminal charges were justified. As a defense attorney for both police officers and criminal defendants, he said he sees both sides.

"That's a tragedy. A kid's lost his life. It's a tragedy for the officer. I believe he's probably devastated by this," Nunley said.

The grand jury based its decision Wednesday on testimony from Long, the teen's father and investigators.

The Attorney General's office does not plan to release an investigative report on the case. The Strickland family may consider a civil suit against the former deputy.

Reporter: Kelcey Carlson
Photographer: Mark Simpson
Web Editor: Kamal Wallace

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