

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-1-3382

Date APR 21 2011

To: Chief, Criminal Section

Re: Trooper XXXXXXXXXX,
Alabama State Police,
Alabaster, Alabama - Subject;
Nathan Johnson, Jr. (Deceased) - Victim
CIVIL RIGHTS

It is recommended that the above case be closed for the following reasons:

Case Synopsis

On May 8, 1966, Alabama State Trooper XXXXXXXXXX, the white subject, fatally shot Nathan Johnson, Jr., the 34-year-old African-American victim, who was being detained at the police station in Alabaster, Alabama following his arrest for driving under the influence of alcohol. According to the subject, he took the victim into the police chief's office so the victim could make a telephone call. The victim, who was highly intoxicated, began yelling at the telephone operator. The subject stated that he took the receiver out of the victim's hand and told the victim that he could make his call later. The victim grabbed hold of the receiver and struggled with the subject, then picked up a billy club and struck the subject on the left side of the neck. The subject unsuccessfully tried to ward off the blows, then drew his revolver and fired two shots at the victim.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

Date

Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

The incident was investigated locally by the Alabama Bureau of Investigation (ABI) and the Alabama Department of Public Safety. The results of those investigations were turned over to the Shelby County Coroner, who determined that the subject acted in self-defense when he shot the victim, and, therefore, it was a justifiable homicide. When the Federal Bureau of Investigation (FBI) re-opened the investigation in 2007,¹ two eyewitnesses came forward and alleged that the subject placed the billy club on the desk, then provoked the victim into striking him with it. For reasons described below, including serious credibility concerns regarding these witnesses, these statements do not constitute sufficiently reliable evidence to prove beyond a reasonable doubt a criminal civil rights violation. Furthermore, because the five-year statute of limitations has run on this matter, federal prosecution of the subject for criminal civil rights violations is not possible.

Prior Federal Investigation

The FBI opened its initial investigation into the circumstances surrounding the victim's shooting on May 10, 1966, based on media coverage of the incident. The FBI obtained the complete ABI investigative report and the Alabama Department of Public Safety investigative report, and spoke to the state investigators (Alabaster Police Department Chief Bull Carter and Captain Robert Miller of the Alabama State Troopers) about the investigative steps they took and their conclusions in this matter.² The FBI forwarded these reports to the United States Attorney in Birmingham, Alabama. The FBI officially closed the case on June 21, 1966.

Local Investigation

The incident was investigated locally by the ABI and the Alabama Department of Public Safety. The results of these investigations were turned over to the Shelby County Coroner, who determined that the subject acted in self-defense when he shot the victim, and, therefore, *it* was a justifiable homicide.

The subject completed a written statement on May 10, 1966, at the request of the ABI.

¹ XXXXXX XX

² Both investigators stated that their investigations revealed that the victim, who was highly intoxicated, reached for a billy club and began hitting the subject with it. The subject then shot the victim in self defense.

The subject stated that at approximately 4:30 p.m. on May 8, 1966, Trooper XXXXX advised him over the radio that he had a report of an African-American man driving drunk and running other motorists off the road. The subject, who was approximately two miles away from the driver's last location, stopped and waited for the vehicle in question to pass him. Approximately one minute later, the subject saw a black Cadillac coming towards him at a high rate of speed and weaving all over the road. The subject activated the lights and siren on his patrol car, and the driver of the Cadillac pulled over after approximately one-half mile. As the subject was exiting his patrol car, Trooper XXXXX arrived at the scene.

The subject stated that he approached the Cadillac and asked the driver to step out of the car and show his driver's license. The driver, who was later identified as victim Nathan Johnson, Jr., stated that he was not going to get out of the car and asked the subject "why the f**k" he had stopped him. The subject stated that he grabbed hold of the victim's left arm and pulled him out of the car. The victim asked the subject what he was being charged with. The subject identified himself by name and told the victim that he was being arrested for driving while intoxicated. The victim asked the subject where they were going, and the subject told the victim that he was going to the Shelby County Jail.

The subject placed the victim in his patrol car and began driving towards the jail. En route, the victim started poking the subject in the right side with his finger. The victim then said, "Motherf****r, you're going to get yours before this day's over." The subject pulled off the road and told the victim to keep his hands to himself. The subject then drove to the jail in Alabaster and took the victim inside. Once inside the jail, the victim asked if he could make a telephone call. The subject brought the victim into the chief's office and told the victim that if the call was long distance, the victim would have to call collect. The victim picked up the telephone and dialed the operator. The victim rested his right arm up on the window next to a billy club. The subject stated that the victim was intoxicated and could not make the operator understand what he was saying. When the victim started arguing with the operator, the subject took the receiver away from the victim and told the operator to forget about making the call. The subject then told the victim that he was too drunk to call now and could call later. The victim grabbed hold of the receiver and tried to snatch it away from the subject. As they were struggling for control of the receiver, the victim picked up the billy club and stuck the subject with it on the left side of the neck just below the ear. The subject released the telephone receiver and tried unsuccessfully to ward off the blows. After being struck with the club several times, and unable to get away from the victim, the subject drew his revolver and fired two shots at the victim. The victim continued advancing towards the subject and tore the subject's shirt. The subject fired a third shot at the victim, and the victim fell to the floor on his back.

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Current Federal Investigation

The FBI opened an investigation into the circumstances surrounding the victim's death on June 6, 2007, based on media coverage of the incident. The investigation was opened pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights era

Medical Evidence

The victim's autopsy was performed on May 9, 1966, at the State of Alabama Department of Toxicology and Criminal Investigation. The autopsy report states the cause of death as shock and hemorrhage following several gunshot wounds to the body. Three gunshots entered the victim's body - two via the chest (fatal) and one via the mid-back (non-fatal).

One fatal bullet entered the mid-chest and traveled from right to left, perforating the heart, the trachea, and the descending aorta. A .38 caliber bullet was removed from the muscles within the third intercostal space on the left side.

A second fatal bullet entered the left chest and traveled downwards and to the left, puncturing the diaphragm, the liver, and the stomach. A .38 caliber bullet was recovered from within the musculature of the back at the sixth intercostal space. A third non-fatal bullet entered the mid-back and penetrated the spinal column at the level of the fifth vertebra. A fragmented .38 caliber bullet was recovered from within the spinal column. The pathologist who performed the autopsy stated that this bullet would be expected to produce paralysis from the waist down. A toxicological analysis of the victim's blood revealed an alcohol level of 0.34 percent.

Legal Analysis

This review is focused on whether there exists a prosecutable violation of the federal criminal civil rights statutes. We conclude that there is insufficient evidence to prove, beyond a reasonable doubt, that XXXXXXXX willfully used excessive force when he fired his weapon at the victim, Nathan Johnson, Jr. As is shown by the above recitation of the fact, a criminal civil rights violation cannot be proven by the evidence. The subject's account that he fired in self-defense is not substantially refuted by the testimonial evidence and, therefore, the facts do not support a federal civil rights prosecution.

In addition, the applicable statute of limitations precludes prosecution of XXXXXXXX under the federal criminal civil rights statutes for the killing of Nathan Johnson, Jr. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of those civil rights statutes were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 ("An indictment for any offense punishable by death may be found at any time without limitation."). However the *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil

⁴ This is inconsistent with XXXXXXXX's statement that the door was open.

⁵ This appears to conflict with XXXXXXXX's later statement that XXXXXXXXXXXXXXXX.

rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnaping resulting in death, the facts of the present case do not lend themselves to federal prosecution under other statutes. Nor do the facts support federal authorities attempting to pursue possible state causes of action.

Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Frank Salter of the Northern District of Alabama concurs in this recommendation.

