



U.S. Department of Justice
Civil Rights Division

RJM:PF:SM:tj
144-41-3568

*Criminal Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530*

JUL 26 2013

(b)(7)(C)

Fayette, MS 39069

Dear (b)(7)(C)

We are writing to inform you that the Department of Justice and the Federal Bureau of Investigation (FBI) recently conducted a review of the circumstances surrounding the death of your (b)(7)(C) Johnny Queen, on August 8, 1965. We regret to inform you that we are unable to proceed further with a federal criminal investigation of this matter because the extensive federal investigation has failed to identify any eyewitnesses or evidence that would establish the violation of any criminal statute. Please accept our sincere condolences on the loss of your

(b)(7)(C)

Over the last 50 years, the Civil Rights Division of the Department of Justice has been instrumental in bringing justice to some of the nation's most disturbing civil rights era crimes. Today, the Division continues to use its resources and expertise to identify, locate, and, where possible, prosecute those responsible for committing racially-motivated crimes committed more than 40 years ago.

In 2006, the FBI began its "Cold Case Initiative" — a comprehensive effort to identify and investigate racially-motivated murders committed decades ago. Toward that end, each of the 56 FBI field offices searched their "cold case files" to identify incidents which might be ripe for investigation. In February of 2007, the FBI announced the next phase of the initiative, which includes a partnership with the National Association for the Advancement of Colored People (NAACP), the Southern Poverty Law Center (SPLC), and the National Urban League to assist the FBI in identifying additional cases for investigation and to solicit their help. In October 2008, the "Emmett Till Unsolved Civil Rights Crime Act" ("Emmett Till Act") became law giving the Department of Justice additional tools to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969."

(b)(7)(C) The federal review concerning your (b)(7)(C) death was begun pursuant to the Cold Case Initiative and the Emmett Till Act. This review was conducted by FBI Special Agents and an experienced "cold case" civil rights prosecutor. We have now concluded that review and wish to inform you in writing of our findings.

cc: Chrono Records Mody T. 7/24/13

According to our review, on August 8, 1965, in Fayette, Mississippi, (b)(7)(C) (b)(7)(C) shot and killed your (b)(7)(C) Johnny Queen, a 65 year-old African-American man, in what (b)(7)(C) has consistently claimed was an act of self-defense. (b)(7)(C) who is now (b)(7)(C) Mississippi, was the (b)(7)(C) for nearby Adams County at the time of the shooting. The only two surviving eyewitnesses, (b)(7)(C) both have stated that (b)(7)(C) actions were in self-defense. As described in detail below, there is no existing evidence to refute this claim.

On the day of the shooting, (b)(7)(C) was driving through Marion with (b)(7)(C) father, (b)(7)(C) mother, (b)(7)(C) and a family friend. (b)(7)(C) was driving, (b)(7)(C) family friend was in the front seat, and the rest of (b)(7)(C) family was in the back seat of the car. The group stopped at an ice house, the only place in this rural area that sold solid and crushed ice, and (b)(7)(C) got out of the car. The front deck of the ice house was approximately four feet off the ground, your (b)(7)(C) Johnny Queen, the victim, was on top of the front deck. The victim did not have use of his legs, so he moved around by using his arms to pull himself forward. Accounts differ as to what happened next between (b)(7)(C) and the victim, and the only known surviving eyewitnesses to the actual shooting are (b)(7)(C)

(b)(7)(C) at the time of the shooting, told the FBI in May 2009 that (b)(7)(C) family had stopped at the ice house and (b)(7)(C) saw the victim sitting in a wheelchair. The victim started cursing at (b)(7)(C) family, and (b)(7)(C) told the victim to stop. (b)(7)(C) heard (b)(7)(C) say that the victim had a gun, and (b)(7)(C) saw the victim pointing a gun at (b)(7)(C) (b)(7)(C) recalled hearing the victim's gun click, but the gun did not discharge. (b)(7)(C) also stated that (b)(7)(C) then reached into the car, pulled (b)(7)(C) gun from the front seat, and shot the victim. The FBI asked (b)(7)(C) to take a polygraph examination, however, (b)(7)(C) citing health reasons, (b)(7)(C) declined through her attorney in August 2010.

The *Sentinel* interviewed three other individuals who were present but did not observe the shooting. According to the 1965 investigative reports of the Mississippi Highway Patrol, (b)(7)(C) one of whom was then (b)(7)(C) and one of whom was then (b)(7)(C) were interviewed at the time of the shooting. According to those reports, the (b)(7)(C) heard (b)(7)(C) tell the victim to quit cursing at (b)(7)(C) family. The (b)(7)(C) told the *Sentinel* that (b)(7)(C) heard the victim curse, and (b)(7)(C) told the victim not to curse in front of (b)(7)(C) family. The victim responded, "I can say shit whenever I get ready," and the (b)(7)(C) then heard a shot fired. (b)(7)(C) told the *Sentinel* that they only heard one shot fired. Another witness, who was (b)(7)(C) at the time of the shooting, also told the *Sentinel* that (b)(7)(C) remembered hearing only one shot.

¹ On March 6, 2013, (b)(7)(C) published a story in conjunction with (b)(7)(C) (b)(7)(C) in the *Concordia Sentinel*, a Ferriday, Louisiana newspaper, on (b)(7)(C) two year investigation into the Johnny Queen shooting. (b)(7)(C) aired a story on NPR on May 3, 2013. Evidence and witness interviews gathered by the FBI and (b)(7)(C) ("the *Sentinel*") are incorporated together into the investigative summary.

(b)(7)(C) (b)(7)(C) claimed at the time that (b)(7)(C) shot the victim in self-defense, and (b)(7)(C) (b)(7)(C) that claim when (b)(7)(C) was interviewed by the FBI in April 2009 and by the *Sentinel* in January 2012. (b)(7)(C) accounts to the FBI and the *Sentinel* were consistent with one another. (b)(7)(C) told the FBI that he saw two young African-American men at the ice house that day, both of whom he claimed later testified and corroborated (b)(7)(C) version of events at the Justice of (b)(7)(C) the Peace hearing.² (b)(7)(C) stated that (b)(7)(C) left (b)(7)(C) car to go get ice, and (b)(7)(C) walked by the (b)(7)(C) victim. On the way back to (b)(7)(C) car, (b)(7)(C) heard the victim say, "Don't ever walk by no (b)(7)(C) white man." (b)(7)(C) continued to (b)(7)(C) car and leaned in to speak to (b)(7)(C) mother. His mother (b)(7)(C) then said to (b)(7)(C), "That nigger's got a gun."

(b)(7)(C) looked up and saw the victim holding a gun approximately seven feet from where (b)(7)(C) was standing. The victim fired his gun, but (b)(7)(C) moved out of the way (b)(7)(C) and the victim missed. (b)(7)(C) grabbed (b)(7)(C) .357 caliber pistol that was laying on the front (b)(7)(C) seat of the car, and (b)(7)(C) turned and fired twice at the victim.³ The victim looked as though he was going to raise his gun again, and (b)(7)(C) shot him two more times, including once in the forehead. The shots were fatal, and the victim died at the scene. As discussed below, (b)(7)(C) account is consistent with the report from the coroner's inquest. (b)(7)(C) claimed (b)(7)(C) to the *Sentinel* that if (b)(7)(C) had not shot the victim, the victim would have killed (b)(7)(C) and (b)(7)(C) family. (b)(7)(C)

The *Sentinel* interviewed several individuals who were not present for the shooting but did arrive sometime thereafter. Three men all told the *Sentinel* that they observed the victim laying on the ground and that they saw a small gun in the victim's hand. One of the men stated that (b)(7)(C) did not appear excited or nervous as you would expect a person to appear after having shot someone. Two of the men reported to the *Sentinel* that (b)(7)(C) told them at the scene that the victim shot at (b)(7)(C) but missed and struck the door of a house across the street, and one man indicated he heard multiple gunshots.

Two other individuals were interviewed by the FBI in April 2009 but they had only heard rumors about the reason for the shooting. The victim's (b)(7)(C) heard that the victim was shot because he whistled or winked at a white man's wife. A local resident heard that a white man had said to the victim, "Move nigger," and that the victim was shot when he did not move.

Federal Investigation

The FBI opened an investigation in 2006, pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights era homicides that occurred not later than December 31, 1969. Other than (b)(7)(C) there are no surviving eyewitnesses to the actual shooting.

² The two witnesses referred to by (b)(7)(C) are both deceased, and there is no documentation as to whether their testimony at the hearing corroborated or refuted (b)(7)(C) account.

³ (b)(7)(C) told both the FBI and the *Sentinel* that the gun (b)(7)(C) used was a .357 magnum pistol, (b)(7)(C) however, reports of the inquest indicate that (b)(7)(C) used a .38 pistol. (b)(7)(C) later told (b)(7)(C) the *Sentinel* that (b)(7)(C) still had the .357 pistol but (b)(7)(C) declined to show it to them.

1. Investigative Files

As part of its investigation, the FBI attempted to obtain the results of the local investigation into the matter. The local agencies all reported to the FBI that they had not maintained their files from the 1960s. Therefore, the Jefferson County Sheriff's Office, Jefferson County Circuit Clerk's Office, Fayette police Department, and the Jefferson County District Attorney's Office all reported that they had no files regarding the shooting or any subsequent investigation. The *Sentinel* reported that it had obtained a copy of the 1965 investigative file of the Mississippi Highway Patrol, however, the Mississippi Highway Patrol reported to the FBI as recently as May 2013 that it had no record of the file.

(b)(7)(C) was contacted by the FBI about whether (b)(7)(C) would (b)(7)(C) share any information (b)(7)(C) learned during (b)(7)(C) investigation, however, (b)(7)(C) was not willing to provide (b)(7)(C) any information outside of what was published. The media accounts provided by (b)(7)(C) (b)(7)(C) did not reveal any witnesses or evidence to refute (b)(7)(C) claim of self-defense.

2. The Victim's Physical Limitations

(b)(7)(C) (b)(7) also interviewed by the FBI, and (b)(7) stated that the victim had broken his back (b)(7)(C) as a child when he fell off the roof of a house. (b)(7) also said that because the victim could no longer use his legs after the accident, he walked on his hands. The victim's (b)(7)(C) told the FBI in April 2009 that the victim always walked bent over down on his hands. (b)(7)(C) of the victim, told the FBI in December 2011 that the victim walked on his hands but was able to shine shoes. The then Jefferson County Coroner told the FBI in April 2009 that the victim used cups to walk around on his hands. The *Sentinel* also reported that some people called the victim "Crippled Johnny" or "Shoe-Shine Johnny."

The victim shined shoes, and it was reported that he kept shoe polish supplies inside boxes. A chaplain at the Jefferson County correctional facility and a friend of the victim, told the *Sentinel* that the victim kept "a little gun" inside one of his shoe shine boxes for protection. A local resident, who became a police officer after 1965, told the FBI in April 2009 that the victim always carried a knife. This witness also stated that the victim would cut someone if they gave the victim a reason to do so, however, he did not know the victim to ever carry a gun. According to the *Sentinel*, Fayette residents reported that it was kind of a sport to rile up the victim, because he could go off on "his famous cursing streaks."

3. Coroner's Inquest and Justice of the Peace Hearing

According to the *Sentinel*, eighty minutes after the shooting, six random white men were chosen to sit on the Coroner's Inquest Board. The board determined that the victim's cause of death was four gunshot wounds from a .38 pistol that had been fired by (b)(7)(C). The board also found that the shooting was in self-defense. The *Sentinel* interviewed one of the men chosen to serve on the Coroner's Inquest Board. This individual indicated that no witnesses were called at the inquest, and either the sheriff or the coroner presented the case. He also stated

that a small gun, known as an "owl head" due to its shape, was presented at the inquest as the gun used by the victim. This individual was not interviewed by the FBI, because his account of the shooting is limited to what he learned from an investigator's testimony at the Inquest.

The *Sentinel* located a copy of a report from the inquest in the Jefferson County Courthouse. The report is only one sentence long: "Johnny Queen, came to his death by reason to-wit: Four gunshot wounds (.38 S & W special pistol) fired by (b)(7)(C) in our opinions, in self-defense." No autopsy report was located by the FBI or the *Sentinel*.

The following day a preliminary hearing before the Justice of the Peace was held. Although there are no records of the hearing, an article in the *Fayette Chronicle*, dated August 12, 1965, briefly summarized the hearing. The article, entitled "Man Acquitted in Local Shooting," reported that the Justice of the Peace heard from multiple witnesses including (b)(7)(C) family members, and the two African-American men who worked at the ice house. The two African-American men are deceased. According to the article, the Justice of the Peace found that (b)(7)(C) actions were "justifiable homicide." (b)(7)(C) also claimed that the victim's mother testified at the preliminary hearing that she heard her son say the day of the shooting that he was "going to kill him a white man before he came back home." There is no other known evidence or documentation that the victim's mother testified at the hearing.

4 Subject's Ties to the Ku Klux Klan

(b)(7)(D)

Additionally, an article from the *Jackson Daily News* titled, "Alleged State Klan Leaders Identified," listed (b)(7)(C) as a White Knight. In 1966, the House Un-American Activities Committee reported that (b)(7)(C) was among numerous Klansmen that worked at the International Paper Company in Natchez, Mississippi. (b)(7)(C) denied (b)(7)(C) ever had any ties to (b)(7)(C) the Klan when (b)(7)(C) was asked by both the FBI and the *Sentinel*.

Due to the FBI's information that (b)(7)(C) was potentially a White Knight, (b)(7)(C) was interviewed by the FBI on February 18, 1965, in relation to the bombing of the Natchez mayor's home in September, 1964. During that interview (b)(7)(C) made derogatory comments about "Jews" and the "nigger situation." There was insufficient evidence to link (b)(7)(C) or any other suspects to the bombing.

Conclusion

We have determined that this matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. There are no surviving eyewitnesses to refute (b)(7)(C) claim of self-defense. Self-defense is also a defense to the shooting being racially motivated, because (b)(7)(C) claims (b)(7)(C) motivation for the shooting was (b)(7)(C) fear that the victim was about (b)(7)(C) to kill (b)(7)(C) and (b)(7)(C) family. In this case, there are no surviving witnesses that refute (b)(7)(C) and (b)(7)(C) account that the victim pulled a gun on (b)(7)(C) first. Because of the destruction of local investigative files and the lack of any other known living eyewitnesses, there is no reasonable possibility that further investigation will lead to a prosecutable case. The existing evidence does not establish the violation of any federal criminal statute beyond a reasonable doubt.

Even if the defendant's self-defense claim could be overcome and some racial motive could be established, the statute of limitations has expired. 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 these 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 rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnapping resulting in death, the facts of the present case, even if the defendant's self-defense claim could be overcome, do not lend themselves to federal prosecution under other federal statutes. Self-defense is also a defense to a state homicide charge, therefore the existing evidence does not establish the violation of any state criminal statute beyond a reasonable doubt as well. Accordingly, we have no choice but to close this investigation.

We regret that we cannot be of further assistance to you. Again, please accept our sincere condolences for the loss of your (b)(7)(C)

Sincerely,

Paige M. Fitzgerald
Deputy Chief in Charge of the
Cold Case Initiative