

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3568

Date JUL 26 2013

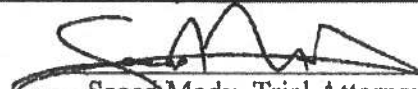
To: Chief, Criminal Section

Re: (b)(7)(C) - Subject,
Fayette, Mississippi;
Johnny Queen (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis¹

On August 8, 1965, in Fayette, Mississippi, (b)(7)(C) shot and killed Johnny Queen, a 65 year-old African-American man, in what Burchfield has consistently claimed was an act of self-defense. (b)(7)(C)



Saeed Mody, Trial Attorney

To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

JUL 26 2013

Date


Deputy Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

¹ On March 6, 2013, journalist Stanley Nelson published a story in conjunction with Joe Shapiro of National Public Radio (NPR) in the *Concordia Sentinel*, a Ferriday, Louisiana newspaper, on their two year investigation into the Johnny Queen shooting. Shapiro aired a story on NPR on May 3, 2013. Evidence and witness interviews gathered by the FBI and Nelson and Shapiro ("the *Sentinel*") are incorporated together into the investigative summary.

Natchez, Mississippi, was (b)(7)(C) (b)(7)(C) for nearby Adams County at the time of the shooting. The only two surviving eyewitnesses, the (b)(7)(C) both have stated that the subject's 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, the subject was driving through Marion with his father, (b)(7)(C) mother, (b)(7)(C) and a family friend. The subject was driving, (b)(7)(C) family friend was in the front (b)(7)(C) seat, and the rest of the subject's 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 the subject got out of the car. The front deck of the ice house was approximately four feet off the ground, and 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 the subject and the victim, and the only known surviving eyewitnesses to the actual shooting are the (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 (b)(7)(C) victim started cursing at (b)(7)(C) family, and the subject told the victim to stop. (b)(7)(C) heard (b)(7)(C) (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) stated (b)(7)(C) that the subject 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, 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. (b)(7)(C) and (b)(7)(C) were interviewed at the time of the shooting, according to the 1965 investigative reports of the Mississippi Highway Patrol. According to those reports, (b)(7)(C) heard the subject tell the victim to quit cursing at the subject's family. (b)(7)(C) told the *Sentinel* that (b)(7)(C) heard the victim (b)(7)(C) curse, and the subject told the victim not to curse in front of his family. The victim responded, "I (b)(7)(C) can say shit whenever I get ready," and (b)(7)(C) then heard a shot fired. Both (b)(7)(C) and (b)(7)(C) told the *Sentinel* that they only heard one shot fired. (b)(7)(C) (b)(7)(C) at the time of the shooting, also told the *Sentinel* that (b)(7)(C) remembered hearing only one (b)(7)(C) shot.

(b)(7)(C) The subject claimed at the time that (b)(7)(C) shot the victim in self-defense, and (b)(7)(C) reiterated (b)(7)(C) that claim when (b)(7)(C) was interviewed by the FBI in April 2009 and by the *Sentinel* in January 2012. The subject's accounts to the FBI and the *Sentinel* were consistent with one another. The (b)(7)(C) subject told the FBI that (b)(7)(C) saw two "nigger boys" at the ice house that day, both of whom (b)(7)(C) (b)(7)(C) claimed later testified and corroborated (b)(7)(C) version of events at the Justice of the Peace hearing.² (b)(7)(C) The subject stated that left (b)(7)(C) car to go get ice, and (b)(7)(C) walked by the victim. On the way back to (b)(7)(C)

² The two witnesses referred to by the subject, Amos Green and Johnny Lee, are both deceased, and there is no documentation as to whether their testimony at the hearing corroborated or contradicted the subject's account.

(b)(7)(C) [redacted] car, the subject heard the victim say, "Don't ever walk by no white man." The subject (b)(7)(C) continued to [redacted] car and leaned in to speak to [redacted] mother. [redacted] mother then said to [redacted] "That nigger's got a gun." (b)(7)(C)

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

The *Sentinel* interviewed several individuals who were not present for the shooting but did arrive sometime thereafter. (b)(7)(C) [redacted] all told the (b)(7)(C) *Sentinel* that they observed the victim laying on the ground and that they saw a small gun in the victim's hand. [redacted] stated that the subject did not appear excited or nervous as you would expect a person to appear after having shot someone. (b)(7)(C) [redacted] reported to the *Sentinel* that the subject told them at the scene that the victim shot at the subject but missed and (b)(7)(C) struck the door of a house across the street. [redacted] 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. (b)(7)(C) [redacted] the victim's (b)(7)(C) [redacted] heard that the victim was shot because he whistled or winked at a white man's wife. (b)(7)(C) [redacted] (b)(7)(C) [redacted] a local resident, heard that a white man had said to the victim, "Move nigger." (b)(7)(C) [redacted] had heard 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 the subject and (b)(7)(C) [redacted] there are no surviving eyewitnesses to the actual shooting.

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

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

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 share any information he learned during (b)(7)(C) investigation, however, (b)(7)(C) was not willing to provide any information outside of what was published. The media accounts provided by (b)(7)(C) and (b)(7)(C) did not reveal any witnesses or evidence to refute the subject's claim of self-defense.

2. The Victim's Physical Limitations

(b)(7)(C) of the victim, stated that the victim had broken his back as a child when he fell off the roof of a house. The victim could no longer use his legs after the accident, so he walked on his hands. (b)(7)(C) of the victim, 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. Will Turner, the Jefferson County Coroner after 1965, 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. (b)(7)(C) of the victim, told the *Sentinel* that the victim kept "a little gun" inside one of his shoe shine boxes for protection. (b)(7)(C) after 1965, told the FBI in April 2009 that the victim always carried a knife. (b)(7)(C) also stated that the victim would cut someone if they gave the victim a reason to do so. (b)(7)(C) 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 the subject. The board also found that the shooting was in self-defense. The *Sentinel* interviewed Dr. Elmo Gabbert, one of the men chosen to serve on the Coroner's Inquest Board. Dr. Gabbert stated that no witnesses were called at the inquest, and either the sheriff or the coroner presented the case. Dr. Gabbert 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. Dr. Gabbert 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 J.W. Burchfield, 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 Justice of the Peace H.N. Dunnam heard from multiple witnesses including the subject, the subject's family members, and the two African-American men who worked at the ice house. The two African-American men, Amos Green (aka Icehouse Red) and Johnny Lee, are deceased. According to the article, Dunnam found that the subject's actions were "justifiable homicide." The subject also claimed that the victim's mother, Johana Hooks, 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 Tics to the Ku Klux Klan

(b)(7)(D)

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

Due to the FBI's information that the subject was potentially a White Knight, the subject 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, the subject made derogatory comments about "Jews" and the "nigger situation." There was insufficient evidence to link the subject or any other suspects to the bombing.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. There are no surviving eyewitnesses that contradict the subject's claim of self-defense. Self-defense is also a defense to the shooting being racially motivated, because the (b)(7)(C) subject claims [] motivation for the shooting was [] fear that the victim was about to kill [] (b)(7)(C) and [] family. The law recognizes the right of a person who is not the aggressor to use force to defend himself. *See United States v. Branch*, 91 F.3d 699, 714-17 (5th Cir. 1996). However, that person may use only such force as is reasonably necessary to defend himself against the imminent use of unlawful force. *Id.* In this case, there are no surviving witnesses that contradict the subject and (b)(7)(C) account that the victim pulled a gun on the subject 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, this matter lacks prosecutive merit and should be closed. AUSA Glenda Haynes of the Southern District of Mississippi concurs in this recommendation.