CASE DOCUMENT

Johnnie M. Chappell - Notice to Close File

Attachments

PDF

File No. 144-17M-3165

CIVIL RIGHTS DIVISION

Notice to Close File

Date 08/18/2014

To: Chief, Criminal Section

Re: J.W. Rich (Deceased) XXXXXXX, XXXXXXXX XXXXXXX – Subjects; Johnnie M. Chappell (Deceased) – Victim CIVIL RIGHTS DIVISION

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

I. Recommendation

1. It is recommended that the above case be closed for the following reasons: The United States Government lacks evidence to prosecute the murder of Johnnie Chappell; and

2. The State of Florida has determined that it cannot prosecute the murder of Johnnie Mae Chappell due to insurmountable legal and factual obstacles, including the State's grant of immunity to the three surviving subjects.

Carroll McCabe
Attorney

To: Records Section
Office of Legal Administration

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

Date Deputy Chief,

Criminal Section

II. Case Synopsis

In March of 1964 African American protesters demonstrated at Jacksonville hotels and restaurants demanding equal rights. On March 22, 1964, Jacksonville's Mayor deputized 496 firefighters to combat "hit and run" groups of protesters who blocked business entryways and roads. The city exploded into violent confrontations between African American and white citizens. At least ten fire bombings occurred that night and over 140 people, all African American, were arrested. Against this background of civil unrest, the subjects, four young white Jacksonville men, drove to an African American neighborhood in order to "get a nigger."

On the evening of March 23, 1964, Mrs. Johnnie Mae Chappell (Chappell), a thirty-five year old African American woman, walked to a local food market to purchase ice cream for her children. Shortly after she returned home, she realized that she had lost her billfold. Chappell retraced her steps to look for her billfold, assisted by two neighbors. As they searched for the billfold, they heard a loud "pop," as a dark sedan sped by. Chappell clutched her right side and told her neighbors, "I've been shot." Chappell fell to the ground near the market and one of her neighbors ran to summon help. Chappell was transported by ambulance to the hospital where she was pronounced dead on arrival.

Four white men were charged in connection with her murder: J.W. Rich then-21 years old (now deceased); XXXXXXX, then-XX years old; XXXXXX, then-XX years old; and XXXXXX, then-XX years old. XXXXXX and XXXXX made statements regarding their involvement to Duval County Sheriff's Office (DCSO) detectives XXXXXX (XXXXXX) and XXXXXX (XXXXXX) on August 10, 1964.

According to XXXXXX and XXXXXX, the four men met up at the Freezette restaurant and were drinking beer and driving around town together in XXXXXXXX's vehicle when Rich said, "Let's get a nigger." None of the vehicle's occupants objected so they drove to a predominantly African-American neighborhood. As they passed by three African-Americans walking along New Kings Road, Rich pointed a gun out of the car window and shot Chappell. XXXXXX also identified Rich as the shooter. Rich denied that he made the statement, "Let's get a nigger," but was unable to identify who did. Rich admitted firing the shot that killed Chappell, but claimed that "the gun was fired by accident." After the shooting all four men drove to the home of Bob Perry (Perry), owner of the Freezette, where they disposed of the gun.

Rich, XXXXXX and XXXXX were all indicted by the state on first-degree murder charges. Perry (now deceased) was not charged. The defendant's cases were severed, and ultimately only J.W. Rich stood trial for the murder. In December, 1964, he was convicted of manslaughter and sentenced to serve ten years in prison, of which he served three. Charges against the other three men were dismissed upon motion of the Assistant State's Attorney based upon insufficient evidence.

There have been multiple attempts to re-open the case under either state or federal jurisdiction. To date, two State's Attorneys, Harry Shorstein (Shorstein) in 2004 and William Cervone (Cervone) in 2006, have declined to prosecute, citing significant factual problems such as loss of evidence and death of witnesses, in addition to opining that Florida's speedy trial rules procedurally preclude future prosecution.

The matter was most recently re-opened in 2008, pursuant to the Emmett Till Unsolved Civil Rights Crime Act of 2007 (Emmett Till Act), to explore the possibility of a state or federal prosecution. After determining that there was no basis for federal jurisdiction, the investigation and review focused on whether there was a viable state prosecution to which the FBI and the Department of Justice (DOJ) could lend assistance. After reviewing the existing evidence we determined that evidentiary problems are the same, or worse, than when the state made declinations in 2004 and 2006 and are essentially insurmountable.[1] That conclusion was cemented when, in April of 2012, without prior consultation with DOJ, the State's Attorney's office for Florida's Fourth Judicial Circuit granted immunity to XXXXXX, XXXXX and XXXXX in return for their sworn statements regarding Chappell's murder, creating yet more evidentiary problems and legal barriers.

This memo first outlines the investigative history of the case. Because the subjects and some of the other witnesses were interviewed multiple times throughout the years, the substance of their statements is detailed separately in order to provide a comprehensive analysis of their statements.

III. Predication and Investigative History

This matter has been investigated eight times. Federal authorities conducted investigations in 2002 and 2008 and the state of Florida conducted investigations in 1964, 2003, 2004, 2005, 2006 and 2012. The evidence obtained during these investigations is detailed below.

A. 1964 Investigation

The Duval County Sheriff's Office (DCSO) conducted the initial investigation into Chappell's death. Responding DCSO patrol deputies found Chappell lying on the shoulder of U.S. 1. They secured the scene and called for an ambulance and investigative personnel. The deputies questioned the two neighbors who had been with Chappell and witnessed the shooting and they prepared a crime scene diagram. They had no further involvement in the investigation.

DCSO detectives also responded to the scene, where they unsuccessfully searched for relevant physical evidence. The detectives prepared an offense report, noting that the suspects were unknown at that time and the investigation was continuing.

Chappell's autopsy revealed that the cause of death was a gunshot wound to the abdomen and the manner of death was homicide. One flattened bullet was recovered from Chappell's body, and turned over to DCSO.

The next day, DCSO Detective XXXXX (XXXXX) read through the initial reports and made a mental note of the basic facts. XXXXXX assumed that Chief Detective James Patrick (Patrick) had assigned the matter to other detectives on the squad for follow-up investigation because that was the usual practice.

In August 1964, XXXXX approached XXXX and DSCO Detective XXXXX (XXXXX) at the Freezette restaurant. XXXXXX appeared nervous and, unprompted, offered to assist the detectives with whatever they might need. Days later, XXXXXX again approached the detectives at the Freezette and offered his assistance. Due to XXXXXX's suspicious behavior, the detectives decided to interview XXXXXX regarding the Chappell murder.

When questioned, XXXXX stated that he was in XXXXX's vehicle with XXXXX, XXXX and Rich when Rich shot Chappell. XXXXXX and Rich were subsequently questioned and gave similar accounts.[2] Based on information provided by the subjects, XXXXXX and XXXXXX recovered the gun allegedly used in the shooting from Jim Nobles, proprietor of the Duval County courthouse concession stand, and logged it into the DCSO Evidence Unit.

XXXXXX and XXXXX, without the prior approval of a supervisor, arrested Rich, XXXXXX and XXXXXX for the murder of Chappell on August 11, 1964. XXXXX, who was on active military duty at XXXXXX, was arrested the following day.

According to XXXXXX and XXXXX, they attempted to determine which detectives had actually been assigned to conduct the follow-up investigation in order to inform them of the arrests, but discovered that the matter had not been assigned for follow-up investigation. XXXXXX and XXXXXX then met with Sheriff Dale G. Carson and discussed their suspicions that Patrick had buried the case to subvert an investigation.[3] Carson promised to investigate. The following day Patrick called XXXXX and XXXXX into his office and advised them not to "rock this boat." Patrick then removed XXXXXX and XXXXX from the Chappell investigation, ended their partnership and assigned them to other duties.

There is no evidence that the Chappell investigation was reassigned. It appears that no further investigative actions were taken by the DCSO. XXXXX's vehicle was never seized, or processed for evidence. No forensic testing was conducted on the firearm and it disappeared from the Evidence Unit. The bullet recovered from Chappell's body during the autopsy was held as evidence, but was not then examined or subjected to forensic testing. The bullet is still available and was tested by FDLE in 2005. The test results are discussed below.

Documents from the original Duval County Circuit Court file show that the court set an appearance bond for each defendant on August 21, 1964. It is unclear from the record when each defendant posted bond, but it is clear that all four bonded out. In September, 1964, all four defendants entered not guilty pleas and were allowed to remain at liberty under their previously posted appearance bonds. XXXXXX, XXXXXX and XXXXX filed motions seeking severance from Rich, which were granted.

Only Rich stood trial for the murder. Trial began on November 30, 1964.[4]

XXXXXX, XXXXXX and XXXXXX were subpoenaed by the State to testify against Rich. XXXXXX and XXXXXX were present at Rich's trial and prepared to testify however they were never called to the witness stand. XXXXXX claims he was called to the stand but did not testify because he asserted his Fifth Amendment right to remain silent. XXXXXX and XXXXXX both

recall that all three men were offered immunity in return for their cooperation. Court records of the state subpoenas still exist, however there is no existing record of an immunity agreement and all of the attorneys of record and the Judge are now deceased. XXXXXX was called to testify on the subject of Rich's confession. XXXXXX was subpoenaed to testify, but was not called to the stand.

The flattened bullet recovered from Chappell during the autopsy was admitted into evidence without associated testimony explaining how the bullet might end up in its flattened condition. The gun recovered by XXXXXX and XXXXXX was never located and therefore was not admitted into evidence at trial.

According to a juror, XXXXX, who was interviewed by FDLE investigators in 2005, the defense argued that the condition of the bullet was evidence that it hit a hard surface prior to wounding Chappell. The jurors agreed with the defense "ricochet theory" and they considered the projectile a "stray bullet."

Rich was convicted of manslaughter on December 2, 1964, and was sentenced to serve ten years in prison, of which he served three.[5] XXXXXX, XXXXXX and XXXXXX were released after Assistant State's Attorney entered and was granted a motion of nolle prosequi.

B. 2000 Civil Suit

In March of 2000, the Chappell family filed a civil suit against XXXXXX, XXXXXX, XXXXXX, Rich and Duval County, alleging a conspiracy to cover-up Chappell's murder pursuant to 42 U.S.C. §§ 1983, 1985. The United States District Court dismissed the civil suit finding that it failed to state claims for relief or was otherwise barred by the four year statute of limitations. The Eleventh Circuit Court of Appeals upheld the District Court decision and the U.S. Supreme Court denied certiorari.

C. Previous State and Federal Reviews

1. 1994-1998.

Sometime in 1994-1995, XXXXXXXX, the victim's XXXXXX, began searching for information on XXXXXX's murder. In March of 1996, XXXXX organized a memorial service for XXXXXX, the details of which were publicized in several newspapers. XXXXXX learned of and attended the service, after which he shared with the Chappell family his knowledge of the case.

Afterward, XXXXXX made several requests that the FBI, DOJ and State of Florida open investigations into the racially motivated slaying of XXXXX and the subsequent conspiracy to obstruct the state murder investigation. Prior to the passage of the Emmitt Till Act, CRT had no jurisdiction or authority to open the matter and so could not be of assistance.

2. 2002

In 2002, XXXXXX sent a letter to President George Bush alleging that the FBI failed to investigate a number of XXXXXX's allegations relating to Chappell's murder and improprieties and corruption in the DCSO. The letter was forwarded to the Civil Rights Division (CRT) for a response. Thereafter, CRT reviewed all of the available records from DOJ, the United States Attorney's Office in Jacksonville (USAO) and the FBI. CRT also investigated whether Chappell's murder occurred within the special territorial jurisdiction of the United States , but determined that Chappell was killed on property exclusively owned by the State of Florida; consequently, federal jurisdiction could not be established.

In 2003, CRT, responded to XXXXXXX's letter and advised that a federal prosecution of Chappell's murder was precluded by the applicable statute of limitations, and that a prosecution of then-Sheriff Carson and Chief of Detectives Patrick for possible obstruction was not possible because both were deceased and the statute of limitations had expired.

3. 2003 FDLE Review

In 2003, in response to a letter from XXXXXX asking for an investigation into Chappell's murder and possible later obstruction, then-Governor Jeb Bush asked the Florida Department of Law Enforcement (FDLE) to review the matter. FDLE reviewed the materials available to their office at the time including investigative reports from DCSO, correspondence from interested individuals requesting investigations and newspaper articles regarding Chappell's murder. FDLE concluded that a state prosecution of the alleged offenses would either be time-barred under applicable Florida statutes of limitations, or would be otherwise frustrated by the passage of forty years time, the lack of physical evidence, and the subsequent death of witnesses and alleged conspirators.

4. 2004 Shorstein Review

In 2004, Harry Shorstein, State Attorney for Florida's Fourth Judicial Circuit, conducted an independent investigation into the Chappell murder. As part of his investigation, Shorstein reviewed the 2003 FDLE investigation, in its entirety. Shorestein concluded that there was little likelihood of successful prosecution forty years after Chappell's slaying. Shorstein also opined that because XXXXXX, XXXXXX and XXXXXX were indicted on first-degree murder charges that were later nolle prossed, they could invoke their constitutional right to a speedy trial "which would almost certainly prohibit a trial."

5. 2005 FDLE Review

On April 27, 2005, Governor Jeb Bush directed FDLE to conduct another inquiry into the 1964 investigation of the murder of Chapppell to determine whether any facts were omitted during the initial investigation, or if any new information existed to support the filing of criminal charges against XXXXXX, XXXXXX or XXXXXX.

FDLE's investigation was exhaustive and involved the recovery and review of official documents, interviews of available witnesses from the 1964 era, and a laboratory examination of the bullet recovered from Chappell's body.

FDLE investigators obtained records from the DCSO, Medical Examiner's Office, Circuit Court for Duval County, Jacksonville Jail and General Counsel for the City of Jacksonville. These documents included the investigating officer's incident reports, the Medical Examiner's report, the court file related to the criminal charges against Rich, XXXXXX, XXXXXX and XXXXXX and documents related to the civil case filed by the Chappell family. A number of relevant documents were no longer available. Unavailable documents included the transcripts of XXXXXX and XXXXXX's statements to XXXXXX and XXXXXX in 1964, transcripts of the 1964 grand jury proceedings, transcripts of Rich's trial and sentencing, the trial judge's trial notes, the prosecutor's case file, and documents related to offers of immunity to XXXXXX, XXXXXX and XXXXXX in 1964.[6]

FDLE investigators conducted twenty-three witness interviews. They interviewed DCSO personnel, the subjects, Duval County Circuit Court personnel, jurors from the Rich trial, XXXXXX's defense attorney and XXXXXX's family members. These witness statements will be discussed in more detail below. A number of witnesses were unavailable in 2005, including Chappell's neighbors were with her at the time of the shooting and who could not be located. Sheriff Carson, Chief of Detectives Patrick, and the evidence custodian were all deceased. All of the attorneys involved in the prosecution and defense of the subjects were deceased except for one, and he had no recollection of the case. Bob Perry, the owner of the Freezette and the person who received the gun from the subjects after the shooting, was also deceased.

The only forensic evidence still available was the .22 bullet recovered from Chappell at autopsy. The bullet was submitted to FDLE evidence analysts for examination.

FDLE found that missing or non-existent court and investigative documents prohibited an accurate reconstruction of investigative and judicial events; that the evidence provided by available witnesses did not support renewed charges against the subjects for first-degree murder; and that the forensic analysis of the bullet produced no conclusive information that would support renewed charges against the subjects.

Ultimately, FDLE concluded that their review/investigation did not uncover new evidence that might assist in the prosecution of XXXXXX, XXXXXX or XXXXXX. Further, FDLE was not able to locate documents, or witnesses that could shed light on the State Attorney's decision to nolle prosse the charges against XXXXXX, XXXXXX and XXXXXX. FDLE recommended that no further action be taken in the Chappell matter.

6. 2006 Cervone Review

On January 6, 2006, Governor Bush, ordered William Cervone, State Attorney for Florida's Eighth Judicial Circuit, to conduct a comprehensive, independent investigation into Chappell's murder. Cervone personally reviewed the 2005 FDLE investigation in its entirety, and all documents provided by Shorstein (many duplicative of the documents included in the FLDE investigation.) In addition, Cervone met with numerous members of the Chappell family and their attorney, Robert Spohrer, to obtain their input. Cervone also met with XXXXXX, who provided the relevant documents he had acquired over the years, and the Inspector who led the 2005 FDLE review, to ensure that nothing had been overlooked. Cervone reviewed the speedy trial research submitted by Spohrer and conducted his own. In addition, Cervone assigned a senior homicide prosecutor in his office to conduct his own, independent research of the relevant facts and law.

Cervone concluded that speedy trial rules enacted by the Florida Supreme Court in 1971 precluded prosecution of XXXXXX, XXXXXX and XXXXXX. Those rules specifically provided that "the trial of all persons taken into custody prior to the effective date of [the] rule shall commence on or before September 27, 1971" and that "[I]f a person is released upon bail or otherwise, and makes no demand for speedy trial, the trial of such person shall commence on or before November 1, 1971." According to Cervone, "Florida law is clear that when charges have been dismissed by the state they may not be refiled after speedy trial has expired. That is exactly the situation this case presents, and no refinement or change in Florida law since 1971 changes that."

Aside from speedy trial concerns, Cervone opined that significant issues related to the statute of limitations also precluded recharging XXXXXX, XXXXXX and XXXXXX. The applicable statute of limitations had expired for any offense other than first degree murder. Cervone found that a successful prosecution for first degree murder was unlikely given that Rich, the acknowledged shooter, was convicted only of manslaughter, and no compelling evidence against the remaining defendants emerged to prove complicity beyond mere presence.

Cervone did not elaborate on the factual/evidentiary issues that informed his decision other than to mention loss of evidence, death of witnesses and the outmoded investigative techniques employed at the time of the crime.

7. 2008 Till Review

In April of 2008, the matter was reopened pursuant to the Emmett Till Act, which empowered the FBI and DOJ to investigate "violations of criminal civil rights statutes...resulting in death" that "occurred not later than December 31, 1969."

The FBI, USAO and CRT conducted an exhaustive review of all of the evidence collected during previous state and federal investigations and reviewed the subject's 2012 state immunized statements. The FBI and CRT again researched the jurisdictional issue and again determined that the federal government lacked jurisdiction to prosecute Chappell's killers.

The USAO for the Middle District of Florida and CRT separately researched the Florida speedy trial statute. We identified what we believe to be a potentially viable argument that the 1971 version of the Florida speedy trial statute may not act as a procedural bar to the future prosecution of XXXXXX, XXXXXX and XXXXXX. Our legal analysis regarding the Florida speedy trial statute is contained in a separate memo. However, this is an extraordinary complicated legal issue with no controlling case law and would be a novel application of the law. It is unclear we would prevail even if we had a strong factual case, and two Florida state's attorneys have opined that we would not. basics of the argument would be that Rule 1.191, adopted and amended in 1971, on an emergency basis, and repealed in 1972, does not apply to a case that terminated in 1965.[7] Florida courts have historically applied the rule, or statute in effect at the time a person is taken into custody, to determine whether a violation of speedy trial rights occurred.[8] Further, the speedy trial statute in effect at the time of the subject's arrests was not violated. Florida Stat. § 915.02 required the defendants to file written requests for speedy trial. Because none of the accused demanded a speedy trial, it could be argued that the provisions of the statute were not activated and the speedy trial clock had not been triggered

when the indictments were nolle prossed. Finally, it could be argued that the entry of the nolle prosequi, in these circumstances, should not preclude future prosecution.

We have shared this potential argument with the state prosecutors, and they remain convinced that the matter is procedurally barred. Because the state has sole jurisdiction on this matter, their interpretation of state law is dispositive.

However, even if the legal question could be resolved against the defendants, as set forth in more detail below, the legal question is rendered moot because of the insurmountable evidentiary issues, compounded by the Florida state prosecutors grant of use and derivative use immunity to XXXXXX, XXXXXX and XXXXXX in 2012 in return for their sworn statements regarding the murder. These factual issues effectively preclude the possibility of a viable state prosecution.[9]

8. 2012 State Review

In 2012 members of the Chappell family, their attorney, Richard Sporher, and Professor Paula Johnson, College of Law Syracuse University, met with the State's Attorney for Florida's Fourth Judicial Circuit and suggested the possibility of a State grant of immunity to XXXXXX, XXXXXX and XXXXXX[10] in order to illicit from them information that they hoped would support a federal prosecution. Florida state prosecutors, at the behest of the Chappell family and without prior consultation with the USAO or CRT, agreed to grant use and derivative use immunity to XXXXXX, XXXXXX and XXXXXX in return for their sworn testimony regarding Chappell's murder. All three subjects testified before a state grand jury; one of the subjects provided information that established federal jurisdiction over Chappell's murder.

IV. Evidentiary Overview

A. Physical Evidence

Currently available evidence includes; police incident reports, the responding patrol officer's crime scene diagram, the transcript of Rich's 1964 statement, the Duval County Circuit Court file related to the 1964 indictments of Rich, XXXXXX, XXXXXX and XXXXXX, documents from the 2000 civil case, the medical examiner's report and the bullet recovered from Chappell's body.

A crime laboratory analyst in the FDLE Firearms Section conducted a visual and microscopic examination of the .22 bullet at the request of the FDLE in 2005. He found that the bullet was damaged or scratched over most of its surface, one side was flattened and no rifling impressions were present. No embedded materials were found in/on the bullet. The analyst could not determine whether the damage noted occurred before or after the bullet entered Chappell's body. Thus forensic analysis of the bullet produced no evidence to refute Rich's claim that he did not intend to kill Chappell and that her death was caused by him "accidentally" discharging the firearm.

B. Unavailable Evidence

Unavailable state evidence includes; transcripts of XXXXXX and XXXXXX's 1964 statements to XXXXXX and XXXXXX, 1964 grand jury transcripts, transcripts of Rich's trial and sentencing, the original prosecutor's case file, documents related to a grant of immunity in 1964 and the alleged murder weapon.

A number of material witnesses are unavailable. The two neighbors who were with Chappell when she was shot cannot now be located.[11] DCSO personnel including Carson, Patrick, Becham, Williams and Luther Hines, evidence custodian, are deceased. All of the attorneys involved in the prosecution and defense of the subjects are deceased. Perry and Rich are also deceased.

B. Subject's Statements

1. XXXXXXX

XXXXXX is XX years old and currently resides in XXXXXX, Florida. He has been arrested for various criminal offenses since XXXX; including XXXXXXX and XXX offenses. His criminal record shows a conviction for XXXX.

XXXXXX gave one statement to DCSO detectives in 1964, one statement to FDLE investigators in 2005 and he provided a sworn statement to Florida Assistant State's Attorney Richard Mantei (Mantei) in 2012. The only fact XXXXX consistently related in all three statements is that he was present in a car with XXXXXX, XXXXXX and Rich when "a black lady was killed on U.S. 1." He identified Rich as the shooter in 1964 and in 2012, but refused to identify the shooter in 2005, although he claimed that the correct person was convicted. According to XXXXXX, XXXXXX claimed, in his 1964 account, that Rich made the comment

"Let's get a nigger" prior to the shooting. XXXXXX denied that the statement was made by anyone in the vehicle XXXXXXXXXXX. In both his 2005 statement and, XXXXXX denied that the four men planned to drive to an African American neighborhood to shoot someone.

XXXXXX would not be useful as a witness in any future state court prosecution. He is not credible, nor reliable. He has given three contradictory statements, all of which are contradicted by other witnesses. Most importantly, unless XXXXXX repudiates his prior statements, they serve to exculpate the subjects from the charge of first-degree murder.

a. 1964 Account

On August 10, 1964, XXXXXX agreed to voluntarily accompany XXXXXX and XXXXXX to the Duval County Courthouse for an interview. The transcript of XXXXXX's 1964 statement has been destroyed pursuant to Florida law. However, XXXXXX and XXXXXX both recall the sum and substance of the interview. This summary is based on their recollections.[12]

During the interview, XXXXXX produced a Bible and asked XXXXXX to read the highlighted passage, "Thou shalt not kill." XXXXXX became emotional and said, "Oh my God Sarge, I didn't shoot her I was just in the car." When asked to identify to whom he was referring, XXXXXX stated, "That black lady on U.S. 1."[13] XXXXXX was then advised of his constitutional rights and agreed to give a sworn statement. According to XXXXXXX, XXXXX recorded XXXXXX's sworn statement. [14] XXXXXX identified the other occupants of the vehicle as XXXXXX, XXXXXX and Rich. XXXXXX stated that he was in the right rear passenger seat, Rich was in the right front seat, XXXXXX was in the left rear passenger seat and XXXXXX was behind the wheel. XXXXXX identified Rich as the shooter and advised that Rich used XXXXXX's gun. The firearm was a blue steel .22 pistol.

According to XXXXXX, the four men met at the Freezette restaurant and drove to the center of the City of Jacksonville during the race riots. As they were driving around Jacksonville, drinking beer, Rich stated, "Let's go get a nigger."[15] None of the car's occupants objected to Rich's statement and they headed toward the northwest area of Duval County where Rich "stuck the gun out of the window and fired."[16] Rich fired one shot from a distance of about thirty feet. After the shooting, all four men drove to the home of Bob Perry, who owned the Freezette. They left the gun used in the shooting with Perry.

b. 2005 Account

On August 25, 2005, XXXXXX was interviewed by the FDLE. XXXXXX consented to a voluntary interview, but declined to give a sworn statement. XXXXXX's statement to the FDLE contradicts most of his initial statement to XXXXXXX and XXXXXX.

XXXXXX confirmed that he was with XXXXXX, XXXXXX and Rich when Chappell was shot; however, XXXXXX placed himself in the XXX seat, and Rich in the right rear seat. contradicted XXXXXX and XXXXXX's descriptions of their meetings at the Freezette. According to , he never approached XXXXXX and XXXXXX with offers of assistance. XXXXXX approached XXXXXX and told him that XXXXXX heard that Rich got drunk and bragged about the shooting while at the Freezette.

XXXXXX recalled answering some questions for XXXXXX and XXXXXX after he was arrested, but did not recall making a sworn statement. XXXXXX denied that XXXXX presented him with a Bible containing highlighted passages. XXXXXX also denied owning the gun used to murder Chappell. XXXXXX stated that he was "startled" when the gun was fired. XXXXXX did not mention that the four men met at the Freezette, or that someone in the car made the comment, "Let's get a nigger."

XXXXXX stated that he, XXXXXX and XXXXXX appeared in court and were prepared to testify against Rich, but were never called to the stand. XXXXXX did not recall an offer of immunity in return for his testimony. XXXXXX refused to identify the shooter, but stated, "The correct person was convicted of the crime."

c. **2012 Account**

In April of 2012, XXXXXX gave a sworn statement to Mantei pursuant to a grant of use and derivative use immunity. This statement varied significantly from his earlier statements and those of the other subjects.

XXXXXX again confirmed meeting XXXXXX, Rich and XXXXXX at the Freezette, but denied driving into Jacksonville during the riots. Instead he claimed that the four men decided to drive to a bar in a nearby town. XXXXXX recalled that he was "riding shotgun" and Rich was sitting in the seat behind him. When asked how they ended up at the shooting scene, XXXXXX stated, "I don't know how we ended up at that spot where we were at." XXXXXX denied that there was a plan to drive to an African American neighborhood in order to shoot someone. XXXXXX also denied that Rich made a statement about "getting a nigger."

XXXXXX claimed he was unaware that Rich had a gun until Rich fired a shot. XXXXXX did not hear the bullet "ding off a sign, or window," but described that they were "running a fairly

rapid rate of speed going up." XXXXXX again denied ownership of the gun and said he did not get a close look at it, but described the gun as being made of blue steel with a six inch barrel. XXXXXX claimed he had no idea what happened to the murder weapon. "I saw it that first time and that was the first and last time I saw it." XXXXXX denied throwing the gun into the Moncrief River. XXXXXX also had no recollection of knowing, or being XXXXXXX (discussed below) and denied telling XXXXX he "killed a nigger."

XXXXXX stated that he was taken directly home after the shooting and that during the drive to his house, the four subjects made a pact to keep their mouths shut. XXXXXX denied speaking about the shooting to anyone prior to his arrest.

Contrary to his 2005 statement, XXXXXX recalled that he asserted his Fifth Amendment right to remain silent when called to the witness stand to testify against Rich. XXXXXXXX said that he believed that the charges against him were dropped because Rich entered a guilty plea.

2. XXXXXXX

XXXXXX is XX years old and currently lives in XXXXX, Florida. His criminal history indicates that he was convicted of XX in XXXX and XXXXX.

XXXXXX gave one statement to DCSO detectives in 1964, one statement to FDLE investigators in 2005 and he provided a sworn statement to Mantei in 2012. XXXXXX consistently related that he, XXXXXX, Rich and XXXXXX were riding in his car when Rich shot Chappell and that he, XXXXXX and XXXXXX were given immunity in 1964 in return for their agreement to testify against Rich. In 1964, XXXXXX told DCSO detectives that Rich made the comment, "Let's get a nigger.' In 2005 XXXXXX refused to acknowledge that anyone made that comment, or to identify the owner of the firearm used to kill Chappell. XXXXXX never admitted that the four men planned to drive to an African American neighborhood in order to shoot someone.

Like XXXXXX, XXXXXX has no value as a witness in any future state court prosecution. XXXXXX also made several contradictory statements, all of which are contradicted by other witnesses. His statements are also exculpatory against charges of first degree murder.

a. 1964 Account

XXXXXX and XXXXXX interviewed XXXXXX on August 10, 1964. According to XXXXXX and XXXXXX, XXXXXX's statement was recorded by a court reporter, but the transcript has

been destroyed pursuant to Florida law. XXXXXXX and XXXXXXX both recall the sum and substance of XXXXXX's interview. Both recall that XXXXXXX admitted that the vehicle used in the shooting belonged to him and that he was driving when the shooting occurred. XXXXXX identified Rich as the shooter and placed Rich in the right front seat. According to XXXXXX, XXXXXX also attributed the statement, "Let's get a nigger" to Rich. XXXXXX said they drove to Perry's house after the shooting and offered to sell the gun to Perry in order to get money to buy beer.

b. 2005 Account

XXXXXX was interviewed by the FDLE in 2005. He was reluctant to discuss Chappell's murder and made several requests for immunity. XXXXXX was not granted immunity at that time, but ultimately agreed to an interview. He was interviewed on August 25, 2005.

XXXXXX confirmed that he was with Rich, XXXXXX and XXXXXX when Chappell was shot and that he was driving his XXX Plymouth Fury. Contrary to his earlier statement, XXXXXXX placed XXXXXX in the right front passenger seat and Rich in the rear seat behind XXXXXXX. XXXXXXX had no comment when asked which of the vehicle's occupants said, "Let's get a nigger." According to XXXXXX, the gun used to kill Chappell did not belong to XXXXXX. XXXXXX refused to identify the owner.

XXXXXX said, but did not elaborate, that he felt coerced into providing his 1964 sworn statement to XXXXXX and XXXXXX because of comments made by the detectives prior to the statement. XXXXXX denied that his statement was recorded by a court reporter. He claimed that XXXXXX recorded it on a piece of paper.

XXXXXX stated that the prosecutor offered XXXXXX, XXXXXX and XXXXXX immunity in exchange for their testimony against Rich during the 1964 trial. XXXXXX recalls that he, XXXXXX and XXXXXX appeared in court as witnesses for the prosecution, but were never called to testify. XXXXXX understood that the charges against him, XXXXXX and XXXXXX were nolle prossed by the prosecutor pursuant to their immunity agreement.

When asked if he was aware that Rich now denied shooting Chappell, XXXXXX said, "Rich is lying, the correct person was convicted of the crime."

c. 2012 Account

In April of 2012, XXXXXX gave a sworn statement to Mantei pursuant to a grant of use and derivative use immunity which varied substantially from his prior statements. In his 2012 statement XXXXXX claimed that he met Rich, XXXXXX and XXXXXX at the Freezette and they drove to a local drive-in so XXXXXX could talk to a female employee there. After a short period of time the group decided to go home. They took the "normal" route home. XXXXXX said that they did not go out of their way to drive through an African American neighborhood. As they were heading home, the four men discussed normal topics like girls and cars.

XXXXXX did not realize Rich had a gun until Rich pulled it out and shot. XXXXXX said, "It was a shock, I think it was a shock to all three of us." XXXXXX denied that Rich showed them the gun prior to the shooting. XXXXXX recalled Rich saying that "he got him one." XXXXXX confirmed that they went to Perry's house after the shooting; explaining, Perry was "a real good friend of Rich's." XXXXXX, XXXXX, Rich and XXXXX told Perry about the shooting and Perry convinced them not to tell anyone else. XXXXX, XXXXX, XXXXX and Perry all watched Rich throw the murder weapon into the Trout River.

When asked if he agreed to testify against Rich. XXXXX stated, "Our lawyers told us ...go ahead and turn state's witness against him, they would drop our cases completely, one hundred percent. XXXXX heard XXXXX and XXXXX' attorneys tell them the same thing. XXXXX said that the conversation occurred when they were all together in a room waiting to testify at Rich's trial.

2. XXXXXXX

XXXXXXX is XX years old and currently resides in XXXXXXX, Florida. His criminal history reveals that he was convicted of XXXXXXX of XXXX. XXXXXX was sentenced to serve fifty-four months in prison, of which he served ten months.

XXXXXXX made one statement to FDLE investigators in 2005 and he provided a sworn statement to Mantei in 2012. XXXXXXX consistently stated that he was in XXXXXX's car with XXXXXX, Rich and XXXXXX when Chappell was shot and that Rich made the comment, "Let's get a nigger." He also consistently asserted that he, XXXXXX and XXXXXX were granted immunity in 1964 in return for their agreement to testify against Rich. XXXXXX made contradictory statements regarding the actual shooting. In 2005, XXXXXX said he heard a shot, but that he did not see the shooting. In 2012 XXXXXX testified that he saw Rich shoot into a crowd of African Americans walking along New Kings Road. XXXXXX also contradicted several other witnesses when he repeatedly denied going to XXXXXX's house after the shooting.

XXXXXX has questionable utility as a witness in a future state court prosecution. He too made self-serving, contradictory statements that are contradicted by other witnesses. In addition, his 2005 statement is exculpatory against charges of first degree murder and the grant of immunity may preclude the use of his 2012 statement against XXXXXXXX and XXXXXXXX.

a. **2005 Account**

FDLE investigators interviewed XXXXXX on September 8, 2005. He confirmed that he was with XXXXXX, XXXXXX and Rich when Chappell was shot. XXXXXX went to the Freezette restaurant after work on March 23, 1964. The restaurant was closed. As XXXXXX was leaving, XXXXXX, Rich and XXXXXX drove up and asked if he wanted to go for a ride. XXXXXX agreed and got into the left rear seat. XXXXXX sat in the rear passenger seat next to XXXXXX; XXXXXX was driving and Rich sat in the front passenger seat. XXXXXX said that he knew XXXXXX from the neighborhood, but that he had never before met Rich, and XXXXXX was only an acquaintance.

XXXXXX stated that XXXXXX drove away from the city of Jacksonville, toward a rural area of Duval County. He recalls that there was general conversation in the car, but could not recall discussing anything of substance. At some point, XXXXXX handed XXXXXX a blue steel .38 revolver, which XXXXXX observed had been modified to fire .22 bullets. XXXXXX did not know the firearm was in the vehicle until XXXXXX handed it to him. XXXXXX did not know who owned the firearm. After examining the firearm, XXXXXX handed it to Rich.

XXXXXX continued to drive around the area and the four men were engaged in general conversation when Rich said, "Let's get a nigger." There was a brief period of silence after which general conversation continued. did not recall any other conversation related to race.

XXXXXX was driving on New Kings road when they noticed a group of people off to the right side of the road in front of XXXXXX's vehicle. XXXXXX slowed down as they approached the group and XXXXXX heard a shot. XXXXXX did not see Rich fire the gun, but saw Rich bring the gun back into the vehicle.

XXXXXX asked XXXXXX to drive him to the Freezette so he could get his car. XXXXXX returned XXXXXX to his vehicle at approximately 11:00 p.m.; and then XXXXXX, XXXXXX and Rich left the area. XXXXXX denied going to XXXXXX's house after the shooting. XXXXXX re-enlisted in the Army and was stationed at XXXXXX when he was arrested.

XXXXXX said that his then-lawyer told him that he murder charge would be dropped if he agreed to testify against Rich. According to XXXXXX he went to Court to testify as witness for the prosecution, but was not called to testify.

b. 2012 Account

In 2012, XXXXXX gave a sworn statement to state prosecutor Mantei pursuant to a grant of use and derivative use immunity, which varied substantially from his prior statement. In this version, XXXXXX advised that he became concerned after Rich said, "Let's get a nigger" so he told the others that he wanted no part in their plan. XXXXXX, XXXXXX and Rich threatened to put him out of the vehicle in an unsafe area, so XXXXXX remained in the vehicle. After they spotted a group of African Americans walking along the side of New King's Road, XXXXXX intentionally turned his car around and made a second pass. XXXXXX slowed the car and XXXXXX saw Rich shoot into the crowd. XXXXXX heard a woman scream and XXXXXXXX "took off." The four men spoke about the incident while they were in jail and XXXXXX recalls Rich telling him that Rich was going to blame the entire incident on XXXXXX.

4. J.W. Rich (deceased)

Rich made one statement to DCSO detectives in 1964 and two statements to FDLE investigators in 2005. In his 1964 account, Rich admitted that he was riding around with XXXXXX, XXXXXX and XXXXXX in XXXXXX's car when he accidentally fired the shot that killed Chappell. In his first account to FDLE investigators he denied shooting Chappell and refused to say who did. In his second statement to FDLE, Rich claimed that XXXXXX fired a shot at a road sign, but that none of the vehicle's occupants were involved in Chappell's murder. In 1964, Rich claimed that someone in the car made the comment, "Let's get a nigger." In 2005 he denied that anyone in the car made that comment. His statements conflict on these and other important facts as detailed below.

a. 1964 Account

XXXXXX and XXXXXX interviewed Rich on August 11, 1964. Prior to the interview Rich was advised of his constitutional rights and he agreed to make a sworn statement. XXXXXXX, court reporter, recorded the interview. The transcript of the interview is still available

Rich met XXXXXX, XXXXXX and XXXXXX at the Freezette restaurant on the night of the shooting and the four men rode around town in XXXXXX's vehicle. Rich sat in the right front

seat and XXXXXX and XXXXXX sat in the rear seats. As they drove around the Jacksonville area, the four men listened to radio updates on the "racial riots" occurring in downtown Jacksonville. They discussed a number of topics including the riots. As they approached the area of New Kings Road somebody said, "Let's get a nigger." According to Rich, XXXXXX's gun was lying in the front seat. "I was cutting the fool and I saw three "niggers" walking down the side of the road and I picked up the gun and the gun was fired by accident." After the shooting they drove to Perry's house and Rich told Perry, "We shot a nigger." Rich last saw the gun at Perry's house.

b. 2005 Accounts

Rich was later interviewed by the FDLE on two occasions in 2005. These statements varied significantly from his 1964 statement to XXXXXX and XXXXXX.

During the first interview, on August 25, 2005, Rich denied shooting Chappell. When asked to identify the shooter, Rich stated, "All I'll tell you is that I didn't shoot her and I ain't sayin' who did."

During Rich's second interview on September 25, 2005, Rich confirmed that he met XXXXXX, XXXXXX and XXXXXX at the Freezette on the night of the shooting. Rich denied that the four men rode around town in XXXXXX's vehicle. Instead, Rich claimed they decided to go to a bar in a nearby town (consistent with XXXXXX's 2012 account above). Rich acknowledged that the four men engaged in conversation during the drive, but denied that anyone in the vehicle said, "Let's get a nigger." According to Rich, as they drove along U.S. 1, XXXXXX pulled out XXXXXX's .22 pistol and fired one shot at a road sign. Rich told investigators that none of the occupants of XXXXXX's vehicle had any involvement in Chappell's murder. Rich could not explain why XXXXXX and XXXXXX told investigators Rich shot Chappell. Rich could not recall any information related to his trial.

During the interview, Assistant State Attorney, George Bateh provided Rich a transcript of the statement Rich provided to XXXXX and XXXXX in 1964. Rich stated that the transcript of his sworn testimony was not accurate and that he vaguely remembered providing the statement.

Rich said that he remembered being in a small interview room with XXXXXX when XXXXXX informed him that XXXXXX, XXXXXX and XXXXXX accused Rich of shooting a black woman. Rich refused to admit to the shooting and XXXXXX began poking him with a slap-jack. According to Rich, he continued to deny the shooting until XXXXXX cocked his gun and stated, "I could shoot you and tell them you tried to take my gun and get away with it." Rich agreed to

provide a statement to XXXXXX because Rich preferred serving time in prison to getting shot. Rich denied that anyone other than XXXXXX was present during that portion of the interview.

Rich did not recall providing many of the details contained in his 1964 sworn statement. Rich did not recall telling XXXXXX and XXXXXX that he handled the gun, or that the gun accidentally discharged. Rich did acknowledge that he might have told XXXXXX and XXXXXX there was a .22 pistol in the XXXXXX's vehicle, but he did not recall describing the gun.

C. Other Witnesses

1. XXXXXXXX

XXXXXXX's XXXXX, XXXXXX (XXXX), was interviewed by FDLE in 2005. XXXXXX advised that she was XXXXXX to XXXXXX from February of 1967 until November of 1968.[17] On two occasions in 1967, XXXXXX told XXXXXX that, "He killed him a nigger." On the first occasion XXXXXX and XXXXXX were home in their kitchen. XXXXXXX's XXXXXXXXXX was present. On the second occasion, XXXXXX and XXXXXX were at a bar in Jacksonville. The bar was a known KKK establishment. XXXXXX was seeking to join the KKK. While at the bar, XXXXXXX told a Klansmen, known only as XXXXX that, "I killed a nigger." XXXXXXX did not provide any details of the shooting and was denied membership.

XXXXXX told XXXXXX that the shooting took place during the racial disturbances in 1964. XXXXXX said he was with XXXXXX, Rich and XXXXXX. XXXXXX told XXXXXX that the shooting was accidental. XXXXXX said that he did not aim at anyone; he just shot out of the car window. XXXXXX told XXXXXX that he owned the firearm and that after the shooting he threw the firearm into the Moncrief River near U.S. 1. XXXXXX made no specific mention of Chappell in his statements to XXXXXX.

XXXXXX would be of little use in a prosecution against XXXXXX for first degree murder. First, XXXXXX's alleged account to XXXXXX is inconsistent with other subject/witness statements which strongly suggest that Rich was the shooter. Rich's second 2005 account is the only other evidence suggesting that XXXXXX was the shooter; further, the weight of the evidence suggests that the murder weapon was given to XXXXXX, not thrown in the Moncrief River by XXXXXX. Finally, as XXXXXX's XXXX, XXXXXX would be impeachable by claims of bias.

2. XXXXXXXX

XXXXXXX's XXXXX, XXXXXXX, was interviewed by FDLE in 2005. She recalled that some time during 1967-1968, when she was XXX years old, she and her two XXXXXXX[18] went fishing with XXXXXX at a boat ramp near Dunn's Avenue at U.S. 1 on the Moncrief River. While they were fishing XXXXXX told XXXXXX, "Be careful, you might pull up a gun that I threw there." XXXXXX thought XXXXXX was joking. A few minutes later XXXXXX said, "I killed a nigger."

According to XXXXXX, XXXXXX made a similar comment while XXXX XXXXXXX XXX one day. XXXXXX noted that a number of black students were attending their school. XXXXXX told XXXXXX, "Well you know I have killed a nigger and I don't want them going to school with XXXX." According to XXXXXX, XXXXXX made no mention of Chappell in his statements to her.

XXXXXX has also known Rich for many years, and she told FDLE that she has discussed Chappell's murder with him several times. Rich told XXXXXX that while he, XXXXXX and XXXXXX were in the Duval County Jail, XXXXXX stated, "Hey Rich, take the fall and we'll take care of you." Rich stated that he refused and said to XXXXXX, "I didn't kill anybody."

XXXXXX said that Rich denied to her that he shot Chappell. He also denied touching the firearm used to shoot her. Rich told XXXXXX that on the night of the shooting he, XXXXXX, XXXXXX and XXXXXX had been drinking and discussing segregation and the race riots in Jacksonville. Rich did not recall making the statement, "Let's go get a nigger." Rich stated that he occupied the rear seat of XXXXXX's vehicle and that XXXXXX was in the right front seat. Rich noticed a group of people on the side of the road. A shot was fired from the right front passenger area of the vehicle. Rich told XXXXXX, "I didn't expect them to fire out into the crowd.

XXXXXX's statements are contradicted by the weight of evidence suggesting that Rich was the shooter. She too, would be impeachable by claims of bias against XXXXXX, XXXXXX, and in favor of Rich, who appears to be a friend.

3. XXXXXXXX

XXXXXX was a court reporter for Duval County in 1964. XXXXXX was interviewed by FDLE in 2005 and provided some corroboration for Rich's claim that his statement was coerced. XXXXXX stated that on August 10, 1964, at approximately 11:30 a.m. XXXXXX and XXXXXX called and requested that he meet them at the courthouse to take a statement from Rich. The detectives informed him that the case was a homicide and that the victim was Chappell.

XXXXX stated that when he arrived at the courthouse Rich was crying and visibly upset. In XXXXXX's opinion, Rich was in no condition to make a statement. XXXXXX advised Rich that he had a right to counsel and asked Rich if he wanted a lawyer form the Public Defender's Office to be present. Rich waived his right to counsel. Still concerned that Rich was in no condition to provide a statement, XXXXX inquired if Rich had a family lawyer. Rich identified Senator Wayne Ripley as the family attorney. XXXXXX initiated a conference call with Ripley on behalf of Rich. According to XXXXX, Ripley, Rich, XXXXX, XXXXX and XXXX all participated in the call. Ripley told Rich to spend the night in jail and that he would meet Rich at 9:00 a.m. the next morning. After the Ripley call, XXXXX prepared to leave the courthouse. XXXXX and XXXXX asked him to remain and advised that they were taking Rich into a small office where they could speak to him for a few minutes. XXXXX refused to participate and remained outside the office.[19] XXXXX, XXXXX and Rich emerged from the office approximately fifteen minutes later. Rich did not appear to be injured. Rich waived his right to counsel and agreed to make a statement. XXXXX recorded the statement. XXXXX recalls Rich telling XXXXX and XXXXX that he didn't mean to kill anyone. Rich said he just wanted to scare someone and he fired the weapon out of the front passenger window of the car. XXXXX had no further involvement in the Chappell case.

XXXXX's statement partially corroborates Rich's claim that he was intimidated and coerced into providing his statement, and undercuts the credibility of XXXXXX and XXXXXX.

4. **Bob Perry (deceased)**

XXXXXX and XXXXXX interviewed Perry on August 11, 1964. Perry was the owner of the Freezette restaurant where the subjects met up prior to the murder. Perry advised that XXXXXX, XXXXXX, XXXXXX and Rich visited him at his home the night of Chappell's murder and gave him a gun. According to Perry the gun was not thrown into the Trout River. Perry sold the gun to DCSO XXXXX.[20]

5. **Anonymous Tip**

On October 5, 2005, FDLE received a telephone call from a citizen who wished to remain anonymous. The citizen told FDLE that in 1965, while he was at XXXXX's Sundries store on Lem Turner Road in Jacksonville, he overheard a conversation between XXXXXX and XXXXX (LNU). According to the citizen, XXXXXX and XXXXX discussed membership in the KKK, and XXXX told XXXXXX that the initiation to hold a position as an officer in the organization involved, "shooting a nigger." XXXXXX responded, "I did the shooting of that nigger woman." There were no other witnesses to the conversation. XXXXX never mentioned Chappell by name.

The citizen's identity is unknown. Further, the statement he allegedly overheard is inconsistent with the weight of evidence that strongly suggests that Rich was the shooter.

V. Legal Analysis

A. Federal Jurisdiction/Statute of Limitations

The applicable statute of limitations precludes prosecution of XXXXX, XXXXX and XXXXX for Chappell's murder under federal criminal civil rights statutes. 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 the civil rights statutes including 18 U.S.C. § 245 and 18 U.S.C. § 241, 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.") The Ex Post Facto Clause, however 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, the facts of the present case do not establish federal territorial jurisdiction. The 'special maritime and territorial jurisdiction of the United States" is defined in 18 U.S.C. § 7 (3) as:

Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

The threshold factual inquiry is whether or not the injury inflicted on Chappell occurred on land owned or reserved by the federal government. The FBI and CRT determined that Chappell's murder occurred on land owned exclusively by the State of Florida; thus there is no federal jurisdiction.

Even if it could be established beyond a reasonable doubt that the gun used to kill Chappell may have been thrown into a navigable waterway after the shooting, this does not confer federal jurisdiction.[21] See 18 U.S.C. §3236 ("In all cases of murder or manslaughter, the

offense shall be deemed to have been committed at the place where the injury is inflicted.") Jurisdiction to prosecute Chappell's killers lies exclusively with the State of Florida.

B. Prosecution by the State of Florida

In recent years, Florida governors, sheriffs, prosecutors and law enforcement agents conducted comprehensive reviews of Chappell's death and the subsequent DCSO investigation and prosecution. All reached the conclusion that no additional investigation was warranted and that no prosecution is legally possible.

In the past, State Attorneys for Florida's Fourth and Eighth Judicial Circuits, Shorstein and Cervone, specifically found that significant issues did not allow XXXXXX, XXXXXX, or XXXXXX to be recharged. Those impediments were Florida speedy trial law, significant issues related to the Florida statute of limitations for offenses other than first degree murder, factual problems such as the loss of evidence, and the death of witnesses over the years.

In a 2006 letter to Florida Governor Jeb Bush, Florida State Attorney Cervone said, "Regretfully, the law and the facts compel me to agree with the determinations of everyone else in the law enforcement community who has reviewed this case in recent years in concluding that Florida's criminal justice system has nothing else to offer them."

Florida prosecutors continue to embrace that view and in 2012, in an attempt to assist the Chappell family in securing a federal prosecution of Chappell's killers, the State Attorney's Office for the Fourth Judicial Circuit granted use and derivative use immunity to XXXXXX, XXXXXX and XXXXXX in return for their sworn statements.[22]

Under a statute authorizing "use and derivative use" immunity, the witness may still be prosecuted for the offense to which the compelled testimony relates. However the prosecution bears the burden of proving that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony. Kastigar v. United States, 92 S. Ct. 1653, 1665 (1972).

Florida prosecutors face insoluble impediments to a successful prosecution of XXXXXX, XXXXXX and XXXXXX for first-degree murder. First, it is unclear from the record what type of immunity was granted to XXXXXX, XXXXXX and XXXXXX by the then-prosecutor when Rich was prosecuted in 1964. The state could not now prove beyond a reasonable doubt that these subjects did not receive transactional immunity at the time, precluding a state prosecution of them

Second, three different State's Attorneys have opined that further prosecution of any subject is precluded by Florida's speedy trial statute. Although our research indicates a legal argument can be made[23], any prosecution of the subjects is exclusively a matter within the province of state authorities, and the state has concluded that it cannot proceed.

More importantly, even if there were a way around the legal obstacles, the existing evidence does not present a coherent or persuasive narrative of Chappell's murder. Neither the scant physical evidence, nor the eyewitnesses, if they could be located, connect the subjects to Chappell's murder. Although each subject has given partially inculpatory statements, the statements are also largely exculpatory and self-serving. More significantly, each subject has contradicted his prior statements and the subjects' statements are inconsistent with each other. They divide on major points, including the identity of the shooter, the owner of the gun, the subjects' positions in the vehicle, whether the shooting was planned or spontaneously committed by one of the subjects, whether the shooting was intended to strike an individual or a sign, whether the victim was struck directly or as a result of a ricochet, and numerous other points. The only independent evidence connecting XXXXX to Chappell's murder is the statement of XXXX, XXXXX. She stated that back in the 60's XXXXX admitted accidentally "killing a nigger." That statement, even if it survived a claim of XXXXX, would not support a conviction for first-degree murder.

Finally, the immunity issues and witness accounts that some of the initial statements may have been coerced undercut the evidentiary value of the subjects' statements. At this point, all of the subjects lack credibility as potential witnesses. It is impossible to state with any level of certainty which version of the various accounts is true; it is thus not possible to prove the guilt of any of the subjects beyond a reasonable doubt.

VI. Conclusion

The federal government lacks jurisdiction to prosecute XXXXX, XXXXX and XXXXX for the 1964 murder of Johnnie Chappell and the current legal and factual impediments preclude any future state court prosecution. For those reasons, this matter should be closed. The USAO for the Middle District of Florida concurs in this recommendation.

[1] Subsequent to the State's declining prosecution, no new evidence has been discovered by federal investigators and additional witnesses have died.
[2] XXXXXX was not interviewed by Florida law enforcement officials until 2005. XXXXXX was arrested at XXXXXX, on August 12, 1964. He was subsequently transported to the Duval County Sheriff's office and arrived on August 13, 1964, the day that XXXXXX and XXXXXX were removed from the Chappell investigation.

[3] Prior to taking a sworn statement from XXXXX, XXXXX left the interview room and attempted to locate the Chappell case file. XXXXXX could not locate an open file; however, he stated that he did find Kemp and Bechem's official report under the floor mat in Patrick's office. XXXXXX and XXXXXX believed that Patrick hid the report in order to prevent an investigation into Chappell's death. It does not appear that Carson investigated Patrick's actions.
[4] The trial transcripts were destroyed in compliance with Florida law sometime in 1996-1997; consequently, the only available information regarding the physical and testimonial evidence produced at trial comes from the very limited recollections of the two jurors interviewed by FDLE in 2005.

[5] Court documents reflect that Rich filed a Motion for New Trial in 1964 and a Motion to Vacate Judgment and Sentence in 1966. Both motions were denied. According to accounts in the New York Times and other media publications, Rich was released on parole in January of 1968.
[6] Because there are no records of the immunity agreements, the government could not now refute a claim that the prosecutors granted transactional immunity to XXXXXX, XXXXXX and XXXXXX.
[7] See Elixson v. State, 269 So.2d 375 (Fla. 2nd DCA 1972) (holding that Rule 1.191(i)(2) did not apply to defendants taken into custody prior to the effective date of the rule).

[8] See Carroll v. State, 251 So.2d 866 (Fla. 1971); Crowder v. Baker, 257 So.2d 20 (Fla. (1971); and Dorian v. State, 642 So.2d 1359 (Fla. 1994) (applying the version of the speedy trial rule in effect at the time of arrest) and Jackson v. Green, 402 So.2d 553,554 (Fla. 1st DCA 1981) (noting in relation to speedy trial rules that "Florida rules of court have prospective effect only, unless expressly provided otherwise").

[9] Since 1980, Florida's general immunity statute, Fla. Stat. §914.04, provides witnesses with use and derivative use immunity. Under such a grant of immunity, a prosecutor must prove that any indictment is based solely on evidentiary sources wholly independent and not derivative of an immunized statement. The State of Florida would have difficulty meeting that burden in this case as the only additional evidence obtained since the State declined to prosecute XXXXXX, XXXXXX and XXXXXX in 2004 and 2006 is their 2012 immunized statements.

[10] Rich is deceased.
[11] In any event, they would have little to add. When interviewed at the time, both witnesses stated that by the time they realized that Chappell had been shot, the car was too far away for them to get a detailed description of the car, or its occupants. The only information they could provide regarding the suspect vehicle was that it was dark in color.
[12] XXXXXX and XXXXXX are both alive and have provided multiple detailed statements regarding their investigation of the Chappell murder to federal and local law enforcement officials. Their accounts are consistent with each other in all material aspects, unless otherwise noted. No other documentation exists because it was destroyed pursuant to Fla. Stat. § 257.36

[13] U.S. 1 is also referred to as New King's Road.

[14] XXXXXX recalls that XXXXXX recorded XXXXXX's 1964 statement. XXXXXX was interviewed by the FDLE in 2005. XXXXXX denied ever meeting XXXXXX and had no knowledge of XXXXXX's 1964 statement to XXXXXX and XXXXXX. XXXXXX was interviewed by the FDLE in 2005. XXXXXX acknowledged that he might have recorded the 1964 statements of some of the defendants in the Chappell case, but has no recollection of doing so. XXXXXX did not recall taking testimony during grand jury proceedings or courtroom testimony during the trial of Sate v. Rich. He could not recall the identity of the court reporter who recorded the proceedings.

[15] XXXXXX does not recall XXXXXX attributing this statement to Rich. According to XXXXXX, XXXXXX said "someone in the car" made that comment.

[16] XXXXXX and XXXXXX have slightly different recollections regarding XXXXXX's description of the actual shooting. XXXXXX recalls that XXXXXX actually identified Chappell as the shooting victim.
[17] XXXXXX did not explain why XXX and XXXXXX XXXXX. When XXXXXX was questioned about XXXXXX in 2012 he could not remember ever XXXXXXXX.

[18] Her XXXXXXXX were aged XXXX and XXXXX at the time. The XXXXX were not interviewed.

[19] XXXXXX and XXXXX deny XXXXX's allegations. Both deny XXXXX's version of the events surrounding Rich's statement. XXXXX and XXXXX believe that Rich understood his Constitutional rights and that he was competent to waive those rights and make a statement. XXXXXX and XXXXX deny having a conversation with Ripley prior to taking Rich's statement or being advised that Ripley scheduled a meeting with Rich for the following morning. They also deny talking to Rich outside the presence of XXXXX.

[20] The detectives also interviewed XXXXX, who informed them that he sold the gun to XXXX. XXXX confirmed that he purchased a gun from XXXXX and turned it over to the detectives. The detectives entered the gun into evidence, but it later disappeared and has never been located.
[21] As discussed above, the evidence suggesting that the gun was thrown in a waterway is exceedingly thin, and is contradicted by the accounts from the subjects themselves and from Perry, who stated that the subjects gave the gun to him.
[22] Unfortunately their theory of federal jurisdiction was not viable and the DOJ was not consulted before the grant of immunity.

[23] Our legal analysis regarding the Florida speedy trial statute is contained in a separate memo. This is an extraordinary complicated legal issue with no controlling case law and would be a novel application of the law. It is unclear we would prevail even if we had a strong factual case, and two Florida state's attorneys have opined that we would not.

Related Case

Johnnie M. Chappell

Updated April 18, 2023

Civil Rights Division

U.S. Department of Justice
950 Pennsylvania Avenue NW
Office of the Assistant Attorney General,
Main
Washington DC 20530

Civil Rights Division
202-514-3847

TTY
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Introduced by Council Member Peluso:

ORDINANCE 2024-

AN ORDINANCE AMENDING SECTION 368.301 (VIOLATIONS AND CRIMINAL PENALTIES), PART 3 (ENFORCEMENT), CHAPTER 368 (NOISE CONTROL), *ORDINANCE CODE*, SECTION 614.103 (RESERVED), CHAPTER 614 (PUBLIC ORDER AND SAFETY), *ORDINANCE CODE*, SECTION 632.101 (CLASSES OF OFFENSES), CHAPTER 632 (PENALTIES), *ORDINANCE CODE*, SECTION 656.1309 (UNLAWFUL SIGN MESSAGES), PART 13 (SIGN REGULATIONS), CHAPTER 656 (ZONING CODE), *ORDINANCE CODE*, AND SECTION 741.107 (VIOLATIONS AND CRIMINAL PENALTIES), PART 3 (ENFORCEMENT), CHAPTER 741 (ZERO TOLERANCE ON LITTER), *ORDINANCE CODE*, TO ENHANCE CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF CITY CODES WHEN SUCH VIOLATIONS WERE MOTIVATED BY HATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION INSTRUCTIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in response to a dramatic increase in hate crimes across the country and state, in November 2023 the FBI and several Northeast Florida law enforcement agencies initiated the United Against Hate campaign to raise awareness and announce an aggressive response to crimes motivated by hatred toward an individual or entity because of their race, ethnicity, religion, sexual orientation, gender identity, disability or national origin; and

WHEREAS, between 2020 and 2022, there has been massive increase in hate crimes investigated and prosecuted in Florida, several of

which have been investigated by the FBI, the Jacksonville Sheriff's Office and the Jacksonville Aviation Authority; and

WHEREAS, between 2020 and 2022, the Jacksonville Sheriff's Office reported 24 hate crimes to the FBI's Uniform Crime Reporting Program; and

WHEREAS, use of Nazi symbols has been present in communities with large Jewish populations in Jacksonville over the past few years; and

WHEREAS, a Clay County resident wrote a detailed diary of his intention to murder Black men, women, and children, resulting in the horrific shooting and murders of Angela Michelle Carr; Jerrald De'Shaun Gallion; and Anolt Joseph "AJ" Laguerre Jr., on August 26, 2023 at the Dollar General located in the historically black New Town neighborhood of Jacksonville; and

WHEREAS, the federal and Florida governments have previously responded to hate crimes by enhancing criminal penalties when those crimes were demonstrated to be motivated by hate; and

WHEREAS, this action, to be known as Johnnie Mae's Law in honor of the life and untimely death of Mrs. Johnnie Mae Chappell, a house cleaner, wife and mother of 10 children who was the first person in modern recorded history to murdered by racists on the evening of March 23, 1964 in Jacksonville as she made her way home from work on US Highway 1 with groceries in hand during race riots in the city, her death initially went unsolved for months before her one of her assassins was eventually tried and convicted serving only three years in prison due to proven malfeasance of evidence and her family never received true redress for the loss of their loved one; and

WHEREAS, the City is enabled to prosecute various code infractions of its ordinance code through its various code enforcement mechanisms; however unlike the federal and state criminal laws, the City's codes fail to include enhanced penalties which can be imposed

as a deterrent against commission of an infraction based on hate; now therefore

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Amending Section 368.301 (Violations and criminal penalties), Part 3 (Enforcement), Chapter 368 (Noise Control), *Ordinance Code*. Section 368.301 (Violations and criminal penalties), Part 3 (Enforcement), Chapter 368 (Noise Control), *Ordinance Code,* is hereby amended to read as follows:

CHAPTER 368. NOISE CONTROL

* * *

PART 3. ENFORCEMENT

* * *

Sec. 368.301. Violations and criminal penalties.

(a) A person who knowingly and willfully or by culpable negligence commits a violation specified in section 368.301(c)(1), (2) (3), ~~and~~or (4), Ordinance Code, may, upon conviction by a court of appropriate jurisdiction thereof, be punished by:

(1) A fine of not more than five hundred dollars; or

(2) Not more than ninety days in jail; or both~~.~~; and

(3) If the violation was committed with the primary purpose of expressing, or attempting to promote, animosity, hostility or malice against a person or persons or against the property of a person or persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, the fine and jail penalties authorized herein may be enhanced up to triple the assessed fine and/or jail penalty.

* * *

Section 2. Amending Section 614.103 (Reserved), Chapter 614 (Public Order and Safety), *Ordinance Code*. Section 614.103

(Reserved), Chapter 614 (Public Order and Safety), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 614 PUBLIC ORDER AND SAFETY

* * *

Sec. 614.103. - ~~Reserved~~Enhanced Penalties for Hate Crimes.

If any violation of this Chapter was committed with the primary purpose of expressing, or attempting to promote, animosity, hostility or malice against a person or persons or against the property of a person or persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, the fine and jail penalties authorized herein may be enhanced up to triple the assessed fine, fee and/or jail penalty.

Section 3. Amending Section 632.101 (Classes of offenses), Chapter 632 (Penalties), *Ordinance Code*. Section 632.101 (Classes of Offenses), Chapter 632 (Penalties), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 632. PENALTIES

Sec. 632.101. - Classes of offenses.

(a) The following classes of offenses are established, and any person violating a provision of the Ordinance Code or an ordinance of the City setting forth an established class of offense and prescribing no other specific penalty shall, upon conviction and adjudication of guilt, be punished as follows:

(1) For a class A offense, by a fine of not more than $25 or by imprisonment of not more than ten days, or by both a fine and imprisonment.

(2) For a class B offense, by a fine of not more than $50 or by imprisonment of not more than 30 days, or by both a fine and imprisonment.

(3) For a class C offense, by a fine of not more than $100 or by imprisonment of not more than 60 days, or by

both a fine and imprisonment.

(4) For a class D offense, by a fine of not more than $500 or by imprisonment of not more than 60 days, or by both a fine and imprisonment.

(b) Whenever a provision of the Ordinance Code or any ordinance of the City makes or declares it to be unlawful or an offense to do or fail to do any act or thing, and no established class of offense or specific penalty is provided, the violation shall constitute a class C offense.

(c) If any violation addressed by this Chapter was committed with the primary purpose of expressing, or attempting to promote, animosity, hostility or malice against a person or persons or against the property of a person or persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, the fine and imprisonment penalties authorized herein may be enhanced up to triple the assessed fine, fee and/or jail penalty.

Section 4. Amending Section 656.1309 (Unlawful sign messages), Subpart A (General Provisions), Part 13 (Sign Regulations), Chapter 656 (Zoning Code), *Ordinance Code*. Section 656.1309 (Unlawful sign messages), Subpart A (General Provisions), Part 13 (Sign Regulations), Chapter 656 (Zoning Code), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 656 - ZONING CODE

* * *

PART 13. - SIGN REGULATIONS

SUBPART A. - GENERAL PROVISIONS

* * *

Sec. 656.1309. Unlawful signs.

(a) Projections of light, laser beams or any other medium to form text, graphics, logos, or artwork upon streets,

walkways, fences, sign structures, land or water surfaces, or exterior walls or other exterior portions of buildings or any other structure are prohibited, except that an owner may project a sign onto an exterior portion of his or her own property, building or structure if the area occupied by such sign does not otherwise violate applicable sign regulations included in this Part. The person or business who owns or is advertised or identified on the sign shall be presumed to have permitted the placement of the sign in the absence of credible evidence to the contrary and may be cited for violation of this subsection by either the City's Municipal Code Compliance Division or the Jacksonville Sheriff's Office, and the person or business installing or projecting the sign is also in violation of this subsection. Violations of this subsection shall constitute a class D offense; however, projections of text, graphics, logos, or artwork onto a building, structure or any other place (including public spaces) without the consent of the owner or person in control of the building, structure or space shall constitute blight and graffiti, and pursuant to Sections 806.13 and 125.69, *Florida Statutes,* these violations shall constitute a second degree misdemeanor punishable by a definite term of imprisonment of up to 60 days (discretionary) and a fine not less than $2000 (non-discretionary), and any equipment or vehicles used in furtherance of this crime shall be seized by the Jacksonville Sheriff's Office and forfeited to the City. Additionally, if any violation addressed by this Section was committed with the primary purpose of expressing,

or attempting to promote, animosity, hostility or malice against a person or persons or against the property of a person or persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, the fines authorized herein may be enhanced up to triple the assessed fine amount.

* * *

Section 5. Amending Section 741.107 (Violation of Zero-Tolerance for Litter Law), Part 3 (Enforcement), Chapter 741 (Zero Tolerance on Litter), *Ordinance Code*. Section 741.107 (Violation of Zero-Tolerance for Litter Law), Part 3 (Enforcement), Chapter 741 (Zero Tolerance on Litter), *Ordinance Code*, is hereby amended to read as follows:

Chapter 741. Zero Tolerance on Litter

* * *

Part 3. Enforcement.

Sec. 741.107. Violation of Zero-Tolerance for Litter Law.

* * *

(c) Violations of this Section shall be unlawful and deemed a civil infraction, and shall be subject to the civil fines set forth in this subsection. Each piece of litter or separate snipe sign that a person illegally places on or affixes to public property in violation of this Section shall be deemed a separate violation. The schedule for civil fines for uncontested citations, which may be imposed under this Part III, together with such attorneys' fees and costs as may be authorized by law, shall be as follows:

Offense	Fine

1st	$150*
2nd	$300
3rd and each thereafter	$500
* Notwithstanding the $150 fine noted above, any signs up to five signs posted on a single date in a twelve month period, shall incur a $50 fine per sign. Any signs in excess of 5 signs on that date, or additional signs, shall incur the standard per sign fine of $150.	

For contested citations, there may be imposed a civil fine of up to $500 per citation, plus such attorneys' fees and costs as may be authorized by law. However, if a person affixes or otherwise places a snipe sign on a public utility pole and the bottom of which sign is at a height more than five feet above the prevailing ground level immediately adjacent to the utility pole then such act shall be punishable with an uncontested $350* civil fine per citation, plus such attorneys' fees and costs as may be authorized by law. For purposes of this section, the term "ground level" shall mean the finished grade of a parcel of land exclusive of any filling, berming or mounding. Additionally, if any violation addressed by this Section was committed with the primary purpose of expressing, or attempting to promote, animosity, hostility or malice against a person or persons or against the property of a person or persons because of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, the fines authorized herein may be enhanced up to triple the assessed fine amount.

* * *

Section 6. Severability. If any section, clause, sentence, or provision of this ordinance or the application of such section, clause, sentence, or provision to any person or bodies or under any circumstances shall be held to be inoperative, invalid, or

unconstitutional, the invalidity of such section, clause, sentence, or provision shall not be deemed, held, or taken to affect the validity or constitutionality of any of the remaining parts of this ordinance, or the application of any of the provisions of this ordinance to persons, bodies, or in circumstances other than those as to which it or any part thereof shall have been inoperative, invalid, or unconstitutional, and it is intended that this ordinance shall be construed and applied as if any section, clause, sentence, or provision held inoperative, invalid, or unconstitutional had not been included in this ordinance.

Section 7. Codification Instructions. The Codifier and the Office of General Counsel are authorized to make all chapter and division "tables of contents" consistent with the changes set forth herein. Such editorial changes and any others necessary to make the *Ordinance Code* consistent with the intent of this legislation are approved and directed herein, and changes to the *Ordinance Code* shall be made forthwith and when inconsistencies are discovered.

Section 8. Effective Date. This ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

_____

Office of General Counsel

Legislation Prepared By: Jason R. Teal

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