



UNITED STATES ATTORNEY'S OFFICE

Southern District of New York

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MANHATTAN U.S. ATTORNEY'S OFFICE CLOSES INVESTIGATION INTO THE DEATH OF DANROY HENRY, JR.

Preet Bharara, the United States Attorney for the Southern District of New York, announced today that the evidence does not support pursuing federal criminal charges in connection with the fatal shooting of Danroy Henry, Jr. Mr. Henry, a student at Pace University, was killed during an encounter with police officers from the Pleasantville and Mount Pleasant Police Departments in the early morning of October 18, 2010. Federal prosecutors informed Mr. Henry's parents of this decision earlier today.

Federal prosecutors thoroughly reviewed the evidence regarding the events that led to and immediately followed Mr. Henry's shooting, in order to determine whether a prosecutable violation of the federal criminal civil rights laws had occurred. To prove a violation of the federal criminal civil rights statutes, prosecutors must establish, beyond a reasonable doubt, that a law enforcement officer willfully deprived an individual of a constitutional right, meaning that the officer acted with the deliberate and specific intent to do something the law forbids. This is one of the highest standards of intent imposed by law, and is different and higher than the intent standard under the relevant state statutes. Neither accident, mistake, fear, negligence nor bad judgment is sufficient to establish a willful federal criminal civil rights violation.

After conducting an exhaustive examination of all of the evidence, including consultation with experts, career federal prosecutors determined that the evidence does not establish the exacting standard of criminal intent required for a federal criminal civil rights prosecution.

The evidence reveals the following: At approximately 11:30 p.m. on the night of October 17, 2010, Mr. Henry drove himself and several friends to Finnegan's Grill, located in the Thornwood Shopping Center in Thornwood, New York. Shortly after 1:00 a.m., a fight broke out among several bar patrons. Mr. Henry was not involved in this altercation. As a result of the fight, however, the owner of Finnegan's Grill closed the establishment for the evening, ejected all of the patrons, and called the police. Police officers from both the Mount Pleasant and Pleasantville Police Departments responded to the scene. Mr. Henry departed the bar, retrieved his car from the parking lot, and pulled into a fire lane in front of Finnegan's Grill while waiting for several friends. A Mount Pleasant police officer knocked on the window of Mr. Henry's car, at which point Mr. Henry pulled out of the fire lane. The Mount Pleasant police officer shouted for Mr. Henry to stop. Mr. Henry proceeded to drive on the access road leading from the Thornwood Shopping Center. An officer with the Pleasantville Police Department stepped in front of Mr. Henry's car. Although there are inconsistencies in the witness accounts regarding the chronology of certain subsequent events, the weight of the evidence indicates that Mr. Henry's car was braking when it struck the Pleasantville officer, who wound up on the hood of

the car, and that the Pleasantville officer then fired through the windshield into the car, wounding one of the passengers and killing Mr. Henry. A toxicology report from the state criminal investigation, which some parties have disputed, indicated that Mr. Henry had a blood alcohol level of .13 at the time of his death.

Several considerations have persuaded federal prosecutors that they cannot prove beyond a reasonable doubt that the Pleasantville police officer intentionally violated the civil rights of Mr. Henry. First, the incident happened within a matter of seconds, without any prior interaction or relationship between the Pleasantville officer and Mr. Henry that could lead a reasonable juror to believe that the officer had a motive to violate Mr. Henry's civil rights. Second, a reasonable person considering the totality of the evidence would likely conclude that the car driven by Mr. Henry struck the officer and injured him before the officer fired his weapon. This resulted in the officer being positioned hazardously on the hood of a moving vehicle, requiring him to make a split-second decision under conditions of extreme danger, conditions under which the law generally allows latitude to a police officer's judgment. Third, while portions of isolated testimony from certain of the witnesses at the scene might suggest that the Pleasantville officer acted with bad intent, there is not enough consistent, credible witness testimony to prove beyond a reasonable doubt that the officer acted with the requisite willfulness to deprive Mr. Henry of his constitutional rights. Finally, although racial animus need not be shown to establish a deprivation of rights under color of law, the evidence indicated that because of the darkness, the glare of the headlights and streetlamps, and the condensation on the windows, the Pleasantville officer would in all likelihood not have been able to see who the driver was or the driver's race.

The Office also examined the evidence regarding the immediate aftermath of the shooting, and the failure of the officers on the scene, which was chaotic, to administer medical care to Mr. Henry as they waited for the EMT crews they had called for to arrive. Here, too, the Office could not conclude that the failure of the officers to provide immediate medical care under the circumstances amounted to a willful federal criminal civil rights violation.

The Office also considered whether there had been a criminal violation of the civil rights of Brandon Cox, who was injured by a bullet as he rode in the passenger side seat in Danroy Henry's car. This injury arose out of the same exact facts that led to Mr. Henry's shooting, and for the same reasons, the evidence does not support pursuing federal criminal charges in connection with the injury of Mr. Cox.

This Office analyzed these issues under the standard applicable to criminal cases, which is proof beyond a reasonable doubt. The Office expresses no view regarding any claims made against any party under the standard applicable to civil cases, which is proof by a preponderance of the evidence.

Accordingly, this Office's investigation into Mr. Henry's death has been closed.

Mr. Bharara expressed his deep sympathy to the family of Mr. Henry for their tragic loss.

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