



CARLTON D. JONES

**Prosecuting Attorney
Eighth Judicial District South
Room 6, Miller County Courthouse
Texarkana, Arkansas 71854
(870) 774-1002 FAX (870) 772-9315**

November 12, 2014

Investigator Paul Nall
Texarkana Arkansas Police Department
100 North State line Avenue
Texarkana, U.S.A. 75501

Re: CCN 14-0381; Chubby Cheeks Liquor
Altercation and death of Joshua Bishop

Investigator Nall,

This office has reviewed the investigative materials compiled in the above listed incident to determine whether felony charges should be filed against any party involved in the altercation. I have concluded that no felony criminal charges will be brought by this office against any of the participants.

The basic facts of what occurred prior to the start of the altercation are not in dispute. Westley Attaway and Joshua Bishop entered Chubby Cheeks Liquor Store around 5:30p.m. on January 25, 2014. The gentlemen were not in the store for an extended period of time and left the store with four bottles of liquor that they had stolen. The owners of the store, in an attempt to locate the suspects, left the store and searched the adjoining street. A confrontation occurred just south of the store on Garland Street and led to an altercation in which Mr. Attaway and Mr. Bishop were injured.

The Chubby Cheeks personnel contend that the force used by them was precipitated by the conduct of Mr. Attaway and Mr. Bishop once the store owners confronted the two gentlemen. Arkansas Code Annotated Section 5-2-609-Use of Physical Force in Defense of Property allows a store owner to apply "non-deadly physical

DEPUTY PROSECUTING ATTORNEYS:

STEPHANIE BLACK
MILLER CO.

KATIE C. CARTER
MILLER CO.

CONNIE MITCHELL
MILLER CO.

JEFFERY SAMS
MILLER CO.
(870) 774-1002

JOHN K. GRIFFIN
LAFAYETTE CO.
(870) 533-2397 • FAX (870) 533-2408

force..... to prevent or terminate the:

(1) Commission or attempted commission of theft;

Or,

(2) Subsequent flight from the commission or attempted commission of a theft.”

The investigation by the police department establishes as fact that a theft of property was/had taken place at the store, and therefore, the proprietors would be authorized to use reasonable non-deadly physical force.

The analysis, however, is compounded by the potential of a felony violation of A.C.A. Section 5-12-102 (Robbery) by Mr. Attaway and Mr. Bishop. The theft element of A.C.A. Section 5-12-102 had been completed by the men leaving the store without paying for the goods. The remaining element of resisting apprehension immediately after committing a theft, “the person employs or threatens to employ physical force upon another person,” is at issue in this incident. Although, none of the injuries sustained by Mr. Bishop or Mr. Attaway caused permanent injury or death, if the store owners believed Mr. Bishop and Mr. Attaway intended to use unlawful physical force against them, then the store owners would be justified in using physical force, including the use of deadly physical force.

Conversely, Mr. Attaway and Mr. Bishop’s position could be that they had only committed a misdemeanor theft of property and that the force used against them was excessive and unlawful. They would also further contend that the store owners were the initial aggressors in the altercation and any force deployed by them was only in response to the force used by the Chubby Cheeks personnel. So, ultimately as is the case in many incidences it comes down to the credibility of the witnesses.

On the date this incident occurred, Officer Cockrell noted that both Mr. Attaway and Mr. Bishop smelled of intoxicants. Officer Cockrell spoke with Mr. Rogers, Sr., Mr. Rogers, Jr. and Mr. Townes, he made no observation suggesting that these gentlemen were under the influence of any intoxicants. Also of importance in determining credibility is a person’s criminal history. Mr. Attaway has at least two (2) prior felony convictions and one relevant misdemeanor conviction. Two of these convictions, one (1) felony and one (1) misdemeanor, are for Domestic Violence with the misdemeanor being reduced from originally being filed as a felony. Another felony conviction came in 2012 for Possession of a Controlled Substance (Methamphetamine). Currently, Mr. Attaway is on

felony probation arising out of conduct in Miller County Circuit Court case # 46CR-2014-114-3.

Mr. Bishop had at least two (2) misdemeanor convictions in the states of California and Idaho for Battery and Domestic Violence.

Neither Mr. Rogers, Sr., Mr. Rogers, Jr., nor Mr. Townes has a felony conviction. Mr. Townes was convicted in 2009 of the offense of possession of an instrument of crime, a nonviolent misdemeanor.

Pursuant to the foregoing analysis, I do not find that felony criminal charges are warranted against any of the participants in this incident.

Sincerely,

A handwritten signature in cursive script that reads "Carlton D. Jones".

Carlton D. Jones

CJ/aw

cc: Matt Keil
Frank Poff
Mark Burgess