



GEORGIA DEPARTMENT OF LAW

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May 11, 2020

Director D. Victor Reynolds
Georgia Bureau of Investigation

Sent via email to Deputy Director Scott Dutton: scott.dutton@gbi.ga.gov

Re: Request for investigation of the prosecutorial response to the investigation of the death of Ahmaud Arbery

Dear Director Reynolds:

I am writing to request that the GBI open an investigation into a case involving possible prosecutorial misconduct by the offices of the District Attorneys of the Brunswick and Waycross Judicial Circuits. The Attorney General is concerned that the actions of these offices in possibly misrepresenting or failing to disclose information during the process of appointing a conflict prosecutor to investigate the death of Ahmaud Arbery may have constituted unprofessional conduct under O.C.G.A. § 45-11-4 or other crimes.

It is the responsibility of the Attorney General under O.C.G.A. § 15-18-5 to appoint a prosecutor when a district attorney's office is disqualified from a prosecution. The law provides that the Attorney General can only perform that function when notified of a conflict by either a district attorney or the presiding judge. For these appointments to be made appropriately, however, it is crucial that the Attorney General be provided with correct and sufficient information.

In this case, Mr. Arbery was shot and killed in Glynn County, in the Brunswick Judicial Circuit, on February 23, 2020. Four days later, on February 27, 2020, the Attorney General's Office received a letter from Jackie Johnson, the District Attorney of the Brunswick Judicial Circuit, advising that she had a conflict and that she was requesting the appointment of another prosecutor. Ms. Johnson wrote that the reason for the conflict was because the investigation into Mr. Arbery's death involved Greg McMichael, a former investigator with her office. Shortly after receipt of Ms. Johnson's letter, this office was made aware that Ms. Johnson had contacted George Barnhill, District Attorney of the Waycross Judicial Circuit, and that he had agreed to accept the case. This office confirmed with Mr. Barnhill and, pursuant to O.C.G.A. § 15-18-5, this office appointed Mr. Barnhill to prosecute the case on the same date Ms. Johnson's letter was received.

Director D. Victor Reynolds

May 11, 2020

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Not long after Mr. Barnhill's appointment, he and Ms. Johnson learned that Mr. Barnhill's son, an assistant district attorney in Ms. Johnson's office, had worked with Mr. McMichael on a prosecution involving Mr. Arbery. Mr. Barnhill, however, held onto the case for several more weeks after making this discovery. On April 7, 2020, the Attorney General received correspondence from Mr. Barnhill advising of a conflict and requesting the appointment of another prosecutor. Mr. Barnhill cited his son's involvement with Mr. McMichael and Mr. Arbery as a reason for his request.

Mr. Barnhill's letter failed to disclose his involvement in this case prior to his appointment. In her conflict letter of February 27, 2020, Ms. Johnson had advised that the Glynn County Police Department was "currently investigating" the shooting death of Mr. Arbery, and that she was requesting new counsel to advise the police. Unknown and undisclosed to the Attorney General, however, Mr. Barnhill had already provided an opinion to the Glynn County Police Department on February 24, 2020, that he did not see grounds for the arrest of any of the individuals involved in Mr. Arbery's death. He additionally stated his opinion to the Glynn County Police Department in writing that there was insufficient probable cause to make any arrests in the case and that he would be asking the Attorney General to appoint another prosecutor.

After receipt of Mr. Barnhill's conflict letter, the Attorney General then appointed District Attorney Tom Durden of the Atlantic Judicial Circuit to this case on April 13, 2020. On May 5, 2020, Mr. Durden requested that your agency conduct an investigation into Mr. Arbery's death. Two days later your agency arrested Mr. McMichael and his son for aggravated assault and felony murder for Mr. Arbery's death.

We will be glad to provide any information or assistance that you may need in furtherance of this investigation. As always, thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Blair McGowan". The signature is fluid and cursive, with the first name "Blair" written in a larger, more prominent script than the last name "McGowan".

Blair L. McGowan
Deputy Attorney General

Enclosures



Jackie L. Johnson
DISTRICT ATTORNEY
BRUNSWICK JUDICIAL CIRCUIT

GLYNN COUNTY OFFICE • 701 H Street, Box 301 • Brunswick, Georgia 31520 • (912) 554-7200 • FAX: (912) 267-5360

February 27, 2020

Blair McGowan
Assistant Attorney General
Attorney General's Office
40 Capitol Square SW
Atlanta, Georgia 30334

RE: Death investigation of Ahmaud Arbery

Dear Assistant Attorney General:

The Glynn County Police Department is currently investigating the shooting death of Ahmaud Arbery which occurred on February 23, 2020 in Glynn County. The investigation involves Greg McMichael, a former investigator with my office.

I am requesting the Attorney General to assign counsel to advise the police in the above referenced matter, as I am recusing my office. Please let me know if you have any questions or require additional information. I can be reached at (912) 554-7204.

Sincerely,

Jackie L. Johnson
District Attorney
Brunswick Judicial Circuit

cc: Karen Crittendon



GEORGIA DEPARTMENT OF LAW

40 Capitol Square SW
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR
ATTORNEY GENERAL

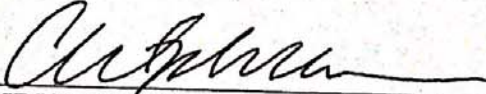
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(404) 656-3300

ADMINISTRATIVE ORDER

BY THE ATTORNEY GENERAL:

ORDERED: That under the authority contained in O.C.G.A. § 15-18-5, George Barnhill, District Attorney, Waycross Judicial Circuit or his designee, is hereby appointed to act as District Attorney Pro Tempore, Brunswick Judicial Circuit, to prosecute in the name of the State the following case, to wit: Death Investigation of Ahmaud Arbery, Glynn County and pursuant to O.C.G.A. § 15-18-5 (c) shall receive no additional compensation for such services except that actual expenses incurred shall be reimbursed by Glynn County at the same rate as provided for district attorneys in O.C.G.A. § 15-18-12.

This 27th day of February, 2020.


CHRISTOPHER M. CARR, ATTORNEY GENERAL



**OFFICE OF THE DISTRICT ATTORNEY
WAYCROSS JUDICIAL CIRCUIT**

George E. Barnhill
District Attorney

306 Albany Avenue
Waycross, Georgia 31501

(912) 287-4395
FAX (912) 287-4399

Captain Tom Jump
Glynn County Police Department
Investigation Division
157 Public Safety Blvd.
Brunswick, GA 31525

Email: tjump@glynncounty-ga.gov

Ref: Glynn County, The Shooting death of Ahmaud Arbery, Feb 23rd, 2020

Dear Captain Jump:

My office received the Arbery autopsy report [dated 4/1/2020] yesterday and have reviewed it yesterday and this morning. We were waiting on this important evidentiary article before finalizing our opinions.

However, since we were initially requested to handle the case the victim's mother has clearly expressed she wants myself and my office off the case. She sees a conflict in that my son works in the Brunswick District Attorney's Office where Greg McMichael retired some time ago. She believes there are kinships between the parties [there are not] and has made other unfounded allegations of bias[es]. As such, I believe it is better for my office to step out and am going to recuse myself and the Assistants working for me from handling the case. I am contacting the Georgia Attorney General Office and seeking their assistance in finding another District Attorney in the State to handle the further 'evaluation for prosecution' in this case. That is, to determine whether there is sufficient evidence on which to make a Grand Jury presentation or not.

Given the Governor's current shelter in place order and Justice Melton's Judicial Emergency Order; I can not venture a guess as to when they will move on this request, and once another is found; when that District Attorney will have the staff available to review this casefile. I hope for all involved it will move along as quickly as possible.

After talking by telephone with you yesterday, I appreciate there is immediate pressure on your department as to the issue of "Arrest". Since I have already given you an initial opinion the day after the shooting, I feel I can still comment on this limited issue.

First,

I am the current elected District Attorney for the Waycross Circuit, I have worked as a criminal prosecutor for some 36 years. As an Assistant District Attorney in Waycross and Brunswick, as Chief Assistant in Waycross for 20 years and served as the District Attorney the last 5 years; I have been actively involved in over 100 murder cases and assisted other prosecutors with at least 100 more. I have no idea how many Aggravated Assault cases involving gunshots and wounds of all types; Plus I have attended countless schools, classes and seminars on criminal prosecution and criminal acts and evidence. Myself and one of my Senior Trial Attorneys have reviewed the evidence extensively and concur on all points.

Second,

As to the case at hand: It is my professional belief the autopsy confirms what we had already viewed as shown in the video tape, with the photographs & from the witness statements taken immediately at the scene. The autopsy supports the initial opinion we gave you on February 24th, 2020 at the briefing room in the Glynn County Police Department after reviewing the evidence you had at that time. We do not see grounds for an arrest of any of the three parties.

Third,

It appears Travis McMichael, Greg McMichael, and Bryan William were following, in 'hot pursuit', a burglary suspect, with solid first hand probable cause, in their neighborhood, and asking/ telling him to stop. It appears their intent was to stop and hold this criminal suspect until law enforcement arrived. Under Georgia Law this is perfectly legal,

OCGA 17-4-60 "A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion."

Fourth,

It clearly appears Travis McMichael and Greg McMichael had firearms being carried in an open fashion. The investigation shows neither of them to be convicted felons or under felony supervision, they were in a motor vehicle owned by Travis McMichael. Under Georgia Law this is legal open carry.

OCGA 16-11-126

"a) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a weapon or long gun on his or her property or inside his or her home, motor vehicle, or place of business without a valid weapons carry license.

(b) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a long gun without a valid weapons carry license, provided that if the long gun is loaded, it shall only be carried in an open and fully exposed manner."

Fifth,

The video made by William Bryan clearly shows the shooting in real time. From said video it appears Ahmaud Arbery was running along the right side of the McMichael truck then abruptly turns 90 degrees to the left and attacks Travis McMichael who was standing at the front left corner of the truck. A brief skirmish ensues in which it appear Arbery strikes McMichael and appears to grab the shotgun and pull it from McMichael. The 1st shot is through Arbery's right hand palm which is consistent with him grabbing and pulling the shotgun at the barrel tip, the 2nd and 3rd wounds are consistent with the struggle for the shotgun as depicted in the video, the angle of the 2nd shot with the rear of the buttstock being pushed away and down from the fight are also consistent with the upward angle of blood plume shown in the video and that McMichael was attempting to push the gun away from Arbery while Arbery was pulling it toward himself. The 3rd shot too appears to be in a struggle over the gun. The angle of the shots and the video show this was from the beginning or almost immediately became-- a fight over the shotgun. Given the fact Arbery initiated the fight, at the point Arbery grabbed the shotgun, under Georgia Law, McMichael was allowed to use deadly force to protect himself. Just as importantly, while we know McMichael had his finger on the trigger, we do not know who caused the firings. Arbery would only had to pull the shotgun approximately 1/16th to 1/8th of one inch to fire the weapon himself and in the height of an altercation this is entirely possible. Arbery's mental health records & prior convictions help explain his apparent aggressive nature and his possible thought pattern to attack an armed man.

OCGA 16-3-21 Use of Force in Defense, once confronted with a deadly force situation an individual is allowed to use deadly force to defend themselves or others OCGA 16-3-23.1 Georgia's No Duty to Retreat Law, an individual is not required to back away from or submit to an attack; OCGA 16-3-24 [b] The use of force which is intended or likely to cause death or great bodily harm to prevent trespass on or other tortious or criminal interference with real property other than a habitation or personal property is not justified unless the person using such force reasonably believes that it is necessary to prevent the commission of a forcible felony.

OCGA 16-3-24.2 A person properly and legally defending themselves is immune from prosecution

For the above and foregoing reasons, it is our conclusion there is insufficient probable cause to issue arrest warrants at this time.

As to any further issues on whether to present this to a Glynn County Grand jury, that will have to wait for the next District Attorney's review. **Please consider this an OPEN file until that decision is made and restrict the release of any information under Georgia Open Records Act requests.**

Sincerely,

George E. Barnhill
District Attorney
Waycross Judicial Circuit

From: George E Barnhill <gebarnhill@pacga.org>
Sent: Tuesday, April 07, 2020 8:42 PM
To: Blair McGowan; Karen Crittendon
Cc: Tom Jump; Alexander Markowich; Michelle McIntire; Jackie Johnson
Subject: Glynn County Shooting, Greg and Travis McMichael

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ref: Feb 23rd 2020 Shooting in Glynn County
Involving: Greg McMichael, Travis McMichael, and Ahmuad Arbery

Requesting Appointment of a 2nd Conflict District Attorney

Dear Ms Crittendon and McGowan:

Thank you again for emailing back. This is a case without any law enforcement warrants. I agreed to take the file from Jackie Johnson, the District Attorney in Glynn County, for review to see if it justified and arrest and/or presentation to a Glynn County Grand Jury.

Greg McMichael, a party/ witness in the matter, retired from law enforcement then worked at her office as an investigator for several years up until re-retiring about 10 months ago. His son, whom I have never met and do not know, is the shooter in this case. Ahmaud Arbery was shot and died in this confrontation.

Upon taking the case, my office began gathering the array of materials one normally gathers. My Chief Victim Assistant, Tammy Horlock, talked several times with Mr Arbery's family; I spoke to the mother once; Senior ADA Michelle McIntire was monitoring the collection of information through Capt. Tom Jump GPD. We had told the family it would take a month to 6 weeks to get the autopsy report. They apparently did not believe us. Note: Ms McIntire in my office received the autopsy April 2nd. I know they called the Attorney General Office sometime during this time .

My son works as an Assistant District Attorney for Jackie Johnson. Unknown to Jackie and me until about 3-4 weeks ago, he had handled a previous felony probation revocation and pleading Ahmaud Arbery to a felony in her Glynn County Office.

A local 'rabble rouser' has taken up this cause and begun publishing wild and factually incorrect and legally wrong accusations on Facebook and other social media formats calling for marches and physical affronts be made against the McMichaels at their homes, and my son's home in Brunswick etc.. . To date I have seen no direct connection between the 'rouser' and the family other than their increased calls for my office to be removed, that I must be biased.

This family are not strangers to the local criminal justice system. From best we can tell, Ahmauds older brother has gone to prison in the past and is currently in the Glynn jail, without bond, awaiting new felony prosecution. It also appears a cousin has been prosecuted by DA Johnson's office. Ahmaud, the deceased, had a juvenile and adult felony record.

In that regard, given the connection between myself and my son, and my son having worked with Greg McMichael for several years, and now known that he and Greg McMichael both helped with the previous prosecution of Arbery; I believe it is in the best interest of justice to recuse both myself and my office from this particular investigation.

In doing so I request another District Attorney be appointed to review the file and give advice to the Glynn County Police Department and determine whether there is anything justifying a presentation to a Glynn County Grand Jury.

I believe we have the majority of the information at our office. There is a decent cell phone video of the entire shooting incident, also video of Arbery burglarizing a home immediately preceding the chase and confrontation. We have a witness list and have done research we would include with the file to be available for the new prosecutor's use if desired.

Thank you for your help in this matter

George E Barnhill
District Attorney
Waycross Judicial Circuit

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Waycross GA 31501

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office FAX 912 287 4399
my email gebarnhill@gapac.org

if I am not available ask for Michelle