

# The Washington Times

## Civil rights violations hard to prove to Justice Department

By Phillip Swarts

March 4, 2015

Neither police officer Darren Wilson in Missouri nor neighborhood watchman George Zimmerman in Florida was indicted on civil rights violations in their shootings of unarmed young black men, bringing into question why the Justice Department investigated in the first place and whether the bar is set too high to convict on such statutes.

Civil rights charges are “very difficult to bring forth and they also have a very harsh proof that’s needed before a case can be found,” Barry Slotnick, a New York City defense lawyer told The Washington Times, adding that federal civil rights charges are often “few and far between.”

On Wednesday, the Justice Department ended a lengthy investigation into Mr. Wilson, who shot and killed Michael Brown in August in the streets of Ferguson, Missouri. Although the department found ample evidence of racial bias within the police force in a separate report released Wednesday, there was not enough evidence for criminal charges. A state grand jury in November decided not to indict Mr. Wilson for the same offense after witness credibility was drawn into question and forensic evidence was reviewed.

Likewise, last month, Justice last month cleared Mr. Zimmerman in the fatal shooting of Trayvon Martin in 2012, on lack of sufficient evidence to pursue hate-crime charges. Mr. Zimmerman said Trayvon attacked him and he shot his gun in self-defense. A state jury also exonerated Mr. Zimmerman on criminal charges before the Justice’s ruling.

Both cases became national flashpoints on race relations, sparking debate on policing methods and self-defense laws, and prompting the federal investigations.

However, despite pressure to charge both men, legal analysts said the Justice Department made the right call in exonerating them and warned such cases must always follow the evidence that’s presented.

In regard to Mr. Wilson: “This was a case where the cart got ahead of the horse,” said Horace Cooper, a legal analyst at the National Center for Public Policy Research, a conservative think-tank. “Once that Missouri grand jury issued its findings, it was pretty clear there was no reason for there to have been a criminal case whatsoever,” he said.

Roger Pilon, the founder and director of constitutional studies at the Cato Institute, said that despite the fact that instances of police misconduct is a problem nationwide, getting to the bottom of the case is often difficult because it involves so many “controverted facts.”

“What makes these cases so difficult and so deeply troubling is that they often are not clear-cut cases where the right and wrong are clear for all,” he said. “It seems that only when the facts are fairly clear do you get the decision to either prosecute or file a civil rights action.”

In a speech at the Justice Department’s Washington headquarters Wednesday, Attorney General Eric H. Holder Jr. was careful to defend the agency’s decision not to charge Mr. Wilson with any civil rights violations.

“This conclusion represents the sound, considered and independent judgment of the expert career prosecutors within the Department of Justice,” Mr. Holder said, adding that he concurred with the conclusion reached.

“The strength and integrity of America’s justice system has always rested on its ability to deliver impartial results in precisely these types of difficult circumstances, adhering strictly to the facts and the law, regardless of assumptions,” Mr. Holder said.

His remarks regarding Mr. Zimmerman were similar, saying after a “comprehensive examination” there was not enough evidence for a federal hate crime prosecution, but adding Trayvon’s “premature death necessitates that we continue the dialogue and be unafraid of confronting the issues and tensions his passing brought to the surface.”

On Wednesday, the Justice Department announced that it had found a pattern of race-based abuses by Ferguson law enforcement agencies including use of excessive force.

Mr. Holder suggested that the civil rights violations by the Ferguson Police Department at large may be a “possible explanation” for why “such a strong alternative version of events was able to take hold so swiftly and be accepted so readily” about Mr. Wilson.

The Brown family and their supporters turned their attention to the Justice Department in hopes that it would bring civil rights charges against the police officer involved, much as the department had indicted the officers involved in the 1991 beating of Rodney King in California.

But the Justice announcement essentially closes the Ferguson case as far as Mr. Wilson is concerned.

Civil rights cases are hard to bring, and in February, in an interview with Politico, Mr. Holder indicated he would like to see the bar lowered, potentially making it easier for the Justice Department to convict in certain cases.

“I think some serious consideration needs to be given to the standard of proof that has to be met before federal involvement is appropriate, and that’s something that I am going to be talking about before I leave office,” Mr. Holder said.

Mr. Cooper, who is black, slammed Mr. Holder’s comments and said that civil rights charges must follow the law just like any other criminal violation.

“What he is essentially saying is you can be accused in a criminal court in the state — of murder, robbery or whatever — and either be acquitted or found by a judge of being ineligible for prosecution. But on the very same effort you can be convicted at the federal level,” he said. “I think that’s dangerous and very likely unconstitutional.”

Mr. Slotnick agrees.

“I think that until Congress decides to pass a law with regards to civil rights actions and lowering the burden of proof, there’s nothing to talk about,” he said. “The fact is there is a standard of proof that we have in cases that come out of civil rights actions that have to be followed.”

Ron Hosko, president of the Law Enforcement Legal Defense Fund and former assistant director of the FBI, warned trying to “lower the bar” of evidence needed for convictions can be a slippery slope for officers who often are placed in dangerous situations in the line of duty. He said he believes there was a “rush to judgment” about Mr. Wilson’s actions.

“That officer is owed the presumption of innocence just like anyone else who might be suspected of a crime,” Mr. Hosko said.

He said he believes the Justice Department has known since the grand jury’s verdict that there was no evidence to convict Mr. Wilson, but may have waited to announce that until today so the department could pair it with its review of the Ferguson Police Department in general.

“Where do you lower the bar to? Do you prosecute someone whose actions are justified?” he said. “Do we lower the bar so we’re going to indict and charge innocent cops who are doing their job?”