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UPDATED: Bellaire Officer's Upcoming Trial To Lift Secrecy On Explosive Case

March 4, 2010

The public will finally get answers to ongoing questions about one of the darkest incidents in Bellaire's recent history as the criminal trial of former Bellaire Police Officer Jeffrey Cotton begins in May. ~~next week.~~ *Note: Trial was reset for May 3. Read more here (http://instantnewsbellaire.com/2010/03/08/7230/).*

The trial on Cotton's charges of aggravated assault by a public servant is set for May 3 ~~March 8~~ in the Harris County 232nd Criminal Court, but it could be postponed because another trial is still ongoing in that court, said David Donahue, legal administrator for Cotton's attorney, Paul Aman.

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"I believe prosecution is ready, and we're ready. Now it's just a matter of getting in there," Donahue said. "It's tough on everybody."

Many facts about the criminal case against Cotton have been kept secret since his indictment in April 2009. Cotton is accused in the Dec. 31, 2008 shooting of Bellaire resident Robbie Tolan, who was stopped by police on his front lawn after officers mistakenly thought he and his cousin were driving a stolen vehicle.

After the shooting, the Bellaire Police Department released statements that an "altercation" lead to Cotton shooting Tolan. But a civil lawsuit the Tolan family filed in

April 2009 against Cotton, city officials and the police department challenges that story.

The Harris County District Attorney's Office investigated the incident, and in April 2009 prosecutors went straight to the grand jury with the investigation findings and secured the indictment. In a rare occurrence, this bypassed the requirement for a probable cause hearing that would have made public the criminal complaint against Cotton.

Donahue said that once Cotton's trial begins, he estimates choosing a jury could take a full day. The actual trial could begin in the late afternoon, or the next morning.

"We feel the prosecution is going to take at least a day, maybe a day and a half," Donahue said. "We're looking probably to take the rest. Probably three days, maybe four."

[Assistant District Attorney Clint Greenwood, who is prosecuting the case, agreed the trial may take about a week.](#) Greenwood has said previously he is unable to divulge information about the case due to the secretive nature of grand jury proceedings.

Afterwards, the jury will deliberate on the verdict — Jurors must agree unanimously, which can take time if there are any holdouts. If the jury finds Cotton is guilty, the sentencing phase of the trial will follow.

"It's just going to be an acquittal, they're not going to find him guilty," Donahue said.

Previously, the trial was scheduled to begin on Jan. 25. Cotton's defense attorney, Paul Aman, asked the court to postpone it because an expert witness was not available at that time, and another of Cotton's attorneys was scheduled to be in court on another case. Also, Aman was still waiting on completion of a court order for Robbie Tolan's medical records from the Bellaire Fire Department Emergency Medical Service.

According to court documents, expert witness Jim Conley said he couldn't attend the Jan. 25 trial because his family had planned a homecoming in Florida for his daughter, who was on leave from serving in Iraq with the U.S. Army Reserves. Aman plans to call Conley as a witness to "testify about the use of force by police officers and police tactics," according to court records filed on Jan. 11.

Because facts in the criminal case haven't been aired in public, and Bellaire officials will not discuss the case, the most information about what happened that night comes from the Tolan family's civil lawsuit. The lawsuit accuses Cotton of throwing Robbie's mother, Marian Tolan, against the garage door when she protested there was a misunderstanding, and her son was not driving a stolen vehicle.

While he was laying on the ground as police had instructed, Robbie Tolan then yelled at Cotton, "Get your f***ing hands off my mom," the lawsuit said. (Note: InstantNewsWestU removed the expletive.)

"Immediately after Robbie told Cotton to stop assaulting his mother, Cotton drew his gun and shot Robbie in the chest," the lawsuit said. Doctors couldn't remove the bullet from Tolan's liver, casting doubt about whether he will be able to pursue his lifelong dream of becoming a professional baseball player, like his father Bobby

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Tolan. After the shooting, police separated the Tolan family in the backs of police cars and refused to tell them whether Robbie was dead or alive, the lawsuit said.

The Tolans' lawsuit claims the incident was a result of racial profiling and there is a culture of racism running rampant in the Bellaire Police Department. The Tolan family is black, while the officers involved in the incident are white. Read more about the family's lawsuit here (<http://instantnewsbellaire.com/2010/01/11/6211/>).

~~Phone calls to Assistant District Attorney Clint Greenwood, who is prosecuting the case against Cotton, were not immediately returned today. InstantNewsWestU will update this story later if he calls back.~~

But everything will come out in court next week, or whenever the court is clear for the trial to begin. Check InstantNewsWestU for updates about the proceedings.

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