

Arkansas Democrat-Gazette: Northwest Edition (AR)

December 15, 2006

Section: Northwest Arkansas

Page: 13

Murder charge filed in shootout

Bystander died in police pursuit

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Article Text:

FORT SMITH - Prosecutors filed a capital murder charge Thursday against a man police say was involved in a shootout during which a bystander was fatally shot.

Gary Adam Nixon, 34, of Van Buren was charged in two cases in Sebastian County Circuit Court relating to the two different locations where offenses occurred, said Dan Shue, Sebastian County chief deputy prosecuting attorney.

The capital murder charge stems from a shootout Tuesday with officers near an apartment complex at South 16th and I streets. Olivia Stewart, 41, who was standing outside the complex a block away, died after she was struck in the chest with a stray bullet.

A conviction for capital murder carries a sentence of death or life in prison without parole.

The Fort Smith Police Department is investigating the shooting but has not concluded who fired the shot that killed Stewart.

The charge against Nixon contends that he acted "with the premeditated and deliberated purpose of causing the death" of police officers who were "acting in the line of duty." In doing so, the charge states, "he caused the death of Olivia Stewart."

"If he contributed to her death, it caused her death," Shue said. "He's criminally responsible "

Police say that when officer Jeff Carter pulled over a 1991 Oldsmobile Cutlass occupied by Nixon and Shawn Paul Mumbower, 31, about a block from the apartments, Nixon got out and pointed a sawed-off shotgun at Carter. A report said Carter believed Nixon fired the gun at him and he returned fire.

Moments later, while running from Carter, Nixon encountered detective Cpl. Ron Scamardo and shot at him. Scamardo shot twice at Nixon before Nixon surrendered.

Nixon was charged with two counts of attempted capital murder. He also was charged with being a felon in possession of a firearm and being a habitual offender.

The second case includes two counts of aggravated assault against Nixon, alleging he pointed the shotgun at officer Daniel Honeycutt and Phillip Walston at the Kum & Go convenience store shortly before the shootout near the apartments.

Honeycutt had responded to the store on a report of a man with a gun. Reports say when Honeycutt approached the maroon Oldsmobile, Nixon raised up in the back seat and pointed the shotgun at him. Witnesses at the store said Nixon also pointed the gun at Walston as the bystander sat in a car outside the store before Honeycutt arrived.

The second case also charged Nixon with being a felon in possession of a firearm and a habitual criminal.

Shue said Mumbower, who police say was driving the car, is not being charged with offenses connected to the shooting because of insufficient evidence but will be prosecuted on a petition

to revoke a suspended sentence.

Circuit Court records show Mumbower was sentenced to one year in prison with nine years suspended in April 2005 after pleading guilty to a felony theft by receiving charge.

The state also filed a civil forfeiture case Wednesday against Mumbower to seize the Oldsmobile on the grounds it contained or was being used for drug possession.

Both men were being held in the Sebastian County jail without bond and are scheduled to be arraigned on the charges Wednesday, Shue said.

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