

STATE

After 6 years, Fitchburg man freed in case of mistaken ID

Gary V. Murray TELEGRAM & GAZETTE STAFF

Published 11:18 p.m. ET Dec. 13, 2012 | Updated 4:36 a.m. ET Dec. 14, 2012

Based on what they said was a case of mistaken identification, prosecutors dropped murder, weapons and assault charges yesterday against one of two men who were alleged to have been involved in a fatal shooting six years ago at a girl's 15th birthday celebration in Fitchburg.

Assistant District Attorney Terrence M. Reidy filed a nolle prosequi yesterday afternoon in Worcester Superior Court in the case of Xavier Santiago, who spent more than six years in custody after being charged in the Oct. 8, 2006, shooting death of 24-year-old Julio X. Colon.

Mr. Colon was gunned down at the Finnish Center at Saima Park in Fitchburg during a Quinceanera celebration.

A nolle prosequi or nol pros is an entry in the court record reflecting a prosecutor's decision not to proceed with a case after charges have been lodged.

Investigators had alleged that Mr. Santiago and a co-defendant, Jonathan DeJesus, were barred from the social event, left, and returned with firearms. Three other men were injured in the hail of gunfire that took Mr. Colon's life.

Mr. Santiago, who was 18 when he was arrested the day after the shootings, was not in court when the nol pros was filed. His lawyer, Christopher P. LoConto, said Mr. Santiago was being held at the Middlesex County Jail in Cambridge and would be released from there.

Murder, assault and firearm charges are still pending against Mr. DeJesus and District Attorney Joseph D. Early Jr. said the investigation into the shootings remained open.

"There was someone who initially identified him as being involved who in subsequent statements said he was not," Mr. LoConto said of his client. "He's just thrilled. He's not

angry. He's just happy.”

Mr. LoConto praised the district attorney's office for “doing the right thing.”

“We received some information several months ago that the defendant was not the murderer,” said Mr. Early, who was not yet the district attorney when Mr. Santiago was charged. “Our state police actively investigated that information. As a result, original witnesses to the crime were re-interviewed.

“Based on this information, the determination was made to nol pros the case with regard to one of the co-defendants. I believe he was misidentified originally,” Mr. Early said of Mr. Santiago.

Mr. Reidy told Judge James R. Lemire when the nol pros was filed in open court that Mr. Colon's family had been notified that the charges against Mr. Santiago were being dropped.

“We never stop investigating a case. There is no statute of limitations on murder,” Mr. Early said, adding that the case against Mr. DeJesus remains open and that, “the entire case is still being actively investigated.”