

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-32M-804

Date 09/29/2021

To: Chief, Criminal Section

Re: Special Agent XXXXX et al.
Federal Bureau of Investigation,
Baton Rouge, Louisiana - Subjects;
Milton Scott (deceased) - Victim
CIVIL RIGHTS

It is recommended that the above case be closed for the following reasons:

1. Synopsis of the Investigative Findings:

On July 18, 1973, Federal Bureau of Investigation (FBI) Special Agent (SA) XXX shot and killed Milton Leon Scott, who was Black and Muslim, in front of Mr. Scott's home in Baton Rouge, Louisiana. SA XXX and SA XXX had gone to the victim's home to arrest him, believing incorrectly that he had gone AWOL from the army. As will be explained at greater

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To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

Date

Deputy Chief, Cold Case Unit

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length below, a man named XXX had stolen the victim's identity, enlisted in the army, and then gone AWOL. The SAs claimed that SA XXX shot Mr. Scott because he struggled with them and attempted repeatedly to take their weapons. SA XXX stated that Mr. Scott picked up an object from the ground, which SA XXX thought was SA XXX's gun (but was in fact SA XXX's blackjack). When Mr. Scott then lunged at SA XXX, SA XXX shot him.

This case was previously closed, but we reopened it after a meeting with Mr. Scott's family in which we were provided with additional information. Although the additional information was not sufficient to change our decision, we believed it important to include in the closing memorandum. For the reasons set forth below, the case will be closed without prosecution. The statute of limitations has long run on any federal crimes; moreover, evidence is insufficient to prove that any agent willfully deprived Mr. Scott of a constitutionally protected right or that any agent, motivated by Mr. Scott's race, color, or religion, deprived him of a right protected under then-existing civil rights laws. Due to the insufficiency of any evidence of misconduct, the case will not be referred to the state for prosecution. Additionally, the defendants could remove any state criminal prosecution to federal court pursuant to 28 U.S.C. § 1442(a)(1).¹

Complaints

In 2012, the Department of Justice received a complaint from XXXXX, XXX Mr. Scott's XXX, XXX.² About a year later, XXX again wrote to the Department after receiving various documents pursuant to a FOIA request. Among other things, XXX alleged that the agents lied when they said they acted in self-defense during a struggle. XXX stated that the majority of Mr. Scott's injuries were the ones inflicted by the agents: the gunshot wounds and a skull-fracture; the only other injury was a cut to Mr. Scott's right pinky finger. XXX also stated that, while SA XXX was injured, it was only after the shooting when Mr. Scott fell on top of him.³ In XXX

¹ "(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue."

² We were also forwarded XXX's complaints to the Office of the Inspector General (OIG).

³ XXX alleged that, according to the FOIA documents, SA XXX's injuries were sustained after the shooting. It is likely that XXX is referring to a September 19, 1973, FBI memo discussing a request for a preliminary investigation by the Section. According to the document, the Section was particularly concerned with the timing of one of the agents' injuries. Specifically, the Section had "received information" from USA Douglas M. Gonzales indicating that "the agent on the ground" sustained his facial injuries after the *other* agent shot Mr. Scott, and Mr. Scott fell on the agent on the ground causing that agent's injuries. Thus, it appears that the Section was concerned with the timing of SA XXX's injuries not SA XXX's. The casefile contains only one other reference to the Civil Rights Division. In a letter, dated February 7, 1975, from the Director of the FBI to the AAG for the Civil Division, the Director states "The Civil Rights Division is aware of this matter and has had investigation conducted regarding it." This suggests that the investigation was closed by February 1975.

XXX's 2013 letter, XXX stated that the subjects violated Mr. Scott's rights by kicking down the door without a warrant.

As will be discussed at greater length later in this memorandum, Mr. Scott's XXX filed a suit under the Federal Tort Claims Act (FTCA) in 1974. In it, XXXXX (XXX)⁴ argued that the agents acted negligently, not intentionally.

At the time of XXX's complaints, the Emmett Till Unsolved Civil Rights Crime Act of 2007 (the Act) applied only to deaths that occurred on or before December 31, 1969. However, the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016, extended the reach of the Act to include cold case deaths that occurred on or before December 31, 1979, thereby bringing the death of Mr. Scott within the purview of the Act.

Supplemental information received from Mr. Scott's family

The Criminal Section closed this matter in May 2019, and notified XXX and XXX.⁵ In August 2020, Criminal Section attorneys met telephonically with members of Mr. Scott's family; specifically, with his XXX, XXX; XXX, XXX, who had been present XXX at the time of Mr. Scott's death; and his XXX, XXX, who provided a more detailed recollection of the events surrounding the death of Mr. Scott than had been included in XXX's original complaints. XXX's 2020 account, which is discussed at greater length later in this memorandum, did not alter our decision to close this matter.

Initial investigation

Mr. Scott's death was investigated primarily by the Baton Rouge Police Department (BRPD) and by the East Baton Rouge Parish District Attorney's Office (DA). The SAs gave statements to BRPD at the scene, and the FBI also obtained signed statements from both SAs on July 19, 1973. The following is a summary of the investigative findings.

Relevant events preceding Mr. Scott's death

In 1970, Mr. Scott met a man named XXXXXX in San Francisco. Through various contacts with Mr. Scott, both in 1970 and in January or February 1972, XXX pried sufficient background information from Mr. Scott to allow XXX to obtain a birth certificate, driver's license, and Social Security card, all in Mr. Scott's name.

In April 1972, XXX enlisted in the army at Fort Ord, California, using Mr. Scott's identity. On October 24, 1972, XXX went AWOL from Fort Ord and the army asked the FBI to find and arrest "Milton Scott" for desertion.⁶ On June 28, 1973, the Baton Rouge office of the

⁴ At the time of the shooting and the subsequent federal civil suit, XXX was referred to as XXX.

⁵ XXX reported that XXX did not receive the notification.

⁶ Desertion is defined in 10 U.S.C.A. § 885. Title 10 U.S.C.A. § 808 in turn defines who may make an arrest for

FBI received a request to locate Mr. Scott, and SA XXX was assigned.

Shortly after the shooting, through fingerprint checks, the FBI learned that XXX⁷ was the army deserter, and that, at the time of the shooting, XXX was in San Quentin, serving a seven-year sentence.

Accounts of the shooting

Accounts of the incident were provided by XXX; by the subject agents; by three sanitation workers who witnessed parts of the incident; and by a neighbor of the Scotts who witnessed the aftermath of the shooting. The subjects' account that Mr. Scott was combative was directly supported by the sanitation worker who witnessed the greatest part of the incident. Additionally, as will be discussed with respect to XXX's August 2020 statement, XXX too confirmed that Mr. Scott fought back, although XXX indicated he was justified in doing so.

XXX's account

XXX was not interviewed in 1973 by either the BRPD or the FBI.⁸ In 2012, however, XXX (XXXXX), included brief summaries of XXX's account in the complaints we reviewed. Additionally, in August 2020, XXX was interviewed by Criminal Section attorneys and that account is discussed below. The accounts we reviewed were largely consistent, except that, while the summaries provided by XXX suggested that XXX heard, but did not see, either of the shots being fired, XXX stated in XXX 2020 interview that XXX saw one of the agents fire the second shot into Mr. Scott's chest.

According to XXX, Mr. Scott was working for the athletic department of Louisiana State University (LSU) at the time of his death. On a number of occasions, Mr. Scott returned from

desertion: "Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces."

⁷ The Identification Division (ID) of the FBI compared Mr. Scott's fingerprints, obtained on July 18, 1973 (after the shooting), to the enlistment prints provided by the army for the deserter, and determined that they did not match. Shortly after that, a "full technical fingerprint search" of the files in the ID revealed that the deserter's prints were those of XXX.

⁸ The local investigators reportedly described XXX as "hostile" when they contacted XXX shortly after the shooting. As a result, the FBI did not contact XXX for an interview. According to an August 21, 1973, FBI memorandum, a Criminal Section attorney opined that, while there had been an independent local investigation and that a grand jury was considering the matter, it was important to interview XXX. The attorney was reportedly "reminded" that an FBI interview might raise the possibility of a future claim of "intimidation" by XXX, given that XXX might be considering a civil suit. The attorney replied that he understood but that he planned to have a Department attorney contact XXX to obtain XXX account of the events surrounding Mr. Scott's death. The attorney opined further that XXX may ultimately "resist interview," no matter who contacted XXX. The file contains no indication as to whether, or when a Department attorney contacted XXX in 1973. In August 2020, XXX stated that XXX could not recall anyone asking to interview XXX in 1973. In May 1974, an attorney representing XXX filed an administrative claim with the Department followed, in December 1974, by an FTCA complaint in the Middle District of Louisiana.

work and told XXX that he had seen unidentified individuals following him and taking pictures of him.⁹ On the day of the shooting, Mr. Scott returned from work at LSU early and, about an hour later, there was a knock at the door. Both Mr. Scott and XXX were lying down. XXX, XXX, was asleep, but was awakened by the knock at the door and jumped up. At Mr. Scott's request, XXX went back to the bed with XXX. XXX heard Mr. Scott ask the people at the door to identify themselves. Instead of responding, the agents asked who the occupants of the house were and announced that they were looking for Milton Scott. Mr. Scott identified himself as Milton Scott and again asked the agents to tell him who they were. One of the agents asked Mr. Scott if he had deserted the army and informed him that they had come to take him in. Mr. Scott replied that he had not been in the army and added that he had seen them following him that week and would not go anywhere with them. Mr. Scott then slammed the door closed. The agents kicked open the door.¹⁰

From the bedroom, XXX heard an altercation start between Mr. Scott and the agents. XXX heard Mr. Scott tell the agents that they could not come into his house with their guns drawn. The altercation started in the front room, and then moved onto the porch, down the front steps, and, eventually, to the parking area. XXX moved to the front door and, when XXX got there, the agents and Mr. Scott were still fighting. Mr. Scott, who had a much smaller build than either of the agents, was "fighting back hard" for his life. One of the agents was beating him with a nightstick. XXX heard, but did not see, the first gunshot which was to Mr. Scott's abdomen. XXX was on the porch when one of the agents shot the second shot into Mr. Scott's chest.

XXX recounted that XXX ran out to Mr. Scott and said, "look what you did TO XXX!" XXX then picked up and cradled Mr. Scott's head, and heard him making gurgling sounds. XXX was with him when he took his last breath. XXX then heard XXX, XXX, who was crying, tell the agents, "look what you all have done, you all shot XXX." At that point, a number of the neighbors started coming out to the street. The agents were "red-faced and mad," because they had been "whipped." The agents referred to XXX using a racial slur, and told XXX that if XXX did not get XXX out of the way, they were going to do the same thing to XXX as they had done to Mr. Scott. Within 10 minutes of the shooting, what appeared to be the entire BRPD had arrived at the scene.

During the interview with Criminal Section attorneys, XXX and XXX family expressed particular concern about the fact that the agents had not more carefully confirmed Mr. Scott's identity before coming to his home to arrest him.

Subjects' accounts

⁹ As is indicated in footnote 11, according to the subject SAs, they did not know Mr. Scott's correct address until they were given it by XXX minutes before the shooting.

¹⁰ According to XXX, a footprint remained on the door for a long time.

The following account is based primarily on SAs XXX and XXX's signed July 19, 1973, statements.

About a week prior to the incident, SA XXX obtained a copy of Mr. Scott's Louisiana driver's license with his picture on it. When SAs XXX and XXX reached the front door of Mr. Scott's house, SA XXX noticed a metal plaque outside the door that read "Milton X."¹¹ The agents claimed that until that point they had no idea that Mr. Scott was Muslim. SA XXX knocked on the door, and Mr. Scott opened it. The agents both recognized Mr. Scott from his driver's license. They both said that when they asked, Mr. Scott readily acknowledged that he was indeed Milton Scott. SA XXX identified himself as an FBI agent and told Mr. Scott that he was under arrest for desertion. Mr. Scott slammed the door. SA XXX kicked the door once. SA XXX drew his gun, and kicked the door twice, while Mr. Scott tried to hold it closed. After SA XXX's second kick, Mr. Scott opened the door. Mr. Scott lunged at SA XXX, grabbed at his face, and tried to gouge out his left eye. SA XXX fell on the porch with Mr. Scott on top of him. The two men struggled as Mr. Scott tried to take SA XXX's gun. SA XXX tried to pull Mr. Scott off SA XXX, but Mr. Scott continued to try to take SA XXX's gun and was able to slam him against a wall.

Mr. Scott wrestled SA XXX off the porch and onto the ground. SA XXX also fell off the porch. The two agents struggled with Mr. Scott. While Mr. Scott was partially on top of SA XXX, SA XXX drew his gun and hit Mr. Scott on the head with it. Mr. Scott got off SA XXX and lunged at SA XXX, and hit him with a shoulder block, causing SA XXX to fall to the ground on his back. At that point, both agents were on the ground. Mr. Scott picked up an object from the ground, rose to a semi-standing position, and leaped at SA XXX. SA XXX thought Scott was holding SA XXX's gun, so he fired twice at Mr. Scott. SA XXX estimated that he fired at Mr. Scott about two minutes after the victim opened the door and charged at SA XXX.

Mr. Scott continued toward SA XXX, but the agent used his feet to propel Mr. Scott over his head. As Mr. Scott fell over SA XXX, he kicked SA XXX in the head. Mr. Scott landed on his hands and feet and continued to try to attack SA XXX. SA XXX twisted Mr. Scott's hands behind his back, and pulled a blackjack out of Mr. Scott's hands. The blackjack belonged to SA XXX, but SA XXX had been carrying it in his back pocket. SA XXX said that he surmised that the blackjack had fallen or had been pulled out after the agents and Mr. Scott fell off the porch.

After Mr. Scott was subdued, the agents alerted the local police. Mr. Scott was pronounced dead at the scene by the East Baton Rouge Parish Coroner.

SA XXX sustained large abrasions and contusions on the left side of his face and on his arms and legs. SA XXX's left eye was inflamed. He also had contusions over his left eye,

¹¹ When SA XXX checked the 1973 City Directory, it listed an old address for Mr. Scott. On the morning of July 18, 1973, SAs XXX and XXX initially visited the old address and spoke with the resident who did not know the Scotts. The agents then visited a neighbor, XXX, who said XXX knew Mr. Scott, and confirmed that it was the same Milton Scott depicted in the photograph on the driver's license obtained by SA XXX. XXX said that the Scotts had moved around the corner to a XXXXX, and the agents drove there.

abrasions on his left hand, and several cuts inside his mouth. Both SAs were transported from the scene to a hospital, treated, and released.

The agents claimed that throughout the encounter, Mr. Scott, a member of the Nation of Islam (NOI), yelled, among other things, "Allah Akbar," and "Mohammed teaches that white devils should be dead."

SA XXX explained that the chant, which began when Mr. Scott charged out of his house, made SA XXX fearful based on information he learned in January 1972 when he assisted in investigating a confrontation between the BRPD and members of the NOI, that resulted in the deaths of two officers and two NOI members. During interviews with NOI members, SA XXX learned that, although NOI members generally carried no weapons, they were willing to attack police officers and take the officers' weapons. He also was told that they chanted phrases such as Allah Akbar to build up courage during the confrontations.

SA XXX explained that, from the moment Mr. Scott began his chant and throughout the encounter, he believed that Mr. Scott would try to take SA XXX's gun. SA XXX concluded, at one point, that Mr. Scott had, in fact, taken possession of SA XXX's gun.

Civilian Witnesses

Three city sanitation workers – **Curtis Buhler, L.W. Bradley, and Charles Mixon** - witnessed part of the incident. All three men gave statements to the DA, and were interviewed by the FBI on July 23, 1973.¹² Buhler, who appears to have seen the most, said he was picking up trash and heard a woman scream. He looked up and saw Mr. Scott push the agents off the porch. One of the agents landed behind a car and Buhler could only see one of that agent's feet; he could not see the other agent at all. Buhler then heard two shots, about one second apart. Buhler jumped on the truck and Bradley drove away. Bradley, who was in the cab of the garbage truck, heard two shots but saw nothing. Mixon heard one shot, and saw Mr. Scott and one of the agents on the ground, and a second agent "by a car."

Additionally, a neighbor of the Scotts, **Ida Mae Triplett**, was interviewed by the FBI on July 21, 1973. Mrs. Triplett stated that she heard two sounds which sounded like a car backfiring. She looked out the front window and saw the sanitation workers jump on their truck and leave. She looked toward her driveway and saw Mr. Scott (whom she recognized as her neighbor) scuffling with two white men next to her car. Mrs. Triplett moved away from her window and sat back down. She heard XXX scream, "They killed XXX." Mrs. Triplett ran outside and found XXX kneeling by the body of XXX. One of the white men (SA XXX) was standing nearby, while the other (SA XXX) was walking toward a car. Mrs. Triplett noted that SA XXX's left eye was red. Mrs. Triplett asked SA XXX whether an ambulance had been called and whether they wanted to use her phone to call one. SA XXX said that it would not be necessary as the other man had gone to his car to call. She asked SA XXX why Mr. Scott had

¹² The interviewing agents were not the subjects.

been shot, and he replied that Mr. Scott was a deserter. At that point, Mrs. Triplett brought XXX into her home.

Medical evidence

The autopsy revealed that Mr. Scott died as a result of two gunshot wounds: one to the lower abdomen, and one to the upper left chest.¹³ He had also sustained a “Z-shaped, hairline [...] non-depressed” fracture to the inner-table of the skull. However, “there had been no damage to the brain and no hemorrhaging inside the skull.”¹⁴ The only other listed injuries were a 2-centimeter laceration on the skull, under which was a 0.5-centimeter groove in the outer table of the skull, and a 0.5-centimeter laceration to the back of Mr. Scott’s right pinky finger.

Other proceedings

An East Baton Rouge Parish grand jury convened on August 16, 1973, and began hearing testimony on the shooting. According to contemporaneous news articles, XXX and XXX were among the grand jury witnesses. In November 1973, the grand jury declined to indict the subject SAs.

In 1974, XXX filed a federal civil suit action under the Federal Tort Claims Act (FTCA), claiming that Mr. Scott’s death was as a “direct and proximate result of the negligence, carelessness, and unlawful conduct,” of the defendant (the United States). The United States filed a motion to dismiss, arguing that the court lacked jurisdiction because under the version of the FTCA that was in force at the time of the shooting, the United States could not be sued for assault and battery. The FTCA was amended in 1974 to allow for such suits, but the amendment stated specifically that it could only be applied prospectively. On April 3, 1975, the District Court granted the motion, reading the complaint as alleging assault and battery. XXX appealed, arguing, among other things that the agents had not committed intentional torts against Mr. Scott, rather, that they had negligently arrested him. On December 30, 1975, the Fifth Circuit affirmed the District Court’s ruling.

2. Legal analysis:

This matter will be closed for the following reasons.

First, the statute of limitations has run on any potential federal offense and had run by 2012 when XXX first complained to the Department. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations.

¹³ The autopsy report describes the abdomen entry wound as being 1 centimeter (0.4 inches) in diameter and the left chest entry wound as being 6 millimeters (0.2 inches) in diameter. There is no mention of stippling or other evidence of close range of fire surrounding either wound.

¹⁴ XXX stated that Mr. Scott’s skull was fractured when he was hit in the head with a blackjack. It appears that the fracture most likely occurred when SA XXX hit Mr. Scott in the head with his gun.

See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, were amended to provide for the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 (“An indictment for any offense punishable by death may be found at any time without limitation.”). However, the Ex Post Facto Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. *Stogner v. California*, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnaping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Under the Till Act and its Reauthorization, the United States can refer cases to the state government for prosecution if the statute of limitations on federal offenses has expired. Referral in this case is inappropriate. It is difficult to prosecute any cold case due to fading memories and loss of evidence. Such challenges would be compounded given that the witness accounts, including that of XXX, indicate that Mr. Scott was physically fighting with the agents. These observations would preclude a prosecutor from proving murder charges beyond a reasonable doubt.

Similarly, XXX and XXX family have expressed particular concern, consistent with the pleadings XXX submitted in XXX 1974 civil suit, about the fact that the agents had not more carefully confirmed Mr. Scott’s identity before coming to his home to arrest him. However tragic its result, this negligence, would be insufficient to support state murder charges which require proof of the *specific intent* to kill or to inflict great bodily harm. (La. R.S. 14:30.1); *State v. Chester*, 19-363 (La. App. 5 Cir. 2/3/21)(“Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.”). Finally, as previously indicated, the agents could remove any state criminal prosecution to federal court, complicating the prosecution. Accordingly, this case will be closed without referral to the state. The United States Attorney’s Office for the Middle District of Louisiana concurs with this conclusion.