

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-34-168

Date: _____

To: Chief, Criminal Section

Re: XXXXXXXX,
XXXXXXX¹,
XXXXXXX,
XXXXXXX,
William Robbins (Deceased) – Subjects;
Peter Francis (Deceased) – Victim;
CIVIL RIGHTS

This matter should be closed for the reasons described below:

1. Date of the Incident: November 14, 1965
2. Synopsis of the Facts and Reasons for Closing:

The Tribal Nations Leadership Council has requested that the Department of Justice's Civil Rights Division (CRT) open an investigation, pursuant to the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016² (Reauthorization Act), into whether the 1965 death of Peter Francis was a racially-motivated murder.

Angela Miller
Attorney

To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section
FORMERLY CVR-3 FORM CL-3

¹ Police reports identify this subject as XXXXXX; contemporaneous and recent media reports, however, identify this subject as XXXXX.

² Pub. L. No. 114-325, 130 Stat. 1965 (2016).

³On November 14, 1965, the five subjects named above, all of whom were from XXXXXX, Massachusetts, traveled to the Pleasant Point reservation near Perry, Maine, for a hunting trip. Once on the reservation, the hunters drank and socialized with Christopher Altvater, a member of the Passamaquoddy Indian tribe, and with Peter Francis, a 59-year old tribe member from Connecticut who was visiting family on the reservation. Later, the hunters attacked the two tribe members. Altvater received serious but non-life threatening injuries; Francis was struck on the head multiple times – most likely with a wooden board – and died from his injuries the next day. Witnesses allege that in the hours leading up to the incident, the hunters made disparaging comments about Native Americans, propositioned Native-American young women, and ridiculed the victim. After a local investigation, the County Attorney charged one of the hunters, XXXXXX, with manslaughter. None of the other hunters was charged for his role in the assault. An all-white jury subsequently acquitted XXXXX.

As explained more fully below, a federal prosecution of anyone responsible for Francis's death is not possible because the statute of limitations has run on all potential federal hate crimes and there is no other potential basis for federal jurisdiction. The Emmett Till Unsolved Civil Rights Crime Act⁴ (Till Act) and its Reauthorization Act authorize federal authorities to assist state and local jurisdictions in prosecuting cold cases. The Constitution's prohibition against double jeopardy, however, prevents the state from retrying the most culpable subject in this case, and the lack of any living eyewitnesses to the attack upon Francis would impede any state trial of the remaining subjects.

3. The Death of Peter Francis⁵

Five white men (XXXXXX; XXXXXXX; XXXXXX; XXXXXX; and, William Robbins) traveled from Massachusetts to Maine in mid-November 1965 for a hunting trip. They drove to the Pleasant Point reservation looking for beer, women, and Christopher Altvater, whom some of the hunters claimed to have met briefly on an earlier hunting trip. Although Altvater claimed not to remember having met them before, he agreed to accompany them to buy beer.⁶ Altvater later invited the hunters to George Francis's home, where a group of Native-American men was watching television and where several younger Native-American women were studying in a back

³ Much of the information reported in this memorandum is consistent with information contained in the transcript of the referenced state grand jury investigation. Rule 6 of Maine's Rules of Unified Criminal Procedure protects the secrecy of grand jury proceedings and provides for disclosure of grand jury matters only in limited circumstances. Me. R. Crim. P. 6. Despite this prohibition, media reports from 2014 purport to cite to the state grand jury transcript. According to these reports, the grand jury transcript was released to the media and family members in 2014, after having been lost for several decades. Except where specifically noted, this memorandum relies upon information from a state police investigation and publicly-available media reports. Any information taken from the state grand jury transcript is identified as such.

⁴ Pub. L. No. 110-344, 122 Stat. 3934 (2008).

⁵ The following facts are taken from police reports and interviews, investigative notes, media reports (both recent and those contemporaneous to the events surrounding Francis's death), other public sources, and testimony reportedly provided in XXXXX's criminal trial. The government, however, has not been able to locate a trial transcript. It is possible the current/recent media articles are referring to testimony reported in contemporaneous news articles written about the state trial.

⁶ According to media reports, Altvater had suffered a serious brain injury a few years earlier.

room. While inside George Francis's home, some of the hunters made lewd comments and suggestive inquiries about the young women, and others made disparaging comments about Native Americans. In an apparent effort to diffuse the situation, Altvater and Peter Francis, George's younger brother, invited four of the hunters to dinner at Altvater's house, which was located just off the reservation. Media reports indicate that the remaining hunter, XXXXX, took Altvater's eight-year old son, Kirk, for a drive in XXXXX's car to "shop for girls."

At some point after arriving at Altvater's house, Altvater and the hunters began to fight. Altvater had offered the hunters marijuana but provided them just an aspirin pill instead. One of the hunters, William Robbins, claimed that Altvater then attacked him with a hunting knife when Robbins refused the pill. Altvater, however, said he offered the pill to the hunters as a joke and denied attacking anyone with a knife. All agree that one of the hunters knocked Altvater to the ground, that Francis eventually broke up the fight, and that the hunters then walked out of the house.

Altvater and Francis followed the hunters outside. Stories then diverge. According to Altvater and Kirk, the hunters attacked Francis and Altvater. Media reports indicate that Kirk, who had returned with XXXXX⁷ just as the other hunters were leaving Altvater's house, saw one of the hunters attack his father with a stick, and saw XXXXX strike Francis, who was unarmed, with a knife. Altvater corroborated Kirk's account that the hunters were the assailants, stating that three of them beat him and that, before he lost consciousness, he saw XXXXX attack Francis. The hunters, however, told a different story. According to the hunters, Altvater swung a 2x4 at them and they fought back in self-defense. They hunters denied ever hitting the two men with weapons. XXXXX, however, admitted to the police that he hit Francis a few times with his fists and acknowledged that Francis "went down [and] out" as a result. It is undisputed that when the hunters drove off, Francis was on the ground, unconscious.

When Altvater came to, he called the police from his house. A Maine state trooper eventually responded to the call and found Peter Francis lying face down in the road, bleeding from his head. Police also found a splintered, wooden 2x4 board, stained with Francis's blood, on the ground nearby. Francis was taken to the hospital, where he died the next day from his injuries.

4. State Investigation

XXXXX, the County Attorney for Washington County, immediately prepared warrants charging the five hunters with murder. After a meeting between XXXXX and the Maine State Police, however, XXXXX determined that "there was not enough evidence to warrant the arrest of the five hunters," and that additional investigation was needed. According to media reports from 2014, XXXXX told a reporter shortly after he prepared the murder warrants that he did not serve them because he did not believe he had sufficient evidence to prove premeditation. After three days of investigation, state police investigators met with County Attorney XXXXX, investigators from the state Attorney General's staff, Sheriff XXXXXXXX, Deputy Sheriff XXXXXXXX, and defense counsel XXXXX, who was advising all five hunters. According to a

⁷ The two were accompanied in the car by XXXXX, whom XXXXX had picked up XXXX. XXXXX fled during the incident.

state police report, XXXX and XXXX decided that XXXXX, and only XXXXX, should be charged with manslaughter based on his admission that he punched Francis.

The state developed additional information about the hunters' actions on the reservation, as well as the altercation outside Altvater's house, during the state grand jury investigation, which took place over three days in February 1966. Witnesses from George Francis's house testified that when the hunters arrived, they asked where they could find women, drank heavily, and, at various times, propositioned the under-aged girls present in the Francis home and offered them money. George Francis ordered the hunters to leave, at which point Altvater invited the hunters to his house for dinner. While in Altvater's home, the hunters spoke disparagingly about Native Americans and made fun of Peter Francis. One of the hunters slapped Kirk Altvater several times. XXXXX and XXXX, wary of the hunters' behavior, left the house. Kirk eventually agreed to leave with XXXXX after XXXXX suggested that they "shop for girls." While they were driving around the reservation, they picked up XXXXX, who accepted XXXXX's offer of a ride.

When Kirk, XXXXX, and XXXXXX returned to Altvater's house, Kirk saw three of the hunters standing near the bushes across the street. He also saw his father and Peter Francis outside. XXXXX was afraid of the men so XXXXX got out of the car and ran away. Kirk then saw one of the hunters hit his father with a stick multiple times before two of the other hunters joined in and began beating his father with their fists. Altvater testified that at least three of the hunters attacked him, knocked him to the ground, and hit him on the head, face, back, and arms. He did not see the attack on Francis. Kirk, however, saw XXXXX strike Francis multiple times in the head with what Kirk thought was a knife. Kirk also testified that he had seen a hunting knife on XXXXX's belt earlier. After Francis was struck, Kirk testified, Francis fell down and did not get back up. Kirk also testified that he saw Altvater lying on the ground as the hunters drove away.

Two doctors testified that Francis died from blunt force trauma to the head. The attending physician testified that Francis's injuries were consistent with having been struck with a 2x4 and inconsistent with having been hit by fists.

5. The Trial

XXXXXX was tried by an all-white jury. The hunters testified at trial that Altvater and Peter Francis attacked them with clubs and that the hunters struck back in self-defense. Despite his earlier admission to the police that he had punched Francis multiple times with his fists, XXXXX testified at trial that he did not punch Francis and instead hit Francis only with "a straight arm." The jury acquitted XXXXX.

6. Federal Investigation

In 2010, XXXXXXXX asked the United States Attorney's Office (USAO) for the District of Maine to investigate the death of Peter Francis. At that time, the state grand jury transcript had not been located. The USAO determined that the statute of limitations on any applicable federal crime had since expired and there was no other basis for federal jurisdiction.

In 2014, after the state grand jury transcript was located, XXXXXX asked the CRT's Criminal Section to review the new information and assess whether a federal or additional state prosecution was warranted. CRT concluded, consistent with the USAO, that the statute of limitations on any applicable federal crime had expired and there was no other basis for federal jurisdiction.

Upon a request from the Tribal Nations Leadership Council, CRT's Criminal Section opened an investigation in 2017 pursuant to the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act, which charges the Department of Justice to investigate "violations of criminal civil rights statutes . . . result[ing] in a death" that "occurred not later than December 31, 1979." The Department thoroughly reviewed the available state police investigative reports, the transcript of the state grand jury investigation, online records, and numerous media reports. According to recent news articles, Robbins is deceased and XXXXX XXXXX XXXXX. XXXXX told a newspaper reporter that XXXXX XXXXX XXXXX. Christopher Altvater died in 1971 and Kirk Altvater died in 1979.

7. Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. In 1965, at the time Mr. Francis was killed, federal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations – a limitations period which has long since expired. *See* 18 U.S.C. § 3282(a). In 1994, Congress amended some of these civil rights statutes to provide 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 of the United States Constitution, Art.I, § 9, cl.3, 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, 610 (2003).

The Department of Justice has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land. *See United States v. Avants*, 367 F.3d 433, 440 (5th Cir. 2004); *see also* 18 U.S.C. § 1111 (criminalizing murder committed within the territorial jurisdiction of the United States). Federal law defines federal land to include Native American reservations and makes certain federal laws applicable there. *See* 18 U.S.C. §§ 7, 1151, 1152. But while some of the events leading up to Mr. Francis's death occurred on the Pleasant Point reservation, the actual assault took place in front of Christopher Altvater's home, which was *outside* the reservation and therefore *outside* of federal jurisdiction. For this reason, an alternative basis for federal jurisdiction does not exist.

The Reauthorization Act permits federal prosecutors and agents to assist in state and local prosecutions when federal jurisdiction is unavailable. Reauthorization Act, Pub. L. No. 110-344, 122 Stat. 3934 (2017). The available evidence in this case, however, is insufficient for the government to provide assistance, as it is unlikely that any state prosecution could succeed. The Double Jeopardy Clause of the United States Constitution prohibits the state from re-trying XXXXX, the most culpable of the subjects. U.S. Const., Amdt. 5. State prosecutions of the three living hunters whom the state did not originally prosecute would be extremely challenging, given

that the only two witnesses to the assault upon Mr. Francis – Christopher Altvater and Kirk Altvater – are deceased, and their state grand jury testimony does not identify Mr. Francis's assailant as anyone other than XXXXX.

In sum, the statute of limitations for any relevant civil rights statute applicable to this case expired long ago. Given the location of Mr. Francis's assault, the government cannot establish an alternative basis for federal prosecution that could potentially extend the applicable federal statute of limitations. It is also extremely unlikely that any further FBI investigation would lead to additional usable evidence for a state prosecution, as the only witnesses to the assault upon Mr. Francis are deceased. For all of these reasons, this matter lacks prosecutive merit and should be closed. The United States Attorney for the District of Maine concurs in this recommendation.