

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-1-3411

Date \_\_\_\_\_

To: Chief, Criminal Section

Re: XXXXXXXXX,  
Birmingham, Alabama - Subject;  
Virgil Ware (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On September 15, 1963, Virgil Ware, the 13-year-old African-American victim, was fatally shot by XX-year-old subject XXXXXXXXX, who is white. Earlier that day, the 16th Street Baptist Church was bombed, resulting in the death of four African-American girls. The bombing sparked racial rioting and unrest throughout the city.

\_\_\_\_\_  
Shelly Ward  
Attorney

\_\_\_\_\_  
\_\_\_\_\_  
To: Records Section  
Office of Legal Administration

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief, Criminal Section

According to media reports, the victim and XXXXXXXXXXXX were bicycling on a lonely stretch of road outside Birmingham, unaware of the events that had transpired that morning. Meanwhile, the subject, who had attended a segregationist rally with friends, was holding a revolver that XXX classmate, XXXXXXXXXXXX, had handed XXX as they were riding home on XXXXXX motorbike. The subject and XXXX reportedly had also heard that African-American youths were throwing rocks at white people in the wake of the bombing. As they passed the victim and the victim's XXXX, XXXX reportedly told the subject to fire the revolver in the victim's direction to scare him. The subject stated that XXX closed XXX eyes and pulled the trigger. The victim was hit in the chest and cheek by two separate bullets, and thrown off the bike's handlebars and into a ditch.

The subject and XXXX were charged with first-degree murder. An all-white jury convicted the subject on the lesser charge of second-degree manslaughter, to which XXXX then pleaded guilty. Both XXXX received suspended sentences and two years of probation.

### **2009 Federal Review**

On February 20, 2009, the Federal Bureau of Investigation (FBI) conducted a review of the circumstances surrounding the victim's death based on media coverage of the incident. The review was conducted pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights era homicides that occurred not later than December 31, 1969. As part of its review, the FBI obtained the Jefferson County Court docket relating to the matter. It revealed that the subject was found guilty of second-degree manslaughter on XXXXXXXX, 1964, following a jury trial. The subject was sentenced to seven months in the county jail. On XXXXX, 1964, the subject's sentence was suspended, and XXX was placed on probation for 24 months. XXXX entered a guilty plea to the charge of second-degree manslaughter on XXXXX, 1964. He was also sentenced to seven months in the county jail. On XXXXX, 1964, XXXX sentence was suspended, and XXX was placed on probation for 24 months.

The FBI was unable to locate court transcripts or any local investigative reports pertaining to the incident. A Jefferson County Family Court judge told the investigating agents that the subject and XXXX were likely tried as juveniles, and their state trial transcripts would have been destroyed decades ago.

The FBI checked their archived files and uncovered a memo from 1963, pertaining to the death of Johnnie Robinson on the same day, and detailing the protests and rioting that followed the church bombing. However, the victim's death is not mentioned in the memo.

On April 22, 2009, FBI agents contacted the victim's XXXX, XXXXXXXXXXXX and XXXX XXXXX, regarding the federal review of the victim's death. XXXX stated that they did not want to speak to the agents about the victim's death because they considered the matter complete.

### **Legal Analysis**

The applicable statute of limitations precludes prosecution of Virgil Ware's murder under the federal criminal civil rights statutes. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes were amended 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 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 kidnapping resulting in death, the facts of the present case do not lend themselves to federal prosecution under other statutes.

Because the subjects were already prosecuted for this matter in state court, jeopardy has attached, and the subjects cannot be retried in state court. Therefore, this matter will not be referred to state authorities for prosecutive review.

Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Frank Salter of the Northern District of Alabama concurs in this recommendation.