

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-17-782

Date APR 09 2010

To: Chief, Criminal Section

Re: Constable Henry Sauls
(Deceased), Taylor County,
Florida - Subject;
Joseph Dumas (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On May 5, 1962, Constable Henry Sauls, the white subject, fatally shot Joseph Dumas, the 19-year-old African-American victim, during a traffic stop of the victim's XXXX. According to the victim's XXXX and XXXX, who witnessed the incident, the subject shot the victim in the back while the victim was standing still with his hands in the air. According to the subject, he shot the victim accidentally when the victim lunged at him while the subject was taking a switch blade from the victim's pocket.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

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

Date

Section Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

This matter was presented to the local grand jury in 1962, but the grand jury declined to indict the subject on any criminal charges. The subject was tried in federal district court under 18 U.S.C. § 242 and acquitted in September 1962. The FBI also has determined that the subject died in 1974.

Current Federal Investigation

On December 22, 2008, the Department of Justice, Civil Rights Division, opened an investigation into the circumstances surrounding the victim's death upon notice from the United States Attorney's Office (USAO) for the Northern District of Florida. The Federal Bureau of Investigation (FBI) also opened an investigation pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights era homicides that occurred not later than December 21, 1969. The USAO and FBI provided the Civil Rights Division with the reports from the FBI's initial investigation into the incident, a transcript of the subject's testimony at his federal trial, a copy of the docket log and many of the filings pertaining to the subject's federal prosecution, and a death certificate indicating that the subject died in 1974. The 1962 federal file does not contain a death certificate for the victim, nor does it indicate whether an autopsy was performed.

Prior Federal Investigation

The FBI opened its initial investigation into the circumstances surrounding the victim's death on May 9, 1962, at the request of Robert Saunders, the field secretary for the Florida chapter of the NAACP. Mr. Saunders stated that members of the Dumas family contacted him on May 8, 1962, regarding the incident and requesting his assistance. The following day, Mr. Saunders brought the family members who had witnessed the shooting to the FBI, where XXXXX and XXXXX (a XXX), the victim's XXXX, provided sworn statements. It does not appear that XXXXX (a XXXX), the victim's XXXX, who was also a witness to the incident, gave a statement.

XXXXX's written statement indicates that on the morning of the incident, he got into the pickup truck with his XXXX, XXXX and XXXX, and his XXXX, XXXX, and drove to a new house that XXX was renting. After dropping off some household items, the family returned to the area of XXXX's old residence. As they neared the house, XXXXX heard a car horn blow. XXXXX looked into his rear view mirror and saw Henry Sauls, a local, constable, driving right behind them. XXXX stopped his truck and walked back to the subject's car. The subject asked XXX for his driver's license, and XXX displayed it. XXX bent over the hood of the subject's car and began writing his names. When XXX was finished, he placed the paper on the hood of the car. As the subject exited his car, the victim got out of the pickup truck and walked over to where XXX was standing.

According to XXX, the subject asked, "What's that black son of a bitch looking at me for?" The subject then said, "I'm going to teach you damn niggers some sense." The subject

reached for his blackjack which was in a holster near the left side of the car's steering post. The subject told the victim to get back in the truck. The victim turned and began walking back towards the truck with his hands in his pockets. XXX stated that both XXX and the subject told the victim to take his hands out of his pockets. XXX explained that XXX was concerned that the subject would think the victim had something in his pockets. The victim removed his hands from his pockets and walked to the corner of the truck bed. The subject yelled, "Wait a minute. What have you got in your pockets?" The subject then walked up to the victim and said, "Nigger, put your hands up." The victim put his hands in the air, and the subject stood behind the victim XXX saw that the subject had a pistol in his left hand. With his right hand, the subject reached into the victim's front right pants pocket and removed an old switchblade knife that was in the closed position. As the subject was taking the knife out of the victim's pocket, he said, "Nigger, if you move I'll kill you." As the victim stood still with his hands still raised in the air, the subject shot the victim in the back. The victim fell to his knees and said, "Mr. Sauls, why you want to shoot me. I haven't did anything."

The subject told the victim to stand up and get in his car so he could carry him to the hospital. The victim stood up and walked a few steps, then fell to the ground. The subject and XXX tried but were unable to place the victim in the car. XXX placed the victim on a porch, while the subject radioed for an ambulance. XXX rode to the hospital with the victim in the ambulance. As XXX was lying on the table donating blood to give the victim, Taylor County Sheriff Maurice Linton and Deputy XXX questioned him about the incident. XXX asked Deputy XXX why the subject had stopped him, and XXX said the subject wanted XXX's signature to compare it to those on some forged checks. Shortly thereafter, the doctor told XXX that the victim had died.

XXXXXX gave an account of the events leading up to the shooting that was consistent with that of XXXX. XXXX stated that after the victim exited the pickup truck, the subject reached for his blackjack and told the victim to get back in the truck. The victim walked back towards the truck with his hands in his pants pockets. The subject stopped the victim and told him to wait, then drew his service pistol and told the victim to put his hands up. XXX did not indicate whether or not the victim complied with this request. The subject then reached into the victim's right front pants pocket and took a knife out. XXX did not state whether the knife was in the open or closed position. The subject told the victim, "Nigger, don't move. If you do, I'll kill you." As soon as the subject removed the knife from the victim's pocket, he shot the victim in the back. XXX gave an account of the events following the shooting that was consistent with that of XXX.

Federal Prosecution

On June 19, 1962, the subject was indicted in the United States District Court for the Northern District of Florida for violation of civil rights pursuant to 18 U.S.C. § 242. The court file indicates the jury found the subject "not guilty" on September 18, 1962. The subject testified in his defense during the course of his trial.

The subject stated that on the day of the incident, he was investigating some forged checks. The victim's XXX, XXXX, was a suspect in the case along with his friend, XXXX. The subject stated further that XXX had once been arrested for carrying a deadly weapon. While the subject was looking for XXX, he saw XXX parking his pickup truck on West Drew Street in the vicinity of XXX house. The subject pulled up behind the truck, tooted his horn, and said, "XXX, let me see your driver's license." XXX approached the subject's car, showed the subject his license, and began writing his name on a notepad at the subject's request. The subject, who was still sitting in his car, saw the victim approach XXX. The subject asked the victim, "Boy, what are you running around here looking at me like that for? What you got your hand in your pocket for? We are not doing nothing here. I am not going to jump nobody." The subject stated that the victim "looked like he was going to come right in there on me all that time." The subject told the victim to get back in the truck, as did XXX.

The victim turned and began walking back to the pickup truck. As he did so, the subject saw an object sticking out of the victim's pants. The subject stated that he figured that the victim wanted to hurt him or someone else, and the subject wanted to find out what the victim had in his pocket. The subject exited his car and said to the victim, "Boy, what is that you have got in your pocket? I told you to go back and get in that car." The victim told the subject that it wasn't "any of [his] damn business." The subject replied, "Well, we will see about it then. Take your hands out of your pocket." The subject walked up to the victim, who was now standing near the pickup truck "with an awful grin on his face," and told the victim to take his hands out of his pockets. The victim eased his hands out of his pockets and held them at shoulder level. The subject held his service weapon in his left hand and tried to reach into the victim's pocket with his right hand, but was initially unable to because the victim was wearing tight pants. The subject then put his left hand behind the victim while still holding the gun, and reached into the victim's pocket a second time with his right hand. The subject removed a long switchblade knife which was in the open position. The subject stated that the victim lunged at him, and his gun discharged. The subject was thrown off balance and hit the ground with his right hand and knee. The subject stated that he did not intend to shoot the victim, nor did he intend to do the victim any harm.

After the gun discharged, the victim said, "You shot me." The subject replied, "Well, I don't think you are hurt bad." The subject then said, "Get in the car and I will carry you to the doctor." The victim took two or three steps, then grabbed onto a light pole and fell to the ground. The subject asked XXX to help him carry the victim to the car. The victim was wiggling so much that XXX and the subject were unable to place him inside the car. Instead, they placed the victim on a porch while the subject called for an ambulance. When asked if he called the victim a "mother*****r" or cursed at the victim, the subject answered in the negative.

Local Investigation

According to media reports, in May 1962, a Taylor County grand jury declined to indict the subject on any criminal charges. Following his indictment by a federal grand jury, the Governor of Florida suspended the subject from duty finding that he was incompetent and the public had lost confidence in him.

Legal Analysis

This case is not prosecutable as a federal civil rights crime for multiple reasons. First, the federal investigation revealed that the subject is deceased. Additionally, the subject was already tried and acquitted under 18 U.S.C. § 242. Thus, a second federal trial under the same statute would constitute double jeopardy. U.S. CONST. amend.V. Finally, the applicable statute of limitations precludes prosecution of Joseph Dumas'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, including 18 U.S.C. § 242, 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 kidnaping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Chris Canova of the Northern District of Florida concurs in this recommendation.