

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19-2764

04/02/2009  
Date \_\_\_\_\_

To: Chief, Criminal Section

Re: William Haywood James (Deceased),  
Atlanta, Georgia - Subject;  
Hulet Varner (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On September 10, 1966, at about 10:40 p.m., Hulet Varner, the 16-year-old, African-American victim, was fatally shot by William Haywood James, the subject. At the time of the shooting, the victim and another teenager, XXXXX, were sitting on their bikes in front of the sidewalk at 420 Boulevard Avenue, N.E., in Atlanta. A number of other youths were nearby. According to XXXX and other witnesses, the subject drove passed them, stopped, and then backed up. The subject's wife, Edna Ruth James, was sitting in the passenger seat. The subject said something to the effect of, "hey boy, did you say something?" One of the youths on the sidewalk replied in the negative. At that point, James pushed his wife down in her seat, and fired shots through the passenger window.

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Cristina Gamondi  
Attorney

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To: Records Section  
Office of Legal Administration

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

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Date

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Chief, Criminal Section

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The victim sustained a fatal gunshot wound to the head. XXXX turned to flee and sustained a gunshot wound to the back, but survived.

### **Local Investigation and Legal Proceedings**

The shooting was investigated by the Atlanta Police Department (APD).

On September 20, 1966, the subject was indicted on state charges of murder for Varner's death and assault with intent to murder for the nonfatal shooting of XXXX.

The state trial took place in February 1967.<sup>1</sup> The subject admitted that he fired at the victim and XXXX, but claimed that he had done so in self-defense. Specifically, James claimed that a large number of African-American men attacked his car, yelling statements such as, "Black Power." At one point, one of the men hit James in the head with a brick. Immediately afterwards, the subject saw another man pointing a small pistol at his wife. At that point, James pulled out a gun and fired a few times into the crowd.

At the trial, the judge admitted the subject's statements to the arresting officers, including the statement that he had been hit in the head with a brick investigators found in his car not on the night of the shooting, but two nights prior.

The subject was convicted of murder. The state jury recommended "mercy" and James was sentenced to a life term. On October 9, 1967, the subject's murder conviction was overturned on appeal.<sup>2</sup>

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<sup>1</sup> At the time of his trial, the subject, who had an eight-page rap sheet, was already serving time in prison for an October 1966, conviction for the March 1966, attempt to murder a man who had earlier testified against the subject's XXXXX, XXXXXX. XXXXX was himself indicted in October 1966, for shooting at a witness expected to testify in the subject's trial for the murder of Varner.

<sup>2</sup> The appeals court cited three reasons for overturning the conviction. First, the prosecutor had improperly stated in closing that the subject's wife had not testified despite having relevant information. Second, the trial judge had erred in not admitting testimony about rioting that occurred *after* the shooting because the testimony was "relevant to show the conditions existing in the neighborhood and to corroborate the defendant's statement that riotous conditions existed at the time of the shooting." Third, when the prosecutor alleged in front of the jury that defense counsel had represented himself as part of the prosecutor's office in contacting witnesses, the judge erred in asking that the allegations be investigated, thus implying that defense counsel was dishonest in front of the jury.

### **Federal Investigation**

In the fall of 2008, the Federal Bureau of Investigation (FBI) opened an investigation into the circumstances surrounding the victim's death, pursuant to the Department of Justice's "Cold Case" initiative and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which charges the Department of Justice to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969." In addition to researching and reviewing media articles from 1956 and 1957, the FBI case agent obtained the APD investigative file; conducted searches of Georgia death records; and interviewed XXXXX, the XXXXX of the subject's XXXX, XXXXXX.

Based on a review of the APD file, the FBI case agent determined that the subject was born on March 18, 1924, and that his wife was born on June 22, 1933. A review of the Georgia death records revealed that a William James, born on March 18, 1924, died in Gwinnett County, Georgia, on November 8, 1997. The FBI case agent was initially unsuccessful in locating Edna James in the death record database. However, the case agent located and interviewed XXXXX, listed in the APD file as XXXX's XXXX. XXXX confirmed that he was the XXXX of the XXXX, whose XXXXX killed Varner. XXXX stated that XXX XXXXX, who went by the name of Edna Ruth Carr at the time of her death, had died two years earlier in Bartow County, Georgia. The case agent conducted a second search of the death records and determined that Edna Ruth Carr, whose date of birth was listed as June 22, 1933, had died in Bartow County on February 22, 2007.

### **Legal Analysis**

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, both the subject and his wife are deceased.

Second, 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. § 245, 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.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because there has already been a state prosecution and because the subject is deceased, this matter will not be forwarded to the state for prosecutive review. Assistant United States Attorney Gentry Shelnett, Northern District of Georgia, concurs in this recommendation.