

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19-2767

04/02/2009
Date _____

To: Chief, Criminal Section

Re: B.T. Dukes (Deceased),
XXXXXXXXXX - Subject;
Maybelle Mahone (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On December 5, 1956, Maybelle Mahone, the 30-year-old, African-American victim, was fatally shot by B.T. Dukes, the then-71-year-old subject. According to the victim's XXXXX, XXXXX when he and XXXXX returned home from XXXXX on the afternoon of the shooting, they found the subject lying in front of the fireplace in a bedroom; the victim was sitting on a bed in the same room. The victim then repeatedly asked the subject to leave. She then asked XXXXX to force Dukes to leave. Dukes said something to the effect of that he "wasn't going nowhere." The subject then exited the house, retrieved a shotgun from his car, and shot the victim as she stood at the back door.

Cristina Gamondi
Attorney

To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section

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According to Georgia State Trooper XXXXXXXX and Trooper XXXXXXXX responded to the scene and eventually went to the subject's home and arrested him. The troopers then transported Dukes back to the scene to await a Georgia Bureau of Investigation (GBI) investigator. Trooper XXXXXXXX stated that, during the trip back to the scene, Dukes gave him an account as follows. Dukes stated that he went to the victim's home sometime in the morning of December 5, 1956. He stayed there the majority of the day, drinking with the victim. When the victim's XXXXXX returned home in the afternoon, she "sicked" XXXXXX on him: the victim made her XXXXXXXX throws rocks and sticks at Dukes and push him down. Dukes acknowledged that he went to his car and got out his shotgun. At that point, the victim stood on the back porch and began to "sass" the subject by telling him that no one there was afraid of him, whereupon he shot her.

Local Investigation and Legal Proceedings

The shooting was investigated by the GBI. On July 31, 1957, the subject was tried and convicted of murder in Pike County Superior Court. The state jury recommended "mercy" and Dukes was sentenced to a life term. Dukes was initially taken to the Georgia State Penitentiary in Reidsville, Georgia, but he was eventually transferred to the Georgia State Sanatorium. On January 2, 1958, the subject was examined by two psychiatrists, who concluded that he was psychotic and not mentally able to distinguish right from wrong. Characterizing the psychiatrists' conclusions as newly discovered evidence, the subject filed an "extraordinary motion for a new trial."¹ The motion was granted on February 24, 1958. That same day, a new trial took place and the jury returned a verdict of not guilty by reason of insanity. The judge ordered Dukes confined to a state psychiatric hospital.

Federal Investigation

In the fall of 2008, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding the victim's death on November 18, 2008, based on media coverage of the incident. The investigation was opened 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. In addition to researching and reviewing media articles from 1956 and 1957, the FBI case agent obtained the subject's file from the Pike County Superior Court Clerk's office, which included a transcript of the trial; and conducted searches of internet ancestry websites and Georgia death records.

¹ The defense called a medical expert during the original trial, who testified that he had examined Dukes on December 13, 1956 and on April 1, 1957, and determined that the subject suffered from psychosis with cerebral arteriosclerosis and, therefore, could not distinguish right from wrong at the time of the shooting. Moreover, the defense called several of the subject's XXXXXXXX and acquaintances, who reported seeing changes in his personality and loss of memory in the months and years preceding the shooting.

Based on the ancestry and death record searches, the FBI case agent determined that a Benjamin Dukes was born on April 23, 1886 in the county adjacent to Pike County and died in Pike County on June 1, 1962. Additionally, one of the subject's XXXXXX, XXXXXX, testified during the state trial that XXXXXX was 71 years old at that time.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, it is extremely likely that the subject is already deceased. The Benjamin Dukes identified by the FBI case agent's search of the birth and death records would have been 71 at the time of the Dukes trial, which is consistent with the state trial testimony indicating that the subject was 71. Thus, it is likely that the subject is the same Benjamin Dukes, who died in June 1962. Moreover, since the subject was 71 in 1957, he would now be 122 years old if he were still alive.

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 kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Third, even if the subject were alive and the government was not prohibited from prosecuting him under the *Ex Post Facto* Clause, he was tried, convicted, and sentenced by the state and, therefore, under the Department of Justice dual and successive prosecution (Petite) policy, set forth in Section 9-2.031 of the U.S. Attorney's Manual, the government would have to show that (1) the matter involves a substantial federal interest; (2) the prior prosecution left that interest demonstrably un-vindicated; and (3) the defendant violated a federal statute and the admissible evidence probably will be sufficient to sustain a conviction by an unbiased trier of fact. The government could not meet its burden here. Under the applicable federal criminal civil rights statutes, the government would have to prove that the subject shot the victim because of her race and because she was exercising a federally protected right such as her right to fair housing. Although the subject was white and the victim African-American, and he shot her at her home after she asked him to leave, there is clearly far from sufficient proof to prove either element.

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.