

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1752

Date _____

To: Chief, Criminal Section

Re: Luico Flowers (Deceased),
Columbus, Georgia- Subject;
Thomas Brewer (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On the evening of February 18, 1956, Dr. Thomas Brewer, the prominent African-American physician and NAACP chapter founder victim, was fatally shot by Luico Flowers, the subject. The shooting took place in the F & B Department Store (the store), owned by the subject in Columbus, Georgia. According to the subject, he shot the victim when the victim reached into the left pocket of his trousers as though intending to draw a gun.

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

FORMERLY CVR-3

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Local investigation

The shooting was investigated locally by the Columbus Police Department (CPD) and the Solicitor General's Office of the Chattahoochee Judicial Circuit. Local investigators obtained statements from the subject and witnesses, as well as physical evidence.

Subject's statement

On February 28, 1956, **Flowers** gave a written statement to be submitted to the Muscogee County grand jury hearing evidence on the shooting. Flowers stated that rancor between him and the victim had been developing for years, ever since the victim had threatened indirectly to start a boycott of Flowers' store if Flowers did not support a particular candidate in a city commission race. Flowers had refused to support the candidate but the boycott did not take place.

According to the subject, Brewer's hostility toward him reached a zenith several weeks prior to the shooting when a white police officer arrested an African-American man in front of Flowers's store (the arrest incident). The victim believed that the arrest incident had involved police brutality and asked Flowers to report it as such to the Safety Board; Brewer believed that Flowers had influence with the Safety Board because XXXXX XXXXX sat on it. The subject, who did not agree that the arresting officer had used excessive force, refused Brewer's request.

On February 11, 1956, a week before the shooting, the victim came into the store and again asked the subject to report the arrest incident. According to Flowers, when he refused the victim's request, the victim became enraged, cursed, jabbed Flowers in the stomach, and stepped on Flowers's toes. As Brewer left the store, he told Flowers that he "wasn't through" and would "get" Flowers. Flowers asked for an explanation and the victim told him that he would return at a later date to "straighten out" Flowers.

As a result of the threat, Flowers called CPD Captain J.D. Armstrong and asked for protection. According to Flowers, for the next week one or more officers checked on the store regularly. Flowers stated further that the victim came to the store twice on February 13 and twice on the morning of February 14. On those occasions, the subject, who had been frightened by Brewer, was at home. On the afternoon of February 14, the victim again came into the store and spoke briefly with Flowers, and left. Flowers did not indicate what Brewer said to him on that occasion.

On the evening of February 18, 1956, Flowers was standing at the curb outside the store when the victim approached and again asked him to report the arrest incident to the Safety Board. Again Flowers refused and again the victim began yelling profanity and became abusive. At one point, in an attempt to rescue Flowers, Flowers's XXXX XXXX came out of the store and pretended that Flowers had received a telephone call that he needed to answer. According to Flowers, the victim threatened to return at 7:00 p.m. and "get" Flowers.

At 7:00 p.m., Brewer had not arrived. Flowers told a CPD detective, who had entered the store, about the threat, but the detective opined that Brewer would not make good on his threat as

evidenced by the fact that Brewer had not arrived at the appointed time. The detective then left. At closing time, the victim again entered the store and walked toward the back. Flowers walked back to his office and Brewer followed suit. Flowers stated that the victim appeared extremely nervous and his hands were shaking. The victim started backing away from Flowers and toward a corner of the office. As the victim backed away, he repeatedly touched the lower left part of his coat. When the victim then reached into the left pocket of his trousers, Flowers retrieved a pistol and shot the victim several times.

Flowers stated that he had known the victim to carry two pistols, one in each pants pocket, on a regular basis for years. Flowers stated that he harbored no racial animus toward the victim and that the sole reason for the shooting was self-defense.

Witness statements

CPD Detective XXXXXXX, XXXXXX, and store clerk XXXXXX were all in the store at the time of the shooting. However, only XXXXX was an eyewitness to the shooting itself. XXXXXX corroborated the subject's account that the victim entered the store at about 7:20 p.m. on February 14, 1956. According to XXXXX, the victim walked around the store, stopping to stare at XXXXX, Detective XXXXX, or the subject a number of times. The victim then preceded the subject into the subject's office. According to XXXXX, the office was an "open office" and XXXXX could see everything that took place inside. The victim carried a bag, which he initially placed on a counter in the office. He then picked up the bag and walked with his back to XXXXX to a desk at the rear of the office. Upon reaching the desk, the victim threw the bag onto it. According to XXXXX, the victim then turned rapidly to the right toward Flowers, crouched down, and reached with his left hand toward his left trouser pocket. Flowers started backing out of the office and the victim backed toward a corner. At that point, a suit rack prevented XXXXX from seeing the subject's body below the shoulders. XXXXX stated that he then heard gunshots and initially did not know who had fired them. As XXXX moved toward the office, he saw Flowers holding a gun. Flowers fired about two more shots and Brewer fell slowly to the floor.

Detective XXXXX corroborated that Flowers told him that the victim had threatened to come back to the store at 7:00 p.m. and "get" Flowers. XXXXX corroborated further that he told Flowers not to worry because it was already 7:15 and the victim had not returned. According to XXXX, he then told Flowers that he would remain in the store until Flowers closed it and would leave with Flowers. XXXX thus contradicted Flowers's statement that XXXXX then left the store. XXXX stated that Flowers, who was clearly ill at ease, told XXXXX that he believed that the victim intended to try to kill him and that Flowers would kill the victim first. XXXX told Flowers to calm down and that it was XXXXX's job to deal with any problems.

XXXX corroborated XXXXX's account that Brewer entered the store and eventually walked toward the office while Flowers followed him. XXXXX said that he walked next to Flowers. As they neared the office, XXXXX turned back toward the cash register and front of the store and said, "Mr. Flowers, come here just a minute." XXXXX assumed that Flowers would follow him but, as XXXXX reached the cash register, he heard several shots. XXXX ran back toward Flowers as Flowers continued to fire his gun. XXXXX yelled at Flowers to stop and

eventually he did. Flowers then told XXXXX that he had to shoot the victim because the victim was about to kill him.

XXXXXX, a store employee, corroborated Flowers's account of the victim's confrontation with Flowers outside the store earlier on the evening of the shooting. XXXXX stated that it was he who told Flowers's XXX to exit the store and tell Flowers that he had a phone call. XXXXX stated that, as Flowers turned to go back into the store, the victim said, "I'll get you tonight!"

XXXXXX corroborated the other witness accounts that Brewer entered the store and then made his way to Flowers's office followed by Flowers and then XXXXX. XXXXX, who was standing behind the cash register, corroborated further that XXXX was walking back toward the front of the store when the shooting occurred.

Notably, all of the witnesses stated that the *subject* followed the victim to the subject's office, not vice versa as Flowers had claimed. All three witnesses also contradicted the subject's statement that XXXXX left the store prior to the victim's arrival.

CPD Captain J.D. Armstrong did not witness the shooting but corroborated Flowers's account that on February 11, 1956, Flowers called him and told him that the victim had been in the store earlier that evening and been extremely abusive of Flowers because Flowers refused to make a false statement concerning the arrest incident. Flowers told XXXXX that Brewer had threatened to boycott the store. Flowers then told XXXXX that the victim had threatened to return and that Flowers "may have to defend himself." According to XXXXX, when he asked Flowers whether the CPD could do anything for Flowers, Flowers said that he could not think of anything. Thus, it appears that XXXXX also contradicted Flowers's statement in part: first, Flowers did not mention the victim's boycott threat in his statement; second, Flowers did not ask for CPD protection, rather, he appeared to preview a need to act in self-defense against the victim.

Physical evidence

CPD officers responding to the scene found a .32 caliber revolver inside the victim's left front pants pocket.

Local grand jury

On February 29, 1956, a Muscogee County grand jury declined to indict the subject on a murder charge.

Subject's murder

On the morning of February 11, 1957, almost exactly one year after shooting the victim, the subject was found in the entrance of the Dixie Theater, across the street from his store, bleeding from an ultimately fatal gunshot wound to the head. The Georgia Bureau of Investigation (GBI)

investigated Flowers's shooting but the shooter or shooters were not identified.¹

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." The FBI case agent obtained the local investigative files relating to the shooting of Brewer by the subject and the shooting of the subject by an unknown assailant or unknown assailants. Additionally, the FBI case agent retrieved a number of contemporary FBI records.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes for a number of reasons. First, and most importantly, the federal government could not prosecute the subject because he is deceased, having himself been murdered in 1957.

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 was alive and the government was not prohibited from prosecuting him under the *Ex Post Facto* Clause, there is insufficient evidence to prove that the subject shot the victim because of the victim's race or because the victim was enjoying a federally-protected activity.

Fourth, even if the first three reasons were not prohibitive, the victim was found to be armed and, even though some of the evidence appears to at least partially contradict the subject's claim of self defense - particularly the fact that the subject chose to follow the victim into his office

¹ According to a February 20, 1957, FBI report, the Detective Chief of the CPD received a letter indicating that it would be fruitless to continue searching for Flowers's killer because he was on "New York City's water front."

rather than have the CPD detective deal with the victim - there is insufficient to contradict the subject's account beyond a reasonable doubt.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Sharon Ratley, Middle District of Georgia, concurs.