

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-30-989

Date _____

To: Chief, Criminal Section

Re: Officers Robert Claypoole, *et al.*,
Winchester Police Department,
Winchester, Kentucky- Subjects;
Collie Hampton (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On August 14, 1966, at about 2:00 a.m., Winchester, Kentucky, Police Department (WPD) Sergeant (Sgt.) Robert Claypoole, Patrolman (Ptl.) William Claypoole, Ptl. Ronald Johnson, and Ptl. Gene Hollon, the subjects, followed Collie Hampton, the African-American victim, into his home with their guns drawn, reportedly to arrest him for "breach of the peace." The subjects claimed that as the victim retreated into his home, he kept his right hand in his pants pocket and threatened to shoot them if they entered his home.

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 the subjects, Sgt. Claypoole slapped Hampton, while Hollon maneuvered behind Hampton. The victim then grabbed Hollon's gun hand¹, whereupon Hollon yelled "he has my gun" and Sgt. Claypoole fired a shot aiming at the victim's legs, but wounding Hollon in the left hip, instead. Upon hearing the shot, Ptl. Claypoole and Johnson fired at Hampton, fatally wounding him in the chest.

Local investigation and legal proceedings

At the request of WPD Acting Chief James Taylor, the Kentucky State Police (KSP) initiated an investigation within an hour of the shooting. Between 10:15 and 10:30 p.m. that night, one of the victim's brothers, James Hampton, swore out warrants against the subjects. Subjects Sgt. And Ptl. Claypoole and Ptl. Johnson were arrested the night of August 15, 1966, and subject Ptl. Hollon, the next day; all four subjects were released on \$5000 bonds.

An autopsy, conducted on August 14, 1966, at the University of Kentucky Medical Center in Lexington, Kentucky, determined that the victim had four gunshot wounds to the chest - two entrance wounds and two exit wounds.

On August 26, 1966, a local Coroner's Inquest returned a verdict of homicide, having concluded that the victim had died as a result of a gunshot wound to the heart; the jury did not determine who had fired the fatal shot.

Jefferson County Assistant Commonwealth Attorney, James Crumlin, former head of the Louisville, Kentucky, NAACP chapter and noted civil rights attorney, assisted in the state prosecution of the subjects. The subjects were indicted on September 14, 1966 on state murder charges.

The local trial started on December 13, 1966 in the 11th Judicial District. All four subjects testified, and gave accounts as summarized in the case synopsis above. Civilian witness Juanita Taylor testified that the victim shut his front door and the subjects kicked the door open. As Taylor stood in the doorway of Hampton's home, she saw Sgt. Claypoole slap the victim, who then grabbed Sgt. Claypoole.² Taylor heard a gunshot and saw Hollon fall to the floor. Taylor left and immediately heard two gunshots.

¹ Sgt. Claypoole testified during the state trial that the victim grabbed the cylinder of Hollon's gun. However, the other subjects gave statements and testified that it was Hollon's gun hand, not the cylinder of his gun.

² The newspaper summary of Taylor's trial testimony does not mention the specific detail that she was standing in the doorway of the victim's home. However, she provided that detail in her KSP statement and in her Coroner's Inquest testimony.

Civilian witness James Davenport testified that Ptl. Claypoole told the victim that he had a warrant for the victim's arrest (when in fact, he had not). Although it is not clear whether he testified as much at the trial, according to an August 26, 1966, *Winchester Sun* newspaper article, Davenport had previously testified at the Coroner's Inquest that he too was in the doorway of the victim's home when Hollon was shot and, like Taylor, left immediately and did not witness the victim's shooting.³

Additionally, the prosecution called Clark County Coroner Leon Pace, who testified he had found a closed pocket knife in the victim's right front pocket.⁴ KSP laboratory Chemist William Whitlock testified that the victim's BAC was 0.28%. KSP Sgt. Everett Wilcox, a firearms examiner, testified that the three bullets recovered by investigators were too mutilated to be definitively matched to any particular firearm, and that Hollon's gun had not been fired. On December 16, 1966, the jury acquitted the subjects.

In March 1967, James Hampton, represented by Attorney James Crumlin, filed a federal civil suit. On March 28, 1968, following a two-day trial; the federal jury returned a verdict in favor of the subjects.

Federal Investigation

In the fall of 2008, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding the victim's death, 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. The FBI case agent obtained the KSP case report, Clark Circuit Court and Eastern District of Kentucky District Court records, and a number of contemporaneous *Winchester Sun* newspaper articles.

The case agent also conducted searches of the relevant DMV records and determined that all four subjects are still alive.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, 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

³ The KSP case report contains a statement by Davenport, however, it is in large part illegible.

⁴ There is no indication in the investigative file whether it was found in the right front pocket of the victim's coat or pants.

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.

Second, even if the government were not prohibited from prosecuting the subjects under the *Ex Post Facto* Clause, they were tried, even though acquitted, 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 defendants 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, because as the two juries agreed, there is insufficient evidence to disprove, beyond a reasonable doubt, that the subjects acted in self-defense as they claimed.

Finally, because the defendants were already tried and acquitted of murder charges in state court, jeopardy has attached and the defendants cannot be retried in state court. Therefore, this matter will not be referred to state authorities for prosecutive review.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Robert McBride, Eastern District of Kentucky, concurs in this recommendation.