

CIVIL RIGHTS DIVISION

Notice to Close File<sup>1</sup>

File No. 144-40-2144

03/11/2010  
Date \_\_\_\_\_

To: Chief, Criminal Section

Re: City Marshal Leonard Yarborough (Deceased),  
Merigold Police Department,  
Merigold, Mississippi - Subject;  
Neimiah<sup>2</sup> Montgomery (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On August 10, 1964, Neimiah Montgomery, the African-American victim, was shot and killed by Merigold Police Department (MPD) City Marshal Leonard Yarborough, the subject, at a gas station. XXXXXXXX, a XXXX who had traveled to Mississippi in the summer of 1964, was interviewed by a Seattle, Washington, television station, and alleged that an officer shot the victim when the victim said he did not have enough money to pay for the gas, even though the victim had offered to go home to get the money.

\_\_\_\_\_  
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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1 Memo amended on June 11, 2021.

2 The victim's name has also been reported as "Nehemiah" in certain public sources.

Officials at the Mississippi Sovereignty Commission (MSC) provided a statement to the same Seattle television station, which interviewed XXXXX, indicating that the victim had refused to pay for gas and then attacked the gas station attendant, Johnson Barger, with an ax-handle. According to the MSC statement, when the subject arrived at the gas station, the victim also beat him with the ax-handle, at which point, the subject shot the victim. The MSC statement noted further that the victim's family had been concerned about his prior strange behavior and considered confining him in a mental health facility. Finally, the MSC reported that a coroner's jury, comprised of both African-Americans and whites, had ruled that the subject acted in self-defense.

According to Charles W. Capps, Jr., who served as Bolivar County Sheriff between 1964 and 1968, and an August 13, 1964 *Bolivar Commercial* article, local Justice of the Peace Walter Jones dismissed state charges of voluntary manslaughter against Yarborough after several witnesses testified that the victim attacked both Yarborough and others with an ax-handle.

The subject died on November 13, 2002 in Cleveland, Mississippi.

### **Federal Review**

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 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 contacted various Mississippi law enforcement and government officials; conducted searches of the Mississippi Department of Archives and History (MDAH) and the internet for relevant references and media articles; sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information; and solicited information about the case via a press release that was published in local newspapers and broadcast on local television and radio stations.

An **11th Circuit Court Office of the District Attorney** official told the FBI case agent that her office did not have any records relating to matters prior to 1980. **Bolivar County Sheriff's Office (BCSO) Deputy Chief Charles Gilmer** similarly stated that all BCSO records relating to matters prior to 1970 had either been purged or destroyed by a tornado. The FBI case agent also contacted officials at the **Mississippi Bureau of Investigation**, the **Mississippi Attorney General's Office**, the **MPD**, and the **Bolivar County Coroner's Office** and determined that none of those agencies had any records pertaining to the matter. Finally, the FBI case agent searched the **Bolivar County Justice Court** for records concerning the shooting, but found none.

The FBI case agent searched the **MDAH** and found 4 records pertaining to the allegations made to the Seattle radio station and the MSC's response.<sup>3</sup>

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<sup>3</sup> The MDAH records were: a letter from the Director of the MSC, Erle Johnston, Jr., to Gwin Cole, Assistant Director of the Identification Division of the Mississippi Department of Public Safety, apparently in response to a letter from Cole, summarizing the incident and stating that the MSC planned to ask for time on the Seattle television station; a letter from Johnston to BCSO Chief Deputy Sheriff Ben Bogy, Jr., thanking Bogy for, and returning the

Through an **internet search**, the FBI case agent obtained 5 articles (all written after 2005) that referenced Montgomery's death, primarily in the context of the FBI's "Cold Case" initiative, but did not provide any substantive details concerning the death.

The FBI obtained the **subject's death certificate**, indicating that he died on November 13, 2002, at the Bolivar Medical Center in Cleveland, Mississippi.

An FBI search of **SPLC** records found a FOIA request from the SPLC to the FBI; and the FBI's response to the FOIA request, which included a number of MDAH records. None of these documents provided any information not previously collected by the FBI.

The **press release** requesting information received no response. As of the date of this memorandum, the **letter to the NAACP** has also yielded no information.

In an effort to locate any living relatives of the victim, the FBI took numerous investigative steps, including: contacting/canvassing local law enforcement agencies and officers; contacting older residents of Merigold; contacting individuals residing in and around Merigold whose last name is Montgomery; contacting Civil Rights Cold Case Historian Keith Beauchamp; and conducting searches of the internet and of the Accurint for Law Enforcement database. No living relatives of the victim were located.

### **Legal Analysis**

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the subject because he is 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. § 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 kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

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BCSO's file on the incident; a "proposed broadcast" statement concerning the incident from the MSC to be read during an April 1965 Seattle television station broadcast; and what appears to be a newspaper article or press release stating that the MSC had succeeded in having its statement concerning the incident read over the air during a broadcast by the Seattle television station.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because the subject is deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Robert Coleman, Northern District of Mississippi, concurs in this recommendation.