

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3573

05/26/2011
Date _____

To: Chief, Criminal Section

Re: Constable XXXXXXXX,
Rankin County, Mississippi;
Robert McNair (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On November 6, 1965, Robert McNair, a 26-year-old African-American Mississippi Steel Company employee, the victim, was shot and killed by Rankin County Constable XXXXXXXX in Palahatchie, Mississippi. XXXXXXXX was interviewed by the FBI in May 2009 and stated that the shooting occurred when he tried to serve a warrant filed by the victim's XXXX for XXXXX. XXXX claimed that he located the victim outside a "juke joint" (the club) and that the victim initially ran from him. When XXXX caught McNair and was escorting him

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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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through a field of waist-high grass, the victim pulled out a knife, threatened him, and then lunged at him, whereupon he shot the victim once in self-defense.

According to the subject and a newspaper article, Pelahatchie Town Marshal Cooper Stingley and Night Marshal Pat Wade went with XXXXXX to serve the warrant, but the FBI determined that Stingley and Wade are now deceased.¹

XXXXXX told the FBI that there were no eyewitnesses to the shooting itself. The FBI located a witness, XXXXX, who stated that a man named Fred White was with the victim at the time of the shooting, however, Fred White is deceased. Another witness, XXXXXX, told the FBI that he was at the club and saw the subject confront the victim and then run after him; the subject was holding a hand in a front pocket as he ran. XXX then heard two gunshots. XXXX also stated that Fred White told people at the time that he had heard the victim tell XXXXX not to shoot him.

XXXXXX told the FBI that he was charged, tried, and acquitted of murder charges. Moreover, XXXXX stated that the FBI investigated the shooting in 1965 and that he was interviewed by the FBI at the time. However, the FBI was not able to locate any records or articles referencing the trial. Further, although the FBI retrieved 1964 FBI records referencing the subject, those records did not pertain to an investigation of the shooting. The 1964 records stated that a XXXXXXXXX had reported that the XXXXXXXX may have been a member of the Ku Klux Klan.

The Federal Investigation:

In 2009, the 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 interviewed the subject and several witnesses; obtained records pertaining to XXXXXX from the National Archives and Records Administration (NARA); contacted numerous Mississippi law enforcement officials; conducted searches of law enforcement databases, the Mississippi Department of Archives and History (MDAH), the Brandon library, the internet, the University of Southern Mississippi library records, and records of the Southern Poverty Law Center (SPLC); sent letters to both the SPLC and the NAACP requesting information; and solicited information about the case via a press release that was published in local newspapers and aired on local radio and television stations. The FBI also

¹ XXXXXXXX mentioned a third person, FNU XXXXXXX. It does not appear that the FBI searched for this individual. However, XXXXXXX stated that there were no eyewitnesses to the shooting and the FBI did not locate any *civilian* eyewitnesses. The subject did not specify whether XXXXXXX was an officer or not. Contemporaneous articles describing the shooting do not mention XXXXXXX as having accompanied XXXXXXX. In any case, even if the individual were identified and is still alive, it is unlikely that XXX statement would affect the declination decision.

sought information concerning civil rights era racially-motivated homicides during the Veterans of the Mississippi Civil Rights Movement conferences in March 2009 and March 2010.

A. Subject's account and other evidence pertaining to the subject

The FBI interviewed XXXXXXXX on May 13, 2009. The subject stated that, on the night of the shooting, he was serving a warrant on the victim filed by XXXXX for "desertion of children." XXXXXXXX went to look for the victim with Pelahatchie Town Marshal Cooper Stingley, Night Marshal Pat Wade, and XXXXXXXX. Stingley was driving, Wade was in the front passenger seat, and XXXXXXXX and XXXXXXXX were on the back seat. At some point, XXXXXXXX told Stingley that he had seen the victim at a "juke joint" (the club). Stingley stopped the car and XXXXXXXX exited. He approached McNair and told him that he was under arrest. McNair tried to knock down XXXXXXXX and then fled. XXXXXXXX chased McNair behind the club. McNair tried to jump over a ditch but fell. XXXXXXXX caught McNair behind a house near Highway 80. XXXXXXXX started escorting McNair back to Stingley's car and, when XXXXXXXX and the victim were in waist-high grass, McNair ran into him, pulled out a single-blade knife, and said, "Well, you tried to kill me, I might as well kill you." When McNair then "came down" on XXXXXXXX with the knife, XXXXXXXX shot him once in the chest with a .22 caliber Derringer. XXXXXXXX said he had the small Derringer in XXX front pocket and it was not his service pistol. XXXXXXXX still had the gun and showed it to the FBI case agent who photographed it.

XXXXXXX said that it was dark at the time of the shooting and there was no one else nearby. According to XXXXXXXX, the shooting was also investigated by the FBI; indeed, XXXXXXXX stated that he was interviewed by the FBI in 1965. XXXXXXXX also stated that no gun or knife was found on or near the victim by either the local investigators or the FBI.

According to XXXXXXXX, Coroner Dempsey Amacker, Sr., did not accept XXXXXXX's story and continued to push the issue.² XXXXXXXX was charged with murder and tried by the state. XXXXXXXX said his defense attorney was John McLauren, who is now deceased. According to XXXXXXXX, the judge ruled that the shooting was justified.

The FBI retrieved from NARA a number of 1964 FBI records that mentioned the subject. However, the records do not pertain to the reported FBI investigation of the shooting. The records indicate that a confidential source whose reliability could not be verified reported in June 1964 that XXXXXXXX may have been a member of the Ku Klux Klan.³

² According to a November 8, 1965 *Clarion-Ledger* article, the results of a Coroner's Inquest which took place the day after the shooting, were still pending. This is consistent with the subject's account that Coroner Amacker did not accept his story.

³ FBI indices checks revealed 5 results, but the FBI obtained only three of those results. It is not clear why the last two records were not located.

The FBI's search of the MDAH located two documents from Mississippi Sovereignty Commission (MSC) indicating that, in early November 1960, the subject called XXXXXX to report that XXXXXXXX had heard at school that the XXXXXXXX had performed a marriage ceremony for an African-American couple in the Value Baptist Church in Brandon, Mississippi, and invited the couple to attend services at the church. The subject told XXXXXX that he and other members of the Value Baptist Church had left it because they were not happy with XXXXXXXX pro-integration attitude.

The MDAH search also produced an article from the Freedom Democratic Party (FDP) news indicating that when an African-American woman attempted to use the washeteria (laundry mat) at a Piggly Wiggly, XXXXXXXX and Brandon, Mississippi, Town Marshal Gred Warren appeared and told the woman to leave immediately and never come back.

B. Witness statements

The FBI interviewed XXXXXXX, who stated that he was at the club on the night of the shooting. XXXX saw XXXXXXX arrive in a car and confront the victim, who was sitting on the fender of his own car. XXXX could not hear what the two said to each other, but he did see the victim start running. As XXXXXXXX chased the victim, he held a hand in a front pocket. XXXXXX stated that a few minutes after McNair and XXXXXXXX ran, he heard two gunshots. XXXX and several people ran to see what had happened. XXXXXXXX would not allow anyone to approach the victim's body. XXXX stated that there was no one in the field with the body. XXXX also stated that Fred White, who is now deceased, told various people that he heard the victim say, "Don't shoot me." XXXX said that McNair was not a violent individual and XXXX had never seen him with a gun or a knife.

The FBI interviewed XXXXXXXX, McNair's XXX, who stated that she was a close friend of McNair's XXXXXXX. XXXX stated that she did not believe XXXXXXXX would have ever filed a complaint against XXXXXXXX for child neglect. XXX also opined that the subject and victim may have been "courting" the same woman, XXXXXXXX. XXXXXXX, who was at the club with XXXXXXXX on the night of the shooting, did not witness it.

The FBI interviewed XXXXXXXX, who stated that he went to the scene of the shooting and saw the victim's body. XXXXXX stated that it appeared to him that the victim had been on his knees at the time of the shooting; XXXX surmised this from the fact that he was slumped over forward with his weight on the top of his head. XXXXXX stated that he recalled hearing an unknown person telling XXXXXXXX that he did not have to shoot the victim. XXXX opined that XXXXXXXX shot the victim as a result of a dispute over an African-American woman XXXXXXXX had been dating. XXXX said that he had once seen the subject strike XXXXXXXX in a similar dispute. XXXXXX opined that XXXXXXXX was a good man until he became a police officer.

The FBI interviewed XXXXXXXXXX, who stated that he went looking for the victim because the victim owed his white employer a few dollars. McNair ran from XXXXXXXX, who then caught him and shot him. According to XXXXXX, Fred White, who is now deceased, was

with McNair at the time. XXXX stated that the subject arrested White on the day after the shooting and warned White to keep silent. It is unclear where XXXX obtained this information concerning the shooting. Like a number of other witnesses, XXXX stated that the subject was attracted to African-American women.⁴

The FBI interviewed XXXXXXXX, the victim's XXXXX, who was XXX years old at the time of the shooting. XXX stated that before McNair was shot, he ran to his house, and said to XXX, "XXX, don't open this door." XXX then heard three gunshots. XXX's account of the shooting is inconsistent with that of the other witnesses and evidence. XXX stated that the subject was always stopping the victim as they did not get along. Like XXXXXXX, XXX stated that XXX had seen the victim in the company of XXXXXXX several times and had heard that XXXXXXX may also have been with XXXX on multiple occasions.

The FBI interviewed XXXXXXX, who was a Mississippi Highway Patrol officer in 1965, who stated that he was not at work on the night of the shooting. XXXX stated that the subject reported that the victim gave him some trouble when he tried to arrest him and that he shot the victim after a struggle.

C. Additional FBI investigation

The FBI search of the MDAH yielded several articles/records. Among them was a **November 8, 1965, Clarion-Ledger** article indicating that the victim had been shot by subject Constable XXXXXXX as he attempted to serve a "justice of the peace warrant" for the victim.

The article also indicated that Pelahatchie Town Marshal Cooper Stingley and Night Marshal Pat Wade accompanied XXXXXXX to serve the warrant and had witnessed the shooting.⁵ The article quoted Fred Banks, an embalmer at the funeral home where McNair's body was taken, as saying that McNair had been shot only once in the chest. Additionally, the article indicated that the Mississippi Freedom Democratic Party (MFDP) had telegraphed the Attorney General Nicholas Katzenbach requesting an investigation.

The FBI also found a report from the **FDP** stating that, according to unnamed witnesses, XXXXXXX shot the victim once in the back and then twice in the head as he lay on the ground. The report also confirmed that Lawrence Guyot, Chairman of the MFDP, had requested a DOJ investigation. Although the FDP had not received a reply, the report stated that the FBI was "working on the case." The FBI contacted Mr. Guyot in 2009 and he stated that he did not recall the details of the incident.

The FBI searched the newspaper archives at the Brandon library and located a **November 11, 1965 Rankin County Press** article. The article indicated that the victim's XXX had sworn out

⁴ XXXX also stated that XXXXXXX had broken into the home of XXXXX and beaten XXXX.

⁵ It did not mention XXXXXXX.

an affidavit on June 15, 1965 and a warrant for “nonsupport” of the victim’s XXXX was issued on September 16, 1965.⁶ According to the article, Sheriff T.H. “Red” Shivers reported that XXXXXX had shot the victim in self-defense after the victim lunged at him with an open pocket knife. A Sheriff’s Office spokesman commented that “not long” before the shooting, XXXXXX had arrested another African-American man who had hit him in the head, splitting his scalp open. According to the spokesman, XXXXXXXX had a gun in his hand at the time but did not shoot the man and brought him in unharmed. Like the *Clarion-Ledger* article, the article stated that embalmer Fred Banks reported that the victim had been shot once in the chest.

The FBI obtained the **victim’s death certificate** which indicated that he had died as a result of a “gun shot wound through [the] chest.” McNair’s XXXX, XXXX and Polly McNair, as well as his wife, Myrtle McNair, were listed on the certificate. A “slip attached” to the certificate reported that the victim had died “in altercation with [a] Law Officer.”⁷

The FBI determined through an Accurant search that the victim’s mother, Polly McNair, died on March 3, 1989, and his wife, Myrtle, died on April 15, 1996. However, the FBI located and contacted **the victim’s XXXXXX, and his XXXX, XXXXXX**. Neither man knew any details concerning the shooting.

The FBI conducted a search of the law enforcement database Accurant and determined that alleged witness **Pat Wade** was deceased. Although the database search did not produce results concerning **Cooper Stingley**, the FBI located and contacted XXXXXX, Cooper Stingley’s XXXX, and XXXXXX, XXXX. Both men stated that Cooper Stingley was deceased.

The FBI determined that **Fred Banks**, the embalmer quoted in the *Clarion-Ledger* and *Rankin County Press* articles, is now deceased.

The FBI contacted **XXXXXXXX**, the XXXX of former and now deceased Rankin County Coroner Dempsey Amacker, Sr., who stated that XXXXXX turned his records over to the Rankin County Courthouse in 1966 when he moved to Natchez.

The FBI also contacted **XXXXXXXX**, the XXXX of “Red” Shivers, who was Rankin County Sheriff at the time of the shooting and quoted in the *Clarion-Ledger* and *Rankin County Press* articles. XXXXXX said that XXX XXXX is deceased and his family did not keep any records pertaining to his time as Sheriff.

⁶ It is unclear why the subject waited almost two months to serve the warrant.

⁷ The “attached slip” was not attached to the death certificate when the FBI initially obtained it. The FBI then made an additional request for the slip. The original certificate is signed by Coroner Dempsey Amacker on November 20, 1965, while the “attached slip” was signed by him on February 3, 1966. It is unclear why they were signed at different times. However, as XXXXXX said to the FBI, Coroner Amacker was not convinced by XXXXXX’s story and, in fact, according to a newspaper article, apparently delayed the results of the Inquest.

The FBI contacted current Rankin County Sheriff Ronnie Pennington and former Sheriff Ken Dickerson, as well as officials at the **Pelahatchie Police Department**; the **Rankin County Coroner's Office**; the **Rankin County District Attorney Office**; the **Rankin County Circuit Clerk, Rankin County Chancery Clerk's Office - Criminal Division**; the **Mississippi Department of Public Safety**; and the **Mississippi Attorney General's Office** and determined that none of those offices had records pertaining to the shooting.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the FBI did not locate any eyewitnesses to the shooting. One witness, XXXXXX, stated that Fred White was with the victim at the time of the shooting, but White is deceased. The FBI also located one witness, XXXXXXXX, who witnessed the subject confronting and chasing the victim. XXXX stated that he heard two gunshots, contradicting the subject's account that XXX fired only once. However, XXXX's statement would not be sufficient to disprove, beyond a reasonable doubt, the subject's claim that XXX fired in self-defense.

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.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Glenda Haynes, Southern District of Mississippi, concurs in this recommendation.