

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-67-2006

Date _____

To: Chief, Criminal Section

Re: J. H. Oswald, Jr.,
Allendale, South Carolina - Subject;
James Waymers (deceased) - Victim
CIVIL RIGHTS

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

1. **Synopsis**

On July 10, 1965, J.H. Oswald, a Caucasian resident of Allendale, South Carolina, was stringing electrical wire across a street in order to add light to the home of an African-American friend. While this electrical work was being performed, Oswald became engaged in an argument with James Waymer, an African-American man. During the argument, Oswald fired a gun at Waymer, striking him near the heart and causing instant death.

Karla Dobinski
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 FORM CL-3

At least two other people were struck by the gunfire. One, XXXXXX, a Caucasian man who was operating his XXXXXX, happened to be in the line of fire and was hit seven times. He spent a week in the hospital recovering from his injuries. A second, XXXXX, an African-American man, was also struck while in the line of fire. XXXXX spent two days in the hospital recovering from his injuries.

On October 4, 1965, an Allendale County grand jury indicted Oswald for murder. At trial, Oswald claimed self-defense. Witnesses for the prosecution included XXXXXX, XXXXXX and XXXXXX. On October 21, 1965, a jury found Oswald not guilty of the charges.

II. Federal Investigation

In July, 2007, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances of the victim's death, pursuant to the Department of Justice's "Cold Case Initiative." The FBI obtained a copy of the case file maintained by the South Carolina Law Enforcement Division (SLED) which contained brief summaries of the incident and proceedings, as well as copies of the police report and statements.

After searching the relevant databases, the FBI obtained a death certificate for the subject who died of cirrhosis on June 29, 1979.

The FBI also interviewed XXXXXXXX, a distant relative of the subject who was XXX years old at the time of the shooting but was not a witness to it. XXXX said that through the years, he had been told that the shooting was in self-defense. He did not know of anyone named "Waymers" in Allendale County, South Carolina.

III. Local Investigation

The reports provided by the South Carolina Law Enforcement Division (SLED) include a brief factual summary of their investigation, recounted in the above synopsis, as well as sworn statements from five witnesses: XXXXXX and XXXXX the two persons also injured in the shooting, XXXXXX, who witnessed the shooting and identified Oswald as the shooter; and XXXXX and XXXXX, both of whom are residents who heard gunshots but did not witness the shooting. The passage of time and the archiving process have rendered the SLED reports substantially unreadable, however, the legible portions of the reports, while not complete, provide the basic facts concerning the incident.

XXXXXX was a XXX-year-old XXXXX who was taking a picture of an eleven year old African-American girl when a woman told him that there was a man pointing a gun at the "joint." XXXXX did not pay attention and went to the dark room, and when he came back, the woman repeated the information. XXXXX went to the back door and saw a white man sitting in an orange and white Dodge truck with writing on the side of it. XXXXX saw an African-American man sitting at the counter. The white man in the truck shot twice. He was sitting in his pickup truck shooting out of the left window. XXXXX told everyone to run. XXXXX did not have the strength to kick the door of the shop open, but the African-American man succeeded in kicking the door open. The African-American man asked for XXXX's keys, after which he drove XXXXX to the hospital.

XXXXXX was waiting on the sidewalk outside the photo shop to have his picture taken when he heard three shots. He was hit in the thigh from what he believes was the third shot. He did not know anyone else was shot until he got to the hospital. He didn't know where the shots came from or who was responsible.

XXXXXX saw the subject, Oswald, about an hour before sundown on the Saturday evening. XXXX gave Oswald some cantaloupes and heard Oswald discussing the cost of a shoeshine with a young boy. There was some discussion about how much money the boy could earn shining shoes. After sundown, XXXX was in "Buck Jennings' joint" when XXXX heard the sound of gunshots, first thought to be firecrackers. Then there were two more gunshots. After the shooting, XXXX saw Oswald sitting in his pickup with the gun in his lap. XXXX went to Oswald and asked him what he was doing. Oswald kept repeating that "they" treated him wrong. Oswald told XXXX that he would give his gun to the police when they came and asked XXXX to stay with him. XXXX stayed with Oswald until the police arrived.

XXXXXX, a XX-year old African-American man, had just finished having his picture taken and was standing inside the photo shop when he heard the gunshots. XXXXX grabbed a young African-American girl as well as the Caucasian man who had been shot (later identified as XXXX) and took them both out of the back of the building. XXXXX put XXX in his own (XXXX) car to take him to the hospital. XXXXX stated that Oswald, the shooter, was in a red and white pick-up truck and was shooting out of the driver's side window. XXXX identified Oswald as the man who fired the shots from the pick-up truck.

XXXXXXX, an African-American man, was leaving a store three doors down from the photo shop when he heard three gun shots. He saw someone lying in the middle of the sidewalk and heard others say the individual was dead. He got in his car intending to take the victim to the hospital, and saw Oswald parked in the middle of the street. As XXXXX and others were placing the victim into XXXXX's car, an ambulance arrived and they moved the victim to the ambulance for transportation to the hospital.

Although a SLED summary report indicates that Oswald and Waymers became involved in an argument while Oswald was in the process of stringing electrical wire, the source of that information is unclear.

IV. 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. § 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.

V. Conclusion

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Alston Badger of the District of South Carolina concurs with this recommendation.