

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 175-41-212

09/22/2009
Date _____

To: Chief, Criminal Section

Re: Lawrence D. Clark (Deceased),
State Line, Mississippi - Subject;
Ed Smith (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On April 27, 1958, Ed Smith, the African-American victim, was fatally shot in the chest by Lawrence David Clark, the subject, in the front yard of the victim's home in State Line, Mississippi. The victim's wife, Daisy Bell Smith, reportedly witnessed the shooting. After a preliminary hearing, the subject was placed on a \$5000 bond pending a grand jury hearing. Two weeks after the shooting, a local grand jury was convened and failed to indict the subject. According to contemporaneous media reports, Clark later bragged about the shooting. The subject died on January 21, 1992.

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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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 agents conducted thorough searches of various internet and other resources in attempts to locate living relatives of the victim and any living witness who testified before the local grand jury that failed to indict the subject. Additionally, the FBI contacted various Mississippi law enforcement and government officials; conducted searches of the FBI records, Mississippi Department of Archives and History (MDAH), the Greene County Museum and Archives, the University of Southern Mississippi library records, and the internet for relevant references and articles; and sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information.

Circuit Court of Greene County Clerk Cecelia Bounds provided the FBI with a certified letter stating that the shooting was presented to the local grand jury in May 1958, and that the grand jury returned a no bill. The letter listed the names of five witnesses who testified before the grand jury: Daisy Bell Smith (the victim's widow), Emmitt Smith, XXXXXX, XXXXX, and XXXXX.

Through **various searches**, the FBI determined that Daisy Bell Smith died in September 1995, and witness Emmitt Smith died in January 1982. The FBI could find no records of witnesses XXXXXX and XXXXX. Through additional searches, the FBI determined that witness XXXXX, who was likely XXX years old at the time of the shooting, had moved from State Line to an unknown location in Alabama.

The FBI conducted a thorough search in an attempt to identify or locate **living relatives** of the victim, including through the Accurant database, and contacts with possible relatives, but no living relatives were located.

The FBI case agent also contacted officials at the **Mississippi Bureau of Investigation** and the **Mississippi Attorney General's Office** and determined that neither of those agencies had any records pertaining to the matter.

Through an **Accurant database search**, the FBI determined that the subject died on January 21, 1992. The FBI then obtained the **subject's death certificate** that confirmed the Accurant date of death and indicated that the subject had died as a result of cardiac arrhythmia.

An FBI search of **SPLC** records, found a FOIA request from the SPLC to the FBI, and the FBI's response to that request which included an NAACP press release. None of these documents provided any information not previously collected by the FBI. As of the date of this memorandum, the **letter to the NAACP** has yielded no information.

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 kidnaping 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. Additionally, because the subject is deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Glenda Haynes, Southern District of Mississippi, concurs in this recommendation.