

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-2-1428

Date Apr. 28, 2010

To: Chief, Criminal Section

Re: Deputy Harvey Conner (Deceased),
Elmore County Sheriff's Office,
Wetumpka, Alabama - Subject;
James Earl Motley (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On November 20, 1966, at approximately 3:30 a.m., James Motley, the 27-year-old African-American victim, died in the Elmore County jail (the jail) as a result of head injuries. Earlier that morning, Elmore County Sheriff's Office (ECSO) Deputy Harvey Conner, the subject, had stopped the car in which the victim was a passenger for a traffic violation. During the course of the traffic stop, the victim told the subject that he did not have jurisdiction because the traffic violation had occurred in a different county. The subject was reportedly offended by this comment and ordered the victim to exit the vehicle. The victim complied, whereupon the subject hit the victim in the head several times with a slapjack or similar object.

Shelly Ward
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

The subject then transported the victim to the jail. A deputy stated that after exiting the patrol car on his own, the victim stumbled and fell to the ground. As he did so, the victim struck his head on a metal post. Two inmate trustees sent to carry the victim into the jail stated that the victim was bleeding from wounds to the head and was unconscious. After the inmate trustees carried the victim into the jail and placed him in their holding cell, the victim fell out of his bunk bed and hit his head on the floor.

A physician who was called to the jail to treat the victim pronounced him dead. The autopsy report states that the victim died from brain injuries and had multiple skull fractures. The coroner concluded that the victim's fatal head injury could have resulted from the blows from the slapjack, the fall to the ground outside the jail, the fall from the bunk bed or a combination of the three. Accordingly, the coroner classified the victim's death as "accidental." In January 1967, a state grand jury declined to indict the subject on the charge of homicide. The subject was also charged with violating 18 U.S.C. § 242 and was tried in federal district court. The jury returned a "not guilty" verdict on April 12, 1967. The current federal investigation revealed that the subject is deceased.

Local Investigation

According to DPS investigative reports, a Coroner's Inquiry was held by Dr. Joseph Benson in Wetumpka, Alabama on November 23, 1966. Twelve witnesses testified before Dr. Benson, including the driver and the five of the passengers in the victim's car, the four law enforcement officers who were present at the scene of the arrest, and two inmate trustees. On the advice of his attorney, the subject declined to testify before the coroner. The witnesses also completed written statements at the request of DPS investigators, summaries of which are set forth below.

According to the passengers in the victim's car, on November 20, 1966, at approximately 1:30 a.m., the subject stopped an automobile driven by a 21-year-old African-American man named XXXX for a traffic violation. Other passengers in the victim's car were XXXXXXXXXX, all of whom were African-American. The traffic stop occurred in Montgomery County on U.S. Highway 231 as they were driving home from a bar. XXXXX was riding in the subject's patrol car. As the subject was writing XXXX a ticket for driving without a license, the victim told the subject that he did not have jurisdiction in Montgomery County. The subject asked the victim to step out of the car. The victim complied, and the subject searched the victim and asked him a few questions. The subject then walked back over to XXXX and continued writing the ticket. The victim approached the subject and told him that he could not arrest XXXX. The subject said, "I'm getting tired of your mouth" and told the victim to step into his patrol car. The victim refused, and the victim and the subject walked up the highway approximately 100 yards. The passengers and XXXXX, all of whom were still inside the car, stated that they heard a single gunshot. Some stated that they saw the flash from the subject's gun go down towards the ground.

Shortly thereafter, the subject and the victim returned to XXXXX's car, and the victim stepped inside it at the subject's request. The subject radioed the Alabama State Trooper station and requested their assistance. XXXXX arrived at the scene three-to-five minutes later and asked

the victim to exit the car. According to the passengers inside the car, the victim complied, and the subject struck the victim on the head with a sap or blackjack three-to-five times. The victim fell onto the trunk of the car, then slid to the ground in a seated position. As he did so, the victim reached out with his left hand and grabbed the subject's shirt. The subject told the victim to turn him loose, then hit the victim in the head again.

XXXXX wrote in his statement that when the victim got out of XXXXX's car, XXXXX searched the victim and found a knife in the victim's pants pocket. XXXXX started walking towards his car, then turned around and saw the victim standing to the rear of XXXXX's car with his arms at his side. The subject grabbed the victim's right shoulder and told the victim that he would teach him not to disobey the subject. The subject then grabbed a sap or blackjack and began hitting the victim in the head with it. The victim reached out and grabbed the subject's shirt. The subject hit the victim in the head once more and said, "Turn me loose, nigger." XXXXX stated that the victim was bleeding profusely from the head. XXXXX corroborated XXXXX's account in relevant detail. XXXXX stated that he was leaning over the hood of the subject's patrol car writing out a bond and did not see what happened. However, he heard the subject say, "Turn me loose," followed by two quick slaps.

According to the troopers, the subject picked up the victim off the ground. XXXXX arrived at the scene at that point. XXXXX walked the victim over to the ECSO patrol car and placed the victim inside it. The subject then transported the victim to the jail.

According to inmate trustees XXXXX, the subject told them to go out to his patrol car and carry the victim into the jail. The trustees stated that they found the victim on the ground outside the patrol car, unconscious and covered in blood. The victim had two holes in the side of his head. They stated further that the subject asked them to wash the blood from the victim and from his patrol car. After doing so, the trustees placed the victim on a bunk in XXXXX's jail cell. XXXXX stated that he then left the cell. XXXXX stated that he later heard the victim coughing and called XXXXX back to the cell. Just as XXXXX arrived, the victim rolled off his bunk onto the floor. XXXXXXXX both stated in their reports that the victim hit the top of his head on the floor when he fell, causing his wounds to start bleeding again. The trustees called for help through the window, and the subject came over to the cell and decided to call a doctor to treat the victim. A doctor arrived at the scene and pronounced the victim dead at approximately 3:30 a.m.

Medical Evidence

The victim's autopsy was performed on November 20, 1966, at the State of Alabama Department of Toxicology and Criminal Investigation. The autopsy report states the cause of death as cerebral damage and hemorrhage from trauma to the right anterior region of the head. The external examination revealed two one-inch lacerations to the right forehead region, and abrasions to the left and right eyebrows and the scalp. The internal examination revealed a large skull fracture in the lower right parietal region and several small fractures in this same area. A toxicological analysis of the victim's blood revealed an alcohol level of 0.14 percent. The victim's death certificate classifies the manner of death as "accidental."

Local Prosecution

On January 9, 1967, a state grand jury declined to indict the subject on the charge of homicide.

2008 - 2009 Federal Review

On July 7, 2008, the Federal Bureau of Investigation (FBI) conducted a review of the circumstances surrounding the victim's death based on media coverage of the incident. The review was conducted 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. As part of its review, the FBI obtained the Alabama Department of Public Safety (DPS) investigative reports, the autopsy report, death certificates for the subject and ECSO Sheriff Lester Holly, and media reports pertaining to the incident. The FBI also contacted the Elmore County Clerk who advised the agents that the Elmore County Courthouse was flooded in 1981, and most, if not all, county records were lost. A review of the few records that remained failed to uncover any records or transcripts pertaining to the victim's death.

1967 Federal Investigation

Pursuant to the 2009 Cold Case review, investigators from the Criminal Section of the Civil Rights Division obtained the 1967 federal file from the National Archives. Records revealed that on the morning after the incident, a representative from the American Friends Service Committee in Atlanta contacted John Doar, the Assistant Attorney General of the Civil Rights Division, to report the incident. Mr. Doar contacted the FBI and requested that they conduct a full investigation into the incident.¹ On January 18, 1967, the Civil Rights Division filed a criminal information against the subject charging him with violation of 18 U.S.C. § 242. The federal trial commenced on April 10, 1967, in Montgomery, Alabama. On April 12, 1967, a jury that consisted of 11 white men and one African-American man found the subject not guilty of a violating 18 U.S.C. § 242.

According to the 1962 FBI investigative reports, XXXXX, who was not mentioned in the state file, stated that the victim fell and struck his head on a metal post behind the Elmore County Jail prior to his being booked into the jail. XXXXX stated that the victim exited the patrol car without assistance and took six to seven steps towards the jail on his own. After that, the victim stumbled and fell forward. As he was falling, the right side of the victim's head struck a metal ring that was 12 to 16 inches from the ground. The victim then half raised up onto his knees and half turned towards the car. The victim crawled two to three feet and fell over onto his back

¹ The FBI also conducted a brief investigation into an incident two years prior to the Motley incident involving a white man named XXXXX who the subject also beat with a slapjack. XXXXX alleged that he took the slapjack away from the subject. The subject then called for the Alabama Highway Patrol, and they took XXXXX into custody. XXXXX was found guilty of burglary after a jury trial and sentenced to three years in prison.

several feet behind the patrol car.

XXXXX was interviewed by the FBI on January 3, 1967. XXXXX stated that he rode to the jail in the subject's patrol car, then exited the car and pulled his seat forward so that the victim could get out. XXXX proceeded to the rear of the jail and opened the door. As he did so, XXXX heard someone fall. When XXXX turned back around to face the patrol car, he saw the victim lying on the ground face down between the car and the open gate. The subject was still walking around the back of the car at that point. XXXX stated that he figured that the victim had just passed out from being drunk, and it did not appear that the victim was hurt badly enough to require medical attention as he was not bleeding significantly and his breathing seemed normal. XXXX stated that he walked into the jail and got two prisoners to come out and carry the victim into the first floor of the jail. The prisoners placed the victim face-up on the floor in the hallway outside the fingerprint room. XXXX estimated that the victim lay there for six to eight minutes while the prisoners washed the blood off his face. XXXX did not state whether or not the victim was conscious at this point. The prisoners then carried the victim up to the second floor of the jail and placed him in a cell. XXXXX left the jail shortly thereafter and returned to his residence.

While the 1967 federal file does not contain transcripts of the trial, media reports pertaining to the incident state that XXXXXXXXX testified about the victim's fall outside the jail.

On December 9, 1966, FBI agents contacted XXXXX advised that he was in the process of preparing a short letter to the Circuit Solicitor stating that the victim died of a head injury that could have been received in one of three ways — by blows inflicted by the subject, by the fall outside the jail in which he struck his head on a metal post, or by the fall from his bunk.

The FBI interviewed XXXX on March 31, 1967. XXXXX stated that at approximately 3:45 a.m. on the morning of the incident, the subject telephoned him and said, "A nigger died in the jail." XXXX stated that the subject sounded anxious and excited, and asked XXXXX to respond to the jail. XXXX reported to the jail, where the subject told him that the victim was drunk and had resisted arrest. The subject told XXXX that he had hit the victim approximately four times with a slapjack. The subject stated further that after exiting his patrol car, the victim had fallen forward and struck his head on a steel gatepost. The subject took XXXX outside and pointed to a support on the steel post on the right side of the gate about a foot above the ground. XXXXX stated that he did not see any blood on the post or on the ground surrounding it. XXXXX stated that he did not examine the area closely, nor did he obtain any physical evidence from the area.

XXXXX stated that he then went into the jail and examined the victim's body. XXXXX observed a small laceration to the left forehead and a small laceration to the right upper forehead. XXXXXXX also saw an injury to the right side of the victim's head just above the right ear. There was a bruise in that area that appeared to have been caused by a blow and blood encrusted in the hair above the right ear. XXXXX stated that he later performed an autopsy and classified the cause of death as accidental based on witness testimony that the victim had received blows to the head on three separate occasions which are set forth above. XXXXX stated that any one of these blows could have caused the victim's death or possibly a combination of all three blows.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. The FBI investigation revealed that the subject is deceased, and the testimony of the witnesses associated with the victim indicated that the subject was the only officer who assaulted the victim and that he acted on his own.

Additionally, because the subject in this case was already tried under 18 U.S.C. § 242, a second trial under the same statute would constitute double jeopardy. U.S. CONST. amend. V. Finally, 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 kidnaping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Louis Franklin of the Middle District of Alabama concurs in this recommendation.