

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-9-1901

Date April 09, 2010

To: Chief, Criminal Section

Re: XXXX, et al.,
Crittenden County Sheriff's Office,
Marion, Arkansas;
Andrew Lee Anderson (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On August 5, 1963, Andrew Anderson, the 16-year-old African-American victim, was shot and killed with a high-powered rifle while trying to run from a group of white men and Crittenden County Sheriff's Office (CCSO) deputies. At a subsequent coroner's inquest, the mother of an eight-year-old white girl testified that she witnessed the victim chasing after her daughter, who was hysterical and covered in mud. According to the mother's testimony, the daughter got into her mother's car and told her mother that the victim had sexually assaulted her.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

The above file has been closed as of this date.

Date

Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

The mother summoned help from passers by, who called the CCSO. According to other testimony at the inquest, a group of CCSO deputies, three civilians, and the girl's stepfather pursued the victim through a soybean field and ordered him to stop. When the victim continued to flee, he was shot in the leg. One civilian witness testified at the coroner's inquest that he believed that Sam Burns, the girl's stepfather, shot the victim with a deer rifle. Although Mr. Burns admitted to reporters that he was in the field at the time of the shooting, he denied shooting the victim. Mr. Burns did not testify at the coroner's inquest. Following the shooting, the CCSO deputies immediately took the victim to the hospital for treatment. The victim died two hours later from loss of blood due to a severed artery in his leg.

Federal Investigation

The Federal Bureau of Investigation (FBI) opened an investigation into the circumstances surrounding the victim's death on August 31, 2007, based on media coverage of the incident. The investigation was opened pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights homicides that occurred not later than December 31, 1969. As part of its investigation, the FBI searched the National Archives and located an FBI report dated August 5, 1963. This report revealed by letter dated July 30, 1963, that Burke Marshall, then Assistant Attorney General of the Justice Department's Civil Rights Division requested that Attorney George Howard, Jr., the President of the Arkansas State Conference of NAACP Branches, be interviewed to determine the basis for his statement in a telegram to the Department that the victim, before being shot, had indicated a desire to surrender. AAG Marshall also requested that the FBI interview any persons mentioned by Mr. Howard as having been sources of this information. Mr. Marshall also requested the transcript and official report of the Coroner's Inquest into the circumstances surrounding the victim's death.

The FBI interviewed Mr. Howard on August 2, 1963. Mr. Howard stated that on July 20, 1963, XXXXXXXXXXXX Andrew Anderson, came to Pine Bluff, Arkansas, and contacted him relative to his son's death. XXXX brought three friends with him, who identified themselves as XXXXXXXXXXXXXXXXXXXX. The four men brought three or four newspaper articles with them containing accounts of the shooting. Mr. Howard stated that he based his telegram to the Department on information he had received from these four men. Mr. Howard stated further that the four men did not indicate that they had first-hand knowledge of the circumstances surrounding the shooting, nor did they mention the names of any eyewitnesses to the shooting. Rather, the information they provided appeared to have been gained through reading the newspaper articles.

The FBI contacted one of the three men, XXXX, who stated that neither he nor the other two West Memphis residents XXXXXXXXX had any firsthand knowledge of the shooting, nor were they aware of any eyewitnesses to the shooting. Rather, they obtained the information they furnished to Mr. Howard from media reports pertaining to the incident.

One of the media reports pertaining to the incident mentions the possibility that the victim was surrendering prior to being shot. According to an article in the *Evening Times*, telephone XXXXXX told officers that the victim stopped several times during the chase and

would put his hands up as if to surrender, then start running again. The article states further that officers said the victim “did the same thing when [sic] finally halted, which caused him to be shot as he ran.”

As part of its investigation, the FBI also obtained the transcript of the testimony given before the Crittenden County Coroner’s Office on July 17, 1963. During the course of the current FBI investigation, the agent obtained death certificates that had been issued for Sam Burns, Horace Brackin, Sheriff Cecil Goodwin, and all of the deputies who were involved in the pursuit of the victim.

Local Investigation

At the Coroner’s Inquest in 1963, Prosecuting Attorney Julian Fogleman questioned civilians Horace Brackin and Bob Counts; CCSO Sheriff Cecil Goodwin; and CCSO Deputies Robert Warren, Billy Williams, Ralph Craig, C.M. Rieves, Clyde Barker, and H.I. Dickson. Mr. Fogelman also questioned the girl XXXX, XXXX, and the doctors who treated the victim following the shooting. Sam Burns, who allegedly shot the victim with a deer rifle, was present with counsel but did not testify.

XXXX testified that when XXXXXX, XXXX, did not arrive home for lunch, XXXX went looking for her in the car. XXXXXX saw XXXXX running down the street, hysterical and covered in mud, with an African-American teenager, who was later identified as the victim, running behind her. XXXXX jumped into the car and told XXXX that the victim had grabbed her between her shorts and her pants. Mrs. Burns testified further that she observed what she believed to be seminal fluid on XXXX pants. XXXX pursued the victim in her car and yelled out for help as she did so. XXXX, who was on the highway, began following the victim in his car and did not let the victim out of his sight. XXXX testified that she also called out to the XXXX, who alerted Mr. Brackin. As Mr. Brackin began following the victim, XXXX called the CCSO to make sure that they were aware of the pursuit.

Civilian XXXX testified that he was working at the XXXX when he saw XXXX drive by in pursuit of the victim. XXXXX stated that XXXX appeared upset, and XXXX looked like she was screaming. XXXX got into his car and drove after XXXX. When he reached the service road, he saw that XXXX had pulled over. XXXX called out to XXXX and said that the victim had molested XXXX little girl. XXXX continued pursuing the victim in his car, then parked his car near the lake and exited it. XXXX walked towards the victim and shouted, “Get in the car with me.” The victim asked why, and XXXX said, “If you haven’t done anything, there is nothing to worry about.” The victim said, “No, I ain’t going in the car with you.” The victim then walked behind some houses and hid behind a shed. XXXX explained what had happened to the woman who resided in one of the houses, and the woman gave XXXX a shotgun with two shells in it.

The victim ran towards the bean field. XXXX stated that he fired a single shot and yelled at the victim to stop. The victim, who was “completely out of range,” fell, then got up and continued running. When the officers arrived at the scene, XXXX pointed out the victim to

them. XXXX also saw Horace Brackin and Sam Burns arrive at the scene. XXXX stated that the victim continued running north, although the officers repeatedly commanded him to stop. When asked if the victim ever gave any indication of surrendering to the officers, XXXX said, "Not that I noticed, except one time he hesitated and looked like he took a step or two toward the south, which would be the middle of the field where the road bisects, and then it looked like he cut and run off again." When the victim reached the middle of the bean field, the officers again hollered for him to surrender. The victim stopped and took a step or two toward the officers, then started off running again. At that time, XXXX heard a shot and saw the victim fall to the ground.

Civilian Horace W. Brackin testified that on the day of the shooting, his XXXX was playing in their yard. XXXX called out to Brackin XXXXX and told him to have his mother call the sheriff's office. Mr. Brackin got his .22 caliber rifle, which was not loaded, out of the gun case. Brackin then got into his car and drove to get Sam Burns, the girl's stepfather. Burns got his rifle, and they got into the car and pursued the victim. A woman motioned towards a bean field and said the victim was in it. Brackin stopped his car, and he and Burns got out. Brackin called out to the victim, who was 600 to 700 feet away from them. Brackin told the victim to come out of the field with his hands over his head. The victim put his hands over his head and "danced about three steps," then stopped. Brackin told the victim that they would hold their fire if he would "come on." The victim turned and ran north across the field. Brackin hollered out to the victim, but he continued to run away. Mr. Burns asked Brackin, "Brackin, should I shoot?" Brackin replied, "No, just knock his props out from under him." Brackin heard a shot at that point, which he thinks was fired from Burns's deer rifle. Brackin stated that he did not actually see Burns fire because Burns was ten feet in front of the car, and Brackin was ten feet behind the car.

Several civilian and deputy witnesses testified that they yelled at the victim to stop, but the victim continued to run north away from those pursuing him through the soybean field and did not surrender. While some of the deputies involved in the pursuit heard the fatal gunshot being fired, all testified that they did not actually see who fired it because they were too far away. Deputy Craig testified that he did not know who fired the shot, but knew Sam Burns had a gun. Craig stated further that none of the deputies who were involved in the pursuit even had their guns out.

The deputies testified that the victim was immediately carried from the scene and taken to the hospital. XXXX testified that he treated the victim at Crittenden Memorial Hospital and found a small entrance wound on the lateral right leg and a large exit wound on the inside of the right thigh just above the knee. The victim died two hours later due to shock and hemorrhage from an arterial bleed.

At the conclusion of the inquest, the coroner's jury returned a verdict of "Excusable Homicide" based on Arkansas law which provided that any officer or private citizen had the right to take any person into custody on a felony charge and could use firearms to do so. Sexual molestation of a child under 14 was considered a felony under Arkansas law.

Legal Analysis

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