CIVIL RIGHTS DIVISION

Notice to Close File

Date MAY 2 2010

File No. <u>144-19-2766</u>

To:	Chief, Criminal Section
Re:	Officers W.O. Dempsey (Deceased) et. al, Atlanta Police Department, Atlanta, Georgia - Subjects; Joseph Franklin Jeter, Sr. (Deceased) - Victim CIVIL RIGHTS
	It is recommended that the above case be closed for the following reasons:
	Case Synopsis
shoot W. Jo XXX arrest	On September 13, 1958, Joseph Franklin Jeter, Sr., the African-American victim, was shot illed by Atlanta Police Department (APD) Officer W.O. Dempsey. Shortly before the ing, Dempsey, and subjects Lieutenant Ellis Barrett, Officer Ned C. Oliver, Officer Andrew nes, and Officer David R. Turner responded to a report of a man, later identified as XXXX, pointing a gun inside a drug store. The subject officers reported that when they ed XXXXX and placed him in a patrol car, a very large crowd approached and began yelling m. Among them was XXXXX, the victim XXXXX. The officers claimed that
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To:	Records Section Office of Legal Administration The above numbered file has been closed as of this date.
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	Chief, Criminal Section FORMERLY CVR-3 FORM CL-3

when Oliver attempted to arrest XXXX the victim struck Oliver from behind, knocking him to the ground. At that point, the victim, XXXXX jumped on top of Oliver. Believing that the victim was trying to take Oliver's service weapon, Dempsey shot and fatally wounded him.

The majority of the civilian witnesses gave statements to the APD contradicting the subjects' version of the events. Specifically, the witnesses stated that the officers beat XXXXX after arresting him and when a woman from the crowd, XXXX protested, they began beating her too. The XXXXXXXXXX approached the officers in attempt to intervene and stop them from beating XXXXX. An officer grabbed XXXXX around the neck and lifted him off the ground, while another officer struck him. The victim started to cross the street toward the officers to explain that XXXXX was the housing project manager. At that point, an officer, likely Oliver, crossed the street and pushed the victim back, while Dempsey shot the victim.

The matter was presented to a Fulton County grand jury that heard testimony from about 30 witnesses over the course of ten days. On September 30, 1958, the grand jury announced that it had declined to indict Dempsey, determining that he had acted in defense of himself and his fellow officers.

On September 30, 1958, the victim's XXXXXXX were tried in Recorder's (municipal) Court. During the six-hour hearing, Dempsey, Oliver, Barrett, and several civilian witnesses testified. The judge found the victim XXXXX guilty of resisting arrest, assaulting an officer, creating a disturbance, and cursing. The judge sentenced XXXXX 30 days in jail for each of the four offenses but then suspended all four sentences. The judge sentenced XXXXX to one 30-day suspended sentence, XXXXX to two 30-day suspended sentences, and XXXX to 60 days.

Dempsey died on September 17, 1993; Jones died on November 9, 1994; Oliver died on July 25, 1996; Barrett died on November 23, 2003; and Turner died in February 1978.

Federal Review

In the fall of 2008, the Federal Bureau of Investigation (FBI) opened an investigation into 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 obtained the APD investigative file, the personnel files for all subjects except Dempsey, and a number of contemporaneous newspaper articles. The FBI also conducted searches of Georgia death records and various databases, and contacted XXXXXXX subject XXXXXX.

Subjects' accounts

Lieutenant Barrett, and Officers Dempsey, Oliver, Jones, and Turner submitted reports on the day of the shooting.¹ All five subjects were white. Barrett, Dempsey, and Oliver also

¹ Dempsey and Oliver submitted a joint report, Jones and Turner submitted a joint report, and Barrett submitted a report alone.

testified in the municipal court proceeding against the victim XXXX. Their accounts are consistent and are summarized together below.

At about 6:20 p.m., the subjects responded to a report of an armed man at the Yates and Milton drugstore (the drugstore) near the Perry Homes housing project. Upon arrival, they were informed by the drugstore XXXXX that a man, later identified as XXXX had brandished a gun in the drugstore and was standing across the street. The subjects exited the drugstore. Seeing the officers ,XXXX began to run away. The subjects gave chase and caught him at the intersection of Drew Place and Drew Drive. XXXXX was arrested and placed in Jones and Turner's patrol car. At that point, a crowd of about 500 people "stormed" the patrol car, trying to free XXXX from it. A woman in the crowd, later identified as XXXX approached the officers and demanded to know why XXXX had been arrested. The officers replied that XXXX was "unruly" and asked her to leave. XXXX "directed opprobrious words" to Officers Jones and Turner. Officer Jones arrested XXXX and was trying to place her in his patrol car when she kicked and slapped him. Jones, Turner, and Barrett then used "force as was necessary" to place XXXX in a patrol car. In the meantime, XXXX had exited the patrol car and was running north. Barrett caught XXXX within a half block of the car, subdued him, and returned him to the car.

One of the people in the crowd was the victim XXXXX Oliver arrested XXXX and was bringing him toward a patrol car, when the victim hit Oliver on the right side of the face from behind, knocking Oliver to the ground. At that point, the victim XXXX and his XXXX, jumped on top of Oliver and grabbed at his service weapon. Dempsey then shot the victim. The officers placed the victim and his XXX in Dempsey and Oliver's patrol car and they drove to meet the ambulance that had been called. At the intersection of Marietta and Ashby Streets, the victim was transferred to the ambulance and transported to Grady Hospital.

Civilian witness statements

Except for XXXXX and XXXXX the witnesses generally gave similar accounts indicating that the officers beat XXXXX and XXXXX when XXXXX intervened, he, too was struck. At that point, the victim tried to tell the officers that XXXXXX was the XXXXXXXXXXXX, whereupon one officer pushed the victim backwards and another officer shot him.

XXXXXX and XXXX all stated that they saw the officers beating XXXXXX XXXXX and XXXXXX stated the officers struck XXXXXXX with blackjacks and kicked him.

²XXXXXX and XXXX were unrelated.

XXXXX stated that when XXX tried to speak to XXXXX an officer hit XXX and XXX struck back. At that point, two other officers grabbed XXX, handcuffed XXX, and placed XXX on the ground. An officer stomped his foot across XXX head, while another struck XXX on the top of the head. They then took XXX to a patrol car and struck XXX again.

XXXXX stated that XXXXX approached the officers to intervene and stop them from beating XXXXXX. An officer grabbed XXXXX around the neck and lifted XXXXX off the ground, while another officer struck XXXXX.

XXXXXXX and XXXXXX stated that they saw officers hitting XXXXXXX and XXXXXX confirmed that XXXXXX attempted to intervene but an officer grabbed XXXXX from behind, while XXXXXX stated that when XXXXXXX said XXXXX was the XXXXXXXX an officer struck XXXX in the head.

XXXXXXX and XXXXXXX stated that the victim began to tell the officers that XXXXXXXX was the XXXXXXX.

XXXXXX stated that an officer, likely Oliver, crossed the street and grabbed the victim. XXXXXX tried to pull the victim away from Oliver, and a brief tussle ensued. As Oliver pushed the victim back onto the sidewalk, another officer shot the victim, striking him somewhere below the chest. The victim fell to one knee and two officers dragged him to a patrol car and placed him on the floor in the back.

XXXXX similarly stated that when the victim began yelling at the officers, Oliver crossed the street and pushed the victim backward. Another officer, presumably Dempsey, who was standing eight to ten feet away from the victim, shot him and the victim fell to the ground.

XXXXXX stated that when the victim approached the officers and told them XXXXXX was the XXXXXX an officer grabbed him. XXXXX. grabbed the victim at the same time. At that point, an officer walked up and shot the victim.

XXXXX stated that when an officer grabbed XXXX the victim started to cross the street and XXX pulled him back. The officer let go of XXXX approached the victim, grabbed him, and struck XXXX The officer then pushed the victim back while another officer shot the victim.

XXXXX stated that when an officer struck XXXX the victim started across the street and was shot.

XXXX did not witness the shooting but stated that XXXXX was being held and struck by officers when XXXX heard the gunshot behind him.

XXXXX described XXXXX arrest and beating but did not mention XXXX attempted intervention or the shooting.

Only two civilian witnesses, XXXXX (white) and XXXXX (white) gave accounts

supporting the subjects' version of the incident. XXXX stated that XXXXX saw an officer (presumably Oliver) being attacked by two men and a woman (presumably the victim, his XXXXX, and his XXXX. XXXX stated that he thought Oliver would be killed. XXXX gave a similar statement, adding that XXXX saw the victim knock Oliver to his knees and appeared to be trying to take Oliver's gun when he was shot.

The subjects' deaths

The FBI obtained death certificates for all of the subjects, save Turner. The death certificates indicated that Dempsey died on September 17, 1993; Jones died on November 9, 1994; Oliver died on July 25, 1996; and Barrett died on November 23, 2003. The FBI was not able to obtain a death certificate for Turner. However, based on searches through various databases, the FBI made an initial determination that he died in February 1978 in Acworth, Georgia. The FBI then contacted XXXXXXXX who confirmed that XXXX died in February 1978.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, none of the subjects can be prosecuted because they are 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 subjects are deceased, this matter will not be forwarded to the state for prosecutive review.