

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1751

Date 4-6-09

To: Chief, Criminal Section

Re: Officers Weyman Cherry (Deceased),
Robert Hancock (Deceased)
Dawson Police Department,
Dawson, Georgia - Subject;
Willie Countryman (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On May 25, 1958, at about 1:30 a.m., Dawson Police Department (DPD) Officers Weyman Cherry and Robert Hancock, the subjects, entered the yard of Willie Countryman, the African-American victim, reportedly to investigate a suspicious noise. The subjects claimed that the victim jumped from behind a tree and cut Cherry's cap with a knife, whereupon Cherry broke free and shot the victim. Countryman sustained a gunshot wound to the stomach and was transported to a nearby hospital where he was pronounced dead upon arrival.

Cristina Gamondi
Attorney

To: Records Section
Office of Legal Administration

The above numbered file has been closed as of this date.

4-6-09
Date

Chief, Criminal Section

FORMERLY CVR-3

FORM CL-3

Local investigation

The shooting was investigated locally by a Coroner's Inquest that was held on May 26, 1958. The coroner's jury acquitted Cherry, ruling that he acted in self-defense.

Federal Investigations

The Federal Bureau of Investigation (FBI) first opened the matter on May 28, 1958, after receiving a complaint from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Following the investigation, the Department of Justice presented criminal civil rights charges against the subjects to a federal grand jury in August 1958.¹ The grand jury declined to return indictments against either Cherry or Hancock.

In the fall of 2008, the 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 case agent retrieved from the National Archives and Records Administration (NARA) the 1958 FBI file relating to the incident; interviewed current DPD and other law enforcement officials; and conducted searches of Georgia death records.

The 1958 investigation

As part of the 1958 investigation, the FBI case agents interviewed both subjects on June 11 of that year. Both subjects declined to sign the statements.

Cherry stated that, in the early morning of May 25, 1958, he and Hancock were on patrol in their car when they heard "loud hollering and hooping" in a nearby house. The subjects stopped their car and began to make their way on foot through the back yard of the victim's residence toward the source of the noise. Cherry suddenly heard a "commotion" behind him and turned, instinctively drawing his gun. A man, later identified as the victim, cursed and asked what the subjects were doing there. At the same time, Countryman lunged at Cherry. When Cherry crouched to avoid the blow, Countryman cut Cherry's cap with a knife, causing the cap to fall to the ground. Cherry then turned and ran but, as he looked back, he saw the victim lunge at him again, whereupon he fired a shot, wounding the victim in the abdomen. Cherry radioed for an ambulance, and after the victim was placed in the ambulance, XXXXXXXXXXXXX picked up the knife used by the victim. The FBI case agents asked who was in possession of the knife.

¹ The Department also presented charges against subject Cherry and XXXXXX for the fatal beating of James Brazier on April 20, 1958; against subject Cherry for the nonfatal shooting of XXXXX on May 23, 1958; against subject Cherry and XXXXXXXX for the nonfatal beating of XXXXX on May 25, 1958; and Officers XXXXXXXXXXXX for the nonfatal beating on XXXXXXXX on an unknown date in the spring of 1958. As in the case of the death of Countryman, the federal grand jury declined to return indictments in any of the other four incidents.

Cherry said that he was but, after checking two desks at the station, stated that it must have been at his home. When asked to provide the cap that Countryman had reportedly cut, Cherry said that it had been cleaned of the dirt.

Hancock corroborated Cherry's account. He stated that he was about 15 to 20 feet ahead of Cherry as they moved through the victim's property. Hancock heard a commotion, turned, and saw someone lunging at Cherry, whereupon Cherry fired and the person fell to the ground. Hancock stated that he did not see the knife.

XXXXXXXXXX stated that XXXXXXXX found a knife with a silver-colored blade under's the victim's right side after the victim was lifted onto the ambulance cot. Like Cherry, XXX stated that he could not find the knife at the DPD station and that Cherry might have had it.

XXXXXXXXXXXX was interviewed by the FBI case agents on June 5, 1958. XXXXXXX stated that on the night of the shooting, XXX was standing with the victim outside his house. At some point, they heard what sounded like someone urinating in the back yard. Countryman went to investigate the sound. XXXXX heard something fall and then a gunshot. XXXXX stated that she also heard the victim say something to the effect of, "I'm sorry, I didn't know it was you all." XXXXXXX saw two men in the back yard and the light of a flashlight illuminating the victim's body on the ground. At that point, XXXX ran from the scene and went to XXXXXXXXX.

XXXXXXXXXX, employee of the Moore Funeral Home, told the FBI case agents that XXXXXXXXX responded to the scene in an ambulance. XXXXXXXXX picked up the victim's body and placed him on a cot. According to XXXXXXXXX, possibly XXXXXXXXX, told XXX to look for a knife. XXXX stated that it was then that XXX saw a knife lying to the left of the victim's body. XXXXX described the knife as being 6-inches long. XXXXX stated that XXX did not see the knife on the ground or anyone pick it up off the ground and place it on the cot. XXXXXXX stated that XXX did not see a knife at the scene nor did XXX recall hearing any officer instruct the funeral home employees to look for one.

XXXXXXXXXXXXXXXXXX, Countryman XXXX, and XXXXXXXXX all stated that they had never known the victim to carry a knife. XXXXXXXXX, the victim's XXXXXXXXX, stated that the only knife XXX had seen the victim carry was a small knife with a covered blade, used to open cartons at the victim's workplace.

2) The 2008 Review

The Georgia death records database revealed that subject Cherry died on October 25, 1970 and subject Hancock died on October 8, 1991. The FBI case agent obtained copies of both subjects' death certificates.

The FBI case agent interviewed XXXXXXXXXXXXXXXXXXXX, who was XX years old at the time of Countryman's death and could not recall the incident. XXXXX stated that XXX had known both subjects and confirmed that they are both dead.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the subjects because they are both 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. § 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 kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.²

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. AUSA Sharon Ratley, Middle District of Georgia, concurs.

² Although, the federal government already investigated the incident and presented charges, the dual and successive prosecution policy would not be applicable because double jeopardy did not attach since the subjects were not indicted.