

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1756

Date July 27, 2011

To: Chief, Criminal Section

Re: Officer James L. Durden (Deceased),
XXXXXXXXX,
Macon Police Department,
Macon, Georgia - Subjects;
A.C. Hall (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On the night of October 13, 1962, Macon, Georgia, Police Department (MPD) Officers James L. Durden and XXXXXX, the subjects, shot and killed A.C. Hall, the 17-year-old African-American victim. The subjects claimed that they fired at the victim, who ran from them and who they believed to be armed, when he turned toward them and appeared to reach for a weapon.

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

FORMERLY CVR-3

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The incident began sometime after 9:00 p.m., when the subjects responded to a complaint from XXXX and XXXX that XXXX had seen an African-American man exit their 1957 Ford (the XXXX car) and that, shortly thereafter, XXXX discovered that a gun was missing from the glove compartment. When the subjects arrived on Ash Street, where the XXXX car was parked in front of the home of XXXXXXXXX, XXXX told them that she would be able to identify the alleged thief. Both XXX and XXXX got into the back seat of the subjects' patrol car which was driven by subject XXXX, while subject Durden sat in the front passenger seat. They drove a short distance and eventually to the rear of the G.W. Carver elementary school (the school) on Hazel Street.

At about the same time, the victim and a XXXXXXXXX, were walking toward the home of one of XXXXXXXX girlfriends, and stopped at the school yard so that XXXX could remove dirt from inside X shoes.

When they testified at Coroner's Inquest in October 1962, the subjects and the XXXX stated that the victim ran across the headlights of the patrol car, whereupon XXXX recognized him as the person X had earlier seen exiting the XXXX car and said, "that's him!" The subjects and the XXXX stated further that one or both the subjects yelled at the victim to stop but he did not comply. The subjects pursued the victim in their car at a slow speed. According to the subjects, when Hall ran over a dirt mound, subject XXXX stopped the car at the edge of the mound. At that point, Hall turned toward the car and pulled his right arm from behind his back. It was then that first Durden, and then XXXX, started firing at the victim from their car windows. Durden fired two shots and XXXX five. The victim continued running but eventually fell to the ground, having been fatally wounded. The XXXX confirmed that the victim turned and pulled an arm from behind his back. Neither the subjects nor the XXXX stated that they saw something in the victim's hand, however.

Both XXXXXXXXX were interviewed by the FBI in 2008 and stated that the subjects exited their patrol car and both they and the victim were out-of-sight at the time of the shooting. Both XXXXX stated that they thought they heard the subjects screaming at the victim and then a single gunshot.

The FBI determined that subject Durden died on September 24, 2009. Subject XXXX, who is still alive and XXX years old, was interviewed by the FBI in 2011. Although XXXX could not remember many of the details of the incident, X gave an account consistent with his 1962 statement. In particular, XXXX recalled that XXXX pointed the victim out as the person who had broken into their car and that the victim turned toward the officers, pulling an arm from behind his back. In his 2011 interview, XXXX stated that the victim actually pulled a gun and that Durden yelled at XXXX that the victim was about to shoot the officers.

At the Coroner's Inquest in 1962, XXXX stated that when X and the victim saw the patrol car at the school, X could see two officers in the front and one white woman in the rear. X stated, however, that X heard a voice that sounded like that of a young African-American male, yell from the patrol car at the victim, "A.C., here is the police!" X confirmed the subjects' and XXXX' accounts that the victim started running. According to XXXX, when Hall passed the slow-moving patrol car, the car stopped, and the driver exited and ran after the victim. XXXX

stated that the driver fired shots in the victim's direction as he ran. XXXX stated further that the passenger officer also exited and ran after the driver and the victim but she could not see whether he drew his gun or fired it. X initially testified that X heard three or four shots and subsequently that X heard several but did not know how many.

Although officers searched the area on the night of the shooting, they did not find the XXXX stolen gun. The next morning an MPD patrolman found a revolver of the same caliber of, and similar in appearance to, the XXXX gun, about 30 to 40 feet from the dirt mound where the victim was standing when the officers shot at him. However, XXXX examined the revolver and said that it was not his.

The shooting was investigated locally by a Coroner's Inquest that began on October 17, 1962. On October 19, 1962, the coroner's jury returned a verdict of murder. The subjects were arrested and held in the Bibb County Jail. However, the matter was then presented to a Bibb County grand jury which declined to indict the subjects.

In 1962, the FBI monitored the local investigation and conducted additional investigation in 2008.

Local Investigation:

As mentioned previously, a Coroner's Inquest was held on October 17 and 19, 1962. Coroner A.R. King, Jr., and five jurors heard the sworn testimony of ten witnesses, and the subjects were allowed to give unsworn statements.

At the Inquest, the state was represented by Assistant Solicitor General, J.J. Gautier and the subjects were represented by Macon attorney Denmark Groover, Jr. The victim's mother, Beatrice Hall, was represented by attorneys Howard Moore, Jr. and Donald L. Hollowell.

Initial events

XXXX testified that, on the afternoon of October 13, 1962, X drove to XXXX house on Ash Street in his car (the XXXX car). XXXX kept an Omega .22 caliber revolver in the glove compartment.

According to XXXX, on the night of the shooting, X left work at the "Shrimp Boat" at about 9:15 p.m. and drove to X mother-in-law's house in the Shrimp Boat truck. Upon arrival, X pulled up behind the XXXX car and saw an African-American man exit the driver's side, close the door, and walk away toward Second Street.¹ XXXX stated that the man walked directly in front

¹ A Shrimp Boat employee was with XXXX in the truck and XXXX allowed the employee to drive home in the truck. The employee was reportedly in the position to see the African-American man exit the XXXX car, but X was not called to testify or identified by name.

of the lights of the truck and X saw him clearly. XXXX entered X mother-in-law's house and told XXXXXXXX about what X had just seen. X then accompanied XXXXXXXX out to their car. X looked inside and saw that the glove compartment was open and the gun was gone. XXXX told XXXXXXXX to call the police and X went back inside to do so while X walked up Second Street looking for the man.

Subjects' accounts

Subject Durden stated that on the night of the shooting, he and XXXXXXXX received a call to go to Ash Street because an African-American man had reportedly stolen a gun out of a car and a white man was chasing him.² Upon arrival, the subjects spoke to the XXXX who said that XXXX had seen an African-American man get out of their car and shortly thereafter noticed that a gun was missing from it. The subjects asked XXXX whether X would recognize the man and X said X would. X then said that the man was wearing a white shirt with the tail hanging out of his pants. Both XXXX then got into the subjects' patrol car and they drove around looking for the suspect. After a few turns, subject XXXX suggested they go look behind the school. They drove down the driveway at the side of the school and, just before they reached the corner, a teenager, later identified as the victim, ran out from behind a small side-building. As the victim crossed in front of the car's high beams, XXXX said, "that's the man."

As the victim then ran down a concrete path behind the school, XXXX drove faster to chase the victim, while Durden yelled out his window at the victim to halt. Hall reached a dirt mound and ran over it. XXXX stopped the car at the edge of the mound and yelled, "watch him, Durden!" Durden saw that Hall had a hand in his pocket and when "he done made his turn," Durden fired his service revolver out of the car window. Durden then opened his car door and again fired a shot over the door. During that time, XXXX was firing rapidly from his car window. Durden yelled at XXXX to "hold it," while he ran around the front of the car. Durden said that XXXX fired one last shot that would have struck Durden had he not fired it "straight up." Hall was running fast up the path and Durden gave chase. The victim then crossed Ash Street and immediately fell to the ground forward, breaking his fall with his hands. He then rolled over and sat up. Durden stood on the other side of Ash and had his service revolver out. He could not see the victim's hands very well but they were down by his sides. Durden ordered Hall to put his hands up. Hall raised his hands above his shoulders but then fell backwards to the ground. Durden ran to the victim and saw that he had been wounded. Durden ran back to the patrol car and radioed for an ambulance. He then drove the car to the intersection of Ash and First Streets where he parked it. He walked back to where the victim was lying. By then there were numerous officers at the scene.

² According to a contemporaneous newspaper article, Durden had been an MPD officer for about seven months at the time of the shooting.

XXXX gave a statement consistent with Durden's account with respect to the events that led up to the shooting, XX
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Witness statements

The XXXX testified that the subjects arrived about five minutes after the XXXX called the MPD. Both XXXX confirmed that they were in the patrol car with the subjects when they spotted the victim. XXXX was sitting behind XXXX and XXXX behind Durden. They both confirmed that, when the victim ran across the patrol car's headlights, XXXX told the subjects "that's him."

XXXX stated that when Hall ran, both subjects yelled at him stop. He corroborated the subjects' account that when the victim ran over the dirt mound, he stopped running, turned, and "his right arm was coming out from his right side." XXXX testified that the victim was "almost full facing" the car but XXXX could not see whether the victim had anything in his hands at that point. Either Durden or XXXX then yelled a warning to the other to the effect of "watch it," and then started firing. XXXX testimony's is somewhat unclear as to whether the patrol car had stopped fully, or was still slightly rocking, when the first shot was fired. Nevertheless, he maintained that he clearly saw the victim turn and reach behind his back.

XXXX stated further that Durden fired first, possibly two shots; XXXX estimated that XXXX fired more than two shots. As soon as the shooting began, the victim started running. XXXX confirmed the subjects' accounts that Durden ran in front of the car and yelled at XXXX to hold his fire. At that point, XXXX and XXXX also got out of the car. XXXX followed the subjects as they chased the victim. XXXX testified that X did not hear any gunshots at that point. X confirmed their account that the victim fell to the ground, sat up, raised his hands at Durden's request, and then fell again.

XXXX stated that X first saw the victim as he ran across the headlights of the patrol car. X did not see the victim's face but recognized him from his build and the fact that he was wearing a white shirt hanging over his pants. X confirmed that X heard one of the subjects, X could not recall which one, yell at Hall to stop. Like XXXXXXXX, XXXX stated that when Hall reached the dirt mound, he reached in his back pocket and turned slightly toward the patrol car, but he did not stop running. Like XXXXXXXX, X did not see anything in Hall's hands. XXXX stated that X was in the car when the subjects started shooting. Durden, who was in the front passenger seat,

fired first, before the patrol car had come to a complete stop. X believed that X fired once or twice. XXXX said X thought XXXX did not start firing until Durden jumped out of the car and that the car was still coming to a stop at that point, but X could not be sure. X thought that XXXX did not fire more than three times. XXXX confirmed that the subjects and XXXXXXXXX chased the victim, but X remained in the car and did not see the victim fall.

XXXX, who was X years old at the time of the shooting, testified that X met up with the victim at the Middle Georgia Veterans Club on Cotton Avenue, sometime between 8:30 and 8:45 p.m. X estimated that they remained there until about 9:00 or 9:30 and then started walking toward the home of one of XXXX girlfriends. They stopped near a fence on the right side of the school because there was dirt in X shoes that was bothering X feet. X held on to the victim and got the dirt out of one shoe. About a minute after X stopped, a patrol car arrived. At that point, the victim moved behind a small side-building ("block house") while XXXX stood next to it. The victim pushed XXXX away from the beam of the patrol car's headlights. As the patrol car drove by, XXXX heard a voice yell from the patrol car, apparently at the victim, "A.C., here is the police!" XXXX stated that X could only see one passenger in the rear of the patrol car, a white woman, however the voice X heard sounded to X like that of a young African-American male. As the car continued to the rear of the school, Hall asked XXXX to run with him, but X was too afraid. Hall then started running up the path. XXXX stated that Hall ran past the slow-moving car and, just before he reached the mound of dirt, the patrol car stopped. The victim was on top of the mound of dirt, when the driver of the patrol car got out and started shooting as he ran after the victim. According to XXXX, the officer did not yell at the victim to stop before he started shooting. XXXX initially stated that X heard three or four shots and then several but X did not know how many. X could not see the victim at that point. The passenger officer then exited the car and ran after his partner; X did not see whether he drew his gun or whether he shot. XXXX yelled at the subjects that they killed the victim, and then X ran to Hazel Street where X saw a car with two officers, later identified as XXXX and XXXX, who asked X about the gunshots. X replied, "shooting at a boy." The detectives asked X what the boy had done and X said X did not know. XXXX testified that XXX never saw the victim with a gun on the night of the shooting.

XXXXXXXXX testified that he and his partner, XXXXXXXXX, went to Ash Street on the night of the shooting, in response to the XXXX complaint. Upon arrival, they learned that the XXXX had already left in the subjects' patrol car to search for the alleged gun thief. XXXX testified that he and XXXX drove down Second Street and, when they reached Hazel Street, they heard a burst of rapid gunfire. They turned the car and started down Hazel in front of the school. They saw XXXX, who was crying and told them that officers were shooting at Hall. XXXX and XXXX pulled into the school yard where they saw XXXX, who was starting to drive away. They asked him what happened and he told them that a man had been shot on Ash and First Streets. They drove there where they found the victim on the ground. About thirty seconds later, an ambulance arrived and transported the victim to Macon Hospital.

XXXXXXXXX gave a statement consistent with X partner's account.

XXXX, who lived about a block from the school, testified that he heard seven shots.

XXXX, who was bartending at the Middle Georgia Veterans Club on the night of the shooting, testified that he did not see the victim with a gun. There was a teenage party at the club, and no one was drinking alcohol. He testified further that he learned about the shooting about 20 or 30 minutes after the victim and XXXX left the club.³

Physical and medical evidence

According to investigating XXXXXXXXX, it was determined that both subjects fired their .38 caliber service revolvers. Durden fired two rounds and XXXX fired five rounds. Investigators did not recover any bullets and, therefore, did not run any ballistic comparison tests.

XXXX stated that the victim's body was found about 270 feet from where the subjects claimed they started shooting. XXXX testified further that XXXX found a billfold/pouch on the victim's body with a deck playing cards and two 12-gauge shotgun shells.

XXXXXXXXX testified that he responded to the scene shortly after the shooting and conducted a search. He found a billfold/wallet. XXXX testified that XXXX found the billfold about 90 feet from where the subjects first started shooting (at the mound) and about 180 feet from where the victim fell to the ground. The billfold contained pictures, cards, and the victim's social security card.

XXXXXXXXX testified that he went to the scene on the morning of October 14, 1962. Several other officers were present, as was XXXX. XXXX found a .22 caliber revolver about a foot off the pathway behind the school, about 30 to 40 feet "on the other side" of the dirt mound where the shooting occurred, toward Ash Street. He examined and unloaded the gun: it contained two fired rounds and four live rounds.

According to XXXX, the gun found by XXXX was a .22 caliber, RG-10, German-made pistol. They could not find the gun among the MPD gun registration files.

XXXX stated that he was present on October 14, 1962, when XXXXXXXXX found a gun at the scene. XXXX examined the gun and determined that, although the revolver was very similar in appearance to the gun taken from his car, it was not, in fact, his gun.

Dr. Leonard Campbell, Bibb County Medical Examiner, testified that the victim sustained a single gunshot-wound to the back. The fatal bullet exited the victim's chest, through the apex of the heart. Campbell stated that he had no way of knowing whether the bullet ricocheted off of anything, prior to striking the victim's back because the bullet was not recovered. Campbell stated that, based on the size of the entrance wound, the bullet was .38 caliber. He stated further that Hall was wearing a white shirt and dark pants.

³ He also estimated that it would take the same amount of time to walk from the club to the school.

The [redacted] were interviewed by the FBI on November 24, 2008. [redacted] was X years old at the time of the interview and [redacted] was X. They gave very brief, essentially identical, accounts of the incident. They both stated that when the patrol car reached the school, they saw a man running. Both subjects exited the patrol car and gave chase. The [redacted] did not mention [redacted] identifying the victim to the subjects as the suspected thief. Both [redacted] stated that they thought they heard the officers scream at the man, and then they heard a gunshot. Notably, they stated that both the subjects and the victim were out of sight at the time of the gunshot and they did not see the shooting. Both [redacted] stated that they did not remember much of what happened after the shooting. [redacted] recalled being asked to testify at the Inquest, while [redacted] said X thought X was asked to testify by the Byron, Georgia, Police Department.

The FBI attempted, unsuccessfully, to locate [redacted].

The FBI obtained a copy of subject Durden's death certificate that indicated that he died on September 24, 2009, at the age of 75.

Contemporaneous newspaper articles concerning the shooting quote MPD Detective Chief William Heyward Bargeron, whose department was tasked with investigating the incident.⁴ The FBI obtained Bargeron's death certificate that indicates that he killed himself in April 1974.

The FBI determined that the G.W. Carver School is not located on federally-owned land and is not, therefore, within the territorial jurisdiction of the United States.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute subject Durden 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. § 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.

⁴ Bargeron was presumably quoted because his department was investigating the shooting, however, he did not personally investigate it and, in fact, did not testify at the Inquest.

Third, there is insufficient evidence to prove beyond a reasonable doubt that either XXXX, XXXXXXXX, or Durden acted with the requisite criminal intent. According to XXXX, the subjects fired when the victim turned toward them and pulled a gun. Both subjects had been officers for less than one year when the shooting occurred. At the 1962 inquest, the XXXX corroborated the subjects' accounts that XXXX identified the victim as the person X had seen exit X car just minutes beforehand and, therefore, the likely thief of the XXXX' gun. Moreover, every witness, including XXXX, confirmed that the victim ran from the patrol car. The XXXX stated both then and in 2008 that they heard the subjects yelling at the victim prior to the shooting. Moreover, during their Inquest testimony, shortly after the incident, both XXXX corroborated the subjects' statements that the victim turned toward the patrol car and made a reaching gesture. Although their second statement, four decades later, contradicts their prior account, their contemporaneous and far more detailed accounts hold greater evidentiary weight, particularly in light of the fact that they both admitted during their 2008 interview to not recalling much of what happened after the shooting. XXXX apparently did not even recall testifying in the Inquest.

Additionally, XXXX's account that X heard an African-American male yell a warning to the victim from the patrol car is contradicted by the XXXX contemporaneous accounts, as is X statement that the driver, XXXX, exited and fired first. Accordingly, there is insufficient evidence to contradict the subjects' accounts that they shot the victim, who they believed was likely armed with the XXXX gun, when he failed to comply with orders to stop, turned toward them, and moved his arm as if reaching for a gun.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. AUSA Sharon Ratley, Middle District of Georgia, concurs in this recommendation.