CIVIL RIGHTS DIVISION

Notice to Close File

File No. <u>144-33-2264</u>

Date JUN 01, 2011

To: Chief, Criminal Section

Re: XXXXXXXX Ruston Police Department, Ruston, Lousiana; -Subject John Wesley Wilder (Deceased) - Victim <u>CIVIL RIGHTS</u>

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

Case Synopsis

> Cristina Gamondi Attorney

To: Records Section Office of Legal Administration

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

<u>5-26-11</u>

Date

Chief, Criminal Section FORMERLY CVR-3 FORM CL-3

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According to a contemporaneous newspaper article, a local Coroner's Inquest determined that the subject had shot Wilder in self-defense. Lincoln Parish Coroner Dr. Robert Carter was quoted in the article as saying that he had questioned unidentified officers and three African-American witnesses in reaching his conclusion. The shooting took place while the subject and victim were in close physical contact and, according to the Coroner, the victim had a hand on the subject's neck.

2008 Federal Investigation:

In 2008, the FBI initiated a review of 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 interviewed former RPD XXXXXXXXX and XXXXXXX and XXXXXXX and attempted unsuccessfully to interview XXXXX contacted several Louisiana law enforcement officials, and an investigator from the Southern Poverty Law Center (SPLC); and conducted searches of the internet and law enforcement databases.

¹ XXXXX, whose version of the events was provided in summary form by his attorney, did not apparently specify the difference in physical size between him and the victim.

2 As mentioned in the prior footnote, only a summary of XXXX's version of events is contained in the investigative file. As a result, some of the details and chronology are not clear. For example, it is not clear whether the subject interrupted his struggle with the victim in order to get his shotgun.

XXXXXX did not appear at the interview and XXXXXX told the FBI that he had decided against an interview. Nevertheless, XXXXXXprovided the substance of his client's version of the events, as described in the case synopsis, to the FBI case agent.

XXXXX also told the FBI that there was an FBI investigation in 1965 and that XXXXX had been interviewed by the FBI at the time. XXXXXX said that XXXXX claimed that the interview was lengthy and that he was exonerated through it. However, the FBI did not locate FBI records confirming the 1965 investigation.³

XXXXX handed the gun to XXXX pulled out his "slapper" and again tried to direct the victim toward the car. The victim struck XXXXX with his right fist, took the slapper from him, and tried to strike him with it. XXXX deflected the slapper strike and drew his service pistol and fired it at the victim. According to the article, the subject fired five shots at, and had retreated about ten feet from, the victim before the victim fell to the ground.

The article states that XXXXX was ultimately arrested for "obstructing a peace officer." The article does not indicate whether anyone in the crowd was arrested.

³ According to XXXXXX he was interviewed by FBI SA Earl Cox. The FBI determined that SA Cox is deceased.

The FBI interviewed former RPD XXXXXXXXX, who stated that XXXXXX could not recall whether XXXXX was on duty on the night of the shooting but had XXXXX been, XXXXXX would have been "across town." XXXXXX did recall that XXXXX said that XXXX was forced to fire five times to get the victim off him. XXXXX said that XXXXX was "strictly for proper law enforcement" and was bothered that he had killed Wilder.⁴

The FBI interviewed former RPD XXXXX. XXX said that XX was not on duty on the night of the incident but was told about it by XXXX, who was the first backup officer. XXX's description of the incident as told to XX by XXX is consistent with the subject's account and that in the contemporaneous newspaper article, in that XXX stated that the shooting was in self-defense. XXX added that the shooting was investigated locally by the Lincoln Parish Sheriff's Department Chief Deputy George Simonton and Coroner Carter, who are both deceased. Like XXX, XXX opined that XXXX had not wanted to hurt anyone, much less shoot them, and had tried everything he could to properly arrest the victim.

The FBI conducted various **internet and law enforcement database searches**; and contacted officials at the Municipal Employees Retirement System but was not able to locate former RPD Officer XXXX.⁵

There is no indication in the investigative file that the SPLC identified or located any additional eyewitnesses, but they presumably would have forwarded that information to the FBI if they had.

⁵ The FBI also contacted officials at the Redstone Arsenal in Huntsville, Alabama, where XXXXXX was believed to have taken a job after the couple moved to Alabama. Officials found records for five women named XXXXX but none matched XXXXXXX.

⁶ The SPLC investigator forwarded to the FBI an e-mail chain between him and XXXXX.

⁷ XXXXX also said that he had spoken to XXXXXX (presumably as part of his research). XXXXX also told XXX that X had been exonerated following a lengthy FBI interview in 1965.

⁴ It is unclear what XXXXX meant by this statement: the implication could have been that the subject was saddened as a result of the shooting or that he felt guilty about it, or both. The former seems more likely given that another officer, XXXXX opined that the subject did not want to hurt anyone.

The FBI also contacted **RPD XXXXXXX**, who confirmed that the RPD did not have records pertaining to the victim's shooting.⁸

The FBI contacted officials at the Lincoln Parish Coroner's Office and the Lincoln Parish Police Jury but neither agency maintained any records pertinent to the shooting. Additionally, XXXXXXXXXXX told the FBI that he contacted Lincoln Parish District Attorney Bob Levy who said that his office maintained no records relevant to the Wilder shooting.

The FBI obtained the **victim's death certificate** which indicated that he had died as a result of a "gun shot wound through [the] heart," and that he was shot by a police officer.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, there is insufficient evidence to contradict the subject's account that he fired in self-defense. Although the contemporaneous newspaper account is somewhat different from XXXXXXXX account as provided through XXXXXXXX they are consistent in relevant detail, i.e., that the subject fired in self-defense. Moreover, according the article, the Coroner determined that the shooting was justified after reportedly questioning both law enforcement and three civilian African-American witnesses.

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 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. Counsel to the United States Attorney, William Flanagan, Western District of Louisiana, concurs in this recommendation.

⁸ XXXXX said that there had been a leak in the roof of the RPD causing damage to records. A significant mold problem developed as a result of the leak and records were destroyed. It is not clear whether the records were destroyed by the mold itself or by RPD officials after they were damaged.