

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3563

Date APR 18 2010

To: Chief, Criminal Section

Re: Officer Lawrence Rainey (Deceased),
Philadelphia Police Department,
Philadelphia, Mississippi - Subject;
Luther Jackson (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

According to contemporaneous newspaper articles, on October 25, 1959, Luther Jackson, the African-American victim, a 27-year-old veteran of the Korean war, was shot and killed by Philadelphia Police Department (PPD) Officer Lawrence Rainey, the subject, during a traffic stop. XXXXXXXX was with the victim at the time of the shooting and stated that, sometime between 10:00 and 10:30 p.m., XXXX and the victim were in a car parked on Pine Street in Philadelphia, Mississippi. Rainey drove by in his patrol car and stopped. Rainey ordered the victim and XXXXXX to exit their car. Jackson exited first and Rainey pushed him out of sight of XXXXXX. XXXXXX was also exiting the car when XXXXX heard a gunshot. XXXXXX

Cristina Gamondi
Attorney

To: Records Section
Office of Legal Administration

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

4-18-10

Date

Chief, Criminal Section

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started walking in the direction taken by Rainey and the victim and then heard a second shot. When XXXXX reached the started walking in the direction victim, he was lying dead in a ditch. Shortly thereafter, Rainey went to his patrol car and called "City Hall." After a while, he called again, and XXXXX heard him say, "Come on down here, I think I have killed a nigger."

XXXXXX stated that PPD Chief Bill Richardson and two other officers arrived at the scene shortly after the shooting. When XXXXX told Richardson that Jackson had been killed "for nothing," Richardson hit XXXXX in the head with his pistol, breaking XXXX glasses. XXXXX struck Richardson and he struck XXXXX with his "blackjack." Richardson and two other officers were in the patrol car with XXXXX as XXXX was being transported to the jail. Richardson wanted to hit XXXXX again, but one of the other officers counseled against it, saying "We are in deep enough as it is."

Rainey claimed that he and another officer, identified in one newspaper article as XXXXXXXX and in two others as Chief Richardson, attempted to arrest the victim after finding him drunk and slumped over in the driver's seat of his car. Rainey claimed further that the victim resisted arrest and was choking him when Rainey fired two shots at him. Rainey died in November 2002.¹

In a letter to then Attorney General William P. Rogers, dated October 29, 1959, one of the victim XXXXXXXXXX, asked that XXXXX death be investigated. By a letter dated December 1, 1959, then Acting Assistant Attorney General for the Civil Rights Division Joseph M. F. Ryan, Jr., responded to XXXXXXXXXX request by stating that after "careful consideration," of all the evidence developed during the investigation of Jackson's death, it was determined that the evidence did not "indicate the violation of any federal statute." Accordingly, no further action by the Department was warranted.²

¹ Rainey became Neshoba County Sheriff in 1963. In 1964, Rainey was arrested and charged federally for being involved in the conspiracy that resulted in the murders of three civil rights workers, Michael Schwerner, James Chaney, and Andrew Goodman. Rainey was acquitted in the December 1967 trial, however.

² John L. Murphy, Chief of the General Litigation Section, had signed the letter for AAG Ryan. The General Litigation Section would have been responsible for the enforcement of 18 U.S.C. § 242 (deprivation of rights under color of law), thus it is not clear why the shooting of an unarmed man by a PPD officer would not qualify as a violation of "any federal statute." Moreover, it is unclear what "investigation" the letter was referring to. A November 11, 1959, *Jackson Daily News* article quotes Medgar Evers as stating that the NAACP had asked the Justice Department to investigate the shooting after local authorities ruled it a justifiable homicide, and that the Department was, in fact, investigating the incident. However, in 2009, the FBI searched its records and none were found, except a newspaper article and a 2003 FOIA request from the

Several of the victim's living relatives were interviewed by the FBI in 2009, including XXXXXXXXXXXX who had written the Justice Department in 1959. The victim's relatives stated that they came to believe that the victim was not killed by Rainey, but by Earthy Culberson, a cousin of the victim's by marriage. Culberson was reportedly involved in various illegal activities, including running gambling and prostitution rings and selling contraband alcohol. The victim's family members opined that Rainey took responsibility for the shooting because Culberson had connections in the PPD, and more specifically with the subject, providing the subject with prostitutes and alcohol in return for receiving early warnings of any impending police investigation of his activities. XXXXXXXXXXXX opined to the FBI that XXXXXXXX lied about Rainey's involvement because there was a connection between XXXXXX and Culberson. Culberson died in January 1994.

Federal Review

In the fall of 2008, the Federal Bureau of Investigation (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 case agent interviewed numerous members of the victim's family: two of his brothers, two sisters, a niece, and a cousin. One of the victim XXXXXXXXXXXX provided the FBI a number of documents, including a sworn affidavit from XXXXXXXX dated October 29, 1959. The FBI also interviewed former PPD XXXXXXXXXXXX as having witnessed the shooting, and XXXXXXXX Earthy Culberson XXXXXXXXXXXX. The FBI case agent contacted various Mississippi law enforcement and government officials; conducted searches of the FBI records, Mississippi Department of Archives and History (MDAH), the City of Philadelphia archived records, the University of Southern Mississippi library, and the internet for relevant references and media articles; sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information; and solicited information about the case via a press release that was published in local newspapers and broadcast on local television and radio stations.

XXXXXX gave a sworn affidavit on October 29, 1959. XXXXXX one of the victim XXXXXXXXXXXX found the affidavit among XXXXXX possessions and provided it to the FBI on November 30, 2009.³ XXXXXX stated that, sometime between 10:00 and 10:30 p.m., on the night of the shooting, XXXXXXXX and the victim were in a car borrowed from a friend, parked on

SPLC.

³ XXXXXXXXXXXXXXXXXXXX was interviewed by Medgar Evers as part of the NAACP investigation into the incident. Although not stated in the affidavit itself, it appears likely that XXXXXXXX provided it to Mr. Evers at the time of XXXXXX interview. Another document provided to the FBI by XXXXXXXX was a letter from the NAACP to then Attorney General William Rogers, requesting an investigation of the shooting. The letter had the same date as XXXXXXXX affidavit and makes references to facts mentioned in the affidavit.

Pine Street in Philadelphia, Mississippi. Rainey drove by in his patrol car and stopped. Rainey got out of his car and approached the victim and XXXXX and told them to exit their car. Jackson exited first and Rainey pushed him in front of the car and to the side, out of sight of XXXXXXXX. XXXXXXXX was also exiting the car when XXXXX heard a gunshot. XXXXX started walking in the direction taken by Rainey and the victim and then heard a second shot. When XXXXX reached the victim, he was lying dead in a ditch. XXXXX started crying and told the subject he had killed Jackson "for nothing." As XXXXXXXX knelt by Jackson, Rainey knocked XXX back. XXXXXXXX struck Rainey. Rainey told XXXXXXXX to go to the back of XXXXX and Jackson's car and stay there. Rainey went to his patrol car and called "City Hall." After a while, he called again, and XXXXX heard him say, "Come on down here, I think I have killed a nigger."

Shortly thereafter, two more unidentified officers arrived, followed by PPD Chief Bill Richardson and Philadelphia XXXXXXXX Richardson ran up to XXXXX, who was crying and talking to XXXX Richardson asked XXXXX what XXXX was saying and, when XXXX replied that Jackson had been killed "for nothing," Richardson hit XXXX in the head with his pistol, breaking XXXX glasses. XXXXXXXX struck Richardson and he struck XXXXX with his "blackjack." XXXXXXXX was then told to get into a patrol car. Richardson and two other officers were in the patrol car with XXXXX as XXXXX was being transported to the jail. Richardson wanted to hit XXXXXXXX again, but one of the other officers counseled against it, saying "We are in deep enough as it is."

XXXXXX was tried the next morning on charges of drunkenness, resisting arrest, and assault and battery. XXXXX stated that six jurors questioned XXXX about the shooting incident. XXXXX was fined \$40 and returned to the jail where XXXX stayed until 4:30 or 5:00 p.m. XXXXXXXX stated that XXXXX was not allowed visitors during that time. According to XXXXX, Jackson was wearing a diamond ring and a watch at the time of his death and the items had not been returned as of the date of the affidavit, October 29, 1959.

Former PPD XXXXXXXX who was identified in an XXXXXXXXXXXX article as the officer with Rainey at the time of the shooting, told the FBI that he sometimes patrolled with the subject. XXXXX adamantly denied, however, being present when Rainey shot the victim.⁴

The FBI interviewed several of the victim's living relatives.

XXXXXXXXXX (the victim XXXXXXXX), XXXXXXXXXXXX (one of the victim XXXXXXXX), and XXXXXXXXXXXX were interviewed together at XXXXXXXX home in Preston, Mississippi. The three family members stated that they thought that Earthy Culberson, a cousin of the victim's by marriage, shot and killed the victim because the victim had been involved with Culberson XXXXXXXX. Moreover, the family members stated that Rainey had a business relationship with

⁴ XXXXX statement that XXXX was not present is corroborated by XXXXX 1959 affidavit in which XXXXX makes no mention of any other officer being at the scene when Rainey shot the victim.

Culberson: Culberson, who ran various illegal enterprises, provided Rainey with prostitutes and alcohol and Rainey, in turn, warned Culberson if the police was investigating Culberson. The FBI then briefly interviewed XXXXXXXX another of the victim XXXXX who also stated that it was Culberson who killed the victim.⁵

XXXXXX one of the victim XXXXX was with the victim the day before he died. XXXXXXX stated that XXXXX and the victim were both working for GM in Michigan and traveled back to Mississippi together shortly before the shooting. The day after arriving XXXXXXX and the victim both went to Earthy Culberson's house. On the way there, the victim informed XXXXXXX that he had had an intimate relationship with Culberson XXXXX. At some point XXXXXXX and his female friend left Culberson's and, later that night, at about 10:00 p.m. XXXXXXX returned to Culberson's to check if the victim needed a ride home. Culberson answered the door and said that the victim had obtained a ride home with XXXXXXXXXXXX that, as XXXXX later learned, the victim was already dead at that point, leading him to believe that Culberson had killed the victim. Like the other family members XXXXXXX opined that the subject "took the rap" for Culberson because Culberson had connections in the PPD.

XXXXXX another of the victim XXXXX stated that his and the victim XXXXXXX asked XXXXXXX investigate the circumstances of the victim's death. XXXXX and XXXXX went to Philadelphia and then, against XXXXX wishes, XXXXX went first to Neshoba County Sheriff Cecil Price and demanded information. Price told XXXXX to go to the PPD, but XXXXX convinced XXXXX not to do so. At some point, the NAACP began an investigation of the victim's death, and XXXXXXX traveled with Medgar Evers to Philadelphia to locate XXXXXXX. XXXXXXX was eventually interviewed by Evers in his office in Jackson, Mississippi. XXXXX stated that XXXXX did not hear the substance of XXXXXXX's statement because he was sitting outside the office. XXXXXXX later learned, however, that XXXXXXX statement was consistent with the newspaper accounts indicating that Rainey killed the victim. Like the other family members XXXXXXX came to believe that it was Culberson who killed the victim and opined that XXXXXXX lied about Rainey's involvement because there was a connection between XXXXX and Culberson.

The FBI interviewed XXXXX Culberson XXXXX who stated XXXXX that XXXXX had no direct knowledge of the shooting as XXXXX was living in Indiana in 1959. XXXXXXX stated that Culberson was forced to leave Mississippi around the time of the shooting, in the middle of the night, "for safety reasons" because someone had threatened him.

City Clerk of Philadelphia James Johnson told the FBI that a search of their records found none pertaining to the victim, XXXXX, Rainey, or XXXXX. The FBI case agents conducted an additional search of those records and found payroll records for XXXXX but none pertaining to the victim, XXXXX, or the subject.

⁵ None of these relatives were present when the victim was shot; their opinion is based on speculation.

The FBI case agent also contacted officials at the Mississippi Highway Patrol, the Mississippi Attorney General's Office, the PPD, the Neshoba County District Attorney's Office, and the Neshoba County Sheriff's Office and determined that none of those agencies had any records pertaining to the matter.

The FBI obtained the subject's death certificate from the Mississippi Department of Vital Statistics, indicating that he died on November 8, 2002, in Lauderdale County, Mississippi, as a result of throat cancer. The FBI also obtained the death certificate of Earthy Culberson, indicating that he died as a result of a heart attack on January 29, 1994. Finally, the FBI obtained the death certificate of Bill Richardson, who was reportedly present at the time of the shooting; the certificate indicated that Richardson died on January 6, 1967.

An FBI search of **SPLC** records found a number of contemporaneous newspaper articles and a number of MDAH records. None of these documents provided any information not previously collected by the FBI. The press release requesting information received no response. As of the date of this memorandum, the letter to the NAACP has also yielded no information.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the subject because he is deceased. Additionally, assuming that the victim's family members are correct that Culberson, and not the subject, killed the victim, Culberson himself is dead.

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.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because the subject is deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Glenda Haynes, Southern District of Mississippi, concurs in this recommendation.