

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3580

Date APRIL 12, 2010

To: Chief, Criminal Section

Re: Officer William Kelly (Deceased),
Taylorsville Police Department,
Taylorsville, Mississippi - Subject;
Roman Ducksworth, Jr. (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On April 9, 1962, Corporal Roman Ducksworth, Jr., the African-American victim, was shot and killed by Taylorsville, Mississippi, Police Department (TPD) Officer William Kelly, the subject. The victim, a 30-year-old military policeman, had taken a number of buses from his post in Fort Richie, Maryland, to Taylorsville, on emergency leave to be with his wife and their newborn child. The victim was sleeping as the bus he had boarded in Jackson pulled into Taylorsville. According to witness XXXX, the bus driver, XXXX, summoned the subject when he was unable to wake the victim. At that point, Kelly boarded the bus and, according to XXXX, began slapping the victim to wake him and then escorted him off the bus. The victim struck Kelly and Kelly responded by hitting the victim on the head repeatedly with a blackjack. The subject

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

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then fired a shot into the ground and then a second shot into the victim's heart.

Kelly claimed in a local grand jury that he tried to arrest the victim, who resisted.¹ Kelly struck the victim several times with his blackjack but did not "faze" him. The victim then used a Judo strike on the subject causing the subject to fall to his knees. At that point the subject drew his gun and fired a warning shot into the ground. According to Kelly, the victim said something to the effect of, "that's no good," and tried to grab Kelly's gun. It was then that the subject shot and killed the victim.

On April 10 or 12, 1962, the local grand jury declined to indict the subject for the shooting. According to an internet article on tolerance.org and an NAACP document, the subject sent a message to the victim's father, stating, "If I'd known it was your son I wouldn't have shot him."

The subject died in September 2004.

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 interviewed the victim's XXXXXXXX. The FBI also contacted various Mississippi law enforcement and government officials; conducted searches of the FBI 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.

An FBI search of SPLC records, found numerous documents: including various contemporaneous newspaper articles; documents from the NAACP investigation; NAACP press releases; an e-mail to the SPLC from XXXX, the victim's XXXXXX.

According to an NAACP field investigation report filed by Medgar Evers, XXXX, who was on the bus on X way to X home in Tampa at the time of the shooting, stated that X was seated across from the victim, about four or five seats from the rear of the bus. When the bus arrived in Taylorsville, the bus driver tried to wake the victim and, when he failed, asked the subject to intervene. XXXX stated further that the subject woke the victim by slapping several times "lightly" on the face, and then escorted him off the bus. According to XXXX, the victim struck the subject repeatedly, whereupon the subject pulled out his blackjack and struck the victim on the

¹ The subject's account of the shooting was provided by XXXXXX in a *Jackson Daily News* article.

head. The subject then drew his gun, shot once into the ground, and then at the victim.²

According to various documents provided by the SPLC, the shooting was investigated by both the FBI and the Department of Defense.³ An April 1962 memorandum from Adam Yarmolinsky, Special Assistant to the Secretary of Defense to Lee White, Assistant Special Counsel to the President, that was forwarded to the NAACP, provides a summary of the “facts” as determined by the Army’s “investigation.” The summary of the facts is in essence the subject’s version of the shooting.

XXXX, the victim XXXX, told the FBI that it was X understanding that the subject boarded the bus and struck the victim repeatedly with a blackjack, knocking out some of the victim’s teeth. When the victim tried to defend himself, the subject shot him. XXXX stated that TPD Officer Bernice Jones was present at the time of the shooting. XXXX stated further that X had also heard that the only other African-American passenger on the bus, a XXXX (XXXXX), gave a statement to Medgar Evers, but then the XXXX began receiving threats on X life and that of her mother, so X was forced to move to Florida.

Taylorsville Court Clerk Arthur Newman told the FBI that he had no records pertaining to the victim’s death.

The FBI case agent also contacted officials at the Mississippi Department of Public Safety, the Mississippi Attorney General’s Office, and the TPD and determined that none of those agencies had any records pertaining to the matter. Moreover, TPD XXXXXXXXX told the FBI that both the subject and Officer Bernice Jones (reportedly present at the time of the shooting) were deceased.

The FBI obtained the subject’s death certificate from the Mississippi Department of Vital Statistics, indicating that he died on September 17, 2004, in Magee, Mississippi, as a result of congestive heart failure.

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.

² XXXX initially told the NAACP that X heard a scuffle outside the bus, followed by two gunshots.

³ When the FBI case agents searched the FBI records, they found only a FOIA request from the SPLC, and the search in response to that FOIA request reportedly found no records.

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. 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.