

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-41-3587

Date APR 16 2010

To: Chief, Criminal Section

Re: Eugene Hurst (Deceased),  
Liberty, Mississippi;  
Herbert Lee (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On September 25, 1961, Herbert Lee, an African-American farmer, was shot and killed at Westbrook's Cotton Gin in Liberty, Mississippi, by the subject, Eugene Hurst, a Mississippi state representative. Hurst stated that he and the victim argued over an outstanding debt and that the victim swung a tire iron at him. Hurst responded by striking the victim in the head with a .38 caliber revolver, causing it to fire and kill the victim.

A state Coroner's Inquest was held inside the cotton gin office within about an hour of the shooting. Witnesses XXXXXXXXXXXXXXXXXXXX, Louis Allen, XXXXXXXXXXXXXXXXXXXX,

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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



### **1961 Federal Investigation:**

As mentioned above, the FBI initiated an investigation on the day of the shooting at the request of the Department of Justice, after XXXXXXXXXXXX, called the Department. According to XXXXX, the victim had attended voter registration classes during the week of August 20, 1961, and the victim had driven XXXXX around the area to recruit other African-Americans for the classes. XXXXX had not seen the victim since the week of August 20. The FBI interviewed the subject, the victim's XXXXX, and numerous witnesses, including all who had testified in the local Coroner's Inquest and preliminary hearing.<sup>4</sup>

### **Subject's statements**

Eugene Hunter Hurst gave statements to the FBI on September 26 and 28, 1961, and on November 2, 1961. Hurst stated that he had known the victim for 30 years and that, in 1956, Hurst helped arrange the purchase by the victim of land belonging to Hurst's XXXXX. In connection with that purchase, Hurst and the victim had made a verbal agreement whereby the victim would pay Hurst \$500. Hurst claimed that the victim had never paid Hurst the money.<sup>5</sup> Hurst stated that when he saw the victim at the gin on the morning of the shooting, he decided to speak to the victim about the debt. Hurst stated further that he generally carried a revolver with him after having been threatened by a neighbor.

Hurst saw the victim sitting in the driver's seat of his truck. As Hurst approached the truck, he put his revolver in the waistband of his trousers. According to Hurst, the victim had a reputation for belligerence and was known to often carry a gun. Hurst talked to the victim about the debt and they eventually both became angry. At one point, the victim reached down, picked up a tire iron, and told Hurst that he would not pay him. The victim then appeared to be about to exit his truck. The subject put a hand on the victim's shoulder and told him not to exit the truck with the iron. The victim nevertheless did exit the truck holding the iron. In his second interview, the subject stated that he warned the victim several times to put down the iron as he did not want to harm him. When the victim swung the iron back as if to strike Hurst, Hurst shielded his head with his left arm and struck the victim in the head with the gun with his right hand. The revolver fired and the victim fell to the ground. In his second interview, Hurst claimed that the victim swung at him twice with the iron.

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<sup>4</sup> The FBI conducted a related, broader, investigation concerning allegations that African-Americans active in voter registration efforts in Amite County had received death threats, or had been denied employment or credit. The subject and a number of witnesses from the shooting investigation were re-interviewed during that investigation, and a number of additional witnesses were located and interviewed.

<sup>5</sup> According to the victim's XXXXXXXX, the agreement had been that the victim would pay Hurst the \$500 after the victim had made the last payment on the land. Since the victim had not yet made that payment, he had not given Hurst the \$500.

## Witness statements

### i. Eyewitnesses to the shooting

All five eyewitnesses in the immediate vicinity of the shooting confirmed the subject's account that, initially, the victim was sitting in the driver's seat of his truck and that the subject stood next to the driver's door and talked to the victim. They confirmed further that, at some point, the victim exited the passenger side of the truck, whereupon the subject ran around the front of the truck and confronted the victim and then the shooting occurred.

Louis Allen<sup>6</sup> was interviewed by the FBI on September 26, 1961 and on November 3, 1961. In his first interview, Allen stated that while the victim was still in the truck, the victim and Hurst were talking loudly and, although Allen could not hear exactly what they were saying, they sounded angry. According to Allen, at one point, Hurst said to the victim something to the effect of "put down that plaything" or "put down that playing."<sup>7</sup> When the victim exited the truck and the subject walked around the front, Allen saw that the subject was holding a gun. The subject struck the victim with the gun once in the head. Hurst then appeared to strike the victim a second time, whereupon the gun fired and the victim fell to the ground. Immediately after the shooting, Hurst and the XXXXXXXX, drove away in a pickup truck.

Allen also left the scene but, within a few minutes, he was approached by XXXXXXXXX who told him that he needed to return to the gin. As XXXX transported Allen to the gin, XXX made the comment that a tire iron had been found under the victim's body. On arrival at the scene, Allen was called to testify at the Coroner's Inquest that was taking place inside the gin. Allen stated in his first FBI interview that he heard XXXXXXXXX, and XXXXXXXX testify that they had seen the victim brandishing a tire iron at Hurst prior to the shooting. Allen told the FBI that he lied about seeing the tire iron because he wanted to testify in conformity with the four other witnesses' testimony. Allen added that, from his vantage point, he could not see the victim's right hand clearly and, therefore, Allen could not state definitively that the victim was not armed, however, he felt that he would have seen the tire iron had the victim swung it. Ultimately, Allen specifically denied that anyone told him how he should testify at the inquest. The next day, Allen was summoned to testify in court at a hearing in the Amite County Courthouse and repeated his Coroner's Inquest testimony.

In Allen's second FBI interview, he stated that he was standing about 15 feet away from the rear of the victim's truck when the subject confronted the victim on the passenger side of the truck. Allen said that the subject stood about five feet away from the victim and waved or swung a gun at the victim. The victim raised his hands and Allen could not see a tire iron or any other tool extending out of the victim's hands. Allen stated that the victim would have to have been holding such a tool extending backward from his hand up his arm for Allen not to have seen it.

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<sup>6</sup> Allen was African-American and self-employed as a farmer and logging operator.

<sup>7</sup> In his later FBI interview, Allen stated that Hurst warned the victim to the effect of "you think I'm playing this morning but I'm not playing."

The subject waved the pistol a second time and it fired, whereupon the victim fell to the ground. Allen then walked up to the victim's body. Allen stated that he did not see any tire iron or other implement near the body.

In his second interview, Allen explained that he had lied during his inquest testimony because a former Amite County XXXXXX, was present in the gin prior to and during the inquest and XXXX said repeatedly to Allen, "you saw that piece of iron, didn't you." Allen told the FBI that initially he denied seeing the iron but he then decided it was best for his welfare to lie and state that he had seen a tire iron. Allen did not explain why he had not mentioned the pressure by XXXX during his first FBI interview.

After Allen testified briefly at the inquest, he went outside and saw XXXXXXXXXXXX searching the victim's body. According to Allen, XXXXX found a pocket knife and a small amount of change but Allen did not see XXXXX recover a tire iron.

XXXXXXX<sup>8</sup> was interviewed on September 26, 1961, and on November 15, 1961. XXXXX stated in XXX first FBI interview that XXX saw the victim holding a tire iron both while sitting in the pickup truck and once he exited and was confronted by Hurst. In XXXXX second FBI interview, however, XXX stated that XXX did not see the victim holding a tire iron. XXXXXX said that XXX was initially sitting in the doorway of the gin and could not have seen the victim's hands while the victim was sitting in his truck. Moreover, although XXXX stood up once the victim exited the truck, the truck obstructed XXXX view of the victim's hands. In fact, XXXX only saw the tire iron after it was pulled from under the victim's body during the inquest. XXXX also stated in XXXX second interview, however, that XXX heard the victim and subject talking about the tire iron both when the victim was still in his truck and just before the shooting. XXXX did not explain why XXX had lied in XXX first FBI interview, rather, stated that XXX thought that XXX had given the same account of the shooting, at the inquest and during both FBI interviews. XXXX added that no one had ever told XXX to change his account.

XXXXXX<sup>9</sup> was interviewed only once, on September 27, 1961. XXXXX stated that XXX was sitting on a box in the doorway of the gin at the time of the shooting. XXXX confirmed that XXXXX was also in the doorway. XXXXX stated that XXX view of the victim's and subject's lower bodies was obstructed by the truck. XXXXXX saw the subject strike the victim in the head and then XXXXX heard a gunshot. XXXXX stated that XXX did not get up from XXX box for some time.

XXXXXX<sup>10</sup>, the gin owner, said that the victim's truck obstructed XXX view of the

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<sup>8</sup> XXXXXX was African-American and employed as a farmer.

<sup>9</sup> XXXXXX was white, and the summary of XXX FBI interview does not mention XXX profession specifically. However, XXXXX stated that XXXX had brought a load of cotton, belonging to XXX neighbor, XXXXXX, to the gin in his truck.

<sup>10</sup> XXXXXXXXXXXX was white.

victim's and Hurst's lower bodies. XXX saw Hurst strike the victim in the head and then XXX heard a shot. XXXX stated that XXX had earlier seen Hurst standing next to the victim's truck and heard Hurst tell the victim to put down a tire iron. XXXX did not specify how much time had elapsed between Hurst's statement to put down the tire iron and the shooting.

XXXXXX<sup>11</sup> was interviewed on September 28, 1961, and on November 6, 1961 and stated in both interviews that the victim was holding the iron at the time of the shooting. XXXXXX explained that when the subject struck the victim with the gun causing it to fire, the victim was holding the iron down by his side and extended out in what XXXX described as a defensive position.

XXXXXX<sup>12</sup> was one of three men constructing a shed across the street from the gin. XXXXX told the FBI that XXX was 50 to 60 feet away from the victim at the time of the shooting. XXXXX saw the victim fall to the ground. XXXX stated that XXX did not see anything in the victim's hands as he fell. The other two men at the construction site, XXXXXX and XXXXXXX, both stated that they saw the shooting at too great a distance to see whether the victim was holding anything.

ii. Witnesses concerning post-shooting events and the recovery of the tire iron.

According to the witnesses, the victim fell to the ground completely face-down or mostly face-down and partially on his right side. XXXXXXXXXXXX, Amite County XXXXXX, and Dr. C.L. Delaney arrived at the scene, likely in that order, within minutes of the shooting. Dr. Delaney conducted a very brief examination and pronounced the victim dead. At some point, XXXXXXXXXXXX arrived at the scene and, according to a number of witnesses, searched the victim.

Eight witnesses stated that the tire-iron was found during, or immediately after, the inquest, after there had been witness testimony concerning the tool and the jurors went to look at the body. A tenth witness stated the tool was found prior to the inquest.

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<sup>11</sup> XXXXXXXXXXX was African-American.

<sup>12</sup> XXXXX was white and employed as XXXXXXX.

XXXXXXXX<sup>13</sup>, former Amite County XXXXXXXXXXX, was one of six coroner's jurors. XXXXX stated that, after a number of witnesses testified that the victim was holding a tire iron, the jurors walked over to the victim's body and at that point, XXX saw the iron protruding a few inches from under the victim's left pant-leg. XXXXX pointed out the tool to the other jurors, reached down and pulled it out from under the body, and handed it to Sheriff XXXX as evidence. XXXXX stated that XXX did not have to move the victim's body to remove the tire iron.

XXXXXXXX<sup>14</sup>, XXXXX<sup>15</sup>, and XXXXXXX<sup>16</sup> confirmed that they saw the tire iron protruding slightly from under the victim's legs during the inquest and it was retrieved at that point. XXXXX and XXXX stated specifically that XXXXX retrieved the tool and handed it to XXXXXXX.

XXXXXXXX<sup>17</sup>, a coroner's juror, stated that XXX was the first member of the jury to see the tire tool which the victim was still clasping in his hand. XXXXX could not recall if the tool was found before or after the witnesses testified.<sup>18</sup>

XXXXXXXXXXXX<sup>19</sup> was interviewed by the FBI on September 25 and 26, 1961. On both those occasions, XXXXX stated that XXX moved the victim's body after the inquest and it was then that XXX found the tire iron near the victim's right hand. XXXXX was interviewed again on November 6, 1961. In XXX third interview, XXXXX stated that it was XXXXX who found the iron.

XXXXXXXXXXXX<sup>20</sup> stated that it was XXXXX who first mentioned the tire iron during XXX testimony at the inquest. XXXX stated further that XXXX then pulled on one of the victim's pants-leg to move him and it was then that the tire iron was revealed under the victim's body.

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<sup>13</sup> XXXXX was white and, at the time of XXX FBI interview, XXX was employed as an XXXXX for the XXXXXXX of the Mississippi Department of Public Safety.

<sup>14</sup> XXXXXXX was white and owner of the XXXXXXX.

<sup>15</sup> XXXXX was white and employed as a XXXXXXX for the XXXXXXX.

<sup>16</sup> XXXXX was white and employed as a XXXXXXX.

<sup>17</sup> XXXXX was white and operated the XXXXXXX.

<sup>18</sup> XXXXX told the FBI that the victim's body was first moved during the inquest but XXX did not elaborate on that point. Accordingly, it is unclear whether XXX saw the tire iron at that point or some other point.

<sup>19</sup> XXXXX was white.

<sup>20</sup> XXXXXXX was white.

XXXXXXXXXX stated that XXX was present when the victim's body was turned over for the Coroner's Jury and that a tire iron was lying underneath it. XXXXX did not state who turned the body over.

XXXXXXXXXX stated that XXX saw a law enforcement officer remove a tire iron from under the victim's body during the inquest.

XXXXXXXXXX was the only other witness who stated that XXX saw the tire iron being found. According to XXXXXXXX, and a local newspaper article, XXXX was the XXXXXXXX. When XXXXX was interviewed by the FBI, XXX did not mention being one of the jurors, however. XXXXX stated that XXX had gotten up from XXX box in the doorway of the gin when XXXXXXXX, the Coroner, and a man XXXXX took to be a doctor, presumably Dr. Delaney, arrived.<sup>21</sup> According to XXXXX, the doctor examined the body and then turned it over at which point XXXXXXXX saw a long piece of iron lying on the ground.

Dr. Delaney himself stated that although he examined the victim's body and pronounced him dead, he did not move it and never saw a tire iron, either during the examination or when he was later questioned by the coroner's jurors.

A number of witnesses stated that they saw the victim's body at some point but did not see the tire iron. However, if the tire was concealed under the victim's body, their statements are not conclusive on that issue. On the other hand, three witnesses stated that they saw the victim's body being moved or turned over and that they did not see the tire iron.

XXXXXXXXXX<sup>22</sup> stated that XXX saw XXXXXXXX turn over the victim's body after Dr. Delaney's examination and XXXX did not see a tire iron. XXXX searched the victim and found a wallet, pocket-knife, and change.

XXXXXXXXXX<sup>23</sup>, XXXXXXXXX, stated that XXX ran into XXXX in Liberty and XXXX asked XXX whether XXX wanted to see the victim's body. XXXXX walked back to the mill with XXXX and arrived there prior to Dr. Delaney. Like XXXXXXXX stated that XXX saw the victim's body being turned over by an unidentified person and that no tire iron was revealed underneath.

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<sup>21</sup> Because the position of Amite County Coroner was vacant at the time of the shooting, it is unclear to whom XXXXXXXX was referring.

<sup>22</sup> XXXXXXXXX was African-American. The investigative file does not indicate XXX profession.

<sup>23</sup> XXXXXXXXX was African-American. The investigative file does not indicate XXX profession.



XXXXXXXXXX<sup>24</sup> stated that XXX was behind the gin when the shooting occurred. When XXXXXX walked to the front of the gin, XXX saw the victim lying on the ground with his right hand under his body. XXXXXX did not see any weapons nearby. XXXXXX did not see anyone touch the body until the arrival of a XXXXXXXXXXX. Like XXXX and XXXXXXX, XXXXX saw the deputy turn over the victim's body and then search the victim and find the victim's wallet, a pocket-knife, and some change but not a tire iron.<sup>25</sup>

iii. Medical evidence

Dr. C. L. Delaney stated that he was called to the scene and arrived there and started examining the victim's body within minutes of the victim's death. Dr. Delaney stated that he did not think the victim's body had been touched prior to his examination of it. Dr. Delaney observed what appeared to be a wound to the victim's left temple, possibly a gunshot wound.

Dr. James Anderson, who was hired at the request of XXXXXXXXXXX to remove the bullet from the victim, stated that he did determine that the victim's left temple injury was a gunshot wound but he could not determine the path of the bullet. Anderson did not observe any powder burns around the entry wound. Anderson stated that the victim also had a fracture above his left eye. According to Anderson, the fracture had been caused by an external object but he could not state what the object was.

**2008 Federal Review:**

In the fall of 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 retrieved from the National Archives and Records Administration (NARA) the 1961 FBI file relating to the incident; contacted Mississippi law enforcement officials; conducted searches of the Mississippi Department of Archives and History (MDAH), the University of Southern Mississippi library, and the internet for relevant references and media articles; and sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information.

Additionally, the FBI received information compiled by two Syracuse University students concerning the shooting.

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<sup>24</sup> XXXXXX was white and, at the time of the shooting, had just returned to Liberty after a 30-year absence. XXXXX, who was staying with XXXXXX, did not mention being employed.

<sup>25</sup> XXXXXX, one of the three men building the shed across the road from the gin, is the only other witness who stated that XXXXXXX was the first to arrive at the scene. XXXX said that XXX saw XXXX take something from the victim's pockets at that point. XXXXX did not say that XXXX moved the victim's body, however.

The FBI obtained the subject's death certificate that indicated that he died on April 20, 1990 in Magnolia, Mississippi.

The FBI also contacted officials at the Mississippi Department of Public Safety (MDPS) and determined that the MDPS had no records pertaining to the matter. An FBI search of SPLC records found no records relevant to the victim's death. 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.

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.