

CIVIL RIGHTS DIVISION

Notice to Close File

April 28, 2010

File No. 144-2-1426

Date _____

To: Chief, Criminal Section

Re: Officer Marvin E. Mills
(Deceased), Montgomery Police
Dept., Montgomery, Alabama -
Subject; Hilliard Brooks
(Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On August 12, 1950, Montgomery Police Department (MPD) Officer Marvin Mills, the white subject, fatally shot Hilliard Brooks, the 22-year-old African-American victim, in the abdomen on a crowded street in Montgomery, Alabama. The victim died from his injuries the following day. According to media reports, the shooting occurred at approximately 3:45 p.m., after the victim created a disturbance on a bus and used foul language in front of female passengers. The bus driver requested assistance from the subject, who was patrolling nearby as a traffic officer.

Shelly Ward
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 FORM CL-3

The subject alleged that when he asked the victim what was wrong with him, the victim came towards him. The subject pushed the victim away, and the victim fell to the ground. The victim then got up and came towards the subject again. The subject stated that he warned the victim not to come any closer and drew his gun. The victim hit the subject and pulled the whistle and chain from the subject's shirt. The subject fired a shot at the victim, and he fell to the ground.

The subject and several civilian witnesses stated that the victim appeared to be drunk and was fighting, cursing, and creating a disturbance. Two innocent bystanders, XXXXXX and XXXXXX, were hit by the bullet after it exited the victim's body. Both sustained non-fatal flesh wounds to the legs. Civilian witnesses stated that the victim remained combative following the shooting and attempted to get off the stretcher on which the ambulance attendants had placed him. One civilian witness, however, was quoted as saying that the victim was so intoxicated that he could have been subdued with ease. The witness stated further that he did not see the victim hit the subject, and, therefore, did not believe the shooting was justified.

Federal Investigation

The Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding the victim's death on July 1, 2008, pursuant to the Department of Justice's "Cold Case" initiative, and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which focuses on civil rights era homicides that occurred not later than December 31, 1969. As part of its review, the FBI obtained media reports pertaining to the incident, and death certificates for the victim, the subject, the two bystanders who were wounded, the mayor, and the former MPD chief. FBI agents also searched the Alabama Administrative Office of Records in Montgomery Alabama, the Alabama Department of Public Safety, the Federal Clerk's Office, the Montgomery Police Department, the Montgomery County Circuit Clerk's Office, and the Alabama State District Attorney's Office, but were unable to locate any records pertaining to the incident.

Local Investigation

According to an article in the *MontgomeryAdvertiser* titled "Police Board Asserts Mills's Act Justified; Investigation Report of Shooting of Negro Will go to Grand Jury," a board of senior officers within the MPD conducted a one-week investigation into the shooting and found that the subject acted in self-defense when he shot the victim. The police board studied the statements of 17 civilian witnesses and based its decision on both the witness accounts at the subject's account. The police board noted that as a traffic officer, the subject did not carry any weapons other than a pistol and, therefore, he could not have used non-lethal means to defend himself. The State of Alabama also conducted a toxicological examination of the victim's blood and determined that he was under the influence of

unspecified intoxicants at the time of the shooting. The police board recommended that the case be turned over to the Circuit Solicitor of Montgomery County to be presented before a grand jury. Montgomery Mayor John Goodwyn concurred with this recommendation. It is unclear from the media reports whether or not the case was ever presented to a state grand jury.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. The FBI investigation revealed that the subject is deceased and that no other officers were directly involved in the shooting. Therefore, there are no prosecutable subjects in the present case.

Even if the subject were alive, the applicable statute of limitations would preclude his prosecution under the federal criminal civil rights statutes for the killing of Hilliard Brooks. Prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18U.S.C. § 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18U.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.

Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Louis Franklin of the Middle District of Alabama concurs in this recommendation.