

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1758

Date April 28, 2010

To: Chief, Criminal Section

Re: John Lo Whitaker (Deceased),
Jackson, Georgia- Subject;
James Andrew Miller (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

According to a report of the Southern Poverty Law Center (SPLC), on August 30, 1964, James Andrew Miller, the African-American victim, was shot and killed by a white man, later identified as John Lo Whitaker, the subject, in Jackson, Georgia. According to an article in the Jackson *Progress-Argus*, the shooting occurred in the early morning hours of August 30, after a group of African-American youths, which included the victim, stopped and threw rocks at a car occupied by a white couple and XXXXXXXX (XXXXXXX). Whitaker, who was driving his pickup truck behind the XXXXXXXX car and was also forced to stop, claimed that he fired two shots at the victim when the victim tried to open his truck door.

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
FORMERLY CVR-3 FORM CL-3

The victim was transported to nearby Sylvan Grove Hospital, where he was pronounced dead upon arrival.

Immediately after killing the victim, Whitaker drove to Covington, Georgia, where he surrendered to Butts County Sheriff's Office (BCSO) authorities. That same day, a local Coroner's Inquest was called. According to the *Progress-Argus* article, the African-American passengers of the cars involved in the incident gave statements to BCSO investigators indicating that they went to the scene of the incident after hearing reports that the road had been blocked by white youths. The local Coroner's Jury acquitted Whitaker, ruling that he acted in self-defense.

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 obtained a local newspaper article and conducted searches of Georgia birth and death records.

After searching the relevant databases, the FBI case agent obtained a copy of the subject's death certificate, indicating he died of a heart attack on December 19, 1987.¹

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

¹ The SPLC report also noted that the victim had been beaten by unidentified white individuals a few days prior to the shooting. According to the *Progress-Argus* article, XXXXXXXXXXXX stated that the victim had been beaten on the night of August 28, 1964, "in another fight" between African-Americans and whites. Because the alleged beating did not result in the victim's death, it falls outside the parameters of the FBI's "Cold Case" initiative and the Emmett Till Unsolved Civil Rights Crime Act of 2007.

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. AUSA Sharon Ratley, Middle District of Georgia, concurs in this recommendation.