

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-40-2146

Date APR 12, 2010

To: Chief, Criminal Section

Re: Elmer Otis Kimbell (Deceased),  
Glendora, Mississippi - Subject;  
Clinton Melton (Deceased) - Victim  
CIVIL RIGHTS

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

**Case Synopsis**

On December 3, 1955, Clinton Melton, the African-American victim, was shot and killed by Elmer Otis Kimbell, the subject, at a Glendora, Mississippi, gas station where the victim was employed. The subject was charged and tried on a state murder charge. At the trial, Kimbell claimed that he shot the victim in self-defense after the victim shot at him three times, wounding him in the shoulder. The subject admitted that the shooting occurred after an argument between him and the victim over the amount of gasoline the victim had pumped into his car. XXXXX  
XXXXXX testified that after the argument over the amount of gasoline, Kimbell told XXXXXXXX that he planned to go home, retrieve a gun, and come back to kill both the victim and XXXXXXXX.

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Cristina Gamondi  
Attorney

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To: Records Section  
Office of Legal Administration

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

4-12-10

Date

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Chief, Criminal Section  
FORMERLY CVR-3 FORM CL-3

According to XXXXXX the subject left and returned shortly thereafter, At that time, the victim was in his car, to leave the station. XXXXXX testified that the subject fired three shots through the front window of the victim's car. XXXXXX waited a few minutes and then walked out to the victim's car, finding him slumped over in the front seat, dead. XXXXXX stated that the victim was not armed as Kimbell had claimed and that XXXX only heard three shots, not five. XXXXXX XXXXXXXX similarly stated that XXXX heard the subject's shotgun shots, but did not see the victim holding a weapon. Like XXXXXXXX did not see the shooting, but saw Kimbell arrive with a gun. XXXXXXXX asked Kimball what he intended to do and Kimball replied that he would kill the victim. XXXXXX pleaded with Kimball not to do so, but Kimball threatened to kill XXXXXX too if XXXXXX did not retreat. No weapon was found on the victim's person or in his car.

XXXXXXXXXX of Charleston, Mississippi, testified that, when he examined Kimbell the night of the shooting, he found a bullet wound in the subject's shoulder that had not been caused by close-range fire.<sup>1</sup>

On March 13, 1956, an all-white, all-male jury acquitted the subject. The subject died in February 1985.

### **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 two residents of Sumner (near Glendora), who were alive at the time of the shooting; contacted various Mississippi law enforcement and government 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; 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.

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<sup>1</sup> On the night of the shooting, Kimbell was driving a car owned by J. W. Milam, one of two men accused of killing Emmett Till and a close friend of Kimbell's. Kimbell drove to Milam's house after the shooting, apparently bypassing a closer physician's office, and Milam then drove Kimbell to a hospital in Charleston, 25 miles away.

The FBI contacted Mona Herring, Tallahatchie County Deputy Circuit Court Clerk and obtained the subject's trial file. The file contained only, Kimbell's indictment; capias for Kimbell; subpoenas for witnesses XXXXXXXXXXXX and XXXXXXXXXXX Kimbell's motion for a special venire; Kimbell's proposed jury instructions; the court's instructions to the jury; and the verdict form.

XXXXXXXXXX informed the FBI that the subject's attorney, J.W. Kellum, is deceased and his office no longer exists. The FBI case agent also contacted officials at the Mississippi Department of Public Safety, the Mississippi Attorney General's Office, the Tallahatchie County Assessor and Collector, and the local District Attorney's Office, and determined that none of those agencies had any records pertaining to the matter.

The FBI obtained the subject's death certificate, indicating that he died on February 25, 1985, in Jackson, Tennessee.

Through a search of **SPLC** records and the internet, the FBI obtained contact information for the victim's XXXXXXXXXXXX and other relatives.<sup>2</sup>

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.

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.

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<sup>2</sup> The victim's widow, Beulah Melton died on December 21, 1955, less than three weeks after the shooting. Ms. Melton drowned when her car sank to the bottom of a bayou. Her daughter and son were saved by a relative who was driving by. According to the victim's XXXXXXXXXXXXXXXXXXXX that "everyone" knew that XXXXXXXX car had been forced off the road.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because the subject is deceased and has already been tried by the state, this matter will not be forwarded to the state for prosecutive review. AUSA Robert Coleman, Northern District of Mississippi, concurs in this recommendation.