

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-40-2148

04/15/2010
Date _____

To: Chief, Criminal Section

Re: Lieutenant Henry Petty (Deceased),
Patrolman B.F. Moore, Jr. (Deceased),
Clarksdale Police Department,
Clarksdale, Mississippi - Subjects;
Ernest Jells (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On September 20, 1963, Ernest Jells, the 21-year-old African-American victim, was shot and killed by Clarksdale Police Department (CPD) Lieutenant Henry Petty and Patrolman B.F. Moore, Jr., the subjects. According to contemporaneous *Clarksdale Press Register* articles, shortly before the shooting, the victim attempted to steal bananas from a grocery store and the owner called CPD. The store owner's XXXXX, XXXXX, told the FBI that he confronted the victim about the bananas and a scuffle ensued during which Mr. Jells reached back as if to grab a weapon. XXXXXXXX put the victim in a "head-lock" and pushed him out of the store.

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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According to newspaper accounts, about 30 minutes after the victim was chased out of the store, the subjects and CPD Assistant Chief John Mitchell spotted the victim on a street corner, holding a rifle. As the three officers chased the victim, he climbed onto the roof of a building. The subjects and Mitchell claimed that the victim ignored orders to drop the rifle and, instead, pointed it at them. At that point the subjects fired at the victim, striking him in the neck, left shoulder, and left arm. The victim apparently died immediately and then fell from the roof onto a set of power wires.

A local Coroner's Inquest held the day after the shooting ruled the shooting as a "justifiable homicide." According to a *Clarksdale Press Register* article, XXXXXX, an African-American XXXXX testified at the inquest that she saw officers chasing the victim who was holding a rifle as he ran; the officers were yelling at the victim to stop.

On September 23, 1963, County Judge E.M. Yerger held a preliminary hearing and then dismissed charges against the subjects. According to a newspaper article, the victim's family members protested during the hearing when they heard that the victim reportedly held the rifle to his right shoulder, since they knew him to be left-handed.

The FBI interviewed XXXXXXXX and XXXXXXXX, two of the victim's XXXXXXXX, who did not witness the shooting. XXXXXXXX and XXXXXXXX stated that they believed the real reason the victim was shot and killed was because he had dated a woman who was known to have also dated white men. They stated that the victim's rifle disappeared after the night of the shooting.

Subject Petty died on July 28, 1990 and subject Moore died on August 1, 1999.

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, XXXXXX and XXXXXXXX; one of the victim's friends, XXXXXXXXX; two XXXXX of the victim's now deceased best friend, Albert Hill; XXXXXXXX the XXXXXXXX, XXXXXXXX of the grocery store who accused the victim of stealing a banana. The FBI also 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; and sent letters to both the Southern Poverty Law Center (SPLC) and the NAACP requesting information.

XXXXXXXXXX told the FBI that he was working in XXXXXXXX's grocery stores on the day of the shooting and saw the victim steal a banana. When the victim reached the counter, XXXXXXXX accused the victim of stealing and grabbed at the banana in the victim's pocket. A scuffle ensued during which the victim reached toward his back pocket as if to retrieve a weapon. XXXXXXXX put the victim in a "head-lock" and pushed him out of the store. XXXXXXXX grabbed

his pistol and, as the victim ran away, fired two shots in the air. XXXXXXXXXX summoned CPD. About an hour later, XXXXXX heard yelling and about three gunshots. Sometime later, XXXXXXXX accompanied CPD officers to a location across the street from the grocery store. XXXXXXXX saw the victim lying on the ground, apparently dead, and a .22 caliber rifle lying nearby. XXXXXXXX stated that sometime after the shooting, he contacted the victim's parents and apologized.

XXXXXXX and XXXXXXXX, two of the victim's XXXXX, were interviewed by the FBI together. They stated that on the night of the shooting, the victim came home from work at about 6:00 p.m. and, sometime later, went out again. At about 9:00 p.m. the victim came home briefly. During that time, XXXXXXXX and one of XXXXXXXX, XXXXX, ran into the victim's room and saw him place something outside his window. Sometime after the shooting, the victim's family noticed that his rifle was missing and it was never found. XXXXX and XXXXX attended the preliminary hearing concerning the shooting along with their father. XXXXXXXX stated that she recalled an officer testifying about the way the victim had been holding the rifle that suggested that the victim was right-handed when, in fact, he was left-handed.

The XXXXXXXX stated that they did not believe that XXXXXXXX had been killed because he had stolen bananas and threatened XXXXXXXX with a knife: the victim had enough money to pay for what he needed and he did not carry a knife. The XXXXX stated that they believed the true reason the victim was shot was related to the fact that he was dating a woman named XXXXXXXX. XXXXXXXX was known to have also dated white men, and she disappeared from Clarksdale after the shooting.

XXXXXXXXXX, a XXXXXXXX of the Jells's at the time of the shooting, told the FBI that XXX and the victim had grown up together and he did not recall the victim ever carrying any weapons. XXXXXXXX spoke with the victim on the night of the shooting. The victim asked XXXXXXXX if he wanted to go downtown but XXXXXXXX declined. XXXXXXXX did not witness the shooting and did not attend the preliminary hearing. XXXXXXXX was familiar with XXXXXXXX, the XXXXXXXX who testified that the victim had a rifle at the time of the shooting, but he was not personally aware of her statements concerning the shooting. XXXXXXXX stated that he did not recall the victim dating anyone named XXXXXXXXX but he knew that the victim dated a woman named XXXXXXXX and was the father of XXXXXXXX's two children.¹

The FBI contacted XXXXXXXX and XXXXXXXXX, two of the XXXXXXXX of Albert Hill, the victim's best friend. XXXXXXXX told the FBI that Albert Hill was deceased. However, XXXXXXXX stated that she was with the victim on the night of his death. XXXXXXXX stated that XXX, the victim, Albert Hill, XXXXXXXX, and two or three additional female friends went to a "juke joint" in Clarksdale. At about 11:00 p.m., the victim told XXXXXXXX and the other women to go home. The victim and Albert Hill said that they were going to a nearby grocery store. The

¹ The FBI interviewed XXXXXXXXXXXX, XXXXXXXX, who stated that his XXXXXXXX was deceased. XXXXXXXX stated further that the victim was the father only of XXXXXXXXXXXX's son, but not of her daughter, XXXXXXXX.

next day, XXXXXXXXX learned that the victim had been shot. Like the victim XXXXX, XXXX stated that she did not believe that the victim had stolen anything and she had never known him to carry weapons. She added that Albert Hill never said anything to XXX or any of XXXXXXXXXX about the shooting.

The FBI contacted officials at the **Mississippi Bureau of Investigation**, the **Mississippi Attorney General's Office**, the **CPD**, and the **Coahoma County Sheriff's Office** and determined that none of those agencies had any records pertaining to the matter.

Clarksdale Deputy City Clerk provided the FBI with the subjects' last known addresses and social security numbers.

CPD retired Chief of Detectives Jimmy Carsdale, who was a part-time patrolman at the time of the shooting, told the FBI that he recalled that the victim was shot after pointing a rifle at the subjects.² Carsdale stated that both subjects are deceased.

CPD Captain Robert Snyder told the FBI that subject Petty died over a decade ago, but he did not recognize subject Moore's name.

The FBI obtained the **subjects' death certificates**, indicating that subject Petty died on July 28, 1990 in Clarksdale as a result of a heart attack and subject Moore died on August 1, 1999.

As of the date of this memorandum, the **letters to the SPLC and NAACP** have 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 subjects because they are 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

² In the media accounts, Carsdale is not listed as one of the witnesses at either the Coroner's Inquest or the preliminary hearing. Thus, it appears that he was not present at the time of the shooting.

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 subjects are deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Robert Coleman, Northern District of Mississippi, concurs in this recommendation.