

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-40-2155

Date: January 13, 2020

To: Chief, Criminal Section

Re: XXXXX; XXXX; XXXX – Subjects
Jo Etha Collier (Deceased) – Victim
CIVIL RIGHTS

This matter should be closed for the reasons described below:

1. Date of the Incident: May 25, 1971
2. Synopsis of the Facts and Reasons for Closing:

Jo Etha Collier, an African-American young woman and recent high school graduate, was fatally shot by XXXXX in Drew, Mississippi, on the evening of May 25, 1971. XXXXX and two other men – XXXX (XXXX) and XXXX (XXX XXX) – were driving past Ms. Collier when she was shot and killed. The state arrested the three men and charged them with murder. XXXXX was tried before a jury in October 1971, convicted of manslaughter, and sentenced to 20 years in prison. The state later dropped the charges against XXXX and XXXX. For the reasons stated more fully below, this matter should be closed without prosecution or referral. The statute of limitations has long run on any federal civil rights crime and Ms. Collier's death does not implicate any other federal crimes. Referral to the state for prosecution is inappropriate because the Double Jeopardy clause of the United States Constitution would bar a subsequent state prosecution of XXXXX, and because the state previously determined that XXXX and XXXX could not be held legally responsible for the shooting.

Angela M. Miller
Trial Attorney

To: Records Section
Office of Legal Administration

The above numbered file has been closed on this date.

January 13, 2020

Date

Barbara Bosserman
Deputy Chief, Cold Case Unit Chief, Criminal Section
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3. Factual Background¹

Shortly after her high school graduation ceremony on the night of May 25, 1971, Jo Etha Collier, an 18-year-old African-American woman, was shot with a .22 pistol from a passing car as she walked home with friends in the predominantly black section of Drew, Mississippi. At the graduation ceremony earlier in the evening, Ms. Collier had been honored as the school's first recipient of its school spirit award.

XXXXX, a XX-year-old white man from Memphis, Tennessee, and his XX-year-old XXXX, drank four quarts of beer before driving from Memphis, Tennessee, to Drew, Mississippi, with XXX's XXX and XXX. On the way to Drew, the men drank more beer and, once in Drew, the two men picked up XXXX, XXXX's XX-year-old XXXX, who joined them in drinking more beer. XXXX eventually dropped off XXXX at a grocery store to buy more alcohol while XXXX left to buy gas.² While buying gas, XXXX ran into a friend who invited them to a party. XXXX then picked up XXXX and headed to the party. While driving along Union Street in Drew, XXXXX pointed a .22 caliber pistol out the car window and fired one shot, killing Ms. Collier.³ XXXX told his XXX to put the gun away before they were picked up for disturbing the peace. The men continued on to the party, according to their testimony, without knowing the consequences of XXXXX's shot.⁴ They left the party after about an hour, stopped at an out-of-town bar for a couple of hours, and were arrested by officers from the Cleveland Police Department as they drove back to Drew.

The police recovered from the car a 12-gauge Army issue riot gun, a .22 automatic rifle, and a .22 pistol with one bullet missing. The police could not identify any reason for the shooting. Ms. Collier was not known to be active in civil rights matters. Police reports indicate that the police believed the men had not known whom they had shot.

According to news reports, roughly 1300 mourners and several prominent civil rights leaders, including Fannie Lou Hamer, Mississippi NAACP president Aaron Henry, and Rev. Ralph Abernathy, leader of the Southern Christian Leadership Council, attended Ms. Collier's memorial service. The mayor of Drew, who described the killing as "a horrible thing," also attended Ms. Collier's funeral services, as did the police chief, who led the funeral procession. Both Ms. Hamer and Mr. Henry attributed Ms. Collier's death to racial prejudice. "They were out to kill a black, any black," Henry charged. Ms. Hamer agreed, stating "the reason [Ms. Collier] was shot down" was because of her race. She suggested to reporters that the men had watched Ms. Collier and specifically targeted her because "she was black and smart" and that they did not want to believe that "black people [like Ms. Collier] have the capacity" to succeed. A national paper described Ms. Collier's killing as "one of those wanton, almost casual acts of violence that the deep South produces year after year."

¹ The following account is taken from contemporaneous news articles written about the case, documents generated and gathered by the Mississippi State Sovereignty Commission, and XXXXXXXXXXXXXXXXXXXX.

² Records generated and gathered by the Mississippi State Sovereignty Commission indicate that while at the gas station, XXXX brandished a gun and threatened a black man who approached XXXX and asked for a light. This incident was not reported until after the shooting; XXXXXXXXXXXXXXXXXXXX.

³ Eyewitnesses reported hearing a shot and seeing a flash from the driver's side window.

⁴ According to newspaper reports, others in attendance at the party testified that the three men did not appear disturbed, frightened, or upset.

Ms. Collier's death prompted a series of mostly peaceful marches in Drew and neighboring communities. Mr. Henry reportedly sent a telegram to President Nixon requesting help in stopping a "wave of senseless killings in Mississippi of black citizens by white citizens," citing two additional killings of black citizens in Mississippi. Mr. Henry also noted that visiting college students who were in the area to assist with voter registration recently had experienced harassment and threats.

Contemporaneous newspaper reports indicate that President Nixon ordered the Federal Bureau of Investigation (FBI) to investigate whether the offense constituted a federal crime. Moreover, records from the Mississippi State Sovereignty Commission indicate that eight FBI agents and two Department of Justice attorneys arrived in Drew to conduct a preliminary investigation into the matter. A current review of FBI records, however, determined that the FBI did not open a formal investigation into the matter at the time. Moreover, efforts to identify through archival Departmental reports the identities of the two attorneys who were reported to have traveled to Drew, Mississippi, to conduct a preliminary investigation have been unsuccessful.

4. State Prosecution

The state charged all three men with murder. XXXXX was granted a severance from the other two defendants and went to trial in October 1971. The trial lasted just a few days, and all three men testified. XXXX and XXXX testified that they did not know a pistol was in the car until after they heard a shot and saw XXXXX pull the gun back through the car's window. Both denied seeing XXXXX fire the gun and denied knowing anyone had been shot. XXXXX admitted drinking the night of the shooting and claimed not to remember firing the gun. He testified that his memory was "awful vague" but he did not deny shooting Ms. Collier. Rather, he testified that he "very possibly fired" the gun but that he "wasn't conscious" and "just [didn't] remember." The jury convicted him of manslaughter after deliberating for just over an hour. The judge sentenced XXXXX to 20 years' imprisonment. His efforts to overturn his conviction were unsuccessful.

Several months after XXXXX's conviction for manslaughter, the state dropped the murder charges against XXXX and XXXX. According to District Attorney George Everett, the jury's verdict of manslaughter in XXXXX's trial "eliminated any accessory or accomplice" charges that could be brought against the remaining two defendants because the crime of manslaughter does not require a showing of intent. "We had no charge we could try them on after the previous trial."⁵

⁵ One newspaper article quotes District Attorney Everett as stating that the charges were dropped "because we didn't have enough evidence to try them."

5. Federal Investigation

An eligible entity referred this matter to the Department of Justice for review under the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act, 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, 1979.”⁶ Despite Departmental requests for more information on the matter, no such information was provided by the entity. After confirming with the FBI that no records existed of a formal federal investigation conducted in 1971, the Department reviewed available newspaper reports of Ms. Collier’s killing and XXXXX’s trial, obtained available court documents, and spoke with the Clerk’s Office of the Sunflower County Circuit Court, where XXXXX was tried, in an attempt to obtain additional records. The Clerk’s Office, which located the reference to XXXXX’s criminal trial in its docket book but could not locate the actual court records and transcripts, confirmed that the court severed the case against XXXX and XXXX from the case against XXXXX. Additional efforts to locate relevant court papers and documents were unsuccessful, as were efforts to identify, through Department archival records and reports, the identities of the attorneys reportedly sent to Drew, Mississippi, following Ms. Collier’s killing.

6. Legal Analysis

As an initial matter, it is unclear whether prosecutors could prove that the death of Ms. Collier was racially motivated, a prerequisite for prosecution under federal hate crime statutes. At the time Ms. Collier was killed, many prominent civil rights leaders opined that the subjects’ attack on her was racially motivated. Fannie Lou Hamer, for example, believed Ms. Collier was targeted for her academic success as a young black woman; Aaron Henry, on the other hand, doubted that the three men charged in Ms. Collier’s killing knew who she was and believed the men targeted her for her race alone. Others from Drew and surrounding areas reportedly believed that Ms. Collier’s death was connected to recent voter registration campaigns because of the historical connection between black political activity and harassment from whites.

The political and racial climate in Mississippi at the time of Ms. Collier’s death, coupled with the fact that the subjects are white, may understandably have suggested to many in the community that the incident was racially motivated. The government, however, would have to prove such motivation beyond a reasonable doubt. The government has uncovered no direct evidence of racial motivation. The police, who acted swiftly in arresting the three men, and local prosecutors, who brought serious criminal charges against all three, failed to uncover a racial motive for the shooting. There were also no admissions or confessions of such motives. Nor is there any other evidence of racial motivation in the record (for example, no witnesses reported hearing the subjects use racial slurs at the time of the incident or in describing it afterwards). The court records and news accounts indicate that the subjects had been drinking heavily the night of the shooting, and evidence in the state court record suggests that the shooting may have been a random, drunken attack.

Even assuming, however, that racial motivation could be proved beyond a reasonable doubt, the case cannot be prosecuted federally. The statute of limitations, which is essentially a

⁶ Pub. L. No. 110-344, 122 Stat. 3934 (2017).

deadline the government has for bringing a criminal case, has long expired for using any then-available federal civil rights charge to prosecute this incident. In 1971, at the time XXXXX killed Ms. Collier, federal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations—a limitations period which has long since expired. *See* 18 U.S.C. § 3282(a). In 1994, many civil rights statutes 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 of the United States Constitution, art. I, § 9, cl.3, 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, 610 (2003).

The Department of Justice has used non-civil rights statutes to overcome the statute of limitations challenge in a small number of cases, such as those involving kidnapping across state lines, *see United States v. Seale*, 600 F.3d 473 (5th Cir. 2010), or offenses occurring on federal land, *see United States v. Avants*, 367 F.3d 433, 440 (5th Cir. 2004). The available evidence in this case, however, does not support a finding that Ms. Collier was transported across state lines, nor does it support a finding that she was killed on federal land. For these reasons, no alternative basis for federal jurisdiction exists.

The Emmett Till Unsolved Civil Rights Crimes Reauthorization Act (Reauthorization Act) permits federal prosecutors and agents to assist in state and local prosecutions when federal jurisdiction is unavailable. *See* Reauthorization Act, Pub. L. No. 110-344, 122 Stat. 3934 (2017). However, there are legal barriers that would prevent state prosecution of this matter. XXXXX could not be retried by the state of Mississippi because the Double Jeopardy Clause of the United States Constitution prohibits the state from re-trying him for Ms. Collier’s murder. U.S. Const., Amdt. 5.

Because neither XXXX nor XXXX was tried for Ms. Collier’s death, there is no constitutional bar to the state prosecuting them on state murder charges and the state would not have to prove racial motivation to bring such charges. Nonetheless, the Department does not refer this case for state prosecution. The evidence indicates that just one shot was fired from the .22 caliber pistol and that XXXXX was the shooter. Thus, XXXX and XXXX can be convicted only if there is a legal theory holding them responsible for the shot fired by XXXXX and if that legal theory is one that is not barred by the state statute of limitations. The jury found XXXXX guilty of manslaughter, not murder. Manslaughter is defined by Mississippi state law as “the killing of a human being, by the * * * culpable negligence of another, and without authority of law.” Miss. Code 1942 Ann. § 2232 (1956); *see also* Miss. Code Ann. § 97-3-47. Culpable negligence involves “conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as the result of the willful creation of an unreasonable risk.” *Stewart v. State*, 211 So.3d 724, 727 (Miss. App. 2016); *see also Smith v. State*, 20 So. 2d 701, 705 (Miss. 1945). The only XXX concerning XXXX’s conviction suggests that the jury found him guilty of manslaughter, rather than murder, because of his intoxicated state on the evening of the shooting.⁷ For this reason, the District Attorney at the time opined that the state could not

⁷ XXX.

prosecute XXXX or XXXX as accessories or accomplices to *murder*, and that neither man could be an accessory or accomplice to manslaughter under the circumstances.

The District Attorney's determination that neither XXXX nor XXXX could have been tried as an accessory or accomplice to murder, given XXXXX's conviction for manslaughter, may not have been correct. *See Fleming v. State*, 108 So. 143 (Miss. 1926) (finding no error in accomplice's conviction for murder following principal's conviction for manslaughter and explaining that "the guilt of the accessory in nowise depends upon the previous conviction or acquittal of the principal," and that in making its decision a jury "is in no way bound by the action of a former jury upon a different record"). A person may be held criminally liable as an accessory before the fact if he "procures another to use a dangerous agency which causes death." *Stewart*, 211 So.3d at 727. Alternatively, a person who aids or encourages the commission of a crime could be held criminally liable as an accomplice. *See id.* at 728 (citing *Fight v. State*, 863 S.W.2d 800, 802 (Ark. 1993)) (explaining that where a person does not directly cause the injuries resulting in the criminal action, that person's criminal responsibility stems from acting as an accessory before the fact or as an accomplice). But merely being present for the commission of a crime is not enough to establish criminal liability as an accomplice. *Crawford v. State*, 97 So. 534, 534 (Miss. 1923) ("Mere presence, even with the intention of assisting in the commission of a crime cannot be said to have incited, encouraged, or aided the perpetrator thereof, unless the intention to assist was in some way communicated to him.").

Taking these principles into account, there is insufficient evidence to support a murder prosecution. XXXX and XXXX have denied knowing even that XXXXX possessed a weapon, much less that he intended to shoot Collier—or anyone else. The government has uncovered no evidence contradicting this version of events and the eligible entity who referred the case to the Department has provided no such information. As explained above, their presence in the truck when XXXXX shot and killed Ms. Collier, without more, is insufficient to establish criminal liability. For these reasons, it is unlikely that the state could successfully prosecute (or even charge) XXXX or XXXX as an accessory or accomplice to Ms. Collier's murder.

In sum, neither the state nor federal government can prosecute the three men involved in Ms. Collier's death. The statute of limitations for any relevant federal civil rights statute applicable to this case expired long ago. The Double Jeopardy Clause bars the state from re-trying XXXXX – the shooter, and additional legal barriers prevent the state from trying XXXX and XXXX. For all of these reasons, this matter lacks prosecutive merit and should be closed.⁸ The United States Attorney's Office for the Northern District of Mississippi concurs with this recommendation.

⁸ Despite multiple efforts, the Department has been unable to identify and contact possible next of kin for Ms. Collier to inform them of the results of our review. Should contact information be obtained, the Department will provide the appropriate notification. Anyone with information about Ms. Collier's next of kin may contact the Criminal Section of the Civil Rights Division and ask to speak to the Victim-Witness Coordinator.