

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-40-2143

Date: _____

To: Chief, Criminal Section

Re: XXXXXX,
XXXXXX,
James Neal Butler (Deceased),
XXXXXX,
James Rufus Scott (Deceased),
XXXXXX,
XXXXXX,
Corinth, Mississippi – Subjects;
William Roy Prather (Deceased) – Victim;
CIVIL RIGHTS

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

1. Date of Incident: November 1, 1959

AeJean Cha
Trial Attorney

To: Records Section
Office of Legal Administration

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

Date

Acting Chief, Criminal Section

FORMERLY CVR-3 FORM CL-3

2. Case Synopsis and Reasons for Closing:

On November 1, 1959, William Roy Prather, a black thirteen-year-old child,¹ died from a gunshot wound he sustained the previous night at 10:30 p.m. Prather was walking home with his friends in the black section of Corinth, Mississippi, when XXXXXX, a white XXXX- year-old, shot Prather from the back of a pick-up truck. Seven other white teenagers — James Neal Butler (age 15), XXXXXX (age XX), XXXXXX (age XX), XXXXXX (age XX), James Rufus Scott (age 15), XXXXXX (age XX), and XXXXXX (age XX) — were also in the truck.

Although only XXXXXX pulled the trigger, within a week of the shooting all the subjects admitted that they were involved in Prather's death. According to the subjects, on Halloween night, they were driving through the black residential area of Corinth when black teenagers threw rocks and other objects at them.² The subjects went to subject XXXXXX's house where they retrieved a shotgun and shells. They then returned to the black part of Corinth where XXXXXX fired the shotgun, shooting the victim in the face. XXXXXX reported that before he fired the shotgun several of the subjects said, "There they are, shoot."

On November 5, 1959, the subjects were charged with murder and released on bond. On January 26, 1960, XXXXXX pleaded guilty to manslaughter and served less than a year in prison. The remaining juvenile subjects were certified to the youth court, where they were placed on probation for a year.³ The lone adult, XXXXXX, had his case rolled over to the next grand jury, and it appears that he was never prosecuted.

Although it appears that, at most, three of the subjects have passed away, we recommend that this case be closed and referred to the state.⁴ There is no federal statute under which the subjects could be prosecuted, so any prosecution would have to proceed under Mississippi state law. The Appellate Section, however, has concluded that any state prosecution of the juvenile

¹ The Corinth police file references his age as fifteen, but his birth certificate specifies his date of birth as December 23, 1945. He was therefore only thirteen when he was killed.

² Several witnesses reported that in 1959, it was a Halloween tradition for white teenagers to drive through the black part of town throwing firecrackers at black teenagers, who retaliated by throwing rocks and other objects at the white teenagers driving through their neighborhood.

³ The youth court released the juvenile subjects' youth court records with a strict order that they be kept confidential and disclosed only to FBI or DOJ personnel working on the investigation. We are expressly prohibited from disclosing them to other individuals without a court order. If this memo is subpoenaed under the Freedom of Information Act, any reference to what happened in the youth court proceedings must be redacted.

⁴ James Butler and James Scott have passed away, and the FBI was unable to locate the whereabouts of XXXXXX.

subjects is barred by the Double Jeopardy Clause because they underwent youth court proceedings. Therefore, only XXXXXX can be charged because he was the only adult at the time of the offense. We recommend providing the state with our investigative file and offering them any assistance they might require should they decide to pursue this matter.

3. Overview of Corinth Investigation:

After Prather was killed, the local police quickly determined the contours of what happened and the identities of who was involved. Although there were some mixed accounts, a consistent narrative emerged: the subjects drove through the black section of town and threw firecrackers at black teenagers; the black teenagers, in turn, retaliated by throwing objects at the subjects. This happened at least once before the subjects decided to retrieve a firearm from XXXXXX's house. They then returned to the black section of town where XXXXXX, who was in the rear of the truck, fired at Prather.

The police learned this account primarily by interviewing the subjects. The subjects readily admitted to driving through the black part of town, retrieving a firearm from XXXXXX's house, and then returning to the black section of town where XXXXXX fired the shotgun. Despite these admissions, the subjects denied knowing that XXXXXX was going to shoot anyone with the shotgun. In addition, XXXXXX (and some of the subjects) maintained that XXXXXX had shot in the air. However, as discussed further below, the autopsy report and photograph of Prather's body indicate that XXXXXX aimed the shotgun level with Prather's face.

Corinth police also interviewed black teenagers who were in the neighborhood when Prather was shot. Two of them were next to Prather, and they reported that XXXXXX had aimed the shotgun at them. Many of the other black witnesses reported seeing a truck full of white teenagers driving around town, throwing firecrackers at black teenagers. Some – but not all - of them admitted that they or other black youths threw rocks and bricks at the truck.

As part of its investigation, the Corinth police also impounded and examined for evidence the 1953 Chevrolet truck that the subjects drove. Consistent with witness accounts, the police noted that the truck appeared to have been “struck recently by some kind of blunt object.”⁵ There was a dent on the driver's side door and damage to the bed of the passenger's side. We no longer know where this truck is.

Lastly, the Corinth police examined the crime scene. They found two pieces of wadding. One wadding was approximately 0.5 inches thick and approximately 51 feet from where the subjects said they were when they shot Prather. Another piece was found 55 feet from where they shot Prather. Using the 16-gauge shotgun the subjects used to kill Prather, the police fired a test shot, which traveled 53 feet. We no longer have the shotgun or the two pieces of wadding found at the crime scene.

⁵ The Corinth investigator did not elaborate in his report on how he knew the damage was recent.

4. Overview of Federal Investigation:

When the FBI received this case in 2009, agents searched state and court records for investigative materials and information; interviewed a Corinth law enforcement officer for leads; requested information from the Southern Poverty Law Center and the National Association for the Advancement of Colored People; and searched newspapers for stories regarding Prather's death. After receiving the Corinth police investigative file, the FBI searched for -- and when possible, interviewed -- the subjects. Agents then searched for and interviewed witnesses who gave statements in 1959 and any other witnesses who might have pertinent information. These statements are summarized below.

In addition, the FBI contacted two surviving members of Prather's family -- his XXXXX, XXXXXX, and his XXXXX, XXXXXXX. XXXX was only an XXXX when Prather was shot and had little information to offer. XXXXX, however, was XX-years-old when Prather was killed and recalled that XXXXXX was walking home from church when he was shot. The police arrived to XXXXX to tell XXXXX that Prather had been shot. XXXX and XXXXX drove to the hospital to visit Prather, who was conscious and spoke with them. XXXX recalled that the doctors had told Prather's XXXXX that Prather would not survive the shooting because he had too many pellets in his brain.

5. Witness Statements:

Law enforcement interviewed a number of black teenagers who were in the neighborhood when Prather was shot. One witness -- XXXXXX -- was with Prather when he was shot, and he is still alive. XXXXXX consistently reported to Corinth police and to the FBI that he was on the street with Prather when a truck slowed down and someone pointed a shotgun at them and fired. The FBI interviewed some of the other black witnesses who gave statements in the original investigation, but many of them were deceased. The FBI, however, found and interviewed three black witnesses who did not provide statements in the original investigation.

Both Corinth police and the FBI also interviewed two white teenagers who were friends with the subjects. Both witnesses told Corinth police that the subjects had admitted shooting a black kid, but only one of the witnesses still recalled the admission fifty years later.

a. Statements from Living Black Witnesses

The following black witnesses are still living, and gave statements to Corinth police and/or the FBI.

XXXXXX (XX) provided statements in 1959 to Corinth police and to the FBI in 2009. In both statements, XXXXXX consistently reported that he was with Prather when Prather was struck, and that the shotgun was pointed at them before it was fired. However, XXXXXX was inconsistent on the details regarding what led up to the shooting, and he did not admit to local police in 1959 that he had thrown objects at the subjects' truck.

To Corinth law enforcement, he reported that on Halloween night, he had attended a masquerade party at the black high school. When he was walking home, he met Powell and Prather on the street. At that time, XXXXXX heard firecrackers shooting and noticed a black Chevrolet truck. When he saw the subjects in the truck, he warned Powell and Prather to “watch out, there goes the white boys.” XXXXXX expected the subjects to throw firecrackers at them, but instead, the truck slowed down and someone pointed a gun at them and fired. The truck then sped up and left. XXXXXX turned around and saw Prather on his knees, holding his face.

According to XXXXXX, the three of them had not thrown any objects at the subjects. XXXXXX had not seen that truck earlier that evening, and he had not heard that there were white boys in the black part of Corinth throwing firecrackers at black children.

When the FBI interviewed XXXXXX in 2009, he stated that in 1959, it had been the tradition for the past several years that white kids would drive through the black section of town on Halloween night and throw firecrackers and rotten eggs at the black kids, while the black kids would retaliate by throwing rocks and bricks. He admitted that he and approximately eleven other black teenagers had thrown rocks and bricks at a pick-up truck full of white boys. Later that evening, the same white boys drove by again. At that time, someone yelled, “He’s got a gun.” One of the white boys then fired a shotgun once or twice, striking Prather in the face. XXXXXX was struck by a few pellets in the shoulder and Powell was struck in the ear.

XXXXXX (XX) provided statements to Corinth law enforcement in 1959 and to the FBI in 2012. His statements are consistent, but covered different aspects of the incident.⁶ To Corinth, XXXXXX reported that he saw a car full of boys throwing firecrackers driving through town a few times. The second time the car passed through, XXXXXX and some others threw rocks and bricks at the car. XXXXXX reported that the firecrackers were thrown first.

To the FBI, XXXXXX reported that he grew up with Prather and was good friends with him. XXXXXX recalled that on Halloween night, he was standing with a group of friends when he heard a gunshot from approximately a block away. Everyone dove for cover. Powell and XXXXXX then ran towards XXXXXX’s group, yelling that Prather had been shot. XXXXXX heard later that Prather was shot by someone in the back of a pick-up truck.

XXXXXX (XX) provided statements to the local police and to the FBI. Corinth police focused on different aspects of the night from the FBI, so there are no inconsistencies between his statements. XXXXXX told Corinth police that he had seen Prather earlier on Halloween night. XXXXXX reported that he did not see a truck with white boys shooting cherry bombs at black kids, nor did anyone tell him about these incidents.

In 2011, XXXXXX told the FBI that in 1959, he celebrated Halloween at church with about 25 to 30 other kids. Prather was not in attendance at church that night. While they were on the steps of the church, XXXXXX heard that there was a truck full of white kids who were driving around town, yelling, honking, and spewing racial slurs. XXXXXX saw Prather and

⁶ In their interviews with black witnesses, Corinth police seemed to focus on establishing that black teenagers had thrown objects at the subjects’ truck.

seven other kids walking about five blocks from the church. XXXXXX was getting ready to leave the church when he heard that someone was shot down the street. XXXXXX headed there, but could not see what had happened because the police were keeping everyone away from the scene. XXXXXX later heard that a group of black teenagers were walking on the street when someone in a truck fired a shot that hit Prather and Powell. XXXXXX had not heard that anyone had thrown rocks or bricks at that truck.

XXXXXX was interviewed only by the FBI. He reported that he saw Prather the night of the incident. XXXXXX was cleaning a church with his brother when Prather and a few others came to visit him. They stayed for about 15 or 20 minutes. When XXXXXX left the church, he saw a large crowd surrounding Prather, who said that someone had thrown rocks into his eyes.

The FBI also newly interviewed XXXXXX regarding Prather's death. He reported that he watched a movie with Prather and others earlier on Halloween in 1959. After the movie, everyone split up to walk home. Later that evening, he heard that Prather had been shot. XXXXXX also heard that the white teenagers who had shot Prather had been causing problems in the black section of town that night, including calling black kids "niggers."

XXXXXX also did not provide a statement in 1959. He told the FBI that he recalled a truck with white teenage boys driving through the black part of town on Halloween night in 1959. XXXXXX recalled spending part of the night with Powell. Later that night, XXXXXX heard that Prather had been shot by white boys who were driving a truck. XXXXXX went to the crime scene, but Prather was no longer there.

b. Statements from Deceased Black Witnesses

The following deceased black witnesses provided the below-summarized statements to Corinth police.

Lavelle Powell (16) was with Prather when he was shot and suffered minor injuries from the shotgun blast. He provided two statements – a handwritten statement given three days after Halloween and a signed question-and-answer transcript with the police. Powell reported that on Halloween night, he met up with Prather and XXXXXX. The three of them were walking down the street when he saw a 1952 or 1953 Chevrolet truck carrying five or six white high-school-aged boys in the back. The truck drove out of sight, and then returned a bit later. Powell then saw a white boy, holding a firearm, get up on his knees and "level[]" the firearm at the three of them. Powell dove and felt something hit him on the right side of his head. Prather, who was at Powell's feet, said, "Man, I can't see. Somebody done threw something in my eyes." Powell received superficial wounds on the right side of his face from four shotgun pellets.

Powell did not hear the subjects say anything prior to the shotgun blast. Powell denied that he had thrown any rocks at the truck at any point that night, but admitted that he had heard from XXXXXX that white boys had thrown firecrackers at black kids and that black kids had retaliated by throwing rocks and bricks at the white boys.

James Lusk (16) gave statements to local police and to the FBI.⁷ The local police focused on the narrow questions of whether Lusk had seen the subjects throw objects at black teenagers, and whether black teenagers had retaliated. In 1959, he reported seeing a truck full of white boys drive through the black part of town three times, throwing cherry bombs and other firecrackers. (This is inconsistent with what he told the FBI fifty years later; Lusk told the FBI that he did not see anyone in the truck throw anything, although he had been told by other kids that the white boys were). Lusk, however, consistently reported that he did not see any black kids throw rocks or bricks in retaliation.

Like XXXXXX, **Lusk** reported to the FBI that it had been the tradition in 1959 for white teenagers to drive through the black part of town on Halloween and throw items at black teenagers. On October 31, 1959, he and several other black teenagers were playing football when he saw a pick-up truck with white teenagers drive by. A few of the younger kids told Lusk that the white boys in the truck had been throwing milk, eggs, and bricks, but Lusk did not himself see anyone in the truck throw anything. When it was dark, Lusk, Prather, XXXXXX, Powell, and several others left the football field to walk home. As they were walking home, Lusk saw the same truck drive by, but no one in his group threw anything at the truck. Prather and Powell separated from the group, walking in front of everyone else. The truck with the white boys drove slowly by Prather and Powell, and one of the boys in the truck bed pointed the shotgun level to Powell and Prather, firing once. Someone yelled that Prather was shot, and Lusk ran to Prather. Prather, who had many pellet wounds to his face, was alive but could barely move his eyes. Lusk went home because he was afraid for his life.

Melwayne Polk (16) reported seeing a pick-up truck with white boys drive through town a few times on Halloween night. They were “hollering” and throwing firecrackers. The first time this occurred, Polk and others ran and told the other black kids. Later that evening when they saw the truck again, Polk and other black kids lined up along a field and threw rocks at the truck while the white boys threw firecrackers at them. A “good while” later, the truck drove through town again. Polk had gone down to throw rocks at the truck when Prather was shot.

Richard Toomer (13) reported to Corinth police that he was at the masquerade party at the black school when he first saw a truck with white boys throwing out cherry bombs at black kids. Toomer heard the white boys say “nigger” as they threw firecrackers. Several of the black teenagers at the party retaliated by throwing rocks and bricks at the truck. Toomer saw the truck driving around a few more times. At one point, some of the black teenagers ran down towards the truck, but Toomer did not join them. Toomer was roughly half a block away from Prather when Prather was shot.

Willie Boyd (14) saw a truck drive through town with white boys throwing firecrackers. Boyd only saw the truck once, and he did not see anyone throwing rocks at the truck. Boyd heard a shotgun, and then heard that Prather had been shot. He ran towards Prather, who raised his head and said, “Man, somebody done hit me in the eye with some rocks.” Boyd, scared, went to his aunt’s house and stayed in the rest of the night.

⁷ Lusk passed away in 2012.

Willie James Gwynn (12) reported seeing the subjects' truck drive by twice – once before and once after the shooting. He saw white boys throwing firecrackers, but did not see anyone throw rocks in return.

Calvin Wood (16) also saw a truck with white boys throwing firecrackers. Wood saw the truck only once, and did not see anyone throwing rocks at the truck.

c. Statements from White Witnesses

XXXXXX (XX) provided a statement to Corinth police in 1959 and to the FBI in 2011. There are some inconsistencies between his two statements, with the most significant being that he no longer recalls XXXX's admission that the subjects had shot at and hit black teenagers.

In 1959, XXXXX reported that he and the subjects bought firecrackers (two boxes of cherry bombs and two boxes of torpedoes) before heading to the school for the Halloween carnival. He and the subjects left the carnival to get hotdogs. On their way back, they drove through the "colored section" of town where 15 to 20 "colored boys" started "chunking rocks" at them. Butler, in turn, shot firecrackers from the truck cab; XXXXX did not know whether the boys in the truck bed were also throwing firecrackers. At that point, XXXXX told XXXXX that he needed to go home. According to XXXXX, the truck was damaged from the "rock chunking," including dents in the sides of the truck, and a broken mirror on the driver's side of the truck. When he left, the subjects did not tell XXXXX what, if anything, they planned to do that night.

The next day, XXXX went to XXXXX's house and told XXXXX that the group had returned to the black part of town and that Scott had been hit by a rock. XXXXX reported to XXXXX that XXXXX fired a shotgun into a crowd of about 15 black kids and three of them fell.

XXXXXX told the FBI in 2011 that he was with XXXX, XXXXX, Butler, XXXXX, and Scott on Halloween night of 1959. He reported that they drove in XXXXX's truck through the black part of town and that black kids threw bricks at them, injuring Scott. XXXXX had to wake up early to deliver newspapers so XXXXX drove him home before the shooting. XXXXX did not recall speaking with XXXX the next day.

XXXXXX provided statements in 1959 and in 2011. His statements are consistent, although he remembered more details in his earlier statement, and he newly provided excuses for the subjects in his latter statement. In 1959, XXXXX told investigators that during shop class, XXXXX confided to him that XXXXX, Butler, and several others had shot a black teenager. XXXXX told XXXXX that before they shot the black teenager, a large group of black teenagers had thrown rocks, bricks, and bottles at them three times.

In 2011, XXXXX told the FBI that a day or two after Halloween in 1959, one of the subjects -- Scott, XXXXX, or Butler -- told him that they rode in XXXXX's truck on Halloween night, "messing" around in the black part of town. This individual told XXXXX that black kids had thrown bricks at them, so they got a shotgun, drove back to the black part of

town, and shot up in the air to “scare” the black kids. XXXXXX was told that they had shot someone, but he received no indication that the shooting was intentional.

d. Treating Physician

The FBI interviewed Dr. Thomas Sweat, the on-call physician who treated Prather in the emergency room. He vividly recalled treating Prather, who arrived to the hospital with his eyeballs hanging down his face. Prather repeatedly asked Dr. Sweat, “Why can’t I see?” Dr. Sweat recalled that Prather had been shot in the face, and that he had minimal injury below his head. Dr. Sweat took an x-ray of his skull, which revealed several pellets had penetrated Prather’s orbits and had lodged in his brain.⁸ Dr. Sweat opined that Prather had been shot at an extremely close range. There was no medical treatment that Dr. Sweat could provide for Prather. He remained with Prather the entire night, giving him fluids, pain medication, and sedatives. Prather passed away the next morning.

6. Statements from Subjects

In 1959, all the subjects signed a transcript of a question and answer session with the police. Although their reports were inconsistent on some details, the subjects agreed on the broad outlines of the evening: They had met up at their high school for a carnival and then driven through the black part of town where black kids threw rocks and other objects at them. (Only XXXXXX admitted throwing firecrackers at the black kids; some of the subjects flatly denied throwing anything while others were silent on the topic). The subjects then decided to get a shotgun from XXXXXX’s house and returned to the black part of town where XXXXXX fired the shotgun. Some of the subjects claimed that they did not intend to shoot anyone; that they only intended to “scare” the black kids; that XXXXXX fired in the air; and that they did not realize that night that they had struck anyone.

The FBI interviewed the known living subjects.⁹ As discussed further below, many of their accounts were inconsistent with their prior statements. The subjects mitigated their involvement and the extent to which they planned to get a shotgun to “scare” the black kids. One subject (XXXXXX) even denied being there.

In 1959, XXXXXX reported that he, XXXXX, XXXXX, Butler, XXXX, XXXXX, XXXXXX, and Scott left the Halloween carnival to get food. XXXXX then drove them to the “edge of the colored section” where 35 “colored” boys threw rocks at them. At that point, someone suggested that they get a gun, so they went to XXXXXX’s house and retrieved a 16-gauge, single-barrel shotgun. XXXXXX gave XXXXXX the gun. Butler and XXXXXX ordered XXXXXX to shoot if black kids threw objects at them. XXXXXX loaded the shotgun, and they drove through the black section of town again. At that time, 25 black kids started throwing objects at the subjects, hitting the truck a few times. All of the subjects in the back of

⁸ The local newspaper reported that the x-ray revealed that Prather had approximately 80 pellets lodged in his brain. *Corinth Negro Brutally Slain*, DAILY CORINTHIAN, Nov. 2, 1959.

⁹ As mentioned above, the FBI was unable to identify XXXXX, whose family moved to California within a year of the shooting.

the truck said, "there they are, shoot!" XXXXXX fired the shotgun. XXXXXX claimed that he was "laying down, mostly" when he shot "straight up" just to "scare" the black kids. According to XXXXXX, at the moment he fired the shotgun, Scott had been hit in the head with a rock. XXXXXX, however, had not known that Scott had been hit until after he had fired the shotgun. XXXXXX saw XXXXXX the next day and told XXXXXX that he did not think he hit anyone. XXXXXX discovered that he had hit Prather when his father told him about a "colored boy" getting shot.

In 2009, XXXXXX told the FBI that on Halloween 1959, XXXXXX, XXXXXX, and Butler had been drinking alcohol, and one of them had said they were "going to kill a bunch of niggers." XXXXXX had a shotgun with him. XXXXXX claimed that he decided to accompany them to keep them out of trouble. XXXXXX drove them through the black part of town, where black kids threw bricks and bottles at XXXXXX's truck, breaking the front windshield of the truck. XXXXXX fired one shot into the air. He claimed that he did not aim the gun at anyone and that there was another truck of white boys doing the same thing as him and his friends. XXXXXX reported that he was the only one of the subjects to have suffered legal consequences for his actions that night.

In 2011, the FBI re-interviewed XXXXXX. He provided largely the same account as he did two years earlier. When he was confronted with the statement he provided in 1959, XXXXXX claimed that he did not remember giving that statement, although he did remember signing it. XXXXXX claimed that several portions of the statement were wrong; most notably, he insisted that, contra his 1959 statement, the other boys already had a firearm when he joined them.

In 1959, XXXXXX reported to Corinth police that he was at a Halloween carnival with XXXX, XXXXX, XXXXX, XXXXX, Butler and Scott. They all left to get fireworks and then drove through the black section of town where they threw out cherry bombs and fireworks. XXXXXX claimed that they were "mobbed" by 50 or 75 black kids who threw rocks and other objects at them. Scott got hit in the head.¹⁰ The subjects then went to XXXXXX's house where XXXXXX grabbed a 16-gauge single shotgun. XXXXXX claimed that he instructed the other subjects not to shoot unless they were "mob[bed]" again. XXXXXX drove back to the black part of town where they were "mobbed" three times, leading XXXXXX to fire the shotgun. XXXXXX claimed that XXXXXX "didn't know where he was firing" because he was being "knock[ed]" around by all the rocks. XXXXXX contended that he did not know that anyone had been shot until two days later.

The FBI interviewed XXXXX in 2009. His account was largely consistent, except that he told the FBI that Scott had been struck by a rock the first time they drove through the black part of town, rather than the second time. According to XXXXXX, on Halloween in 1959, he drove his father's 1954 Chevrolet pick-up truck with several of his friends -- Butler, Scott, XXXXXX, XXXXX, XXXXX, XXXXX, and possibly XXXXXX -- through the black section of town where black kids threw rocks at them, hitting Scott in the head. XXXXXX denied that

¹⁰ XXXXXX first indicated that Scott was hit in the head during the first drive-through (thereby providing a motive to get a shotgun), but later in the interview -- upon leading questioning by the police -- he reported that Scott was hit during the second drive-through.

he or any of the other subjects threw anything at the black kids. The subjects returned to XXXXXX's home, where he retrieved a Stevens 16-gauge shotgun and bird shot shells. XXXXXX claimed that the subjects only intended to use the shotgun to scare the black kids if they threw any more objects at them; they did not intend to hurt anyone. After they got the shotgun and ammunition, XXXXXX drove his truck through the black section of town where they were hit by rocks. XXXXXX heard a gunshot and left without looking back. He claimed that he did not know that it was his shotgun that had been fired and did not realize that he and his friends were responsible for Prather's death.

XXXXXX, the only adult among the subjects, told the Corinth police in 1959 that he left the school's Halloween carnival with XXXXXX, XXXXX, Scott, XXXXX, XXXXX, Butler, and XXXXXX to get food. He claimed that they drove back through the black section of town to "save gas" because they were running low. At that time, unprovoked, about 15 to 20 black kids began calling the subjects names and throwing stuff at them. XXXXXX claimed that he and the other subjects did not throw firecrackers or anything at the black kids. During this skirmish, one of the subjects got hit in the head with a brick, and XXXXXX's truck got "a big old dent." The subjects took XXXXXX home and then went to XXXXXX's house where XXXXXX retrieved a 16-gauge gun. When they drove back through the black part of town, the black kids were "cursing" at the subjects so XXXXXX "just raised up and shot." XXXXXX claimed that they did not mean to shoot at anybody and could not explain how Prather got hit.

Fifty years later, XXXXXX told the FBI that he had been at a party at the high school when he and some other white teenage boys decided to cruise around town in XXXXXX's father's pick-up truck. When they drove through the black part of town, black kids threw rocks and bricks at them, knocking out the front windshield of the truck. XXXXXX got a shotgun, and they decided to drive through the black section of town again. Once again, black kids threw objects at the subjects, and some of them blocked the road so that the subjects could not pass. XXXXXX then fired one shot straight up in the air. XXXXXX contended that he also heard a second shot from somewhere else. XXXXXX claimed that the subjects did not intend to hurt anyone and that none of the subjects threw anything at any of the black kids.

XXXXXX told the Corinth police that he was at the Halloween carnival and left a few times to drive around. The second time he left, 50 to 75 black kids "rocked" them. (XXXXXX did not mention whom he was with). They drove back to the school and got XXXXXX, Scott, and XXXXXX. They then returned to the black part of town where the subjects were again bombarded by rocks. At that time, someone mentioned that they should get a shotgun. The subjects drove to XXXXXX's house where XXXXXX got a shotgun and shells and gave them to "someone" in the cab. The subjects stopped at a corner, and "somebody" gave the shotgun to XXXXXX, who was in the truck bed. They returned to the black part of town where black teenagers again threw rocks at them. According to XXXXXX, XXXXXX was lying down when he fired the shotgun. At about the same time, Scott was hit by a rock that glanced off the side of the truck and struck him in the forehead. The subjects left, went to a grocery store where they placed the gun under the car seat, and checked to make sure everyone was okay. At that time, "somebody" mentioned that "they shot above [Prather's] head." The subjects ended their evening at a restaurant where they ate hotdogs and drank cokes before they went home.

To the FBI, XXXXXX provided an inconsistent account that omitted the prior admission he had given to the Corinth police that the subjects had explicitly discussed getting a shotgun and that they drove to XXXXXX's house for the express purpose of getting a shotgun. XXXXXX told the FBI that on Halloween night in 1959, he and several boys were riding around town in XXXXXX's truck, throwing firecrackers and toilet paper. He recalled that when they were in the "colored" part of town, he and the other truck occupants threw cherry bombs and firecrackers at fifteen black kids, who in turn, threw bricks and rocks at them. XXXXXX's group then drove to XXXXXX's home, which only XXXXXX and XXXXXX entered. XXXXXX claimed he did not know why they entered XXXXXX's house, and further claimed that he did not know whether they got anything while they were there. When they got back to the truck, XXXXXX got into the truck bed, and XXXXXX drove them back to the "colored" part of town. XXXXXX admitted that the express purpose in returning there was to "retaliate", but claimed that he did not recall how they intended to do so. After they arrived, "someone" from the truck cab handed a shotgun to XXXXXX. XXXXXX then heard the sound of a shotgun, which "scared" them so they went home. Approximately two weeks later, he was arrested in connection with the death of Prather. XXXXXX claimed that the shooting was not planned but the result of a series of bad decisions. He further stated that XXXXXX did not take any role in the shooting.

To the Corinth police, XXXXXX reported that on Halloween night, he, XXXXXX, XXXXXX, XXXXXX, Butler, Scott, XXXXXX, XXXXXX, and XXXXXX went to get firecrackers. The subjects then drove to a café. When they were by the "colored school," roughly 50 "[g]reat big ones" started throwing bottles, bricks, and rocks at the subjects. The subjects drove to XXXXXX's house where XXXXXX got a shotgun. XXXXXX left, and the subjects returned to the black part of town where 25 or so black kids began throwing things at the subjects again. XXXXXX -- lying down "flat on his back" with his shoulders and head raised "a little" -- shot over their heads. XXXXXX claimed that he did not know that anyone had been struck until two days later when he heard classmates discussing it at school.

To the FBI, XXXXXX provided a remarkably different account, and denied that he had even been present when the shooting occurred. He told the FBI that on the date in question, he was riding in the back of XXXXXX's pick-up truck with some other boys. He recalled going to XXXXXX's house, but could not remember any details of that visit. They then drove to the black part of town, where six to seven black males threw sticks, bricks and rocks at them. He did not recall that anyone in his group threw any firecrackers at the black kids, but stated that everyone threw firecrackers at the time because they were inexpensive. In "self-defense," XXXXXX and the other truck occupants picked up the sticks and threw them back at the group of black teenagers. XXXXXX and his friends then left the area and drove back to town, where he contended he and XXXXXX were dropped off. XXXXXX did not recall there being a shotgun in the truck, and claimed that he never heard a shotgun being fired. XXXXXX further denied that he or anyone in his group was responsible for Prather's death, and opined that they were arrested because of the pressure applied by the FBI and NAACP. Lastly, XXXXXX reported that he had no memory of XXXXXX being present with the group that night.

James Rufus Scott (deceased) reported to local law enforcement that on Halloween, he met up with Butler, XXXXXX, XXXXXX, XXXXXX, XXXXXX, XXXXXX, and XXXXXX at school. They left to get food in XXXXXX's pick-up truck and then drove by the "colored"

school where kids threw bottles, rocks, and bricks at them. When the subjects left the black part of town, they got out of the truck and saw that the truck was damaged. While they were assessing the damage, someone said that they should get a shotgun. XXXXXX volunteered to shoot it. They drove to XXXXXX's house where XXXXXX got the shotgun. When the subjects drove back to the black part of town, black kids threw objects at them. XXXXXX then shot into the air. After XXXXXX pulled the trigger, Scott got hit by a rock in the forehead. Scott claimed that XXXXXX said he was going to shoot over the black kids' heads to scare them so that they would stop throwing objects at the subjects.¹¹ According to Scott, he did not know that XXXXXX had hit anyone until the next day.

James Neal Butler (deceased) reported to Corinth police that on Halloween night, he went to a carnival at Corinth High School with XXXXXX, XXXXXX, XXXXXX and XXXXXX. At the carnival, he met up with XXXXXX, XXXXXX, and Scott. Around 10:00 p.m., they got into XXXXXX's truck to get food. They then drove through the black part of town where a "bunch of niggers" threw rocks at them. XXXXXX then suggested that they should get a shotgun, and XXXXXX suggested that they should get a shotgun from his house. They drove to XXXXXX's house where XXXXXX retrieved a 16-gauge single-barrel shotgun and shells. When they got back into the truck, XXXXXX, XXXXXX and Butler rode in the cab, with XXXXXX in possession of the shotgun. They drove through "nigger town" again, and black kids threw rocks at them. XXXXXX continued to drive through the black section of town when XXXXXX said he wanted to get in the back because he "was going to shoot a nigger." XXXXXX took the shotgun, and "shot at the niggers." They left, and Scott said he had been hit by a rock thrown by one of the black kids.

XXXXXX told Corinth police that he, XXXXXX, XXXXXX, Butler, XXXXXX, Scott, XXXXXX, and XXXXXX left the Halloween carnival to drive through "nigger town." When they were close to the black school, "[s]ome nigger boys" threw things at them. They left and went to XXXXXX's house to get a shotgun. XXXXXX did not remember whose idea it was to get the shotgun, and classified it as a group decision. According to XXXXXX, the purpose of getting the shotgun was to "scare" the black kids. XXXXXX got the gun and put it on the seat inside the truck's cab. XXXXXX took the gun and went into the truck bed. They returned to "nigger town" where 20 to 30 black kids threw things at the subjects. XXXXXX claimed that XXXXXX then "jumped down and as he was going down he pulled the trigger." According to XXXXXX, XXXXXX shot up in the air and did not aim the shotgun at anyone. XXXXXX reported that they left after the shooting and did not realize they had hit anyone.

7. Extant Additional Evidence

As mentioned above, we no longer have XXXXXX's shotgun, the two pieces of wadding found at the crime scene, and XXXXXX's truck. Only the autopsy report and a photograph of Prather's body remain. As discussed below, their significance lies in the fact that they establish that XXXXXX had aimed the shotgun at Prather.

¹¹ When asked why they did not just go home, Scott revealingly replied "Well, I reckon we were just mad because they throwed at us before."

a. Autopsy

Although XXXXXX contended that he shot straight up in the air, the autopsy report indicated that XXXXXX had aimed the shotgun dead-straight at Prather's face. The coroner noted that there were "innumerable puncture wounds" on Prather's forehead and face that ranged in size from 3-5 millimeters. The wounds "coalesce[d]" around his eyes, nose, and lips. Additionally, the coroner noted that there were linear wounds 3 to 10 millimeters in length that traversed a horizontal path from the front to the back and that would parallel the ground if the body were standing upright. There were multiple metal pellets found in the tissues of the face and brain. The coroner also found bleeding in the right cerebral hemisphere and multiple bleedings associated with the pellets in the face, neck, thorax, and chest.

In addition, the autopsy report noted that the anterior teeth were shattered, both eyeballs "perforated," and the bone and cartilage and of the noses, orbit, and maxilla were fractured.

b. Photograph

A photograph of Prather's body shows multiple pellet wounds, concentrated in his face around his eyes, nose, and mouth, and radiating out towards the sides of his cheek and upper chest.

8. State Prosecution

On November 5, 1959, all eight subjects were arrested and charged with murder. They were released on bond pending action by the January 1960 grand jury. The January 1960 grand jury returned a true bill against XXXXXX charging him with manslaughter and recommending that he be treated with "leniency." On January 25, 1960, XXXXXX pleaded guilty to manslaughter and was ordered to serve five years in prison, four of which were suspended.

The January 1960 grand jury further recommended that the one adult subject – XXXXXX – be rolled over to the July 1960 grand jury. We have found no record indicating what happened in that grand jury, but the FBI has been unable to find any conviction for Prather's murder in XXXXXX's criminal history.

Lastly, the grand jury further recommended that the remaining juvenile subjects be certified to the youth court. On February 1, 1960, a judge certified the juvenile subjects to youth court.

We obtained a court order for those youth court records, which, in summary, shows that each juvenile subject was placed on probation for a year. Each juvenile subject's file is similar. The first document is a petition from a youth counselor laying out the facts of the case and requesting a hearing where the subject could be declared a "delinquent child." The next document is a summons for the subject to appear in youth court in March 1960 to show cause on why he should not be declared "delinquent." Then, the file contains a March 1960 court order in which the court expressly refrained from making any "formal determination" as to whether the subject is a "delinquent." Rather, the court placed each subject on probation, and ordered the

subject back to court in June 1960 for the “final decree.” There is no record of what, if anything, happened during that June 1960 hearing. The last document in each file is a March 1961 court order releasing each subject from probation because all reports indicated that the subject “ha[d] made a good readjustment . . . [and] that he c[ould] make a good citizen and it would be to his best interest at this time to finally discharge the said child.”¹²

9. Appellate’s Legal Analysis

Because there is no federal statute that applies to Prather’s murder, any prosecution would have to proceed under Mississippi state law. The Appellate Section has concluded, however, that the Double Jeopardy Clause would bar any such prosecution of the juvenile subjects because they underwent youth court proceedings. See Attachment 1, Appellate Memorandum for *In re Prather*. (not attached here)

The only subject who could be prosecuted is XXXXXX under Mississippi state law.¹³ Any such prosecution would rely upon the testimony of the other juvenile subjects, many of whom have provided statements to the FBI that are materially inconsistent with their testimony from fifty years ago. Because we do not have jurisdiction over this matter, we will refer this case to the state and provide any assistance they require should they decide to proceed against XXXXXX.

10. Conclusion

For the foregoing reasons, we recommend that this case be closed and referred to the state. Criminal Chief Chad Lamar for the Northern District of Mississippi concurs in this recommendation.

¹² The only exception is XXXXXX’s file. The last documents in his file are (1) a November 1960 petition to be released from probation because his family anticipated moving to California and (2) a court order granting that request.

¹³ In 1959, there was no statute of limitations for manslaughter. See MS CODE 1942 § 2437 Limitations of prosecutions generally. (“A person shall not be prosecuted for any offense – murder [and] manslaughter ... excepted – unless the prosecution of such offense be commenced within two years next after the commission thereof....”)