

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-3-1422

Date MAY 03 2011

To: Chief, Criminal Section

Re: Captain Trooper James Bonard Fowler
Alabama State Police,
Marion, Alabama - Subject;
Jimmie Lee Jackson (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On February 18, 1965, Alabama State Trooper James Fowler, fatally shot Jimmie Lee Jackson, the 26-year-old African-American victim, following a civil rights protest in Marion, Alabama. The victim was transported to a nearby hospital where he died on February 26, 1965, of an abdominal infection secondary to a gunshot wound to the abdomen.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

The above file has been closed as of this date.

Date

Chief, Criminal Section

XXX

Prior to the shooting, approximately 500 African-American members of the community gathered at the Zion Methodist Church to protest the incarceration of a young civil rights worker. Following the meeting at the church, the African-Americans planned to march towards the city jail a half-block away. According to witness accounts and media reports, the protesters were met by a wall of police officers and state troopers who ordered them to disperse, then began beating them with nightsticks. Most of the protestors were chased back into the church, but a small group of them broke away and entered a nearby cafe.

According to the subject, he entered the cafe and went to the assistance of a trooper who was being assaulted by a woman with a glass bottle and two men, one of whom was the victim. A struggle ensued, and the victim pulled the subject's gun halfway out of its holster as he struck the subject twice on the head with a soda bottle. The subject staggered backward causing the victim to lose his grip on the subject's gun. The victim advanced towards the subject and hit the subject across the head. The victim then struck the subject on the hand causing the subject's gun to discharge.

XXXXXX generally corroborated the subject's account. XXXXXX gave a slightly different account, stating that after the victim hit the subject on the head with a bottle, the subject shoved the victim backwards. When the victim advanced towards the subject, the subject drew his gun and fired a shot at the victim. Three civilian witnesses inside the cafe stated that they saw the subject draw his gun and intentionally fire a shot at the victim. All three of these witnesses stated further that the subject or other troopers hit the victim over the head with their clubs prior to the shooting. The victim gave a statement before he succumbed to his injuries from the shooting and the resulting infection. He acknowledged that he had been drinking a soda, but stated that he did not recall throwing a bottle at anyone. Two civilian witnesses stated that the victim armed himself with a bottle. However, one stated that the XXX took it away from him before he could throw it, and the other stated that XXX and the XXX held the victim back to prevent him from throwing the bottle. None of the civilian witnesses mentioned seeing the victim struggling to gain control of the subject's gun.

A state grand jury was convened in September 1965 and returned a "no bill." The state reopened the case in 2005, and in May 2007, a state grand jury indicted the subject on charges of first- and second-degree murder. Fowler plead guilty to manslaughter in November 2010, and was sentenced to six months in prison.

Federal Investigation

The Federal Bureau of Investigation (FBI) opened an investigation into the circumstances surrounding the victim's death pursuant to the Department of Justice's "Cold Case" initiative, which focuses on civil rights era homicides that occurred not later than December 31, 1969. As part of its investigation, the FBI obtained the Alabama Department of Public Safety investigative reports, the autopsy report, and media reports pertaining to the incident.

It was determined that the FBI had conducted an investigation into the incident in the months after it occurred and turned the results of the investigation over to the Department of Justice, Civil Rights Division. However, due to the amount of time that has passed, the original FBI file has since been destroyed. Excerpts from the original case file were located at the National Archives Building in Washington, D.C. by agents from FBI Headquarters. Copies of those files were provided to the FBI's Mobile, Alabama field office, which then provided copies to the local district attorney's office for use during the state trial. FBI agents also visited the Alabama Department of Archives and History in Montgomery, Alabama but were unable to locate any documents pertaining to the case. Finally, FBI agents contacted the United States Attorney's Office for the Southern District of Alabama regarding the case and were advised that they had no stored files for cases that occurred prior to 1980.

The case file contains numerous FBI interview summaries from civil rights protesters and members of the media who were present at the rally. Additionally, an FBI agent witnessed the melee that followed the civil rights protest from a second story window across from the Zion Methodist Church where the initial meeting took place. In his report, the agent stated that he first heard singing coming from the church around 7:00 p.m. Large groups of African-Americans were seen entering the church up until 9:00 p.m. At 9:24 p.m. the double doors of the church were opened wide, and two large groups of African-American protesters exited the church. Chief of Police T.O. Harris addressed the protesters over a loud speaker and said that it was an unlawful assembly. Chief Harris told the protesters to disperse and either re-enter the church or go home. Chief Harris repeated these orders three times and warned the protesters that they would be arrested if they did not disperse. When the protesters did not comply, a line of state troopers moved towards the front of the pack and pushed back the protesters. The protesters began screaming and cursing as the troopers pushed them back towards the church. A group of 15 to 20 protesters broke free from the pack and ran around the corner with 10 to 15 troopers in pursuit of them.

After the majority of the protesters re-entered the church, the agent saw lone African-Americans on the street being chased by troopers and officers. One of the protesters was caught in front of the bus station, and the agent saw an officer raise a nightstick to the man but could not tell whether the nightstick landed on anyone.

FBI agents interviewed a large number of the protesters in the days following the incident, including the victim and witnesses to the victim's shooting inside the cafe. The most pertinent witness accounts are set forth below.

Jimmie Lee Jackson was interviewed by the FBI on February 23, 1965, at the Good Samaritan Hospital in Selma, Alabama in the presence of Dr. William Dinkins. The victim stated that on the night of the incident, he went into Mack's Cafe with the intention of taking his

XXXX, XXXX, to the hospital for treatment of a head injury.¹ As the victim and XXXX were leaving the cafe, two troopers forced them back inside and struck the victim on the side, arms and head with their clubs. The victim saw another state trooper hitting his XXXX. The victim went to assist his XXX, but his XXX, XXXX, held him back. The victim stated that he had been drinking a Coke inside the cafe, but does not recall throwing the bottle at anyone. The victim stated that he recalled standing near the door leading to the dance hall and being shot in the stomach by a trooper. The victim stated that after the shot was fired, he ran out of the cafe with several troopers in pursuit of him. The troopers repeatedly struck the victim with their clubs until they finally stopped him in front of the bus station. The victim stated that he could not offer a description of the trooper who had shot him or of the troopers who hit him with clubs.

XXXX, the victim's XXXX, stated that following the meeting at the church, she went into Mack's Cafe and saw a group of state troopers ordering the African-Americans to leave. The troopers started swinging their clubs and striking the African-Americans. One of the troopers hit the victim several times with a club. The troopers then hit XXX with a club, once on the head and once on the leg. XXX stated that she could not identify the troopers that hit her. XXX stated that she sustained a large bump on her head during the incident.

XXXX, XXXX's XXXX and the victim's XXXXX, stated that on the night of the incident, he attended the meeting at the church and left via the back door at 9:00 p.m. About 50 to 60 troopers surrounded the church and hit several African-Americans with their nightsticks. A state trooper approached XXXX and said, "Go home nigger. Damn you. Go home." The trooper then kicked XXXX in the back and hit XXXX in the back with a nightstick. XXXX stated that he could not describe the trooper that hit him, other than to say that he was large in size. As XXXX was passing by Mack's Cafe, he saw another trooper hit XXXX on the head and leg with a nightstick. XXXX also saw a trooper hit XXXX, Jimmie Lee Jackson, with a nightstick in the area of the bus station.

In a written statement the following day, XXXX stated that he went inside Mack's Cafe and saw the victim and XXXX together. XXXX stated that the victim knew that XXXX had been hit and was going to take XXXX out to the car. XXXX and the victim tried to get out to the car, but were forced back inside the cafe by the troopers. When they were able to leave the café XXXX saw the troopers swinging clubs at the victim and chasing the victim. The victim fell to the ground near the bus station, and the troopers circled around the victim. The victim said, "I'm shot." XXXX stated that he did not hear a gunshot and did not know whether the victim had been shot inside or outside the cafe. XXXX then left the scene and went to a friend's home.

¹ There are some discrepancies amongst the witness accounts as to whether the victim entered the cafe before or after his XXXX, XXXXX. XXXX stated that the victim was already inside the cafe when XXX entered, while the victim and his XXXX, XXXXX, stated that the victim entered the cafe after XXX did in order to take XXX to the hospital. XXX stated that the victim and XXX entered the cafe together.

XXXX, the victim's XXXX, stated that she entered the cafe and saw XXX, XXX, bleeding from the head. The victim came in and started to take XXX for medical care. Several state troopers entered the cafe and hit the victim with their clubs in the back and shoulders. The victim stood by the counter and the cigarette machine along with XXX and XXXX. The victim did not have anything in his hand that XXX could see. XXX stated that she picked up a soda bottle and threw it at one of the troopers, but she did not think it hit anyone. As XXX turned to go back into the storage room, she tripped and fell to the floor. As she lay on the floor, she heard a gunshot. XXX got up and started to go out the back door, but a trooper stopped her and XXX and told them to go out the front door.

XXXXXX stated that he was in Mack's Cafe at approximately 10:30 p.m. on the night of the incident. As XXX was standing near the cigarette machine, a state trooper came into the cafe and ordered everybody to go home. Some of the African-Americans inside the cafe left. XXX attempted to leave, but was forced back into the cafe by the troopers who were entering the cafe. XXX was standing near the victim at that point. XXX stated that the victim tried to leave, but XXX, held him back XXX stated that the victim did not have anything in his hands and was not causing trouble. A trooper hit the victim over the head with a club. The same trooper then drew his revolver and fired one shot at the victim. The victim was standing at the corner of the lunch counter and the cigarette machine when he was shot. After the gunshot, another trooper took XXX by the shirt and pushed him out of the cafe. XXX described the trooper that shot the victim as approximately 30-year-old, six feet tall and slender.

XXXXXX stated that he attended the meeting at the church, then went to Mack's Cafe. XXX was standing near the cigarette machine near XXX and XXXX. XXX also saw the victim inside the cafe. A state trooper hit XXX on the head with a club. The victim saw his XXX get hit. XXX, XXX and XXXX were holding onto the victim to keep him from leaving the cafe. Two troopers then hit the victim over the head with their clubs as the victim stood at the end of the lunch counter by the cigarette machine. The victim picked up a bottle, but his XXX took it away from him. More troopers came in and started using their guns, clubs and shotguns to force people out of the cafe. XXX saw a trooper draw his revolver. XXX then heard two gunshots, but could not see anything because four to five troopers were surrounding the victim. After the gunshots, the victim fell against the lunch counter. XXX left the cafe, walked about 50 feet, then stopped. XXX looked back towards the cafe and saw several troopers chasing the victim. The victim fell to the ground near the corner of the church. Several state troopers kicked and hit the victim as he lay on the ground. The victim got up and ran to the corner of the post office. The troopers caught up to the victim again and stood around him.

XXXX stated that he was in Mack's Cafe when XXX came in and showed him a cut on his head from where he was hit by a state trooper. A short time later, the victim came into the cafe. A state trooper came in right after the victim as if he were chasing him. Several state troopers started hitting the victim with clubs, and one trooper said, "Go home." As the victim fell to his knees, he grabbed hold of one of the troopers. The trooper pushed the victim,

causing him to fall on the floor near the cigarette machine. The victim stood up. A trooper who had been standing by a table near the front window pulled his gun out of his holster and fired one shot. XXX stated that he did not know if the shot hit the victim because the trooper was standing approximately ten feet away from the victim. Just as the trooper fired the shot, the other troopers made everyone leave the cafe. XXX stated that he could not describe any of the troopers that were in the cafe at the time of the shooting.

XXXX stated that he attended the march at the church, then went to Mack's Cafe and stood near the counter. A state trooper came in, and the waitress asked him what he was doing in her cafe. She then told the troopers that there was no trouble inside the cafe. Seven or eight additional troopers entered the cafe and began hitting the African-American protesters. The victim arrived just before the troopers and stood at the end of the counter near the cigarette machine. XXX attempted to leave the cafe, but a trooper struck him with a club, and he fell down under the bench next to the counter; Another trooper hit the victim over the head with a club, and four troopers surrounded the victim. XXX heard a gun discharge twice. XXX did not know who had been shot until he saw the victim fall to the floor. A trooper asked, "Who got him?" A second trooper answered, "I got him." A trooper then kicked XXX in the side and ordered him to stand up. XXX got up off the floor and was forced outside. The victim was still lying on the floor of the cafe when XXX left, and XXX did not see the victim again. XXX described the trooper who shot the victim as tall and slender, and in his early 30s.

XXXX stated that she was XXX Mack's café and was working on the night of the incident. After the church meeting ended, the African-American protesters began coming into Mack's Cafe. The victim came in with his XXX, XXXX, who had been hit on the head. The victim said that he was going to take his XXX to the hospital. Several state troopers entered the cafe at that point, and XXX told them that there was no trouble inside the cafe. Additional state troopers entered the cafe, and the victim was forced over to the other side of the lunch counter near the cigarette machine. The troopers began swinging their clubs at the protesters. XXX did not hear any gunshots, but stated that there was a lot of noise and confusion inside the cafe. A trooper came over to XXX and told her that he wanted her keys and would lock up the cafe after everyone vacated the premises. The next morning when XXX came in, the padlock was not on the door and the cafe was open. XXX noticed that a portion of the wall had been removed behind the location where the victim had been standing during the melee.

XXXX stated that she left the church and went to Mack's Cafe. The troopers entered the cafe and told the protesters to go home. XXX told the troopers that they should not be in XXX cafe and that the protesters were waiting for their rides home to arrive. XXX came in, and XXX saw her swing her purse at a state trooper and push the troopers down onto a bench. XXX then noticed the victim and XXX standing near the cigarette machine. The victim picked up an empty bottle and said, "I'm going to get him." XXX pushed the victim backwards and XXX stood behind the victim and held his collar to keep him from approaching the troopers. XXX stepped behind the counter, took some soda bottles out of the cooler, and began throwing them at the troopers. A state trooper jumped up onto the bench in front of the counter and

raised his club as if he was going to strike XXX. Both XXX and XXX moved backward. XXX tripped over some bottles on the floor and fell down on her back side. As XXX fell, XXX heard a gunshot and thought that XXX had been hit. XXX told XXX to come with her out the back door. Some troopers were standing in front of the back door, so they moved towards the front. XXX did not see the victim inside the cafe at that point.

XXXX, the XXXX of Good Samaritan Hospital, was interviewed by the FBI on February 20, 1965. XXX stated that at 9:30 p.m. on the night of the incident, she received her first telephone call inquiring if the hospital had admitted a patient by the name of "Jimmie Lee Jackson." XXX stated that the victim was admitted to the emergency room at 11:55 p.m. On the day of the interview, XXX stated that the victim was in critical condition and was not expected to survive. XXX stated that she had prepared a written report detailing the statements that Jimmie Lee Jackson had made to XXX at the time of his admission.

According to the report, the victim told XXX shortly after his admission that the riot was started by a state trooper who said that the victim had thrown a bottle during the protest. The victim could not identify the trooper that made this accusation and shot the victim. The victim stated that he did not throw a bottle, nor did he attempt to hit anyone.

Local Investigation and Prosecution

The incident was investigated locally by the State of Alabama Department of Public Safety Investigative and Identification Division. On March 2, 1965, the Circuit Solicitor for the Fourth Judicial Circuit furnished the FBI with written statements from the subjects and two law enforcement witnesses to the shooting. Their accounts are set forth below.

The subject stated that at approximately 10:00 p.m. on the night of the incident, he was on special duty near the courthouse with several other officers. A group of African-American protesters began congregating in front of a cafe approximately 200 yards from the courthouse. The members of the group were throwing bottles and bricks at the officers and using profane words. Upon orders from their superiors, the subject and the other officers moved towards the group and ordered its members to break up. The group members continued throwing objects at the officers, hitting several of them. When the officers reached the group, it broke up and some of its members went into a cafe where they continued throwing bottles and other objects at the officers.

The subject and three other officers entered the cafe to arrest the bottle throwers. One trooper (Trooper XXXXX) was attempting to arrest a woman who was hitting him with a bottle. Two men then assaulted this trooper from behind, and the subject rushed to the trooper's aid and pulled one of the assailants off of the trooper. The assailant, who was later identified as Jimmie Lee Jackson, pulled the subject's gun halfway out of its holster and struck the

subject twice on the head with a soda bottle. The subject said, "Halt, you are under arrest," then staggered backwards yelling, "Get off. Get off. You are under arrest." The subject stated that his backward movement pulled his gun free from the victim and out of its holster. The victim hit the subject across the head while still advancing towards the subject. The victim then struck the subject on the hand causing the gun to fire.

The victim fell backwards and sat down. As the subject regained his balance, the victim got up and ran out the door, knocking over several people and still cursing in a loud voice. The subject went over to the injured officer, who was unconscious and bleeding from the head, and picked him up. The subject assisted the officer over to a patrol car, and the other officers at the scene rushed the injured officer to a nearby hospital.²

XXX gave an account of the events leading up the shooting that was consistent in relevant detail with the subject's account. XXX stated that as he moved to assist the trooper who was being attacked by two men with bottles, a bottle struck his own head and he turned to see where it had come from. XXX turned back around and moved towards the injured trooper again. As he did so, he saw the subject wrestling with the victim. The victim grabbed hold of the subject's gun and tried to pull it out of its holster. XXX stated that he grabbed another African-American man and threw him out of the way. XXX then heard a gunshot and saw the victim on the floor. XXX went to assist the injured trooper who had blood running down his face. During that time, the victim got up off the floor and left the cafe.

XXX also corroborated the subject's account of the events leading up to the shooting. XXX stated that once inside the cafe, he saw two African-American men beating Trooper XXX with glass bottles. The subject tried to pull the two men off of XXX who now had blood streaming down his face and was falling to the floor. The victim hit the subject over the head with a bottle as he tried to gain control of the subject's revolver. The subject threw up his arm and shoved the victim backwards. The victim advanced towards the subject again, and the subject drew his revolver and fired a shot at the victim. The subject then said that someone had been shot and shouted for someone to get a doctor.

XXX stated that he was with the group of officers that entered Mack's Cafe. XXX saw an African-American man throw something across the room in the direction of the officers. The object struck XXX, lacerating his left forehead. XXX was blinded by his own blood and reached for his service pistol. XXX stumbled outside the cafe where another trooper helped him over to a car. XXX was transported to Perry County Hospital where he received eleven stitches to close his head wound.

² None of the civilian witnesses mentioned seeing an injured trooper during the incident. However, Dr. William Deramus stated that he was at Perry County Hospital on the night of the shooting and treated XXX for a head injury, which was reportedly caused by a bottle strike.

XXX stated that he was not sure he could identify the African-American man who threw the object at him.

On September 28, 1965, a state grand jury returned a "no bill" in this case. According to media reports, the case remained untouched until 2005, with most people unaware of who XXX was. At the age of 70, Fowler agreed to be interviewed by a reporter from the *Anniston Star*. During the interview, he confirmed that he was the trooper who pulled the trigger on the victim that night. Later that year, Michael Jackson (no relation to the victim) was elected the first African-American District Attorney for the Fourth Judicial Circuit. Mr. Jackson saw a renewed interest in the case and began pursuing murder charges against Fowler.

On May 9, 2007, the subject was indicted on the charges of first- and second-degree murder. Fowler plead guilty to manslaughter in November 2010, and was sentenced to six months in prison.

Medical and Physical Evidence

The victim's autopsy was performed on February 26, 1965, at the State of Alabama Department of Toxicology and Criminal Investigation. The autopsy revealed that the cause of death was peritonitis due to abdominal trauma.³ The pathologist reviewed the victim's medical records which indicated that the victim entered the hospital shortly before midnight on February 18, 1965, for treatment of a bullet wound to the abdomen. Surgery was performed shortly thereafter, and the victim's condition improved. On February 25, 1965, the victim's condition worsened, and a second surgery was performed to reset his colon and install drainage tubes. The victim died at approximately 8:00 a.m. on February 26, 1965.

The external examination revealed a laceration above the right ear, an abrasion to the lower mid-back, and a sutured surgical incision measuring 1 1 inches on the abdomen. The upper end of the surgical incision was made across a small entrance-type bullet hole 5 3/4 inches below the nipple line. An exit bullet hole was noted on the left side of the abdomen at the lower rib cage. The internal examination revealed inflammation consistent with an infection. While the pathologist did not describe the bullet's trajectory in the autopsy report, he noted that the left lobe of the liver was ragged and torn, and that the transverse section of the colon was perforated in three separate spots. In a subsequent letter to the state investigator, Paul Shoffeitt, Ph.D., who performed the autopsy, stated that it appeared to him that the bullet entered the upper abdomen and ranged to the left at approximately a 45-degree angle and slightly downward through the liver and the transverse colon. The bullet then exited out of the left side of the abdomen.

³ According to some media reports, there is evidence that the wounds to the victim's bowels were not properly sutured causing fecal material to leak into the abdominal cavity. This resulted in a massive infection from which the victim died. Dr. Kris Sperry, the Georgia Bureau of Investigation's Chief Medical Officer, was quoted as saying that had the holes been closed properly, "this would have been a survivable injury."

Examination of the victim's clothing revealed a hole in the shirt, slightly to the right of the mid-line and 7 inches from the bottom of the waistband, with small areas of gunpowder particles surrounding it. A second hole was noted on the left side of the shirt at the same level as the first hole. Blood smears were present on the inside of the garment, particularly around the hole on the left side.

Legal Analysis

The applicable statute of limitations precludes prosecution of Jimmie Lee Jackson's murder under the federal criminal civil rights statutes. 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 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 federal prosecution under other statutes.

The FBI lent its assistance to the State of Alabama in prosecuting the subject at the state level on charges of first- and second-degree murder, resulting in the defendant pleading guilty to manslaughter and receiving a six-month prison sentence. Double jeopardy precludes further prosecution of this matter in state court.

Accordingly, this matter should be closed. AUSA Vicki Davis of the Southern District of Alabama concurs in this recommendation.