

CIVIL RIGHTS DIVISION
Notice to Close File

File No. 144-41-3570

Date:

To: Chief, Criminal Section

Re: Trooper Lloyd Silas Jones (Deceased),
Mississippi Highway Safety Patrol,
Jackson, Mississippi – Subject;
Benjamin Brown (Deceased) – Victim.
CIVIL RIGHTS

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

I. Synopsis

On the evening of May 11, 1967, Benjamin Brown, 22, the victim, was likely shot by Mississippi Highway Safety Patrol Trooper Lloyd Silas Jones, the subject, during a riot which took place in Jackson, Mississippi. Mr. Brown died the next morning as a result of a gunshot to his head.

The riot during which Mr. Brown was shot began on the evening of May 10, 1967, with a student demonstration on Lynch Street against Jackson Police Department (JPD) actions at Jackson State College (now Jackson State University). The students were protesting what they believed to be the unauthorized presence of the JPD on campus. They demanded that the police leave; the officers called for reinforcements; and the disturbance escalated. As the demonstration grew louder, non-students from the immediate area joined in. The police then placed barricades across Lynch Street. The students burned the barricades, and broke street lights. The next night, May 11, 1967, the JPD officers, joined by officers from the Mississippi Highway Safety Patrol (MHSP) and the Mississippi National Guard, replaced the barricades and confronted the protesters with tanks, rifles, and bayonets. Some students and about one hundred teenagers, who remained behind the barricades, gathered and responded with bricks and bottles. At approximately 8:30 p.m., JPD and MHSP officers, who were lined up approximately 75 feet away from the barricades, began shooting their firearms after XXX, a MHSP Investigator, was struck in the head by an object hurled by the protesters.

Mr. Brown, who did not appear to be a protester, was shot a few feet from the Kon-Tiki Café, which was located somewhere between the barricades that separated the protesters and the law enforcement officers assembled to confront them. An ambulance was called and Mr. Brown was transported to the University Hospital in Jackson around 9:45 p.m. He was pronounced dead at 4:42 a.m. on May 12, 1967.

Mr. Brown's autopsy revealed that he had been shot three times by a shotgun and that projectiles entered his head, back, and legs. Projectiles were recovered from Mr. Brown's head and back, and were examined by the JPD and FBI. Ballistics analyses revealed that the projectiles recovered from Mr. Brown's head and back were either #00 buckshots or #0 buckshots. From the initial investigation of this case, numerous people, including some eyewitnesses, reported that Mr. Brown was shot by either JPD Major Anthony Cothra "Buddy" Kane, Sr. (now deceased), or JPD Detectives John Dan Moulder (now deceased) and XXXXXX. However, these allegations are inconsistent with the forensic evidence. The only law enforcement agency using the type of pellets recovered from Mr. Brown's body was the MHSP, the agency that Jones worked for. Based on the ballistics analyses and a confession made by Jones to a civilian witness, Jones is the only credibly implicated subject. However, the federal government cannot prosecute Jones because he is deceased.

Furthermore, prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, the statute most likely violated by Jones through his unreasonable seizure of Mr. Brown while acting under the color of law, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 ("An indictment for any offense punishable by death may be found at any time without limitation."). However, the *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Based on the foregoing, this matter does not constitute a prosecutable violation of the federal criminal civil rights statutes and should be closed.

II. Prior Investigation and Litigation

In 1967, the JPD investigated the shooting of Mr. Brown but closed its investigation without bringing any charges. The FBI provided some limited assistance at the time. On May 10, 1968, Ollie Mae Brown, Mr. Brown's now-deceased mother, and Margaret Brown, Mr. Brown's widow, filed a wrongful death lawsuit in the U.S. District Court for the Southern District of Mississippi. On July 18, 1969, District Court Judge Dan Monroe Russell, Jr. dismissed the case with prejudice. On August 6, 1970, the U.S. Fifth Circuit Court of Appeals reversed the district court dismissal and remanded the case to Judge Russell. On April 15, 1971, Judge Russell dismissed the suit without prejudice. The six-year statute of limitations to re-file the case expired on May 10, 1974. The JPD reopened its investigation in 1998 (JPD reinvestigation) spearheaded by a JPD "Cold Case Unit" assigned to investigate unsolved civil rights era crimes. In May 2001, a Hinds County grand jury found probable cause that city and state officers were possibly to blame for Mr. Brown's death. No criminal charges were ever

filed.¹ The Brown family filed a second lawsuit in 2001. On October 14, 2003, the Jackson City Council voted to settle the \$20 million wrongful death lawsuit for \$50,000.

III. The FBI's "Cold Case" Investigation

In the spring of 2009, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding Mr. Brown's death, pursuant to the Department of Justice's "Cold Case" initiative and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which directs the Department of Justice to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969." The "Cold Case" referral was received in the form of news articles from the Southern Poverty Law Center (SPLC), including the articles Civil Rights Worker Killed When Police Fired on Protestors and Deadly Authority. As part of its review, the FBI interviewed people who were in local law enforcement at the time of Mr. Brown's death; people who may have seen or spoken to him on the day that he died; and other community members who may have had information about his death. The FBI verified the deaths of several people who may have had key information about Mr. Brown's death, including: an officer who was on duty and responded to the scene where Mr. Brown was shot; two men who claimed to have witnessed the person who shot Mr. Brown; and the subject. The FBI retrieved from the National Archives and Records Administration (NARA) the 1967 FBI file related to the case, as well as the investigation conducted by the JPD "Cold Case Unit" from 1998 and 2001. The FBI also requested any relevant information from the SPLC and the NAACP; contacted numerous Mississippi law enforcement and government officials; researched and reviewed dozens of articles and books; and searched for materials on the internet. A thorough investigation was made of the Sovereignty Commission Files, City Archives, and the McCain Library and Archives at the University of Southern Mississippi. Finally, the FBI sought information concerning civil rights era racially-motivated homicides during the Veterans of the Mississippi Civil Rights Movement conferences in March 2009 and March 2010.

IV. Physical Evidence

Medical Examiner's Autopsy Report. The FBI obtained Mr. Brown's autopsy report, which includes the coroner's ruling regarding his cause of death. The report states that Mr. Brown's autopsy was conducted on May 12, 1967, by Dr. Thomas M. Davis. According to the autopsy report, Mr. Brown was shot three times; once to his head, once to his back, and once to his legs. One lead pellet entered Mr. Brown's head behind his right ear and tore a hole through his brain as large as a thumb, and lodged just inside his skull over his left eye. One lead pellet entered Mr. Brown's lower back and was found lodged in his stomach. Mr. Brown also suffered wounds to his right and left legs. The wounds to his right and left legs were very minor and the projectile was not recovered. The cause of Mr. Brown's death was listed as "Death Due To Gunshot Wounds." According to a coroner's jury empanelled by Dr. Davis, the cause of death

¹ In Mississippi, Grand Juries are charged with the enforcement of criminal statutes as well as various civil statutes, including those defining the duties of public officers. MISS. CODE ANN. § 13-5-47 (2012). Accordingly, county District Attorney's Offices are not required to bring criminal charges in all instances where an indictment is returned.

was more specifically attributed to the gunshot wound to the head.

Ballistics Report. A report submitted by the JPD on May 16, 1967, described the examination of the two lead pellets removed from Mr. Brown's body. The ballistics examination showed that both pellets were identified as buckshot type pellets fired from a smooth bore weapon, such as a shotgun. The examiner weighed the pellets against #1, #0, and #00 buckshot bullets obtained from Hunt & Whitaker Sporting Goods and the MHSP Laboratory. The brands tested were Remington Peters, Western, and Super X. The examiner determined that the pellets were not #1 buckshot pellets. They did not weigh less than #0, nor did they weigh as much as #00, therefore they were either #0 buckshots or they were #00 with weight loss due to penetrating Mr. Brown's body.

On July 11, 1967, the FBI Laboratory conducted a second examination of the two pellets removed from Mr. Brown's body. The ballistics examination determined that based upon their weights, the pellets could be #00 buckshots. The examination also determined that the buckshots could not be #1 buckshots.

According to information collected by the FBI during its "Cold Case" investigation, at the time of the incident, the JPD issued 12-gauge cylinder bore barrel shotguns to its personnel, together with #1 buckshot ammunition. The FBI also collected information revealing the make and type of shotguns in the arsenal of, or assigned to, individual officers of the MHSP as of May 11, 1967, which included the following: Remington 12-gauge model 870; Remington 12-gauge automatic; Winchester Pump model 25; Browning 12-gauge; Savage 12-gauge automatic; and Ithaca 12-gauge pump model 37. The type and size of shotgun shells in the arsenal of, or assigned to, individual officers of the MHSP as of May 11, 1967 were: Winchester 12-gauge #9 Skeet Shot; Winchester one-ounce slug; and Remington 12-gauge #00 buckshot.

Given that the pellets removed from Mr. Brown's head (fatal shot) and body were determined to be either #0 buckshots or #00 buckshots, we have concluded that Mr. Brown's shooter was most likely employed by the MHSP and not the JPD.

V. Alleged Confession by Lloyd Silas Jones (now deceased), Subject

During the course of JPD's reinvestigation of Mr. Brown's death, investigators interviewed XXXX on December 1, 2000. XXXX, stated that XXXXX, Ruth Roberts (now deceased), was employed with the MHSP in Brookhaven, Mississippi, around the time that Mr. Brown was shot. XXX recalled visiting her XXXX at work sometime after the shooting and having a conversation with her XXXX and the subject, Jones. During the conversation, Jones stated that "those niggers don't mess with me in Simpson County because they know I will put them in their place." According to XXXX, Jones then began to talk about "a nigger" he killed in Jackson, Mississippi during a riot. When Roberts asked Jones whether he was talking about the shooting that some people had said JPD Detective XXXX had been involved in, Jones replied, "XXX didn't shoot that nigger, I did." According to XXX, Jones said "the nigger" raised his hand and threw something so he shot "the nigger." XXX told investigators that Jones told XXX that he took the shotgun used to kill Mr. Brown back to headquarters where he was told to get rid of it. Jones told XXX that he took the shotgun home, cleaned it, wrapped it in a blanket, and

placed it in his attic for a few months before returning it back into service. Finally, according to XXX, Jones told XXX that there were only about five shotguns like the one he used on the scene the evening Mr. Brown was shot.

Based upon this information, JPD investigators visited the McCain Library and Archives at the University of Southern Mississippi where they uncovered a signed deposition given by Jones on February 12, 1969. In that civil deposition, Jones stated that he was on the police line on Lynch Street the evening of May 11, 1967, and that he fired his 12-gauge shotgun. He estimated that he heard about ten or fifteen shots fired around the time that he fired.

During the course of its “Cold Case” investigation, the FBI conducted an online query of LexisNexis Law Enforcement Solutions. The aforementioned query found that Lloyd Silas Jones, date of birth October 8, 1928, XXX, died on October 4, 1995. A certificate of death (state file # 123-95-21098), obtained from the Mississippi State Department of Vital Records, confirmed that Jones died on October 4, 1995. According to the certificate of death, Jones died of hypovolemic shock caused by a cut aorta as the result of a shotgun blast to the lower left side. The cause of death was classified as a homicide.

VI. Exclusion of Anthony Cothera “Buddy” Kane, Sr. (now deceased), John Dan Moulder (now deceased) and XXXX as Subjects

In the initial investigation of this case by JPD, some eyewitnesses reported that Mr. Brown was shot by JPD Major Anthony Cothera “Buddy” Kane, Sr. In addition, other witnesses reported that the shooters were not in police uniforms but were wearing white shirts. JPD’s investigation in 1967 determined that JPD Detectives John Dan Moulder and XXXX were on the scene of the protest the night Mr. Brown was shot and were wearing white shirts, leading to the suggestion that Moulder and XXX may have been the shooters. Despite this witness testimony, Kane, Moulder, and XXXX were excluded as subjects because their weapons did not use the type of ammunition recovered from Mr. Brown’s body, as indicated by the JPD’s and FBI’s ballistics analyses.

A. Kane

During interviews conducted by JPD in 2000, three retired JPD officers who were at the protest – Hugh Johnston (now deceased), XXX – all stated that they were standing near Major Kane when they heard him make comments to the protesters to the effect of, “You want to throw another brick?”, “You want to throw another bottle, mother*****r?”, or “That’s the last brick you will throw.” XXX claimed that Kane fired his shotgun at Mr. Brown. XXX said that he saw Kane with a shotgun, but that he did not actually see Kane at the time of the shooting. According to these officers, they were never questioned regarding the shooting of Mr. Brown prior to JPD’s reinvestigation.

XXXXX, also a retired JPD Detective who was at the protest, was interviewed by the JPD on May 10, 1967, and July 12, 2000, and was also interviewed by the FBI on May 13, 2009. In 1967, XXX told JPD investigators that XXX, and his XXX, Detective John Dan Moulder

were not on duty but responded to the scene. They arrived at Rose and Lynch Street shortly after 8:00 p.m. When they arrived at the intersection, they saw a large group of demonstrators coming towards Rose Street. XXX stated that he and Moulder got out of the car and that XXX got his JPD-issued shotgun while Moulder got out his personal 30/30 rifle. The demonstrators began to throw bottles, pieces of concrete, bricks, and cans. Shortly after this, XXX stated that someone called out for the men not to stand there and “get the hell knocked out of [them].” XXX stated that all of a sudden, someone from the center of the line of law enforcement officers fired his weapon. At about that time, everyone that had a gun started firing.

In July of 2000, JPD investigators re-interviewed XXX. This interview was largely consistent with XXX 1967 interview; however, in the 2000 interview, XXX added that as the demonstrators began throwing rocks and other objects, Major Kane stepped in front of the line of law enforcement officers and said “Don’t let them knock your brains out.” XXX stated that Kane then fired his weapon. In May of 2009, the FBI interviewed XXX a third time. Although XXX again stated that he saw Kane fire his weapon, he stated that he did not actually see whether Kane’s shot struck Mr. Brown.

Although these various eyewitness accounts lend credence to the theory that Kane may have fired his JPD-issued shotgun at Mr. Brown, the autopsy and ballistics analyses exclude the possibility that the #0 or #00 pellets removed from Mr. Brown’s body were fired from Kane’s shotgun. Given that JPD issued #1 buckshot ammunition, there is no way to prove that the buckshots fired by Kane were anything other than #1 buckshots. Accordingly, there is insufficient evidence to credibly link Kane to Mr. Brown’s death, and in any event, Kane is now deceased.²

B. Moulder and XXXX

At least two civilian eyewitnesses interviewed by JPD in 1967, Bonnie Ray Cooper (now deceased) and Luther Lewis Myles, Sr. (now deceased), claimed to have seen several officers fire their weapons above the protesters and two officers in white shirts fire their weapons while pointing at the protesters.³ Neither Cooper nor Myles claimed to have actually seen Mr. Brown get shot. XXXX, another civilian eyewitness who was interviewed in 1967 by JPD and in 2009 by the FBI, said that he saw a man in a white shirt raise his weapon to his shoulder and fire several times, shooting Mr. Brown in the back.⁴ The “white shirt” information indicated that the

² On May 20, 2009, a query of the Mississippi State Department of Vital Records disclosed Anthony Cothera Kane, white male, date of birth August 12, 1909, Social Security Number XXXXX, died on January 29, 1981, at the Mississippi Baptist Hospital, Jackson (Hinds County), Mississippi. A certificate of death (state file # 81-00898), was obtained from the aforementioned Department. According to the certificate of death, Kane died of chronic pulmonary disease and a carcinoma of the right lung.

³ Both Cooper and Myles were not interviewed during JPD’s reinvestigation because they were already deceased.

⁴ When questioned by JPD investigators on May 11, 1967, XXX initially said that XXX did not

shooter was among the officers but was not wearing a uniform. JPD's initial investigation revealed that two JPD officers who were not in uniform were with the officers at the protest. These officers were JPD Detectives Moulder and XXXX.

As indicated above, XXXX was interviewed by JPD in 1967 and 2000, and by the FBI in 2009. Although XXXX admitted both to wearing a white shirt on the evening of the incident and to firing his JPD-issued shotgun,⁵ the physical evidence excludes the possibility that XXX fired the fatal shot that killed Mr. Brown. While it is possible that XXX fired the unrecovered projectile that went through Mr. Brown's legs, it is impossible to prove that the pellets removed from Mr. Brown's body came from XXX JPD-issued shotgun since JPD did not issue #0 or #00 buckshots. Moulder does not appear to have been interviewed by JPD in 1967 or in 2000. In 1967, he and XXX signed a 2-page typed statement that appears to be a joint statement. This statement indicates that Moulder never shot his rifle. In addition, his 30/30 rifle would have been incapable of firing either #0 buckshots or #00 buckshots because a 30/30 rifle is only capable of firing bullets. Based upon this information, Moulder cannot be credibly implicated in the death of Mr. Brown. Moreover, Moulder died in 2000.⁶

VII. Additional Information

Interview with XXXXX. XXXXX was interviewed on April 15, 2009, by the FBI. During 1967, XXXX was a reporter for the Associated Press (AP). XXXX was standing on the corner of Rose and Lynch Streets, in close proximity to the protest, the evening that Mr. Brown was shot. XXX stated that there was a protest by Jackson State students and that XXX was one of the reporters assigned to cover the event. The students had marched back and forth for about 24 hours. According to XXX, JPD and MHSP were not ready when one of the protesters threw a brick that hit MHSP Investigator XXX in the head. One of the officers fired a shotgun into the air, and the students backed away. The protesters reorganized, came back up to the barricades, and, again, began throwing rocks and bricks. XXX stated that police officers warned the students they would fire. The protesters began throwing rocks and bricks again, and this time the officers fired their guns. XXX was approximately twenty feet from the incident and saw the flash from

know who shot Mr. Brown. The following day, May 12, 1967, XXX reported that by means of peripheral vision XXX saw a man in a white shirt aim his gun at the protesters. During his 2009 FBI interview, XXX stated that a man in a white shirt raised his gun to his shoulder and shot Mr. Brown several times in the back.

⁵According to XXX in his 1967, 2000, and 2009 interviews, Moulder never fired his rifle during the demonstration. During his 1967 and 2000 interviews with JPD, XXX acknowledged that he fired one shot from his JPD-issued shotgun into the air. In his 2009 interview, XXX admitted to firing two shots into the air.

⁶ On March 31, 2009, the FBI conducted an online query of LexisNexis Law Enforcement Solutions. The aforementioned online query found that John Dan Moulder, date of birth March 11, 1935, Social Security Number XXXXX, died on December 17, 2000. Last known residence was Jackson, Mississippi. A certificate of death (state file # 89-75110), obtained from the Mississippi State Department of Vital Records, revealed that Moulder died on December 17, 2000. According to the certificate of death, Moulder died of sudden cardiac arrest.

the barrels of the guns. XXX believes that the gunfire was meant to intimidate the students. XXX saw Mr. Brown fall to the ground after the officers fired. After Mr. Brown had been shot, XXX noticed that officers rushed Lloyd Silas Jones out of the area. XXX heard people within the law enforcement community say that Jones was the shooter.

VIII. Conclusion

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the only credibly implicated subject – Jones – because he is deceased.

Additionally, prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 (“An indictment for any offense punishable by death may be found at any time without limitation.”). However, the *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

For all the above reasons, this matter lacks prosecutive merit and should be closed.