

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1753

Date 4-6-09

To: Chief, Criminal Section

Re: Officers Weyman Cherry (Deceased),
Randolph McDonald (Deceased),
Dawson Police Department,
Dawson, Georgia- Subjects;
James Brazier (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On April 20, 1958, James Brazier, the African-American victim, was arrested by Dawson Police Department (DPD) Officers Weyman Cherry and Randolph McDonald, the subjects, for “interfering” with the earlier arrest of XXXXXXXXXXXX. Subject Cherry admitted that he struck the victim on the head with a “blackjack” (a short, leather-covered club, consisting of a heavy head on a flexible handle), during the arrest, but he claimed that he acted in self-defense when Brazier resisted arrest by swinging at him and subject McDonald.

Cristina Gamondi
Attorney

To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section

Cherry and McDonald took the victim to the Terrell County Jail (the jail) where, later that night, the victim was examined by Dr. Charles Ward. Dr. Ward discovered blood in the victim's left ear and recommended that the victim be placed in a private cell and woken up every two hours. Brazier was moved to a cell in the women's block. When Brazier was taken to court on the morning of April 21, 1958, he was not able to respond to the judge's questions. Brazier's case was continued and he was released to his family. The victim was taken first to a local hospital, where x-rays revealed a skull fracture. He was then transported to the Georgia Medical Center in Columbus where, on April 25, 1958, he died after undergoing brain surgery. An autopsy, conducted at the request of Coroner C.F. Davis, determined that the victim died as a result of cerebral necrosis secondary to head trauma.

Federal Investigation and Review

The Federal Bureau of Investigation (FBI) first opened the matter on April 23, 1958, after receiving a complaint from the victim's XXXXXXXX. Following the investigation, the Department of Justice presented criminal civil rights charges against the subjects to a federal grand jury in August 1958.¹ The grand jury declined to return indictments against either Cherry or McDonald.

In the fall of 2008, the FBI initiated a review of the circumstances surrounding the victim's death, pursuant to the Department of Justice's "Cold Case" initiative and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which charges the Department of Justice to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969." The FBI case agent retrieved from the National Archives and Records Administration (NARA) the 1958 FBI file relating to the incident; interviewed current DPD and other law enforcement officials; and conducted searches of Georgia death records.

The 1958 Investigation

All of the following information was included in the 1958 FBI file.

As mentioned above, the victim's XXXXXXXXX filed a complaint to the FBI on April 23, 1958, prior to XXXXX death. XXXXXXXX stated that, at about 6:30 p.m. on April 20, 1958, he was arrested by subject McDonald for reckless driving.² McDonald struck XXXXX on the head with a blackjack. XXXXXXXX, the victim, witnessed the assault and objected. McDonald took

¹ The Department also presented charges against subject Cherry for the fatal shooting of Willie Countryman on May 25, 1958; against subject Cherry for the nonfatal shooting of XXXXX on May 23, 1958; against subject Cherry and XXXXX for the nonfatal beating of XXXXX on May 25, 1958; and subject McDonald and XXXXX for the nonfatal beating on XXXX on an unknown date in the spring of 1958. As in the case of the death of Brazier, the federal grand jury declined to return indictments in any of the other four incidents.

² XXXXXXXXX referred to subject McDonald as "Randall," presumably because McDonald's first name "Randolph" is similar.

no action against the victim at that point and transported XXXXXXXX to the jail. Later that evening, the victim also arrived at the jail. Brazier had two or three cuts on his forehead and his shirt was covered in blood. According to XXXXXXXX told him that he had been beaten with a blackjack by McDonald and another officer, incorrectly identified as Robert Hancock.³ The next morning, XXXXXXXX and another inmate were ordered to assist the victim to court. According to XXXXXXXX, the victim's shirt had been torn off his body and he was unable to walk or talk. XXXXXXXX and the other prisoner therefore "had to tote" the victim upstairs to court. After court, XXXXXXXX took XXXXXX to Terrell County Hospital where x-rays were taken. At the request of the treating physician the victim was then "rushed" to a hospital in Columbus. XXXXXXXX learned that doctors in Columbus determined that the victim had a skull fracture and a brain hematoma and operated on him.⁴

Subjects Weyman Cherry and Randolph McDonald both gave voluntary statements to the FBI on April 24, 1958. McDonald stated that he arrested the victim because Brazier had not merely objected to XXXXXXXX arrest, rather, he had threatened McDonald with physical harm.⁵

According to Cherry, he accompanied McDonald to the victim's home to aid in the arrest. The victim, who was in the yard, was informed of the reason for the arrest and allowed himself to be searched. Cherry and McDonald then each took one of the victim's arms and escorted him to their patrol car. The victim refused to get into the car, however. When Cherry then tried to push the victim into the car, the victim started resisting. Brazier then swung at the subjects with a closed fist. It was then that Cherry pulled out his blackjack, but the victim grabbed hold of it with his left hand. Cherry snatched the blackjack back and struck the victim on the forehead. Brazier continued to refuse to get into the car. Cherry left McDonald holding the victim and retrieved handcuffs. At that point, he saw the victim trying to get away from McDonald but Cherry was able to handcuff the victim. The subjects then transported him to the jail. Cherry stated that sometime later, he saw Dr. Charles Ward and asked that Dr. Ward examine the victim. Dr. Ward eventually examined Brazier and told Cherry that he did not think Brazier had anything seriously wrong with him. Dr. Ward recommended, nevertheless, that the victim be placed in a cell by himself and awakened every two hours.

McDonald confirmed that the victim resisted being placed in the patrol car and tried to strike both Cherry and McDonald. He stated further that Cherry struck the victim on the head with the blackjack three or four times. According to McDonald, it was at the request of the

³ Hancock was named as subject in the incident involving the shooting death by subject Cherry of Willie Countryman on May 25, 1958.

⁴ The FBI also investigated allegations that XXXXXX was beaten during XXX own arrest by subject McDonald.

⁵ Civilian witness XXXXXXXX, who aided McDonald in arresting Mr. Brazier, corroborated McDonald's claim that the victim threatened McDonald. However, another witness, XXXXXXXXX stated that XXX was present during the interaction between the victim and subject McDonald and the victim did not make any threatening statement.

victim's employer, XXXXXXXX, that the subjects called a doctor to the jail to examine the victim.⁶

XXXXXXXXXXXX, stated that Cherry struck the victim with the blackjack solely because the victim protested his innocence. According to XXXXXXX, after Cherry handcuffed the victim, he drew his pistol, put it in the victim's mouth, said, "I ought to kill you," and then struck the victim in the face with the gun. As the victim was getting into the car, Cherry kicked him twice and then tried to slam the door on the victim's legs.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX were all witnesses to the victim's arrest. XXXXXXX stated that McDonald held the victim's hands while Cherry struck him in the head with a blackjack. XXXXXXX added that Cherry kned the victim in the groin, causing him to bend forward, whereupon Cherry struck him in the head. XXXXXXX further added that Cherry drew his pistol briefly after striking the victim with the blackjack. XXXXXXX stated that XXX heard the victim tell the subjects to "go ahead and shoot" him, but XXXXXXX did not see either subject draw a gun and did not understand the victim's comment.

XXXXXXXX stated that XXX could not see the object Cherry used to strike the victim. XXXXXXX stated that they saw Cherry make a hitting motion but they did not see the actual strikes. XXXXXXX stated that XXX saw an officer strike the victim but did not see where the blow landed.

All these witnesses stated that the victim did not resist or attempt to escape. XXXXX and both XXXXX specifically stated that Cherry struck the victim with the blackjack before the victim was handcuffed. Like XXXXXXX stated that Cherry also kicked Brazier after Brazier was handcuffed.

Marvin Goshay was an inmate at the jail when the subjects brought Brazier in. Brazier was placed in the same cell block as Goshay. Goshay stated that the victim was able to walk without assistance, but was bloody and had "four holes in his head." Moreover, the victim told Goshay that the subjects had beaten him because he had objected to subject McDonald beating his father. At about 9:30 p.m., McDonald removed the victim from his cell and brought him to the jail medical office. When Brazier returned 30 minutes later, he had four bandages on his head. At that point, Brazier could still walk without assistance, but he complained that his head hurt. At about 10:30 p.m., Cherry and McDonald escorted the victim out of the cell-block and Goshay did not see the victim again until about 9:00 a.m. the next morning. Goshay stated that the victim was no longer wearing the shirt he had been wearing when he left the previous night. Moreover, the victim had several welts on his back, sides, and stomach. According to Goshay, XXXXXXX told Goshay that the subjects had taken the victim to a hospital that night, and returned with him at 6:00 a.m. Goshay stated that at the victim's father's request, Goshay and the victim's father each took one of the victim's arms and helped him to the patrol car to be transported to court. The

⁶ XXXXXXX was interviewed by the FBI case agents and stated that XXX was in Columbus on the day of the incident. XXXXX, who was reportedly reluctant to discuss the matter, did not mention asking that the victim be examined by a physician.

victim did not appear to hear when his father asked him what had happened.

XXXXXXX, one of the victim's neighbors, who had witnessed his arrest, also worked XXXXXX at the jail. XXX stated that on the morning of April 21, 1958, XXXX saw the victim as he stood waiting to be transported to court. According to XXX, the victim had a bandage on his forehead but XXX could not see any blood. A number of other inmates, one of whom was the victim's father, joined the victim. Two of the inmates each held one of the victim's arms and walked him out to a patrol car. XXXX stated that the victim could not hold his head up and appeared to be slobbering. Moreover, when the victim reached the car, he could not lift his feet to get in. XXXXXX said to the victim, "I ought to kick you in." Brazier's father told the officer that he would help the victim enter the car and did so.

An Unidentified Female Inmate (UFI)⁷ stated that XXX saw the victim being brought into the jail and noted that he did not appear to have any blood on him at that point. Shortly thereafter, Cherry instructed XXXXXX to place the victim in the cell next to the one occupied by UFI and another inmate, XXXXXX.⁸ A few minutes later, Cherry told XXXXXX to remove Brazier from the cell. UFI then saw Brazier follow the subjects and XXXXXX in the direction of the Sheriff's office. About 90 minutes later, the two subjects and XXXXXX returned to UFI's cell block, carrying the victim in a blanket. They left the victim on a bunk in the cell and UFI could not see the victim's face or body. She stated that for the next hour, about every 20 minutes, subject McDonald came to the victim's cell and called his name but did not receive any response. According to UFI, after McDonald left the victim the third time, no one else entered the cell block. At about 9:00 a.m., XXXXXXXXX arrived at the victim's cell and told him to get ready for court. The victim did not get up, so XXXXXXXXX pulled him up while XXXXXX struck him on the back 7 or 8 times with a blackjack. As Brazier walked out of the cell-block, escorted by XXXXXXXX, UFI saw some blood on the victim's waist and noted that he had a small bandage on his forehead. UFI also noted some blood on the mattress of the victim's bunk.

XXXXXXXXXXXX contradicted both UFI's and Goshay's accounts of his actions at the jail. XXXXXX stated that XXX did not see Brazier until the morning of April 21, 1958. XXXXXX stated further that XXX found and washed Brazier's shirt which was stained in urine, but XXX did not see any blood stains on the shirt. XXXXXX denied telling anyone that XXX saw any officer take the victim to a hospital. Moreover, unlike XXXX and Goshay, XXXXXXXX stated that the victim walked unassisted to the patrol car waiting to transport him to court that morning.

Dr. Charles Ward stated that he examined the victim at the jail at about 9:30 p.m. on April 20, 1958. According to Ward, he found lacerations on both the victim's forehead and on the back of his head, but the cuts did not require stitches. Dr. Ward found a small amount of blood on one

⁷ Although the inmate's name is redacted from the texts of all the FBI reports, the bottom of the reports state that the interviews were with XXXXXXXXX.

⁸ UFI identified the other inmate as "XXXXXXX." However, according to an FBI report, the inmate's name was XXXXXXXX. Moreover, other inmates stated that XXXXXXXX was not in the same cell block as the victim.

side of the victim's nose and inside his left ear. According to Dr. Ward, the victim's reflexes indicated little probability of a skull fracture. Further, the only evidence of internal hemorrhage was the victim's slurred speech. Nevertheless, Dr. Ward asked that the victim be moved to a private cell and that he be awakened every two hours. Dr. Ward saw the victim between 2:30 and 3:00 a.m. on April 21, 1958, and noted nothing unusual. However, the next morning when the victim was brought to Dr. Ward's office, x-rays indicated a possible skull fracture and Dr. Ward asked that the victim be transported to the Georgia Medical Center in Columbus.⁹

The autopsy, conducted at the request of Coroner C.F. Davis, determined that the victim died as a result of "cerebral necrosis and hemorrhage secondary to severe contra-coup trauma." Among the findings, the autopsy report listed "skull fracture" and "multiple contusions of the scalp."

The victim's wife, Hattie Brazier, filed a federal civil suit. XXXXXXXX, XXXXX of the NAACP, informed the FBI that Marvin Goshay, reportedly likely to be a principal witness on behalf of Mrs. Brazier in the civil suit, was first threatened with death by unidentified law enforcement officers and, on March 15, 1961, was found dead, apparently the victim of a homicide.¹⁰

The 2008 Review

The Georgia death records database revealed that subject Cherry died on October 25, 1970 and subject McDonald died on June 17, 1995.

The FBI case agent interviewed Terrell County Probate Judge Nancy Fryer. Judge Fryer stated that she had been a probate judge and confirmed that both Cherry (who had been one of her neighbors) and McDonald are dead. Judge Fryer provided the case agent a copy of Cherry's death certificate, indicating that he had died as a result of injuries sustained in a car accident. Judge Fryer was not able to locate a certificate for McDonald, but she stated that McDonald had died in a hospital in Albany, Georgia and, therefore, his certificate may have been on file in Lee or Dougherty County.

The FBI case agent interviewed XXXXXXXXXXXX, who was XX years old at the time of Brazier's death and did not know the details of the incident. XXXXX stated that he had known both subjects and confirmed that they are both dead.

⁹ According to an FBI report, XXXXXXXX was not asked to provide a signed statement because XXX "exhibited a hostile attitude and was critical of an investigation being conducted of police officers 'just doing their duty.'"

¹⁰ The investigative file does not contain information concerning the result of the suit. However, a newspaper article states that relevant witnesses on behalf of the victim's widow were deceased at the time of the suit. Further, in light of the failure of the grand jury to indict the subjects, it is unlikely that the suit, if it was not dismissed, resulted in a verdict in favor of the plaintiff.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, the federal government cannot prosecute the subjects because they are both deceased.

Second, prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 (“An indictment for any offense punishable by death may be found at any time without limitation.”). However, the *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnapping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.¹¹

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because the subjects are deceased, this matter will not be forwarded to the state for prosecutive review. AUSA Sharon Ratley, Middle District of Georgia, concurs.

¹¹ Although, the federal government already investigated the incident and presented charges, the dual and successive prosecution policy would not be applicable because double jeopardy did not attach since the subjects were not indicted.