

CIVIL RIGHTS DIVISION

Notice to Close File

APR 28 2010

File No. 144-1-3378

Date _____

To: Chief, Criminal Section

Re: Officer Jack Parker
(Deceased), Birmingham
Police Dept.
Birmingham, Alabama - Subject; Johnnie
Robinson (Deceased) - Victim
CIVIL RIGHTS

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

Case Synopsis

On September 15, 1963, Johnnie Robinson, the 16-year-old, African-American victim, was fatally shot in the back by Birmingham Police Department (BPD) Officer Jack Parker, the subject. Earlier that day, the 16th Street Baptist Church was bombed, resulting in the death of four African-American girls. The bombing sparked racial rioting and unrest throughout the city. Police officers claimed that the victim was among a group of African-American youths who were throwing stones at a car containing several white youths who were flying Confederate flags. When officers arrived at the scene, the African-American youths began to flee.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

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

Date

Chief, Criminal Section

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The subject stated that he fired his shotgun towards the ground, but some of the shots struck the victim in the back as he was running away. According to the coroner's investigation, the victim died from injuries caused by the shot to the back. A local grand jury was convened, but did not return an indictment in the case. The FBI determined that the subject died over thirty years ago, on April 9, 1977. An official death certificate for the subject is contained in the file. Neither the FBI, nor the BPD, ever found any evidence to implicate anyone other than the subject in the shooting.

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Local Investigation

Officer Jack Parker was interviewed by BPD Homicide investigators at 5:40 p.m. on September 15, 1963, at City Hall in the presence of the Coroner of Jefferson County. The subject stated that he was on patrol in Car 45 along with XXXXXXXXXXXXXXXX, and XXXXXXXXXXXX. The subject was riding in the back seat of the patrol car, on the driver's side, traveling east between 25th and 26th Streets on 8th Avenue North. When the officers came within 100 feet of the intersection of 8th Avenue and 26th Street North, they saw a group of African-American boys on the northwest corner. Two of the boys ran down 26th Street, and the subject saw them throwing rocks at a car that was traveling south on 26th Street. The boys then ran down 8th Alley and noticed that the officers were following them. The subject stated that he yelled for the boys to stop, but they continued running down the alley. The subject fired a shot at the ground near the boys' feet, from inside the patrol car, approximately 200 feet away. The subject stated that he was armed with a .12-gauge shotgun that was loaded with both bird shot and buck shot. The subject stated further that he fired the shot just as the patrol car came to a stop across the alley. One of the boys, who was later identified as the victim, fell to the ground, while the other boy ran around to the rear of the apartment building. The subject stated that as soon as the victim fell to the ground, the officers called an ambulance, which arrived at the scene within ten minutes.

XXXXXXXXXXXXXXXXXX were also interviewed by BPD Homicide investigators following the incident. Although XXXXXXXXXXXXXXXX were in the car with the subject officer, neither officer actually saw him fire the shotgun. They did, however, see a group of African-American boys throwing rocks at a car filled with white teenagers that was traveling south on 26th Street in front of the patrol car. Shortly thereafter, they heard the subject yell for the boys to stop, followed by a shotgun blast. One of the boys stumbled in the alley, then fell to the ground.

XXXX, who was sitting in the back seat of the car with the subject, saw him point the gun out the window and fire a shot. One of the African-American boys who had been running down an alley stumbled, then fell to the ground. XXXX estimated the distance between the subject's shotgun and the victim as 100 feet when the shot was fired.

The white teenagers who were riding in the car were also interviewed by BPD Homicide investigators. They confirmed that a group of young African-American men threw rocks at their car. None witnessed the actual shooting, however, because they had already crossed 26th Street.

Federal Investigation

The Federal Bureau of Investigation (FBI) opened an investigation into the circumstances surrounding the victim's death on April 16, 2007, based on media coverage of the incident. The investigation was opened 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 complete BPD report pertaining to the victim's death and the report compiled by the Coroner of Jefferson County, Alabama.

Legal Analysis

This matter does not constitute a prosecutable violation of 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, 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.

Additionally, the FBI investigation revealed that the subject is deceased and that no other officers were directly involved in the shooting. Therefore, there are no prosecutable subjects in the present case. Accordingly, this matter lacks prosecutive merit and should be closed. AUSA Frank Salter of the Northern District of Alabama concurs in this recommendation.