

CIVIL RIGHTS DIVISION

Notice to Close File

June 04, 2011

File No. 144-17M-3158

Date ____

To: Chief, Criminal Section

Re: Unknown Subjects,
Brooksville, Florida;
Jesse Wieshiemer Cano - Victim
CIVIL RIGHTS

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

Case Synopsis

In 1999, XXXXXX, contacted the Hernando County Sheriff's Office (HCSO) to report that XXXXXX, victim Jesse Cano, had been missing since 1965. XXXXX alleged that XXXX had learned through her XXXXXX that the victim may have been killed by members of the Ku Klux Klan (KKK), which was operating in Hernando County, Florida at the time.

Shelly Ward
Attorney

To: Records Section
Office of Legal Administration

Date

Chief, Criminal Section

FORMERLY CVR-3

FORM CL-3

Local Investigation

This matter was opened by the HCSO in 1999, then transferred to the Florida Department of Law Enforcement (FDLE), because several members of former Deputy Sheriff XXXXXX's XXXX were employed by the HCSO, and XXXXX alleged that XXXXX had been involved with the KKK.

XXXXXX told HCSO investigators that the victim had worked at the rock mines in Brooksville, Florida and was actively attempting to get the other miners to unionize. This resulted in the victim being "black balled" in the mining community. Due to the victim's union activity, Deputy Sheriff XXXXX had come by XXXXX and told the victim to cease his union activities. XXXX stated that Deputy XXXX also spoke to XXXXXX and told her to encourage the victim to cease his union activities.

XXXXXX stated that she had recently received a couple of upsetting phone calls from her XXXXXX, XXXXX. XXXXX told XXXXX that her XXXX, XXXXXX, had called her one day, upset and under the influence of alcohol. XXXXXX stated that he had information about the victim's disappearance. XXXXX explained that approximately one year prior, XXXX had gone fishing with his XXXXXX, XXXXXX. During the trip, XXXX told XXXX that he had cancer and was terminally ill. XXXX told XXXX that he had something that he needed to discuss with him, because he did not want to carry the burden any longer. XXXX also apologized to XXXX for the pain that he had caused the XXXXXX. XXXX then explained that he did not get along with the victim because the victim was of Mexican descent. XXXX also told XXXX that he was a ranking member of the KKK at the time of the victim's disappearance.

XXXXXX reportedly told XXXX that the KKK had killed the victim, then taken his body to the railroad tracks north of town so that a train would run over it and cover up any evidence of a homicide. XXXXX reportedly told XXXX that a train did, in fact, strike the victim's body, decapitating it. XXXX told XXXX that he became very upset upon hearing this. XXXXX saw how upset XXXX was and changed his story, stating that they told the victim to leave town and never return, which the victim did. XXXXX claimed that it was another Mexican man who had been placed on the train tracks and decapitated, not the victim.

XXXXXX told the investigators that she had attempted to talk to XXXX herself XXX about this matter, but that XXXX refused to speak to her about it.

XXXXXX, XXXX, was interviewed by HCSO investigators on October 18, 1999. XXXXX stated that one day in XXX, her XXXX, XXXXXX, was crying when XXXX. XXXXX told XXXXX that the victim had left XX. XXXXX stated further that the victim had gotten a phone call from XXXX,¹ then told XXXX that the next time they saw him, he would be driving a Cadillac.

¹ XXXX stated that the victim was a very tall, handsome man, and numerous women flirted with him. There was a rumor that the victim had an affair with a woman named XXX who was a waitress at the local restaurant. XXXX allegedly heard this rumor and got into a physical altercation with XXX.

XXXXXX stated that she later spoke with XXXXX, XXXXXX, who confirmed that on the afternoon of the victim's disappearance, he had received a phone call from an unknown person. While the victim would usually hand the phone to a XXXXX member because of his limited English proficiency, he took this phone call personally and refused to discuss the contents of the call with anyone. XXXXX told XXXXX that XXXX then left to go to lunch at XXXXX and told the victim to meet up with XXX. When the victim did not arrive, XXXXX went back XXXX to look for him, but was unable to find him.

XXXXXX described her relationship with the victim as being very close, and referred to herself as his "pet." XXXXX stated that XXXX could not imagine that the victim would have just left and ended all contact with XXXXX. XXXXX did acknowledge that XXXXX relationship was very volatile, and that XXXX often physically abused the victim. On one occasion, XXXXX had chased after the victim with a heavy chain. The victim attempted to take the chain away from XXXX, causing it to loop around and strike XXXX in the eye. The resulting injury required treatment at a hospital. XXXX stated that there was even speculation around town that XXXXX had killed the victim. XXXX stated that XXXX did not believe these rumors given how distraught XXXXX was over the victim's disappearance.

XXXXXX, who is married to XXXX's XXX, XXXXX, confirmed that her XXXX, XXXXX, had called her in June or July of 1999, crying and upset. XXXXX told her about XXXXX's role in the victim's death. XXXXX stated that she was already aware that XXXXX was involved with the KKK, because she had found a KKK robe in XXXX years earlier.

When asked if XXXXX's side of the XXXX could have been involved in the victim's disappearance, either because of the victim's Mexican descent or because of his alleged marital infidelity, XXXXX stated that she had asked her XXXXX, that very same question on a number of occasions. On one occasion, Bassett told XXXX, "Hell no I didn't kill him, but one day before I die, I'll tell you what happened." XXXX stated that in the months prior to Bassett's death, he was leading up to disclosing what he knew about the victim's disappearance. On one occasion, he was about to tell her, but then her XXXX walked into the room and he discontinued the conversation. A short time later, Bassett was placed in a nursing home, and XXXXX had no further contact with him.

XXXXXX, the XXXXX of the victim, was interviewed by HCSO investigators on October 19, 1999. XXXXX confirmed that the victim had received a phone call on the day of his disappearance, which he did not discuss with her or XXXXX. At the time, XXXX thought that it must have been from a friend of one of XXXXX. After the victim went missing, XXXXX searched XXXXX and saw that the XXXXX and only that XXXXX. XXXX stated that it was then that she and her XXXXX suspected that the phone call had actually been from one of the victim's XXXXX. XXXXX stated further that XXXXX had never mentioned anything about a Cadillac.

There is no documentation at the HCSO from around the time of the victim's

disappearance because the records from that era were not archived. HCSO XXXXXX, who initiated the recent HCSO investigation, contacted the National Transportation Safety Board (NTSB) and was advised that even though a train versus pedestrian accident would have fallen within their jurisdiction, they do not have records that date back to 1965. XXXX also contacted CSX Railroad, whose representatives stated that they do not keep records or incident files for more than seven years. XXXXX also contacted the Brooksville Police Department (BPD) and discovered that the BPD did not begin investigating felonies until 1970.

The FDLE took over the investigation in October 1999, and re-interviewed XXXX. XXXX confirmed that XXXXX had made admissions to her XXXXX member that he was a ranking member of the KKK and had beaten the victim to death, then left him on the railroad tracks so that his death would appear accidental. The FDLE obtained the HCSO investigative reports, but did not conduct any further investigation, other than to run the victim's fingerprints through the Florida Automated Fingerprint Identification System with negative results, "due to the lack of any further contact by the XXXXXX." Both the HCSO and the FDLE have since closed their investigations into the victim's death.

Federal Review

The Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding the victim's death on September 2, 2008, based on media coverage of the incident. The review was initiated pursuant to the Department of Justice's "Cold Case" initiative and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which focuses on civil rights era homicides that occurred not later than December 31, 1969. As part of its review, the FBI obtained the 1999 HCSO and FDLE investigative files. The FBI also queried all of the medical examiners' offices in the Tampa area for documentation of the victim's death, to no avail. Searches of national databases for recent use of the victim's social security number were also negative. According to Social Security Administration records, in 1973, XXXXXX, XXXXXX, petitioned the Social Security Administration to have the victim declared dead so that XXXXX and XXXXX could receive death benefits. On September 15, 1973, an administrative law judge granted XX petition and declared the victim dead.

The FBI interviewed XXXXXX on November 2, 2008. XXXXX stated that the conversation XXXXX had described between him and XXXXX had never taken place, and that XXXX is not emotionally stable and believes XXXXXXXXXXXX. XXXX stated further that he and XXXXXX members had encouraged XXXXX to get psychiatric help, but XXXX refused. According to XXXXX, neither XXXXX, nor XXXXX, were affiliated with the KKK. Rather, they were members of a Masonic organization called "The Shriners." When asked if he had any additional information regarding the victim's disappearance, XXXX stated that XXXXXX, was not a good person. XXXX opined that the victim "got tired of being around her" and left the XXXXX.

Legal Analysis

This matter does not constitute a prosecutable violation of the federal criminal civil rights

statutes. First, there is insufficient evidence to prove, beyond a reasonable doubt, that the victim's death was the result of a racially motivated homicide. 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 provide a basis for federal prosecution under these other statutes. Additionally, absent conclusive evidence of the victim's death, any identifiable subjects, and any investigative records from around the time of the victim's disappearance, federal prosecution of this matter would be extremely difficult, even if the statute of limitations had not expired.

AUSA Jay Hoffer of the Middle District of Florida concurs in this recommendation.