

Pages 1 - 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) NO. 3:14-cr-00643-EMC
)
 MATTHEW MUMPHREY, et al,)
)
 Defendants.)
 _____)

San Francisco, California
Wednesday, January 25, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: BRIAN J. STRETCH
United States Attorney
For the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
BY: **SARAH KIM HAWKINS**
LLOYD A. FARNHAM
Assistant United States Attorneys

(appearances continued on following page)

Reported By: Leo T. Mankiewicz, CSR 5297, RMR, CRR
Pro Tem Reporter

APPEARANCES: (cont.)

For Defendants Carey, Reddic, Rouse and Reed, and specially appearing for Ellen Leonida as counsel for defendants Mumphrey and Mathews, and specially appearing for Candis Mitchell as counsel for defendant Adams, and specially appearing for Daniel Blank as counsel for defendants Anthony, Dixon and McNeal:

STEVEN KALAR
Federal Public Defender
450 Golden Gate Avenue
San Francisco, California 94102

BY: **GALIA AMRAM**
Assistant Federal Public Defender

For Defendant Madlock:

RANDY SUE POLLOCK
Attorney at Law
2101 Webster Street, Ste. 1760
Oakland, California 94612

For interested party San Francisco Police Department:

Dennis J. Herrera, City Attorney
City and County of San Francisco
1390 Market Street, Sixth Floor
San Francisco, California 94102

BY: **SEAN FIELD CONNOLLY**
Deputy City Attorney

1 Wednesday, January 25, 2017

2 3:09 p.m.

3 P R O C E E D I N G S

4 (Defendants present in court.)

5 **THE CLERK:** Calling case CR14-0643, USA versus Matthew
6 Mumphrey, David Madlock, Latonya Carey, Chrystal Anthony,
7 Darlene Rouse, Acacia McNeal, Anita Dixon, Aaron Matthews,
8 Nijah Reed, Tiana Reddic, Tiffany Cross and Sholanda Adams.

9 Counsel, please come to the podium and state your name
10 for the record.

11 **MS. HAWKINS:** Good afternoon, your Honor. Sarah
12 Hawkins and Lloyd Farnham for the United States.

13 **THE COURT:** Good afternoon.

14 **MR. CONNOLLY:** Sean Connolly on behalf of the San
15 Francisco Police Department.

16 **THE COURT:** All right. Thank you, Mr. Connolly.

17 **MS. AMRAM:** And Galia Amram with the Federal Public
18 Defender's Office. I am here on behalf of Latonya Carey, Tiana
19 Reddic and Darlene Rouse, who are all present out of custody.

20 I am also here for Nijah Reed. She is not present.
21 The Court had initially waived her appearance when this was a
22 status, at the last status. I would ask that the Court waive
23 her appearance for this day. I believe she's at work.

24 I am also specially appearing on behalf of Ellen
25 Leonida for Matthew Mumphrey and Aaron Mathews. I am specially

1 appearing for Candis Mitchell for Sholanda Adams. I am
2 specially appearing for Daniel Blank for Chrystal Anthony,
3 Anita Dixon and Acacia McNeal.

4 **MS. POLLOCK:** Good afternoon, your Honor. Randy Sue
5 Pollock on behalf of David Madlock, who isn't present. I filed
6 a waiver last week. He was at work all night and just got off
7 early this morning, so that's the reason he is not here.

8 **THE COURT:** All right. Thank you. Good afternoon,
9 everyone.

10 I have received Notice of Dismissal in this case filed
11 by the government pursuant to Rule 48(a). I believe that
12 requires a court order in order to effectuate, and so let me
13 first ask whether the defense counsel has any comments.

14 **MS. AMRAM:** Your Honor, we would ask the Court to sign
15 the dismissal order. It is a dismissal with prejudice. If the
16 Court's inclined to grant it, I would like to express my
17 gratitude a number of people, but I think if the Court has
18 issues with the dismissal, we should take that up first.

19 **MS. POLLOCK:** I join with the request for the
20 dismissal with prejudice, your Honor.

21 **THE COURT:** All right. Well, let me ask. This is an
22 unusual case, obviously, and normally, a request for dismissal,
23 especially if consented to by all parties, is normally signed
24 off fairly perfunctorily, particularly if it's dismissal with
25 prejudice, but I do have to ask a question, why, given the

1 amount of resources that have been put into in this case, and
2 the course and trajectory of this case and the questions that
3 were raised, that at least at this juncture would appear to
4 remain unanswered regarding the defense motion here and the
5 impending discovery issues, what should the Court know?

6 **MS. HAWKINS:** Your Honor, as the government said in
7 our pleadings and has maintained throughout these proceedings,
8 the selection of these defendants was not based on any
9 impermissible factors. We have seen nothing in our
10 investigations of these cases or throughout this discovery
11 process to show that there was selective enforcement or
12 selective prosecution in these cases.

13 Nevertheless, our office has decided not to proceed
14 with further prosecution of these cases, and that's why we
15 filed the Notice of Dismissal.

16 As the Court is aware, the government constantly
17 addresses the merits of going forward in any prosecution, and
18 in this case, given the present state of litigation, the office
19 made the decision not to proceed.

20 **THE COURT:** Well, that's a little bit of a
21 non-sequitur. If the government is confident that there's no
22 merit to the claim of selective enforcement or selective
23 prosecution, and the underlying case is as it is, we know what
24 the evidence is, we have videos and all sorts of stuff, it's --
25 it doesn't enlighten the Court much about what's changed

1 between where we are now and where we were a month ago, two
2 months ago, three months ago.

3 **MS. HAWKINS:** Your Honor, we are not at liberty to
4 discuss our prosecutorial decisions, but the U.S. Attorney has
5 made the decision to exercise his discretion not to proceed
6 with these cases. Most of the conduct that occurred here
7 happened over two years ago, and the current litigation has
8 been proceeding since April of 2015.

9 **THE COURT:** Mr. Connolly, do you have something to
10 add?

11 **MR. CONNOLLY:** Yes, your Honor. It is the position of
12 the San Francisco Police Department that they were neither
13 properly notified, present or represented during the
14 proceedings regarding the allegations about the selective
15 enforcement claim, and therefore, had no input and no response.
16 They were unable to provide any information to the Court before
17 the Court arrived at its order.

18 That is our position.

19 **THE COURT:** Do you have a position as -- does the City
20 have a position as to -- I guess you don't have any standing to
21 object to the dismissal. I'm just --

22 **MR. CONNOLLY:** I have not -- we have no position, at
23 least not that I'm aware of.

24 **THE COURT:** Okay. Let me ask the government, how
25 many -- there are still at least one or two other defendants

1 who are outstanding in terms of not having been sentenced,
2 right? I know of at least one. Is there more than one, or how
3 many...?

4 **MS. HAWKINS:** Yes, your Honor. So there are a couple
5 of defendants who are in the CAP program. I believe...

6 **MR. FARNHAM:** I don't know exactly how many.

7 **MS. HAWKINS:** I believe there are two defendants
8 that I personally handled that I know are currently in the CAP
9 program, and our office has begun internal discussions in terms
10 of what will happen with regard to those cases, and that will
11 be addressed by our office on a case-by-case basis.

12 **MR. FARNHAM:** And then there's one that I was
13 handling, so maybe three, and those would all be
14 post-conviction, post-guilty plea CAP participants.

15 **THE COURT:** Who have not been sentenced, but there
16 was --

17 **MR. FARNHAM:** There was.

18 **THE COURT:** -- there was a plea.

19 **MS. HAWKINS:** That's correct.

20 **THE COURT:** So I'm wondering what the relationships --
21 I gather that there's going to be a review of those cases, in
22 light of this dismissal?

23 **MS. HAWKINS:** Your Honor, we have had contact with
24 defense attorneys in at least the two cases that I'm handling
25 with regard to that issue, which will be part of the

1 conversations internally that our office has with regards to
2 how to proceed on those.

3 **THE COURT:** Okay. Well, I'm not going to stand in the
4 way of dismissal, because I think it is in the best interests
5 of the defendants that are getting a dismissal with prejudice.
6 That means this case cannot be brought against you and charges
7 are dropped.

8 I do expect that the government will revisit the
9 question of those who are still outstanding, because it seems
10 like there may be some equity issues here, if those who had
11 pled remain in a position where they -- if those were to
12 proceed against them to full conviction and sentencing,
13 particularly those who face a potential minimum sentence,
14 statutory minimum, certainly some questions might be raised
15 about the fairness of that if their situation is not visited.

16 I will also say that this case, as I indicated in my
17 order, raised questions. I understand that the City's position
18 is they did not have a full and fair chance to respond, and had
19 this case continued, it would have brought things to a head, to
20 a certain extent.

21 But it appears that at least in this venue and in this
22 forum, that's not going to happen here, even though one could
23 discern a public interest in airing the issues that have been
24 raised. These are serious issues, serious allegations
25 regarding claims of discriminatory enforcement patterns and

1 this sort of thing, and as I stated in my earlier order,
2 I think the defendants in this case have raised a very
3 substantial *prima facie* case that, at the very least, raises
4 some serious questions that would warrant a response and a full
5 airing of the issues, given the seriousness of the allegations.
6 But in this context, I think the appropriate step is to grant
7 the dismissal.

8 I will also say that I hope that the U.S. Attorney's
9 Office will look at its processes to at least discern potential
10 issues that come up such as that arose here, to discern
11 potential patterns that might be red flags, because we spent a
12 lot of time and a lot of effort in this case on all sides
13 litigating this, to come to this result, and one question is
14 whether, you know, when all is said and done, this is something
15 that should have occurred.

16 But I'm not going to pass judgment on that. I'm just
17 commenting that there's a lot of water and a lot of resources
18 under the bridge at this point, but in view of the government's
19 motion and the interests of the defendants, I'm going to grant
20 the motion to dismiss with prejudice.

21 So the matter is resolved at this point, as far as
22 this matters goes.

23 **MS. AMRAM:** Your Honor, may I say something?

24 **THE COURT:** Yes.

25 **MS. AMRAM:** I would like to express my gratitude to a

1 number of people, first and foremost to my clients, who are
2 standing here. We often think of litigation, even in criminal
3 cases, as something fought by lawyers, but on our side this was
4 truly a collaborative effort between the Federal Public
5 Defender's Office and the 12 defendants in this motion.

6 This litigation required a huge amount of patience,
7 faith and courage from them. Exposing publicly the racism and
8 harassment they suffered by some still active police officers
9 was an act of true bravery. They were all scared about
10 retaliation, and they found the strength to say it anyway.

11 The litigation was very important to them and they
12 knew this would be a long, hard fight and they knew the fight
13 would be harder if they were in custody, and all of them worked
14 hard to make really tough changes in their lives, to help them
15 stay out. They have been in treatment, attended counseling,
16 felt the courage to change program and apply to countless jobs.
17 There have been many bumps along the road, but it has been a
18 truly inspiring journey.

19 It is a journey that they did not take alone, and for
20 that I want to express my heartfelt gratitude to Pretrial
21 Services and Judge Spero and Judge Beeler. The Pretrial
22 Service officers involved are Katrina Chu, Gelareh Farahmand,
23 Josh Libby, Brad Wilson, Denise Mancina, Rich Sarlatte, Anthony
24 Granados and Tim Elder. They have provided bottomless support
25 to my clients and have shown true commitment to helping each of

1 them live a better life.

2 I would like to thank next the team of people at the
3 Federal Public Defender who worked on this case. This
4 litigation was enormous and much of the work involved tedious
5 sifting of massive amounts of data through gigantic
6 spreadsheets as well as hundreds of hours of document review.

7 At some point, every paralegal and investigator in the
8 San Francisco office worked on this case. It is easy as we sit
9 here today to think that this outcome was foreseeable, but at
10 the beginning many people thought we were nuts. Yet despite
11 how unlikely victory seemed and how daunting the work,
12 paralegals, investigators and legal assistants threw themselves
13 into this, determined to fight with boundless enthusiasm and
14 energy.

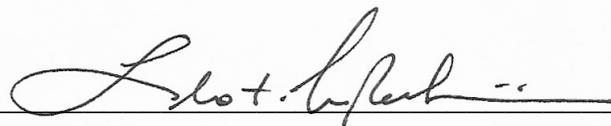
15 I would like to especially acknowledge the work and
16 dedication of research and writing attorney Steve Koeninger,
17 paralegal Sheree Cruz-Laucirica and August Sommerfeld,
18 investigators Rob Ultan and Loana Dominguez, and my assistant
19 Mallory Piper and my prior assistant Amy McGuigan.

20 I would also like to say thank you to Steve Kalar.
21 I had only been at the office about six months when I told him
22 I wanted tens of thousands of dollars and half our staff to
23 file a motion that hadn't resulted in dismissal of a single
24 criminal case since *Armstrong*. He said yes, and not every
25 federal public defender would have done so.

CERTIFICATE OF REPORTER

I, LEO T. MANKIEWICZ, a pro tem reporter in the United States Court, Northern District of California, and Certified Shorthand Reporter duly licensed in the State of California, hereby certify that the foregoing proceedings in Case No. 3:14-cr-00643-EMC, United States of America v. Matthew Mumphrey, et al., were reported by me, and were thereafter transcribed under my direction into typewriting; that the foregoing is a true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

A handwritten signature in cursive script, reading "Leo T. Mankiewicz", is written over a horizontal line.

Leo T. Mankiewicz, CSR 5297, RMR, CRR

Tuesday, February 7, 2017