

Judge decides against mistrial

Defense asks for dismissal of charges due to undisclosed evidence

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Stoughton — Despite the prosecution's apparent unintentional withholding of evidence, Judge Barbara Dortch-Okara denied defense attorney Richard Egbert's requests for first a dismissal of charges and alternatively, a mistrial.

Egbert represents Stoughton Police Sgt. David Cohen, who is facing multiple charges, ranging from improper arrest, kidnapping, assault and battery, abusing his position as a police officer, extortion and intimidation of a witness. Fellow Stoughton Officer Robert Letendre is standing trial alongside Cohen and is charged with filing a false police report.

"It interferes with our ability to try the case fairly and effectively," said Egbert, who said he received some of the information for the first time Tuesday night. "The harm cannot be undone."

"It's clear that nothing that happened (was intentional)," said Special Assistant Prosecutor Andrew Berman.

While Dortch-Okara said she could not find the misconduct to be deliberate, she said she concluded information from the file would have been made use of by the defense. Still, she said she was not prepared to declare a mistrial or to dismiss charges. There were ways to correct the wrongdoings that were "short of that," she said.

Stoughton Lt. Michael Blount conducted an internal affairs investigation into Cohen's conduct surrounding two incidents where Cohen allegedly improperly arrested two individuals. In the process of his investigation, Blount produced documentation and took into his custody further documentation, such as police files. Blount did not provide the documentation in its entirety to the prosecution until the week of June 18, which is when the trial began.

Egbert said the evidence should have been provided to the defense prior to the start of the trial.

Among the documents in the file, was a letter from attorney Barry Abelson that stated Blount was helping him with a personal matter during the same time period the grand jury had convened regarding Cohen's conduct. Abelson has already testified against Cohen in the current trial as he was Timothy Hills's attorney. Hills is one of the individuals allegedly improperly arrested by Cohen.

Dortch-Okara allowed Egbert to question Blount regarding the file without the jury present.

Egbert asked Blount if helping Abelson with a personal matter could be a bias.

Blount agreed it could.

Also within the file that appears to have not been provided to the defense, was a statement by Hills made to Blount that directly contradict Hills's testimony, Egbert said.

There were also allegedly notes taken by Blount that were never provided to the defense.

Egbert questioned Blount about several documents that perhaps could have been important to the defense during cross-examinations.

Blount said he kept the file at his home in a box in the closet until the week of June 18, when he provided the file to Berman, who then asked Stoughton Sgt. Robert Welch to hold the file. Welch then gave the file to Special Prosecutor George Jabour, who then gave the file back to Blount, Berman said.

Egbert said he asked several times for the file and received several excuses but never the documentation.

After initially handing the file to Berman, Blount testified the prosecution had not asked him to produce the file a second time until Tuesday.

Blount said he had made no record of what files he sent to the prosecution.

The prosecution said they had documents categorized but did not have an itemized list of documents received from Blount.

The defense did have an opportunity to view the file in question at about the same time the prosecution received the information. The prosecution offered to make a copy of the file, but the defense did not want a copy, Berman said.

The two parties then agreed the prosecution would maintain the file and make it accessible to the defense when necessary, Egbert said.

Berman said the information provided to Egbert Tuesday night was nothing different than the file Egbert had access to two weeks before, but was instead copies of documents from Blount's file. Providing the copies to Egbert was done in error, Berman said.

"They all should have been disclosed well in advance of the trial," Egbert said. "The Commonwealth didn't do what they said they would..."

Egbert said he was hesitant to recall witnesses in light of the new information because of the convoluted nature of the questioning, given that the defense and the prosecution have already thoroughly examined witnesses.

While Dortch-Okara denied Egbert's request, she did say she would have instructions for jurors regarding Blount and the prosecution's conduct regarding the evidence.

Cohen, who worked as a lawyer during the day and as a police officer at night, is accused of arresting Hills in April 2002. Hills testified that he took \$10,000 from Peter Marinelli to invest in an interest-bearing account to be used to start a business. Hills said he did not put the money into the account. After Marinelli asked for his deposit back, Hills made it known he no longer had the funds.

Marinelli then contacted Cohen, who became involved with getting Marinelli's money back. At question is whether or not Cohen was acting as an attorney or as a police officer in his dealings with Hills.

Cohen is also accused of improperly arresting Jerard Viverito in January 2000 when he worked for the Stoughton Motor Mart. Cohen allegedly arrested him after Viverito did not return a deposit to a customer promptly.

Chief Manuel Cachopa has also been indicted but has been granted a separate trial, which is set to begin Aug. 6. Cachopa's charges allegedly stem from his attempts to cover up Cohen's actions.

The trial was set to continue Thursday morning at 9 a.m. at the Norfolk Superior Court in Dedham and will likely continue into next week.

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