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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HONORABLE ERNEST W. SAWTELLE, JUDGE, DEPARTMENT 9

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THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
-vs-)
)
)
AMY ANDERSON,)
KATHYRN COKE,)
JULIO ESCOBAR,)
DANIEL GARZA,)
MORGAN LESKO,)
TRACY RICE-BAILEY,)
EVAN TALMAGE,)
SARAH THOMASPRODAN,)
SEAN THOMPSON,)
)
Defendants.)
_____)

COPY

No.11M07310, Et al,

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MONDAY, DECEMBER 12, 2011

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REPORTER'S TRANSCRIPT OF FURTHER PROCEEDINGS

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APPEARANCES:

For the City of Sacramento:

By: GARY LINDSEY, JUNIOR
Deputy City Attorney

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1 APPEARANCES (Continued):

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For the Defendant Anderson:

By: MARK MARIN, Attorney at Law,
Sacramento, California

For the Defendant Coke:

By: JEFF ANDERSON, Attorney at Law,
Sacramento, California

For the Defendant Escobar:

By: KRISTA HART, Attorney at Law,
Sacramento, California

For the Defendant Garza:

By: JOSH KAIZUKA, Attorney at Law,
Sacramento, California

For the Defendant Lesko:

By: DAVID KNOLL & BRIAN WANERMAN, Attorneys at Law,
Sacramento, California

For the Defendant Rice-Bailey:

By: MARK MARIN, Attorney at Law,
Sacramento, California

For the Defendant Talmage:

By: MARK MARIN, Attorney at Law,
Sacramento, California

For the Defendant ThomasProdan:

By: MARK MARIN, Attorney at Law,
Sacramento, California

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APPEARANCES (Continued):

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For the Defendant Thompson:

By: KRISTA HART, Attorney at Law,
Sacramento, California

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1 MONDAY, DECEMBER 12, 2011

2 MORNING SESSION

3 ---o0o---

4 The matter of the People of the State of California
5 versus Amy Anderson, Kathryn Coke, Julio Escobar, Daniel
6 Garza, Morgan Lesko, Tracy Rice-Bailey, Evan Talmage, Sarah
7 ThomasProdan, Sean Thompson, Defendants, No. 11M07310, et
8 al., came on regularly before the Honorable Ernest W.
9 Sawtelle, Judge of the Superior Court of California, County
10 of Sacramento, State of California, sitting in Department 9
11 thereof.

12 The City of Sacramento was represented by Gary
13 Lindsey, Junior, Deputy City Attorney for the City of
14 Sacramento, State of California.

15 The Defendant Amy Anderson was personally present and
16 represented by Mark Marin, Attorney at Law, Sacramento,
17 California, as her counsel.

18 The Defendant Kathryn Coke was personally present and
19 represented by Jeff Anderson, Attorney at Law, Sacramento,
20 California, as her counsel.

21 The Defendant Julio Escobar was personally present and
22 represented by Krista Hart, Attorney at Law, Sacramento,
23 California, as his counsel.

24 The Defendant Daniel Garza was personally present and
25 represented by Josh Kaizuka, Attorney at Law, Sacramento,
26 California, as his counsel.

27 The Defendant Morgan Lesko was personally present and
28 represented by David Knoll and Brian Wanerman, Attorneys at

1 Law, Sacramento, California, as her counsel.

2 The Defendant Tracy Rice-Bailey was personally present
3 and represented by Mark Marin, Attorney at Law, Sacramento
4 California, as her counsel.

5 The Defendant Evan Talmage was personally present and
6 represented by Mark Marin, Attorney at Law, Sacramento,
7 California, as his counsel.

8 The Defendant Sarah ThomasProdan was personally
9 present and represented by Mark Marin, Attorney at Law,
10 Sacramento, California, as her counsel.

11 The Defendant Sean Thompson was personally present
12 and represented by Mark Marin, Attorney at Law, Sacramento,
13 California, as his counsel.

14 The following proceedings were then had, to-wit:

15 THE COURT: On the calendar what we have is on the
16 8:30 calendar item number one and two, Amy Anderson.

17 Item number four, five and six, Kathryn Coke.

18 Item number nine Julio Escobar, also item 10, same
19 defendant, Escobar.

20 Item number 11, 12 and 13, Daniel Garza.

21 Item number 17 Morgan Lesko. And item 18 is also
22 Lesko.

23 Item number 20 and 21 is Tracy Rice-Bailey cases.

24 Item 22 and 23 Evan Talmage.

25 Item 24, 25 is the Sarah ThomasProdan case.

26 Item 26 and 27, Sean Thompson.

27 All right. First of all, City Attorney, state your
28 appearance.

1 MR. LINDSEY: Gary Lindsey, Junior, Sacramento City
2 Attorney's Office, your Honor.

3 THE COURT: All right. And Amy Anderson, who is here
4 for the defense?

5 MR. MARIN: Your Honor, I'm -- this is Mark Marin.
6 I'm standing in for Dustin Johnson. M-a-r-i-n.

7 THE COURT: Okay. And who's here for Kathryn Coke?

8 MR. ANDERSON: Good morning, your Honor. Jeff
9 Anderson for Kathryn Coke's matters.

10 THE COURT: And Escobar, who's here for Mr. Escobar's
11 case?

12 MS. HART: Your Honor, Krista Hart.

13 I can stand in for Denise Henderson on behalf of Mr.
14 Escobar.

15 THE COURT: And Daniel Garza, who is standing?

16 MR. KAIZUKA: Josh Kaizuka specially appearing for
17 Jeff Kravitz.

18 THE COURT: How about Lesko?

19 MR. KNOLL: Your Honor, David Knoll and counsel
20 standing in for Richard Staff.

21 MR. WANERMAN: Your Honor, Brian Wanerman appearing
22 977.

23 THE COURT: All right. I just want to know who is
24 here for Morgan Lesko.

25 MR. KNOLL: We both are, your Honor.

26 My request's to have me taken off as counsel so
27 that -- and Richard Staff is going to be continuing -- is
28 going to be continuing.

1 THE COURT: All right. So David Knoll, you want to
2 get out?

3 MR. KNOLL: Correct.

4 THE COURT: And who has been hired?

5 MR. KNOLL: No. Richard Staff was my pro bono co-
6 attorney on the matter.

7 THE COURT: And you're getting out. Mr. Staff is
8 taking it over?

9 MR. KNOLL: Correct.

10 MR. WANERMAN: Yes. Mr. Staff is currently in
11 Roseville.

12 THE COURT: And your name?

13 MR. WANERMAN: Brian Wanerman. W-a-n-e-r-m-a-n.

14 THE COURT: Standing in for Mr. Staff?

15 MR. WANERMAN: Standing in for Mr. Staff, yes.

16 THE COURT: All right.

17 MR. KNOLL: And Mr. Lesko is present.

18 THE COURT: All right. Mr. Knoll is out. Mr. Staff
19 will be the sole attorney.

20 MR. KNOLL: And I've turned over all the discovery to
21 counsel.

22 THE COURT: Thank you. Rice-Bailey.

23 MR. MARIN: Mark Marin for Stacy Rice-Bailey.

24 THE COURT: And Evan Talmadge.

25 MR. MARIN: Mark Marin standing in for Joel Demont.

26 THE COURT: And Thomas Prodan?

27 MR. MARIN: Well, Mark Marin standing in for Linda
28 Parisi who represents --

1 THE COURT: And Sean Thompson?

2 MR. MARIN: Your Honor, for Linda Parisi's office I've
3 been asked to file these oppositions, if I could approach
4 the clerk.

5 THE COURT: Okay. Can we -- we'll get that in a
6 minute.

7 Sean Thompson?

8 MS. HART: Krista Hart appearing on behalf of Mr. Sean
9 Thompson.

10 THE COURT: Thank you.

11 I think we got them all here.

12 It looks like Mr. Lindsey has filed on each of the
13 defendants, he's filed a motion to consolidate each of the
14 separate counts. Some of them are -- some of you have more
15 than one case, and so he's made a motion to consolidate
16 those.

17 MR. LINDSEY: They all have more than one case. Some
18 have two. Some have three.

19 THE COURT: A single complaint.

20 Now, I want to go a step further.

21 I would like to have five defendants joined together
22 in one group and five or four defendants joined together in
23 a separate group.

24 So rather than do your motion to consolidate, the
25 Court is going to order the City Attorney to join defendants
26 in this case so that we don't have nine separate jury
27 trials.

28 I understand some of you would like to object to that

1 but your trial is tomorrow.

2 So I don't the care how you do it. If you need time
3 and you want to continue the case, that's fine.

4 Otherwise, that is currently the Court's plan.

5 So -- and I'm not -- even if the City Attorney objects
6 to it, the Court is going to order it to be done over their
7 objection.

8 So at least that's my plan. I haven't heard anybody's
9 arguments on the -- on the point.

10 It seems to me that the -- the Court's interest is in
11 a more efficient resolution of these cases. And if we have
12 nine separate jury trials, we have to eat up nine separate
13 courtrooms.

14 And the issues all arose out of the -- at least I can
15 at least identify on some, one group, the people who are
16 arrested on September -- excuse me, October -- October 6, we
17 have four different people who are arrested on that. So
18 they'll have all at least one count in common.

19 And then there is a group that has -- that was all
20 arrested on October 8. That's in common. So we could join
21 those defendants together.

22 So that would be my current plan. It would be this;
23 it would be Lesko -- Morgan, Lesko, Anderson, Escobar,
24 Thompson and Rice-Bailey would be in one group. They all --
25 those five defendants all were arrested and charged, have
26 one case that came out of October 6.

27 Then the group Coke, Garza, Prodan and Talmage were
28 all arrested on October 6, and -- and would all share at

1 least one count together. So that would be four defendants
2 in that group and the others indicated would be five.

3 So how much time do you need to respond to -- first of
4 all, City Attorney, do you object to that?

5 MR. LINDSEY: Yes, your Honor.

6 THE COURT: All right. How much time would you like
7 to respond to the Court's order?

8 I won't make the order until you have time to do it.
9 I understand that's the plan that we'd like to proceed with.

10 How much -- how much time to you need to object to
11 that or file motion?

12 MR. LINDSEY: Could we get a week from today to appear
13 back before you, your Honor?

14 THE COURT: Your trial date is tomorrow.

15 What do you want to do with your trial?

16 THE COURT: Mr. Marin?

17 MR. MARIN: Mark Marin.

18 And we want to keep our trial date. That's pretty
19 urgent for us.

20 THE COURT: Okay.

21 MR. MARIN: We also wanted to put this over 'till 1:30
22 this afternoon so we can look at the law. I must say it's a
23 rather --

24 THE COURT: Sure.

25 MR. MARIN: -- big surprise to us to have something
26 unilaterally coming from the bench to this so that
27 consolidation over the -- both the objection of the
28 prosecution and the defense.

1 And I think that that will -- will be the final
2 position, but we'd like to see what authorities your Honor
3 has to order that consolidation.

4 And we would actually like to consider whether we
5 would be able to get it up on an emergency writ --

6 THE COURT: Sure.

7 MR. MARIN: -- depending upon what our research shows.

8 So if we could put it back at 1:30 on calendar, we'd
9 appreciate that.

10 THE COURT: And how about the rest of the lawyers,
11 what do you want to do?

12 MS. HART: Krista Hart on behalf of Sean Thompson and
13 Julio Escobar.

14 I would agree with that. And I'm available at 1:30 to
15 come back.

16 THE COURT: Okay.

17 MR. KAIZUKA: Josh Kaizuka on behalf of Jeff Kravitz
18 or Daniel Garza. Same.

19 MR. WANNERMAN: Brian Wanerman on behalf of Mr. Lesko.

20 I do have authority to agree -- to agree consolidate
21 the other defendants. Mr. Staff indicated to me he would
22 have no objection to consolidate into one count tomorrow.

23 And I also understand he's been arrested on a third
24 count. If the People have no objection, he would not object
25 to the consolidation after the third count.

26 THE COURT: Okay.

27 MR. ANDERSON: Your Honor, Jeff Anderson on behalf of
28 Kathryn Coke.

1 We join in Mr. Marin's motion.

2 And specially appearing for Linda Parisi. She's Sarah
3 ThomasProdan.

4 And I make this on her statement for the record.

5 THE COURT: Okay.

6 MR. WANERMAN: Yes, your Honor.

7 I should mention it -- Brian Wanerman on behalf Mr.
8 Lesko.

9 I would join with Mr. Marin. I would think Mr. Staff
10 would want at least 'till 1:30 to have a chance to look at
11 this.

12 THE COURT: Everybody want to come back at 1:30?

13 MR. LINDSEY: Yes, your Honor, I guess so.

14 THE COURT: Okay. We'll see you all back here at 1:30
15 this afternoon for further argument I guess or if you want
16 to file any papers or decide how you want to proceed from
17 there.

18 Okay. Thank you.

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(noon recess)

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1 MONDAY, DECEMBER 12, 2011

2 AFTERNOON SESSION

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4 The matter of the People of the State of California
5 versus Amy Anderson, Kathryn Coke, Julio Escobar, Daniel
6 Garza, Morgan Lesko, Tracy Rice-Bailey, Evan Talmage, Sarah
7 ThomasProdan, Sean Thompson, Defendants, No. 11M07310, et
8 al., came on regularly before the Honorable Ernest W.
9 Sawtelle, Judge of the Superior Court of California, County
10 of Sacramento, State of California, sitting in Department 9
11 thereof.

12 The City of Sacramento was represented by Gary
13 Lindsey, Junior, Deputy City Attorney for the City of
14 Sacramento, State of California.

15 The Defendant Amy Anderson was personally present and
16 represented by Mark Marin, Attorney at Law, Sacramento,
17 California, as her counsel.

18 The Defendant Kathryn Coke was personally present and
19 represented by Jeff Anderson, Attorney at Law, Sacramento,
20 California, as her counsel.

21 The Defendant Julio Escobar was personally present and
22 represented by Krista Hart, Attorney at Law, Sacramento,
23 California, as his counsel.

24 The Defendant Daniel Garza was personally present and
25 represented by Josh Kaizuka, Attorney at Law, Sacramento,
26 California, as his counsel.

27 The Defendant Morgan Lesko was personally present and
28 represented by David Knoll and Brian Wanerman, Attorneys at

1 Law, Sacramento, California, as her counsel.

2 The Defendant Tracy Rice-Bailey was personally present
3 and represented by Mark Marin, Attorney at Law, Sacramento
4 California, as her counsel.

5 The Defendant Evan Talmage was personally present and
6 represented by Mark Marin, Attorney at Law, Sacramento,
7 California, as his counsel.

8 The Defendant Sarah ThomasProdan was personally
9 present and represented by Linda Parisi, Attorney at Law,
10 Sacramento, California, as her counsel.

11 The Defendant Sean Thompson was personally present
12 and represented by Mark Marin, Attorney at Law, Sacramento,
13 California, as his counsel.

14 The following proceedings were then had, to-wit:

15 THE COURT: On the Occupy Sacramento cases, do we have
16 Gary Lindsey from the City Attorney's Office?

17 MR. LINDSEY: Present, your Honor.

18 THE COURT: All right. And we have lawyers on Amy
19 Anderson.

20 MS. HART: Your Honor, we're waiting for two more --
21 more attorneys. Josh Kaizuka and Mark Marin are on their
22 way as far as I know.

23 THE COURT: Well, I guess we'll wait 'till they get
24 here.

25 In the meantime, I could take up the consolidation
26 lawyers -- for the lawyers.

27 Mr. Lindsey had filed some motions to consolidate some
28 of the defendants that if some of them -- two -- some of

1 them, three cases, and to consolidate them under a single
2 number.

3 MS. PARISI: Right. Except that I understood from
4 this morning that the Court had talked about consolidating
5 people who are accused into two groups.

6 THE COURT: We had some discussions, but since we
7 don't have all the lawyers here can we just -- can we just
8 do the individual consolidation initially?

9 MS. PARISI: Well --

10 THE COURT: We still have to rule on those.

11 MS. PARISI: Right.

12 THE COURT: Unless Mr. Lindsey wants to withdraw that.
13 You still want to -- to, right?

14 MR. LINDSEY: Yes, your Honor.

15 THE COURT: All right. So why don't we take Miss
16 Hart, who is your client?

17 MS. HART: One moment.

18 THE COURT: All right. Mr. Lindsey, can I ask you, do
19 you have complaints ready to file?

20 MR. LINDSEY: On some of them, your Honor, I'm
21 generating, but yes.

22 THE COURT: Okay. For -- for the consolidation for
23 the motion that you filed --

24 MR. LINDSEY: For --

25 THE COURT: -- last week?

26 MR. LINDSEY: Not on all of them but several of them.

27 THE COURT: Okay. Let's Miss Hart, who do you
28 represent?

1 MS. HART: Sean Thompson.

2 THE COURT: All right. Let's call item number -- I
3 don't know what the item number is, but Sean Thompson has
4 two cases on calendar today. 11MO7136, 11MO7306.

5 And could the parties state their appearances on that?

6 MR. LINDSEY: Gary Lindsey, Sacramento City Attorney.

7 MS. HART: Krista Hart appearing 977 on behalf of
8 Mr. Sean Thompson.

9 THE COURT: Mr. Lindsey has filed a motion to
10 consolidate those two cases. Looks like actually should be
11 three, shouldn't it?

12 MR. LINDSEY: One of 'em is actually trailing, your
13 Honor. The defendant hasn't pled in that case.

14 THE COURT: On Sean Thompson?

15 MR. LINDSEY: Yes, your Honor.

16 THE COURT: One offense is October 6, another is
17 October 8 and one is October 31.

18 Which one is trailing?

19 MR. LINDSEY: October 31, your Honor.

20 THE COURT: Okay. So on the case October 6 and
21 October 8, two different offense dates, you wanted to
22 consolidate those two under one complaint number?

23 MR. LINDSEY: Yes, your Honor.

24 THE COURT: Miss Hart, would you like to be heard?

25 MS. HART: Yes, your Honor.

26 I did file a pleading opposing the motion. I'm not
27 sure if your Honor has had a chance to read that.

28 THE COURT: I have.

1 MS. HART: Okay. I would just like to add that by the
2 evidence in these two cases is not cross-admissible and
3 therefore by joining the cases together it's going to allow
4 evidence of one offense in where it would not be admissible
5 in a separate trial.

6 Additionally, this precludes the defense from
7 presenting some -- a defense that I'm not at liberty to
8 disclose right yet that's trial strategy.

9 But it -- it would deny Mr. Thompson his right to due
10 process and a fair trial by combining the two into one
11 trial.

12 THE COURT: So by October 6th weekend they --

13 MS. HART: They went through the booking process.

14 THE COURT: On October 6 there was one offense and
15 they were given -- they were booked and given a -- I guess
16 they charged under case number 7136, right?

17 MR. LINDSEY: Yes, your Honor.

18 THE COURT: And then the October 8 offense was the one
19 under 7360. Both of them are charged the same, right,
20 same --

21 MR. LINDSEY: Yes, your Honor.

22 THE COURT: -- same cordiance that you're charging
23 under both?

24 MR. LINDSEY: Well, it depends on the day. But yes,
25 the curfew hours -- there is a variance by one hour
26 depending on whether it's a weekend, a night that's on a
27 weekend or weekday but --

28 THE COURT: Okay.

1 MR. LINDSEY: -- but that's the only variance.

2 THE COURT: All right. Matter --

3 MS. HART: I would disagree. There is a variance a --
4 because it appears that the chief of police and the director
5 of parks has come to some conclusion that the parks should
6 be closed from sunset to sunrise.

7 So I'm not sure that the 10 o'clock -- that the 11
8 o'clock and 12 o'clock curfew is what it's -- place in this
9 case. And I think that's part of the -- what the confusion
10 is.

11 THE COURT: But the code is Sacramento City Code
12 12.72.0 (A), correct?

13 MR. LINDSEY: Correct, your Honor.

14 THE COURT: That's the same charge for both cases
15 right, on Mr. Thompson?

16 MR. LINDSEY: Yes, your Honor.

17 THE COURT: All right.

18 MS. HART: It is.

19 But each event involves different witnesses.

20 And as I said earlier, it's not cross-admissible and
21 it would allow the jury to draw the infamous conclusion that
22 if he did it once, he did it again.

23 THE COURT: Is the matter submitted?

24 MR. LINDSEY: Yes, your Honor.

25 THE COURT: All right. Motion to consolidate is
26 granted.

27 They'll be granted under case 7136. That's the
28 earliest case number.

1 Mr. Lindsey, do you have a complaint to file?

2 MR. LINDSEY: I have to -- not at this moment, your
3 Honor, but I can have it this afternoon.

4 THE COURT: All right. I'll need it by -- can you get
5 it by 4 o'clock?

6 MR. LINDSEY: Yes, your Honor, definitely.

7 THE COURT: Okay. So that will be consolidated under
8 lowest or the earliest case number which is 11MO7136.

9 THE COURT: Miss Parisi, you have --

10 MS. PARISI: I have Sarah ThomasProdan.

11 THE COURT: Okay. I have -- she's got two cases or
12 one?

13 MS. PARISI: She has two cases and one trailing.

14 THE COURT: Okay. October 6 and October 8 are 290
15 calendar and the October 15 is the trailing one.

16 MS. PARISI: I believe so. I don't have the discovery
17 on the trailing one.

18 THE COURT: Okay. This is the Sarah ThomasProdan
19 cases, case 11M07308 and 11MO7141.

20 And then of course there is the trailing matter which
21 is on the 15th of October that's not set for trial tomorrow.

22 Linda Parisi is here for Miss ThomasProdan and Gary
23 Lindsey for the City Attorney's Office.

24 The City Attorney's Office has made a motion to
25 consolidate those two cases under case 7141, which is the
26 earliest.

27 Is that right, Mr. Lindsey?

28 MR. LINDSEY: I believe so, your Honor. I don't have

1 it right in front of me.

2 THE COURT: You're not seeking to set the one that's
3 on the 15th?

4 MR. LINDSEY: That's correct, your Honor. The
5 trailing ones are intended to be trailing still.

6 THE COURT: All right. Miss -- Miss Parisi --

7 MS. PARISI: Yes.

8 THE COURT: -- what's your position?

9 MS. PARISI: Yes. I -- I would indicate to the Court
10 that really we are ill-equipped to argue these motions.
11 There is a discovery order that was pending before the Court
12 and granted with a compliance date of December 5th. If my
13 recollection is correct, we have not been provided with
14 discovery.

15 And as a result, we are incapable of articulating the
16 full arguments to the Court because therefore their failure
17 to comply with discovery.

18 Additionally, when I review their pleadings, they
19 articulate no facts as required by statute in order to
20 suggest why joinder of these two cases would be appropriate.

21 There has been no declaration as to any
22 cross-admissibility or any of the other factors. They
23 simply make a bald statement, which is true on the numbers.

24 And by that I mean that the individuals are charged
25 with the same code section. That does not automatically
26 require joinder. For -- for them to have met their burden
27 requiring joinder they have to articulate a basis for why
28 joinder would be appropriate.

1 And I believe once we have discovery, as well as the
2 basis for joinder, we would then be able to articulate more
3 clearly our opposition.

4 But as it stands now, we would articulate to the Court
5 that we are in opposition. There is no evidence before this
6 Court that there is any cross-admissible information.

7 So there is no evidence before this Court that it
8 would be a judicial economy to join in the complaints
9 together.

10 Furthermore, there is no statement before this Court
11 that there would be any duplication of witnesses. But my
12 understanding is that it is a series of witnesses of which
13 there is not an issue of the duplication of those witnesses.
14 There are different officers involved in these series of
15 arrests so there is no duplication of witness.

16 So the basis that I would argue for consolidation
17 outweighing our -- my client's right to have these cases
18 tried separately have not been presented to the Court.

19 And there is a danger -- a prejudice to my client.
20 Not only does it diminish her Sixth Amendment right to
21 present evidence, because by joining these in this fashion,
22 it may well prohibit her from calling certain people as
23 witnesses that would not have occurred had they been tried
24 separately or one after the other or however the Court chose
25 to exercise the efficient administration of justice in that
26 regard.

27 Additionally, since the People have not complied with
28 the discovery order, actually I make an oral motion to

1 It's not that we haven't provided discovery at all.
2 We have provided discovery. There may -- there may not be
3 as complete as the defense has sought, and there -- maybe
4 the Court may decide to do something short of dismissal.

5 THE COURT: Are there other items coming? I mean,
6 was -- you -- they asked for some things in discovery.
7 Apparently it was granted.

8 Did you turn over everything? Some?

9 MR. LINDSEY: Some.

10 MS. PARISI: Two of the 13 requested items have been
11 complied with. There are 11 items outstanding.

12 THE COURT: All right. Let me talk to Mr. Lindsey a
13 second.

14 Are you planning on discovering the other items to the
15 defense or have you changed your mind and you want to -- and
16 you can't do it or you won't do it?

17 What's the issue?

18 MR. LINDSEY: Well -- well, for instance, with the
19 videotapes, they're -- unfortunately, this is on VHS tape.
20 That would take real-time to --

21 THE COURT: Who uses VHS?

22 MR. LINDSEY: Apparently Sacramento Police. Don't ask
23 me.

24 And it would take real-time to reduce -- like to
25 reproduce it, but would take an extreme amount of time
26 because somebody has to actually do it real-time.

27 THE COURT: You've videotape that you need to copy and
28 turn over?

1 MR. LINDSEY: Yes, your Honor.

2 THE COURT: Well, so when will you have that ready?

3 MR. LINDSEY: I believe by next week, your Honor, if
4 we -- if we --

5 THE COURT: I don't understand entirely what the issue
6 is with the tape. It seems, you know, pretty easy to copy a
7 videotape.

8 But is this some unusual videotape?

9 MR. LINDSEY: It's not the direct -- let's say if you
10 had like a CD and you directly burned it in a matter of
11 minutes. It's sitting there the entire time. Somebody has
12 to sit there for hours on end.

13 THE COURT: Is this a videotape that was down at the
14 park of the incident?

15 MR. LINDSEY: Yes. Yes, your Honor. Yes, your Honor.

16 THE COURT: So who -- was this city police took --

17 MR. LINDSEY: That's correct, your Honor.

18 THE COURT: There was like a C.S.I. officer or some
19 officer was taping the incident?

20 MR. LINDSEY: That's correct, your Honor.

21 THE COURT: And now they don't have the technology to
22 make a copy of that?

23 MR. LINDSEY: They do.

24 THE COURT: And so why would it take more than -- I
25 don't know, a couple hours to get that done? I don't
26 understand.

27 MR. LINDSEY: It would take not more than a couple
28 hours.

1 THE COURT: So why haven't you turned that over yet?

2 MR. LINDSEY: I see your point, your Honor.

3 THE COURT: Well, what -- what do you want to do about
4 that?

5 I mean, are you gonna have it -- can you get it today?
6 What's the issue?

7 You are ordered to turn over to -- did Judge Frawley
8 give you a day to turn over --

9 MR. LINDSEY: Yes.

10 THE COURT: In other words, you have a certain amount
11 of time.

12 Did he give you a day to discover it?

13 MR. LINDSEY: Yes, your Honor.

14 THE COURT: What was the deadline?

15 MR. LINDSEY: It was the 5th, your Honor.

16 THE COURT: He gave you until the 5th?

17 MR. LINDSEY: Yes, your Honor.

18 THE COURT: Of December?

19 MR. LINDSEY: Yes, your Honor.

20 THE COURT: Today is the 12th. So you're -- a week
21 has gone by and you haven't been able to do it.

22 Can you explain why you haven't turned it over?

23 MR. LINDSEY: We were in negotiations for resolution
24 that looked like they were gonna go through as far as actual
25 resolution and they fell through.

26 THE COURT: Do you understand Court Orders is not a
27 suggestion, Mr. Lindsey?

28 MR. LINDSEY: Yes, I do, your Honor.

1 THE COURT: I mean, it's certainly understandable, a
2 huge backlog or there is a reason for getting some
3 information.

4 But when it doesn't sound like you're explaining there
5 isn't any difficulty in getting that information, you just
6 didn't discover it.

7 So tomorrow's the day of trial. What were you gonna
8 do, show up tomorrow and -- without giving the discovery?

9 The defense seems to say they want trial tomorrow, but
10 help me out, Mr. Lindsey.

11 MR. LINDSEY: I -- I see your point, your Honor.

12 THE COURT: So where is the tape?

13 MR. LINDSEY: The tape is --

14 THE COURT: Can you get it today?

15 MR. LINDSEY: Reproduced or the physical tapes, your
16 Honor, are you saying -- you're asking reproduced?

17 THE COURT: Yes.

18 Can you make a copy and turn it over to defense today?
19 You've got a trial set tomorrow.

20 MR. LINDSEY: I don't believe so, your Honor.

21 THE COURT: Why not?

22 MR. LINDSEY: The tapes -- I believe the tapes are
23 such length as far as duration of time that they wouldn't be
24 ready for everybody.

25 THE COURT: Not particularly acceptable, Mr. Lindsey.

26 You contact the police department and tell them
27 there's a Court Order. They must have it. That's the way
28 it usually works. And then they make a copy.

1 And if there is some problem with it, then you come to
2 court and explain what the problem is, if there is a
3 technological problem or something like that.

4 So you have 10 out of -- uh, actually two out of 13
5 items?

6 MS. PARISI: Right. I was mistaken. I believe we
7 made a request for it looks like 22 items and two have been
8 complied with.

9 THE COURT: So two out of 22 items.

10 What -- what are the other items and why haven't you
11 turned them over?

12 Let's start with why haven't you turned the other 20
13 items over?

14 MR. LINDSEY: Well, there are items that we did turn
15 over.

16 THE COURT: Two?

17 MR. LINDSEY: It was more than than two.

18 THE COURT: Okay. Whatever the number, where is the
19 balance of the items that the Court ordered you to turn over
20 by December 5th or was it by December --

21 MS. PARISI: December 5th.

22 THE COURT: Yeah. You were told that you must turn
23 them over by December 5th and here you are seven days later.

24 So where is the rest of the items?

25 MR. LINDSEY: They still need to be fully compiled,
26 your Honor.

27 THE COURT: Okay.

28 MR. LINDSEY: And it would be in the possession of

1 parks and recreation.

2 For instance, your Honor, the City of Sacramento --

3 THE COURT: Are they physical items?

4 MR. LINDSEY: Yes, your Honor.

5 THE COURT: I mean, in other words, these items of
6 evidence that the defense -- you could show the defense. I
7 don't even know. I don't what the issue is now.

8 MR. LINDSEY: For example, permits going back five
9 years for all the park permits, that kind of thing.

10 THE COURT: Okay. So these aren't difficult things to
11 obtain it doesn't sound like. You just need to make
12 photocopies of them.

13 Is that what you're saying?

14 MR. LINDSEY: Yes, your Honor.

15 THE COURT: So again, Mr. Lindsey, why hasn't all this
16 been turned over? I fail to understand why it hasn't been
17 turned over up to this point.

18 Have you asked anybody to turn it over? Have you
19 asked parks and rec. --

20 MR. LINDSEY: Yes, I have, your Honor.

21 THE COURT: What's the status? Have you talked to
22 them today? Where is this information? We've got trial set
23 for tomorrow.

24 MR. LINDSEY: I did not talk to them today, your
25 Honor.

26 THE COURT: All right. So what were you planning to
27 do? Were you going to show up tomorrow morning without
28 showing up (sic) the discovery and expect everybody to go

1 along with that?

2 You have to have a plan here. I'm not trying to be
3 rude here.

4 MR. LINDSEY: I understand, your Honor. I understand.

5 THE COURT: You have -- if you're gonna go to trial,
6 you have to be able to provide the discovery.

7 Did you object to giving the discovery over in the
8 first place?

9 MR. LINDSEY: No, your Honor.

10 THE COURT: So you agree that this was discoverable
11 information and the Court ordered it, and it sounds like you
12 haven't really taken that many steps to comply with the
13 discovery order because you thought it was going to resolve
14 apparently. But that plan doesn't appear to be working out
15 too well for you.

16 So tomorrow is the date for trial. I think the 45th
17 day is the 19th, something like that.

18 MR. LINDSEY: That's correct, your Honor.

19 THE COURT: So what -- what's your plan? You tell me
20 what the plan is.

21 MR. LINDSEY: Come back tomorrow, see what we can get
22 done and we go from there, your Honor, and whatever the
23 Court's decision is or decision as far as tomorrow as far as
24 what we can physically produce for the defense.

25 THE COURT: Is -- those motions came through this
26 department at one point and before it was assigned out, and
27 I do recall reading it.

28 It appears to me that everybody cut and pasted --

1 everybody had the same exact same request from what I can
2 recall. Everybody had the same items.

3 MR. LINDSEY: Pretty much, yes, your Honor.

4 THE COURT: So it wouldn't be difficult if you can
5 come up with one complete packet of discovery, you have to
6 copy it nine times and you're done, right?

7 So can you even complete the packet of discovery
8 tonight?

9 MR. LINDSEY: I don't know for sure, your Honor.

10 THE COURT: Mr. Lindsey, you're representing the
11 People on this case. This is your responsibility to do
12 this.

13 And I don't know what's going on back in your office.
14 Why don't -- you don't have more support here where you've
15 got nine defendants set for trial?

16 But right now I don't know what you're doing. You
17 haven't moved to join the defendants or to charge anybody
18 under a single complaint.

19 You haven't provided it sounds like 80 percent of the
20 discovery that's requested in this case.

21 I think everybody was gonna answer ready tomorrow.

22 Were you gonna try all nine cases yourself or were you
23 gonna have nine different city attorneys over here trying
24 these cases tomorrow morning?

25 MR. LINDSEY: We have to spread out, your Honor.

26 THE COURT: What were you going to spread out?

27 MR. LINDSEY: In between attorneys, your Honor.

28 THE COURT: You were gonna have nine lawyers here

1 tomorrow?

2 MR. LINDSEY: Well, not nine.

3 THE COURT: Since you didn't move to join these, and
4 and it's at the Court's urging that they be joined, I
5 just -- I fail to understand your plan.

6 What is your plan?

7 How do you -- how are you going to prosecute these
8 cases in a way that the defense all gets the discovery
9 they're -- they're entitled to and where we have enough
10 courtrooms to try 'em and there are enough prosecutors to
11 try 'em?

12 And by prosecutors I mean city attorneys who are
13 prosecuting these cases.

14 Do you need some time to talk to somebody?

15 MR. LINDSEY: Yes, your Honor, I do.

16 THE COURT: Okay. How long do you need? You want to
17 come back here at 2:30?

18 MS. PARISI: Your Honor --

19 MR. LINDSEY: Shouldn't be that long, your Honor.

20 THE COURT: 20 minutes?

21 MR. LINDSEY: That would work, your Honor.

22 THE COURT: Why don't you take 15 minutes and -- and
23 talk to -- this over with somebody and we'll -- we'll come
24 back on the record, okay?

25 MR. LINDSEY: Okay.

26 MS. PARISI: Your Honor, I believe Miss Hart on behalf
27 of her client is requesting the Court to hold in obedience
28 the order to grant consolidation in light of a failure to

1 comply with discovery. We're not prepared to argue.

2 THE COURT: We'll take that up in a minute and take
3 our break if Mr. Lindsey needs to talk to somebody.

4 (recess)

5 THE COURT: Okay. We're going to go back on the
6 record in the case of Sarah ThomasProdan.

7 And Mr. -- we took a break momentarily.

8 Mr. Lindsey --

9 MR. LINDSEY: Yes, your Honor.

10 THE COURT: -- is back.

11 And Linda Parisi for the defense.

12 All right. On -- on the discovery issue did you want
13 to be heard any further?

14 MR. LINDSEY: Actually, your Honor, I think I can
15 resolve the whole thing if I can just make a brief
16 statement.

17 THE COURT: That would be great.

18 MR. LINDSEY: Yes, your Honor.

19 The City Attorney's Office appreciates the Court's
20 dealing with the high volume of cases that came through in
21 relation to "Occupy Sacramento". I think it was over 50
22 maybe.

23 And there were attempts to resolve these cases, given
24 that they were misdemeanors and so on and so forth, along
25 the lines with something other than going to trial, having
26 to do D.E.J. or potentially administrative penalties under
27 the City of Sacramento administrative process.

28 As I mentioned before, that ultimately fell through.

1 But at this time it's probably obvious we should go through
2 the administrative penalty process instead of the criminal
3 court system in relation to these cases.

4 And on that I would make a motion to dismiss in the
5 interest of justice.

6 THE COURT: So the nine cases or actually nine
7 defendants, there is more than that. So there is a number
8 of cases total here, but you're just talking about the cases
9 on calendar today?

10 MR. LINDSEY: Yes, your Honor.

11 THE COURT: So that will be including -- all the cases
12 that are set for trial tomorrow, including all the trailing
13 cases for each defendant?

14 MR. LINDSEY: That's correct. Everything just Prodan
15 and Thompson.

16 MS. PARISI: ThompsonProdan, she has two set for
17 trial, one trailing.

18 I understand him saying he's moving to dismiss as to
19 all three.

20 THE COURT: Is that going to include any -- everything
21 with Amy Anderson?

22 MR. LINDSEY: Yes, your Honor.

23 THE COURT: All cases with Kathryn Coke, Jolio
24 Escobar, Daniel Garza, Morgan Lesko, Tracy Rice-Bailey, Evan
25 Talmage, Sara ThomasProdan and Sean Thompson?

26 MR. LINDSEY: That's correct, your Honor.

27 THE COURT: All of the cases that are on calendar
28 today, I'm not going through the numbers on each of those,

1 but all of those cases at this time will be -- is a motion
2 to dismiss for interest of justice?

3 MR. LINDSEY: Yes, your Honor.

4 THE COURT: As to all of those defendants, no
5 objection is being heard from any of the defense. Defense
6 attorneys all do appear to be present at this time. That
7 will be granted.

8 And there are no bonds I assume.

9 MS. PARISI: I don't believe so.

10 THE COURT: Thank you.

11 MS. PARISI: Thank you, your Honor.

12 MR. LINDSEY: Thank you.

13

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15 (proceedings concluded)

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