
From: KOVACHEVICH David F <david.kovachevich@mcso.us>
Sent: Wednesday, June 28, 2017 10:26 PM
To: INGRAM Matt P; BARKER Timothy
Subject: narrative

On 06/28/17 I was working E Shift at MCDC as the 4th Floor Escort (714). At xxxx I heard a radio transmission that requested an elevator on the 5th Floor to take an inmate to the 4th Floor. The person requesting the elevator had a tone in their voice that made me think there was urgent need for the elevator and that there was possibly a fight occurring. Within about 30 seconds an elevator arrived on the 4th Floor with Inmate Sullivan, Cyrus SWIS #677564 being escorted by Sgt. Ingram and A/Sgt. Barker.

Inmate Sullivan was resisting furiously against Ingram and Barker's efforts to guide him through the hallway. There were several other deputies there, among them were Deputies Simpson and Hubert.

I held the sallyport door open for them and as they headed towards 4F, I followed along behind. Inmate Sullivan was struggling/resisting the entire way. Once in 4F, they moved Sullivan into Cell #13 and pushed him down upon the mattress belly down. Only Sgt's Ingram and Barker were in the cell and Sullivan was still struggling so I entered the cell and took control of Sullivan's legs, crossing them behind his buttocks. Sullivan was handcuffed behind his back, but continued to struggle; at one point he was able to push me off him with his legs, so I had to re-cross his legs behind him.

Sullivan continued to struggle during this time and I then heard Sgt. Ingram call for the "cutter". It was my thinking that Ingram felt we would not be able to perform a strip search at this point, so he decided to cut Sullivan's clothing to remove it. Sullivan was yelling that he couldn't breathe and that he had asthma. He was using full sentences however; and I could hear him inhaling and exhaling, but not wheezing, so I felt he could breathe okay.

When his shirts had been removed, Barker began cutting off Sullivan's pants and boxers; at this time Sullivan began to comply with the directives being issued by Sgt. Ingram; at this point A/Sgt. Barker began removing the handcuffs, I then let up off Sullivan's legs and pulled his blue pants off.

Sgt. Ingram ordered Sullivan to remain belly down on the mattress until we exited the cell, which we then did, and the door was secured.

As we left 4F, Sgt's Ingram and Barker commented to each other that they needed to call Medical to have Sullivan checked out as it appeared Sullivan may have suffered a broken left arm. Medical arrived within a few minutes and after a brief examination agreed the arm was likely broken and Sullivan would require transport to the hospital. At this point Sullivan appeared to be in pain and stated he could not move his left arm.

The Ambulance arrived awhile later and Sullivan was transported to the hospital.

Earl, Inc.

Multnomah County Sheriff's Office

LAW ENFORCEMENT / CRIMINAL JUSTICE RELEASE

 CASE NUMBER
 GO 40 2017-30485


Multnomah County Sheriff's Office

INCIDENT REPORT #27636
 (Dep David Kovachevich #20856)

INCIDENT: Use Of Force - Inmate
LOCATION: MCDC - 4F (4F13)
PACKET #: 2258

 Occurred: 06/28/2017 2035 hrs
 Submitted: 06/29/2017 0652 hrs

SUMMARY: Inmate Sullivan refused to be moved willingly to 5B, therefore force was necessary to move him to 4F.

SUBJECT: #677564 Sullivan, Cyrus M/W 06/26/1983 MCDC - 4F-3

MENTIONED:	#35798 Dep Barker, Tim	A/Sgt 741
	#31450 Dep Hubert, Philip	715
	#34887 Sgt Ingram, Matthew	761
	#31638 Dep Simpson, Paul	5C

INJURIES: Sullivan, Cyrus - Major (Hospitalized) Medical Care: Offered
 - Possible broken left arm. (Examined: 06/28/2017 2045 hrs)

NARRATIVE: On 06/28/17 I was working E Shift at MCDC as the 4th Floor Escort (714). At 2035 hours I heard a radio transmission that requested an elevator on the 5th Floor to take an inmate to the 4th Floor. The person requesting the elevator had a tone in their voice that made me think there was urgent need for the elevator and that there was possibly a fight occurring. Within about 30 seconds an elevator arrived on the 4th Floor with Inmate Sullivan, Cyrus SWIS #677564 being escorted by Sgt. Ingram and A/Sgt. Barker. Inmate Sullivan was resisting furiously against Ingram and Barker's efforts to guide him through the hallway. There were several other deputies there, among them were Deputies Simpson and Hubert.

I held the sallyport door open for them and as they headed towards 4F, I followed along behind. Inmate Sullivan was struggling/resisting the entire way. Once in 4F, they moved Sullivan into Cell #13. Sullivan continued to struggle and fight and therefore it became necessary for Ingram and Barker to push him down upon the mattress belly down. Only Sgt's Ingram and Barker were in the cell and Sullivan was still struggling so I entered the cell and took control of Sullivan's legs, crossing them behind his buttocks. Sullivan was handcuffed behind his back, but continued to struggle; at one point he was able to push me off him with his legs, so I had to re-cross his legs behind him.

Sullivan continued to struggle during this time and I then heard Sgt. Ingram call for the "cutter". It was my thinking that Ingram felt we would not be able to perform a strip search at this point, so he decided to cut Sullivan's clothing to remove it. Sullivan was yelling that he couldn't breathe and that he had asthma. He was using full sentences however; and I could hear him inhaling and exhaling, but not wheezing, so I felt he could breathe okay.

When his shirts had been removed, Barker began cutting off Sullivan's pants and boxers; at this time Sullivan began to comply with the directives being issued by Sgt. Ingram; at this point A/Sgt. Barker began removing the handcuffs, I then let up off Sullivan's legs and pulled his blue pants off. Sgt. Ingram ordered Sullivan to remain belly down on the mattress until we exited the cell, which we then did, and the door was secured.

As we left 4F, Sgt's Ingram and Barker commented to each other that they needed to call Medical to have Sullivan checked out as it appeared Sullivan may have suffered a broken left arm. Medical arrived within a few minutes and after a brief examination agreed the arm was likely broken and Sullivan would require transport to the hospital. At this point Sullivan appeared to be in pain and stated he could not move his left arm.

The Ambulance arrived awhile later and Sullivan was transported to the hospital.

ACTION PENDING: Refer to Hearings Officer

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1001 S.W. Fifth Avenue, Suite 1414
Portland, Oregon 97204
503-546-3927
matthew@levinemchenry.com

Attorneys for Cyrus Sullivan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CYRUS ANDREW SULLIVAN.

Defendant.

3:17-CR-00306-JGZ

MOTION TO CONTINUE
TRIAL DATE

Defendant Cyrus Sullivan, by and through counsel Tiffany Harris and Matthew McHenry, hereby moves the Court for an order continuing the trial, currently set for May 21, 2018 to a date (to be scheduled at a status conference), convenient to the Court and the parties' witnesses. This motion based on the defense's inability to secure the attendance of a subpoenaed witness with information relevant and important to Mr. Sullivan's defense.

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The Government opposes the motion. The defense asks that it be granted over the Government's objection for the reasons outlined in the accompanying declaration of counsel.

DATED this 10th day of May, 2018.

Respectfully submitted,

/S/ Tiffany Harris

Tiffany A. Harris

Attorney for Defendant Cyrus Sullivan

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Attorneys for Cyrus Sullivan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CYRUS ANDREW SULLIVAN.

Defendant.

3:17-CR-00306-JGZ

DECLARATION IN SUPPORT
OF MOTION TO CONTINUE
TRIAL DATE

1. At the end of an altercation at the Multnomah County Detention Center, defendant Cyrus Sullivan was transported to a local hospital with a serious injury. He now stands accused of assaulting five of the corrections deputies who were involved in the incident. There is no known evidence that any of them were treated for injuries. Mr. Sullivan denies the charges and has consistently asserted that his injuries resulted from excessive force and the criminal charges against him were filed as a subterfuge.

2. On April 20, 2018, The Hon. Jennifer Zipps of the District of Arizona was designated to preside over this case, as well as defendant Cyrus Sullivan's related cases. A status conference was scheduled for April 25, 2018.

3. At the April 25, 2018 status conference, the Court asked whether the parties intended proceed to trial on the existing trial date of May 21, 2018. Defense counsel requested a continuance on the ground that she had been on a leave of absence for a month to care for her fiancée, who had a condition that had required brain surgery two weeks earlier, on April 12, 2018. The Government did not oppose the motion. The defense communicated Mr. Sullivan's position that he opposed a continuance longer than two weeks.

3. The Court found good cause to continue the trial date beyond two weeks, but numerous conflicts in the parties' and the Court's schedules prevented the calendaring of a trial date within the next two to three months. Consequently, in accordance with Mr. Sullivan's preference for an earlier trial date, the defense elected to proceed to trial on the existing trial date of May 21, 2018.

4. On May 4, 2018, the defense filed a motion for leave to serve subpoenas on the listed victims—all Multnomah County Sheriff's Deputies—seeking personal emails, text messages and phone records. (See docket no. 75.) The motion relied in large part on evidence that eyewitness deputy David Kovachevich emailed a preview of his required Use of Force Report in "cut and paste" form to two of the alleged victims, also sheriff's deputies. The defense argued that the timing and nature of the witness' communication with one another helped to develop core defense theories of bias and interest and justified service of the subpoenas. The Court concluded, "[u]pon consideration of the nature and relevancy of the information sought by Defendant, the Court finds that Defendant's request satisfies *Nixon* factors." The authorized subpoenas were served on May 9, 2018, the day after the Court's order.

5. Deputy Kovachevich is not on the Government's witness list. Because of his role as a witness to events both during the alleged assault and the ensuing investigation, the defense

placed him under subpoena. Today, on May 10, 2018, the defense received an email from the Multnomah County Sheriff's Office stating,

"Looking at Deputy Kovachevich's calendar, he will be out of the state on vacation from May 19th through June 3rd and will be unable to appear in court. In addition to that, Deputy Kovachevich is retiring at the end of his vacation and will no longer be a member of the MCSO [Multnomah County Sheriff's Office]. (See Exhibit 1)

6. Immediately after receiving the email, defense counsel sent a letter to Deputy Kovachevich (through the Sheriff's office), informing him of the defense's intent to seek a continuance of the trial date to secure his attendance at trial and asking for his cooperation in scheduling matters. (See Exhibit 2.)

7. In response, the MCSO advised that the letter had been forwarded to Deputy Kovachevich and that his retirement was actually scheduled to begin on May 19, 2018, "making May 18th his last day employed with the MCSO." (See Exhibit 3.)

8. The defense has conferred with the Government. The Government opposes the requested continuance and asserts that Deputy Kovachevich is not a percipient witness and will not offer material information, if called to testify. As the discovery provided by the Government makes clear, Deputy Kovachevich was involved in escorting Mr. Sullivan from his cell to "the hole." Once in the hole, Kovachevich was present when Deputies Ingram and Barker pinned Mr. Sullivan to a mattress, face down, causing Mr. Sullivan to say that he could not breathe. Deputy Kovachevich heard Deputies Ingram and Barker discuss Mr. Sullivan's need for medical attention and he sent the aforementioned email to Barker and Ingram some three hours after the relevant events.

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9. Deputy Kovachevich is a material and important defense witness. Therefore, to the extent that he is truly unavailable, the defense requests a continuance of the trial date to secure his appearance at trial.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

DATED this 10th day of May, 2018.

Respectfully submitted,

/S/ Tiffany Harris

Tiffany A. Harris
Attorney for Defendant Cyrus Sullivan

Subject: FW: subp for Deputy Kovachevich

Date: Thursday, May 10, 2018 at 4:48:45 PM Pacific Daylight Time

From: Tiffany Harris

From: Steve Wilson <swilsn@gmail.com>

Date: Thursday, May 10, 2018 at 10:14 AM

To: Tiffany Harris <tiff@harrisdefense.com>, Matthew McHenry <matthew@levinemchenry.com>

Subject: Fwd: subp for Deputy Kovachevich

FYI

----- Forwarded message -----

From: **WHITE Brandon** <brandon.white@mcsso.us>

Date: Thu, May 10, 2018 at 9:19 AM

Subject: RE: subp for Deputy Kovachevich

To: Steve Wilson <swilsn@gmail.com>

Good morning Steve,

Yes, I am the one to send general subpoenas for corrections staff.

Looking at Deputy Kovachevich's calendar, he will be out of the state on vacation from May 19th through June 3rd, and will be unable to appear at court. In addition to that, Deputy Kovachevich is retiring at the end of his vacation, and will no longer be member of MCSO.

Hope this helps,

Sgt. Brandon White

Multnomah County Sheriff's Office

County Attorney Liaison

C.E.R.T.

503-969-3195

Brandon.white@mcsso.us

EXHIBIT 1
PAGE 1 OF 1

Subject: RE: Deputy Kovachevich subpoena (time sensitive)
Date: Thursday, May 10, 2018 at 12:32:18 PM Pacific Daylight Time
From: WHITE Brandon
To: Tiffany Harris
CC: Matthew McHenry, Steve Wilson, CALANDRIELLO Carlo

Good afternoon Ms. Harris,
After speaking with our HR unit, Deputy Kovachevich's retirement will go into effect on May 19th, making May 18th his last day employed with MCSO.
I forwarded you email and attachment to Deputy Kovachevich and notified him via phone of its contents.
Please let me know if you need anything else from me.
V/r,

Sgt. Brandon White
Multnomah County Sheriff's Office
County Attorney Liaison
C.E.R.T.
503-969-3195
Brandon.white@mcsso.us

-----Original Message-----

From: Tiffany Harris [<mailto:tiff@harrisdefense.com>]
Sent: Thursday, May 10, 2018 12:13 PM
To: WHITE Brandon <brandon.white@mcsso.us>
Cc: Matthew McHenry <matthew@levinemchenry.com>; Steve Wilson <swilsn@gmail.com>; CALANDRIELLO Carlo <carlo.calandriello@multco.us>
Subject: Deputy Kovachevich subpoena (time sensitive)

Dear Sgt. White:
Attached is an important letter for Deputy Kovachevich regarding the scheduling of his trial testimony in U.S. v. Sullivan. Please call / write with any questions.

Thank you.

Tiffany A. Harris | Attorney at Law
333 SW Taylor Street Suite 300
Portland, OR 97204
P 503.782.4788
tiff@harrisdefense.com

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EXHIBIT 3
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