

D.A. on verge of mass drug-case dismissalsJaxon Van Derbeken, Chronicle Staff Writer
Saturday, March 27, 2010

(03-26) 15:36 PDT SAN FRANCISCO -- San Francisco prosecutors told judges Friday that they could not "ethically go forward" with 46 narcotics trials because of evidence problems arising out of the scandal at the Police Department's drug-analysis lab - signaling that the district attorney is likely to dismiss nearly all 750 pending drug cases in the city.

"Based on what the district attorney's office knows about the issues within the narcotics division of the crime lab, we cannot ethically go forward with this prosecution," Assistant District Attorney Nancy Tung told a judge overseeing a case that was serving as a test of how much police and prosecutors had to disclose to defense attorneys about problems at the drug lab.

Prosecutors dropped that test case, a cocaine-sales trial, after having been deluged with 1,500 pages of police files about the lab that a spokesman for the district attorney called "troubling" and said pointed to possible larger problems in the Police Department.

Prosecutors are legally required to give up any evidence that could clear a defendant, and the judge in Mario Bell's cocaine-dealing case, who reviewed the papers in private, said Thursday that many of the police files could be relevant in Bell's trial. Now that his case has been dropped, however, the documents will not be given to his attorney.

Madden case and more

The papers include files related to the drug lab and technician Deborah Madden, 60, who left the lab last year just before suspicions surfaced that she had stolen cocaine she was testing as evidence. Police Chief George Gascón shut down the drug lab March 9.

With no one from the lab available to vouch for evidence in court, and with much of the lab's work called into question, the district attorney's office had already dropped more than 400 cases since the shutdown. Prosecutors had said they hoped to retest narcotics evidence and refile some of those cases, but Friday's action signaled that is unlikely to happen.

One recent development that could doom even retested cases is that discrepancies have arisen between the weights of drugs as recorded at the crime lab and weights as measured by outside agencies brought in to do the new tests.

Brian Buckelew, a spokesman for District Attorney Kamala Harris, said prosecutors are still considering what to do about the 750 pending drug cases in jeopardy because of the lab's problems.

"My office is going to work through the weekend and assess how to handle the remaining cases," Buckelew said.

Scope has changed

The exact contents of the 1,500 pages of police files have not been made public, but Buckelew said the documents hinted at problems with police and the drug lab that go beyond Madden's conduct. Buckelew called the files "troubling."

"At the very beginning this was a case about Debbie Madden and isolated incidents that could have been resolved by retesting," Buckelew said. However, he added, "the face of this has changed."

Bell's attorney said he believed the material included audits of the crime lab at Hunters Point, and its drug-testing section, going back at least six years.

Among the questions raised since the suspicions about Madden were made public is why the Police Department took more than two months to open a criminal investigation into her actions after her sister said she had found what she believed to be a stolen lab vial of cocaine in Madden's home. Documents contained in the files could help answer that question and

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reveal who in the Police Department knew what and when.

Only allegations

Former Assistant Police Chief Jim Lynch, who was chief of staff to Gascón until retiring March 17, said Thursday that he did not alert the chief when the Madden issue first surfaced in December. He did, however, refer it at that time to Assistant Chief Kevin Cashman, who oversees the investigations unit, for evaluation as a criminal case, he said.

"They were allegations, we hear lots of allegations, and that's all we had," Lynch said. "All kinds of allegations don't get to the chief's level.

"As it gained merit," he added, "I briefed him (the chief)." He said that was in February. Madden has not been arrested or charged.

Cashman declined to comment, referring questions to a police spokeswoman, who said interviews in an internal investigation are still under way.

"That's what we're trying to find out - why didn't people act sooner, if that is in fact what happened," spokeswoman Lt. Lyn Tomioka said.

Happy defendant

The judge in Bell's cocaine-sales case, Anne-Christine Massullo, said Friday that she would keep the police files under seal as prosecutors decide what to do with them.

Prosecutors dropped 45 other cases Friday in which the defendants, like Bell, were on the verge of trial. In each case, they cited the same reason - that they could not "ethically go forward."

Bell, 35, was accused of selling crack cocaine on three occasions. Madden tested at least one of the samples and confirmed that it was cocaine. Bell has previous offenses, and if convicted of the cocaine-sales charges could have been sentenced to 19 years in state prison.

A smiling Bell declined to comment outside court. His attorney, Jim Senal, said that "the district attorney stepped up to the plate" and had done the right thing by dropping hopelessly flawed charges.

Any mass dismissal of drug cases would raise questions about people who have been convicted of narcotics offenses in San Francisco in recent years, as well as federal cases that have been based on earlier San Francisco convictions. The fallout could be limited, however, because drugs in closed cases that date from before 2008 have been destroyed.

Police were philosophical about the possibility of mass dismissals.

"It's another development," Tomioka said. "We will continue with the independent investigations being conducted at the lab."

She added that Gascón "wants a very thorough investigation. We realized there was going to be fallout from the get-go. We work with the district attorney's office. They are going to do what they feel is the right thing to do. I have confidence in that process."

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