

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE ~~HONORABLE~~ A. HOWARD MATZ, JUDGE PRESIDING

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

STEVEN WILLIAM SUTCLIFFE,)

Defendant.)

Case No. CR 02-350 (A) -AHM

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Los Angeles, California

Friday, November 14, 2003

DAY 3

(Pages 445-642)

KAREN R. PINN, RPR, CSR 5574
Court Reporter

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff United States of America:

3
4 DEBRA W. YANG
United States Attorney
5 STEVEN D. CLYMER
Special Assistant United States Attorney
6 Chief, Criminal Division
BY: ELENA J. DUARTE
7 Assistant United States Attorney
1500 United States Courthouse
8 312 North Spring Street
Los Angeles, California 90012
9

10 For the Defendant Steven William Sutcliffe:

11 STEVEN WILLIAM SUTCLIFFE
12 Pro se
Reg No. 02837-049
13 METROPOLITAN DETENTION CENTER
535 North Alameda
14 Los Angeles, California 90012
15

16 Also Present:

17 LAW OFFICES OF DAVID R. REED
BY: DAVID R. REED
18 Advisory Counsel
3699 Wilshire Boulevard, Suite 850
19 Los Angeles, California 90010
20

21 JEFFREY R. CUGNO, Special Agent, FBI
22
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I N D E X

GOVERNMENT WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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HARRILL, Frank				
By Ms. Duarte			541	
By Mr. Sutcliffe		468		
ISLEY, Linda				
By Ms. Duarte	543		569	
By Mr. Sutcliffe		555		571
MANN, Orly				
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LEITER, Mary				
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RAMSEY, Andrew				
By Ms. Duarte	603			
By Mr. Sutcliffe		609		
GREENWOOD, Elizabeth				
By Ms. Duarte	623			

GOVERNMENT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
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33		546
34		552
35		555
25		585
26		586
27		587
28		588
7		634
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DEFENDANT'S EXHIBITS	FOR IDENTIFICATION	RECEIVED
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201		565
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1 LOS ANGELES, CALIFORNIA;

2 FRIDAY, NOVEMBER 14, 2003; 8:11 A.M.

3 THE COURT: Good morning. Welcome. Call the case,
4 please.

5 THE CLERK: In the matter of the United States of
6 America v. Steven William Sutcliffe, Criminal 02-350(A)-AHM.

7 Counsel, please state your appearances.

8 MS. DUARTE: Good morning, Your Honor.

9 Elena Duarte for the government, with Case Agent
10 Jeffrey Cugno.

11 MR. SUTCLIFFE: Steve William Sutcliffe, accused,
12 present.

13 THE COURT: Good morning.

14 MR. REED: David Reed, advisory counsel.

15 THE COURT: Good morning.

16 I understand the government has a motion.

17 MS. DUARTE: Yes, Your Honor.

18 I reviewed the four subpoenas that the Court provided
19 yesterday, and at this time I'd like to make an oral motion to
20 quash these subpoenas. I'd like to go through them briefly one
21 by one. In the event that the Court requires further
22 authority, I did not get a chance to do it, but I would be able
23 to do it over the weekend.

24 I would ask the Court, if the Court is inclined, not
25 to quash any of the subpoenas, to give me the chance to brief

1 it over the weekend.

2 THE COURT: Let's hear from you first, please.

3 MS. DUARTE: As to the first, Your Honor, a subpoena
4 for Debra Yang. I don't think that the subpoena has a good
5 faith basis.

6 Ms. Yang, as far as I know, as far as anyone working
7 on the case is aware, has no knowledge of the case, would
8 contribute nothing for either side by testifying. The only
9 vague relationship that Mr. Sutcliffe himself has hinted that
10 Ms. Yang may have had with the case is apparently he feels that
11 at some point she was a judge that heard a matter in the
12 "killercop" litigation back in the '90s, and that would have
13 had nothing to do with the instant matter and would not be
14 relevant.

15 THE COURT: Let's do these one by one.

16 What's your response, Mr. Sutcliffe?

17 MR. SUTCLIFFE: Thank you, Your Honor.

18 My response is that the government is confused.

19 There was no "killercop.com" litigation.

20 THE COURT: What is the basis for attempting to
21 effectuate summons and subpoena on Ms. Yang?

22 MR. SUTCLIFFE: The basis of that, Your Honor, is it
23 goes to show motive to prosecute the accused on the -- the
24 bogus charges have no basis at all in reality, based on the
25 fact that the U.S. Attorney, who is now prosecuting me, was

1 directly attacked, verbally, for five years, on the Internet
2 upon a website which received over 2 million hits a month and
3 was internationally known. She was disparaged. She was
4 accused of covering up for the prosecutor. She was accused of
5 assisting the prosecutor in the theft of a tape that contained
6 evidence of two officers of the LAPD who were trying to cover
7 up for each other for their crimes. She was disparaged for
8 letting the prosecutor off for stealing the tape, which the
9 prosecutor admitted he had no authority to take the tape.

10 THE COURT: This is a different website than any
11 website involved in this case?

12 MR. SUTCLIFFE: Yes, Your Honor.

13 THE COURT: And the officers are not involved in this
14 case either; correct?

15 MR. SUTCLIFFE: They are involved in the case. Yes,
16 they are.

17 THE COURT: Which officers?

18 MR. SUTCLIFFE: Officer Willis and Officer Katz.
19 They've been directly involved in the investigation of
20 "killercop.com" since its inception. They have --

21 THE COURT: I think I have heard enough.

22 I grant the government's motion to quash the subpoena
23 on Ms. Yang. Her personal motive, even if it falls into the
24 classification of motives that you ascribe to her,
25 Mr. Sutcliffe, is irrelevant to the propriety and adequacy of

1 the filing of these charges.

2 I mean, I have no doubt, based upon the evidence I
3 have heard so far, that the prosecution is being conducted in
4 good faith, with a sufficient factual basis that the grand jury
5 already found to return the superseding indictment; and it
6 would be a huge sea change in the administration of justice to
7 have the personal backgrounds of whoever happens to be U.S.
8 Attorney at a given time become a basis to issue subpoenas.

9 Selective prosecution, which you hinted at, has
10 already been ruled upon. So I don't need further argument on
11 Ms. Yang.

12 What's the next one?

13 MR. SUTCLIFFE: Thank you, Your Honor.

14 MS. DUARTE: Your Honor, the next one is a subpoena
15 issued by Mr. Sutcliffe to Special Agent James Laveride,
16 L-a-v-e-r-i-d-e, of the FBI.

17 THE COURT: Okay. I happen to be looking at that
18 one.

19 MS. DUARTE: I have made inquiry. There is actually
20 no such special agent. However, I did take the liberty of
21 doing a little bit of investigation into it, and there is a
22 James Laverick, L-a-v-e-r-i-c-k, who Mr. Cugno -- Special Agent
23 Cugno remembers was with him in a portion at least of
24 Mr. Sutcliffe's transport during his arrest in New Hampshire.

25 We called the New Hampshire field office, and the FBI

1 determined that Mr. James Laverick is now retired. He's no
2 longer with the office.

3 Additionally, I inquired of Special Agent Cugno as to
4 former Special Agent Laverick's participation in the case, and
5 was told, as Special Agent Cugno's 302 does reflect, that
6 Special Agent Laverick did not participate at all in the
7 investigation, but merely assisted in the transport.

8 Mr. Sutcliffe is not --

9 THE COURT: The transport of Mr. Sutcliffe from --

10 MS. DUARTE: Of Mr. Sutcliffe after his arrest.

11 THE COURT: -- from New Hampshire to California?

12 MS. DUARTE: No, Your Honor.

13 From his residence in New Hampshire, where he was
14 arrested, to the -- if I could have just a moment, Your Honor.

15 Your Honor, my mistake. Assisted in the
16 transportation from the police department in New Hampshire to
17 the jail in New Hampshire, on that limited basis.

18 Mr. Sutcliffe is not alleged to have made any
19 statements, certainly not any that we would bring into
20 evidence, during that transport. We are not bringing any
21 evidence of anything that occurred during that transport into
22 evidence, and I see no good faith basis for asking retired
23 Special Agent James Laverick even to be present.

24 THE COURT: First, let's confirm that that's the
25 individual you had in mind.

1 MR. SUTCLIFFE: Thank you, Your Honor.

2 Yes. I got the name from the police report. The
3 handwriting was terrible.

4 THE COURT: Those things happen. Don't worry about
5 that.

6 MR. SUTCLIFFE: May I be heard, Your Honor?

7 THE COURT: Yes.

8 MR. SUTCLIFFE: Thank you, Your Honor.

9 I believe that Mr. Laverick's testimony is very
10 relevant in that the FBI agent, Mr. Cugno, wrote down -- after
11 the arrest, he had written a report in which he made statements
12 that he had heard the defendant make statements which came to
13 be used against the defendant, and the defendant wishes to
14 contest those statements being used against him as being an
15 illegal seizure, a violation of his Miranda rights, and
16 further, it goes to impeachment of Case Agent Cugno in this
17 case as to his actions and what he wrote in that report.

18 And only Mr. Laverick can provide that knowledge of
19 what really took place and what was really said to impeach the
20 agent in this case.

21 THE COURT: Okay. Up until now, I haven't been aware
22 of any effort on the part of the defendant, personally, or any
23 lawyer representing him previously, to challenge evidence based
24 upon Miranda or to challenge the lawfulness of the search.

25 The proffer that Mr. Sutcliffe made doesn't satisfy

1 the requirements, under United States v. Reed, 726 F.2d 570,
2 and I grant the government's motion to quash the subpoena to
3 Mr. -- intended to be to Mr. Laverick.

4 What's your next motion?

5 MS. DUARTE: Motion to quash the subpoena issued to
6 the FBI field office at 11000 Wilshire Boulevard. This
7 subpoena, it's my understanding, encompasses approximately --
8 if I could have a moment?

9 THE COURT: First of all, I want to construe the
10 subpoena to mean to the custodian of records at the FBI field
11 office, and you should argue your position accordingly.

12 MS. DUARTE: Okay. The custodian of records at the
13 FBI field office. These documents, the documents sought, are
14 for "killercop.com". And I don't think the defendant has a
15 good faith basis for thinking that there are any documents that
16 are discoverable, certainly, related to "killercop.com" in the
17 possession of the FBI.

18 Anything relevant has been turned over to him. And
19 further, I have confirmed with the FBI that they never opened
20 an investigation on "killercop.com".

21 THE COURT: From whom did you confirm that?

22 MS. DUARTE: Supervisory Special Agent Ken McGuire,
23 who did --

24 THE COURT: When did you confirm that?

25 MS. DUARTE: Yesterday.