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Defense in San Bernardino County corruption trial rests after half a day

The defense rested on Monday in a seven-month corruption trial after only half a day, opting to call no witnesses and close their case before lunch on the same day they opened it after reading a few stipulated facts from earlier testimony.



The defense called no witnesses as it rested its case Monday in a seven-month San Bernardino County corruption trial, opting to read to the jury a few stipulated facts from earlier testimony and close before lunch.

“The prosecution had six months to prove its case, and they failed. We used those six months to cross examine their witnesses – which of course never happened before the indicting grand jury – to expose the rest of the story and establish that these men are innocent and these charges should never have been brought,” said Stephen G. Larson of Larson O’Brien LLP, who represents Jeffrey Burum, co-managing member of Colonies Partners LP, a major land development company.

The brevity of the defense shows a belief that the prosecution did not meet its burden of proof, commented Ariel A. Neuman, a partner at Bird Marella P.C. who was not connected to the case.

“The obvious takeaway is that it signals confidence in the lack of evidence in the government’s case,” Neuman added. “It bolsters the impression that the defense is comfortable,” he said.

The defense has good reason for that confidence. In the last week, Superior Court Judge Michael A. Smith dismissed seven charges against the four defendants, bringing the total across all four to 12. There were originally 29.

Additionally, two key prosecution witnesses failed to help the state attorney general’s office case, as one was impeached repeatedly and another recanted his statements and said he made them at the height of his methamphetamine addiction.

Jason H. Tokoro, a partner at Miller Barondess LLP, echoed Neuman and added that there seemed to be “only downside” for the defense to call witnesses.

“It conveys that the prosecution didn’t carry its burden to prove the charges, and therefore they didn’t need to put on any of their own witnesses,” he said. “If you’ve really done a good job in cross examination, like it seems they’ve done here, there’s really no benefit in calling your own witnesses.”

The other defendants are former county supervisor Paul Biane and Mark Kirk, former chief of staff for former county supervisor Gary Ovitt. They are represented by San Bernardino practitioner Mark R. McDonald and Huntington Beach practitioner Peter W. Scalisi, respectively.

The fourth, former assistant assessor James Erwin, has his own jury due to evidence against him being inadmissible against the other three. Erwin is represented by Rajan R. Maline of Maline & McGee LLP.

The attorney general’s office and the San Bernardino County district attorney are prosecuting the case jointly, led by Deputy Attorney General Melissa Mandel.

They alleged that three county officials accepted \$100,000 bribes from Burum via political action committees, which were reported as campaign contributions, to gain approval for a \$102 million settlement of his suit against the county. *People v. Biane et al.*, FSB1102102 (San Bernardino Super. Ct., filed May 10, 2011).

The civil case dispute was over flood control work at Colonies Partners' 434-acre residential and commercial development in Upland, Colonies at San Antonio and Colonies Crossroads.

The lawsuit, filed against the county in 2002, claimed that after state and county officials built a storm drain in connection with the 210 Freeway expansion, they diverted millions of gallons of floodwater onto the developers' property.

The defendants in the criminal case contended that the allegations are politically motivated and rest on false testimony.

They also said the contributions were legal, publicly disclosed, and part of the company's attempts to mend fences in support of potential future development projects after the contentious legal dispute ended.

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