

Prosecutors May Appeal Judge's Decision

Murder Charge in Ordnance Explosion Death Dismissed

By Matthew Heller

Daily Journal Staff Writer

SAN BERNARDINO - Prosecutors seeking to hold an Army ordnance inspector responsible for a fatal ammunition explosion are almost down to their last strike.

At a hearing last week, a San Bernardino judge granted a defense motion to dismiss a second-degree murder charge against Timothy Collister, who allegedly allowed a live shell to be delivered to a Fontana scrap yard. Martin Mendoza, 22 was killed on March 1997 when the shell exploded.

The ruling mirrored that of another jurist after a preliminary hearing in July --except Judge Brian S. McCarville even went a step further Friday by finding there was also insufficient evidence to support a lesser charge of involuntary manslaughter.

Deputy District Attorney Charles Umeda said his office could appeal the dismissal or file another complaint. "Our duty is to review the case to make sure the appropriate outcome is reached," he noted.

But Collister's attorney argued that further litigation would be an exercise in futility. "The case should never have been filed in the first place," said James E. Blatt, who claims his client has been made a "scapegoat" for the failings of the Army's munitions disposal system.

Although Judge Michael A. Smith dismissed the murder count July 9, the district attorney still included it in the Superior Court information *People v. Collister, FSB16722*. A criminal complaint can only be refilled once.

Collister, 57, was originally charged with murder last November after an eight month investigation of the explosion at Dick's Auto Wreckers, a salvage business that had recently begun acquiring ordnance from the Army's Fort Irwin training center. Mendoza, a worker at the yard, died instantly after cutting into a live shell with a blowtorch.

Among Collister's duties as a manager of explosive ordnance disposal for Octogan Inc. of Virginia was the inspection of munitions collected from Fort Irwin's firing ranges. Based on these inspections, the materiel would be certified as safe prior to shipment to recyclers.

In seeking a murder conviction, prosecutors have relied on the theory of implied malice -- that Collister, in

conscious disregard for public safety, allowed ordnance he knew to be dangerous to be shipped to the Fontana yard. However, two judges have now rejected that theory.

Ruling on the defense's Penal Code Section 995 motion to dismiss, Judge McCarville cited findings of fact made by Smith at the preliminary hearing that relieved Collister of culpability. Most important, Smith found that he relied on existing Army procedures in certifying the ordnance as safe.

Those procedures, for example, did not require the inspections of every individual item leaving the yard.

Holding Collister to answer on the manslaughter count, which requires gross negligence, Smith ruled he had a duty to ensure "as much as possible" that no live munitions got through. McCarville, however, found that the factual findings applied equally to that charge. The prosecution's "last argument was, he's a bad manager," explained Blatt, an Encino attorney. "But Collister never acted in a grossly negligent manner."

Blatt stressed that even after a lengthy investigation that generated 5,000 pages of discovery, followed by a five-day preliminary hearing, the prosecution had been unable to get the case to trial. "That's a strong indication that the case should not go any further," he said.

But prosecutor Umeda suggested that McCarville had ignored at least one important consideration--namely, that it was Collister who developed the flawed inspection procedures.

"If he knew they were flawed, it was incumbent upon him to make some changes," Umeda argued. "The person who was in charge of the overall system of inspection and allowed the release of these live rounds was the defendant."

Whatever happens in the criminal case, several civil suits filed over the fatal explosion are still pending. Relatives and co-workers of Mendoza have sued Collister, the Army and its contractors. According to Blatt, McCarville's ruling could make it harder for the other defendants to escape liability by pinning the blame on his client.

But one plaintiffs' attorney said it was too early to assess the relative liability of individual parties. "Where the buck finally stops we don't know at this point," said Angela J. Elpers, an attorney in the office of Timothy C. Kuzelka in Temecula.

Charges Are Dropped in Deadly Scrap-Yard Blast

Court: Judge sides with defense, which said experts did not know live munitions were among disposed materiel.

By ERIC LICHTBLAU
TIMES STAFF WRITER

Military munitions expert Timothy Colloster walked into a courtroom in San Bernardino on Friday expecting to learn the date for his murder trial in connection with a 1997 explosion that killed a scrap yard worker. Instead, Collister walked out a free man.

The judge surprised many in the courtroom by throwing out murder and manslaughter charges against Collister, siding with defense attorneys who argued that Collister should not be held criminally liable for failing to prevent the tragedy.

"I'm terrifically relieved. I hoped and prayed that it would go this way," said Collister, a 57-year-old Vietnam veteran who lives in Victorville. "This has messed up my life for the last year. . . Now I just want to get my life back.

The charges against Collister stemmed from the March 18, 1997, death of Martin Mendoza; a worker at a Fontana scrap metal yard who was killed while trying to dismantle what he thought was in inert military shell. Instead, the antitank shell containing the equivalent of more than two pounds of TNT--blew up and killed the 22-year old instantly.

The shell was among 1.4 million pounds of scraps that had been discarded by the Army's Ft. Irwin training center near Barstow and sold to Dick's Auto Wreckers for recycling. Collister, an ordnance specialist with the Air Force for 20 years, was the on-site manager for a civilian contractor at Ft. Irwin that was supposed to flag live munitions and clear the rest.

After Mendoza's death, investigators cautiously combed through the heap at the scrap yard and found 55 other military pieces that never should have been transferred off the base, authorities said.

Collister was arrested on a charge of second-degree murder in November 1997. Four months ago, defense attorney James Blatt persuaded a judge to drop the murder charge, leaving Collister to face only an involuntary manslaughter charge.

The district attorney's office refilled the murder charge and went to court Friday to find out when it could

start trial. Instead, Superior Court Judge Brian S. McCarville threw out the charges.

Blatt said the judge seemed persuaded by the earlier court's finding at the preliminary hearing that there was no evidence to suggest that Collister knew there were live explosives amount the scraps sent to the yard. And Collister had followed a set procedure in signing a declaration asserting that the material was safe as best he knew, the lower court found.

Disappointed prosecutors may decide to re-file charges or appeal, said Deputy District Attorney. Charles Umeda

"Certainly it was a surprise to me how the judge ruled," Umeda said.

"I believe there was sufficient evidence that the case should have been allowed to go to a jury to decide," he said. "The evidence would show that Mr. Collister was the person in charge of the facility at the time the live munitions left the [Fr. Irwin] compound, and he had overall responsibility. A higher degree of care should have been exercised."

But defense attorney Blatt maintained in an interview that Collister has been made "a scapegoat" for the military's own liability because the Army tried to rush through the munitions cleanup.

McCarville's decision "was a great victory for us," he said. "It was a moment of just tremendous relief and jubilation."

Collister and other parties in the incident still face civil lawsuits brought by the victim's family. The Mendoza family's attorney could not be reached for comment.