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Justices Rap City Attorney's Knuckles

Mike McKee
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San Francisco Deputy City Attorney Sean Connolly may have successfully defended two city cops accused of beating a man, but it came with a stern tongue-lashing about misconduct.

Late Monday, San Francisco's First District Court of Appeal affirmed a jury's finding that cleared San Francisco police officers Alex Fagan Jr. and John Broucuret of any wrongdoing in a civil suit stemming from a Sept. 18, 2002, confrontation with a man on Haight Street.

But the court had few kind words for Connolly, saying he had engaged in several acts of misconduct that "fell well below accepted standards of courtroom behavior and decorum."

"We do not condone Connolly's misconduct," Justice James Marchiano wrote in the unpublished opinion. "It was utterly unprofessional and unworthy of an officer of the court. But in this case it did not lead to prejudicial, reversible error."

Justices William Stein and Douglas Swager concurred in the ruling, which detailed several instances of Connolly making improper comments to jurors and verbally attacking the plaintiff, his attorneys and one witness.

"This case," Justice Marchiano noted, "was vigorously litigated with frequent objections, energetic and seemingly emotional argument and occasional lapses of trial decorum."

Connolly, a failed judicial candidate who specializes in defending cops, couldn't be reached for comment Tuesday.

But San Francisco attorney Eric Safire, one of two co-counsel for plaintiff James Smith, was disgusted.

"It just breaks my heart that the city engages in pretty much despicable conduct in order to prevent compensation for someone whose rights were clearly violated," he said. "The length that the city will go to protect Alex Fagan Jr. is mind-boggling."

"What are they doing now at the city attorney's office? Saying, 'Way to go, Sean?'"

Smith sued Fagan and Broucuret for assault and battery and civil rights violations, claiming that both had kicked and beaten him outside a store at the corner of Haight and Cole streets. He also claimed that Fagan, who's no longer with the police department, threatened to kill him.

The officers defended themselves at trial by saying that Smith was excessively drunk and violent, and had to be restrained. Jurors found no violations by either officer.

The confrontation took place about two months before Fagan and two other officers were implicated in a Nov. 20 assault on Union Street. That incident became known as fajitagate because the alleged victims claimed that the officers attacked them over a bag of steak fajitas. All three officers were acquitted by juries.

In Monday's ruling, the First District found no merit in any of Smith's arguments, except misconduct by Connolly.

The justices quoted directly from trial transcripts that showed Connolly, admitted to the Bar in 1991, "clearly violated" a state statute prohibiting him from referring to Fagan's invocation of his Fifth Amendment right not to testify and "blatantly" disregarded motions *in limine* that banned him from mentioning Smith's "prior bad acts," such as a conviction for receiving stolen property.

Connolly "flagrantly persisted in eliciting" that testimony, the court held, despite "repeated admonitions" by San Francisco Superior Court Judge A. James Robertson II.

"He also referred to those bad acts in his closing argument," Justice Marchiano wrote. "This was misconduct."

So were, the court held, personal attacks on Smith, Safire, co-counsel John Scott and Police Sgt. Vickie Stansberry, who arrived at the alleged beating scene just in time to hear Fagan threaten Smith's life.

The justices faulted Connolly for suggesting that Smith — who missed several court days — didn't have the courage to face the officers, that his attorneys had pursued civil rights claims "to make money" and that Stansberry made gratuitous remarks about Fagan only "after meetings in the hallway and a conference room with plaintiff's attorneys."

Marchiano called Connolly's conduct "egregious," but said it was harmless considering there was "virtually no evidence" that Smith's claims were valid.

The city attorney's office defended Connolly while expressing gratitude for the court's overall ruling.

"Sean Connolly is a talented and aggressive lawyer. He does an excellent job for the city and its taxpayers, and the city attorney stands behind him 100 percent," spokesman Matt Dorsey said.

"Reasonable minds can disagree about whether his questions were appropriate," Dorsey added. "But we agree with the court that there was no prejudicial conduct."

He also said it was difficult "to take issue with a decision that goes our way."

"We won," Dorsey said. "We'll take it."

The ruling is *Smith v. City and County of San Francisco*, A108308.