

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIM. NO. 94-10287-MLW
	)	
JAMES J. BULGER,	)	
	)	
Defendant.	)	

DISMISSAL OF JAMES J. BULGER  
FROM ALL COUNTS OF THE INDICTMENT

Pursuant to FRCP 48(a), the United States Attorney for the District of Massachusetts, Carmen M. Ortiz, hereby dismisses the defendant James J. Bulger from all counts in which he is named in the above-captioned case.

The United States Attorney has decided, in her discretion, to focus her prosecutorial resources on the more serious federal case pending against the defendant, specifically, *United States v. James J. Bulger*, Crim. No. 99-10371-RGS (the "RICO Murder Case"). The RICO Murder Case alleges 19 predicate acts of murder, among other acts, in support of the Racketeering charges (Counts 1 and 2). A jury finding on any single act of murder, if coupled with a finding on one additional predicate act of racketeering, will subject the defendant to a sentence of incarceration for the remainder of his natural life. No such penalty is available in this matter, which alleges, as its most serious charges against the defendant, RICO/extortion based upon the defendant's collection of tribute or "rent" payments from others involved in local criminal activities.

The RICO Murder Case not only carries higher penalties, but is stronger both factually and legally than this matter. Factually, the evidence in the RICO Murder Case is very strong and

readily available to the government. By contrast, the evidence in this case has become weaker (particularly in comparison to the RICO Murder Case) during the period of the defendant's flight. For example, since the issuance of the Indictment in this case, at least two key witnesses have died: Burton Krantz and Edward Lewis. Moreover, the RICO Murder Case charges a RICO "enterprise" not subject to the legal challenge that exists in this case – namely, that because of the defendant's and his co-defendant Steven Flemmi's status as FBI informants, the enterprise alleged in the Indictment, an amalgam of members of the Winter Hill Gang and the Patriarca LCN Family, may not have existed. This Court has previously identified this issue in United States v. Salemme, 91 F.Supp. 2d 141 (D.Mass. 1999) stating,

With regard to the RICO charges, the alleged enterprise was neither the Patriarca Family of La Cosa Nostra nor the Winter Hill Gang, organizations that have, in effect, been proven to be RICO enterprises in prior prosecutions. Rather, the defendants were alleged to have been part of a unique association-in-fact enterprise made up of individuals who joined together to use their respective relationships with either the Patriarca Family or the Winter Hill Gang to, among other things, facilitate the unlawful activities of the enterprise and coordinate the activities of the Patriarca Family and the Winter Hill Gang.

In view of the roles of Bulger and Flemmi as Top Echelon informants utilized to provide, and in some instances tasked to obtain, information for the FBI concerning the LCN, there is now a serious question presented concerning whether they were authorized to engage in the conduct alleged to be criminal and are, therefore, not guilty as charged. There are also questions relevant to all of the defendants regarding whether the alleged conspiracies and enterprise genuinely existed, because an agreement with someone acting as an agent of law enforcement is not a criminal conspiracy. These questions, however, must be addressed at trial.


Id. at 159-160. In addition to the legal issues surrounding the enterprise, there are also the potential double jeopardy concerns raised by successive RICO prosecutions.

Moreover, of great significance to this decision to dismiss this matter is the interest of the families of the murder victims. The 19 families of murder victims have been denied justice for

many years because the defendant has successfully eluded law enforcement apprehension. The United States Attorney is committed to seeing that this defendant, who is now 81 years old, is called to account as soon as possible for the crimes affecting those families. And given the age of the defendant, there is also a substantial public interest in ensuring that the defendant faces the most serious charges before the end of his natural life.

For all of these reasons, the United States Attorney has determined that it is in the public interest to focus her prosecutorial resources on pursuing the most serious charges and the most provable case against the defendant. It is also in the public interest to protect public resources – both executive and judicial – by bringing the defendant to trial on the government's strongest case, particularly when those resources will be devoted to vindicating the interests of the victims and their families in the RICO Murder Case.

Respectfully Submitted,

  
CARMEN M. ORTIZ  
United States Attorney

June 28, 2011

Leave To File Granted:

\_\_\_\_\_  
HONORABLE MARK L. WOLF  
Chief U.S. District Judge

Date: \_\_\_\_\_

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts  
June 28, 2011

I, Fred M. Wyshak, Jr., Assistant U.S. Attorney, do hereby certify that I have caused a copy of the foregoing to be served on defense counsel in this case (Peter Krupp, Esq.).

/s/ Fred M. Wyshak, Jr.

FRED M. WYSHAK, JR.  
Senior Litigation Counsel  
Assistant U.S. Attorney