

MORE CHARGES FOR DUSTY FOGGO?

The government has agreed to move the Dusty Foggo trial—the last remaining indictment from the Duke Cunningham scandal—to Eastern District of VA to make it easier for the CIA and its friends to testify in the trial (h/t chrisc). But the really interesting part of the news is the indication that prosecutors have found more potential charges against Foggo at precisely the same time as they announce they're dropping charges against Brent Wilkes in the same case.

Federal prosecutors agreed Thursday to move the corruption case of former Central Intelligence Agency official Kyle "Dusty" Foggo to Virginia and hinted he will face more charges in the future.

In addition, prosecutors said they will drop charges in that case against Foggo's lifelong friend and co-defendant, former Poway defense contractor Brent Wilkes.

[snip]

For the past several months, Foggo's Washington, D.C.-based lawyers have asked Burns to transfer the case out of California. They said it made sense because 90 percent of the actions alleged in the complaint took place in that area and not in Southern California, and virtually all the witnesses and documents are based there.

While Burns agreed the case should be moved, both prosecutors and Wilkes balked. But on Feb. 1, Wilkes dropped his objections to the move.

The government followed suit Thursday. In a brief court filing they said that "the government has recently uncovered

evidence to support additional charges”
against Foggo.

Call me crazy, but it sure looks like—faced with the possibility of a 60 year jail sentence—Brent Wilkes all of a sudden remembered some evidence against Foggo that he had previously forgotten.

Duke Cunningham. The gift that keeps on giving.

Update: I’m wrong—it doesn’t look like Wilkes flipped. Perhaps Michael did, but not Wilkes.

What’s happening is a big game over venue. Foggo originally asked for venue in ED VA. The court never finally ruled on that. But then Foggo switched his request, asking that it be moved to DC. Here’s why:

Defendants Kyle Dustin Foggo and Brent Roger Wilkes have jointly moved for transfer of venue in this case to the District of Columbia, on the basis of convenience to the parties pursuant to Fed. R. Crim. P. 21(b). Defendant Wilkes has also moved for transfer pursuant to Fed. R. P. 21(a). Defendant Foggo previously filed a motion to transfer the case to the Eastern District of Virginia (“EDVA”), which was denied without prejudice, and then renewed that motion, which the Court has not ruled upon. The government opposed all transfer motions, contending that Defendant Foggo had not met the legal standard to show that transfer was warranted. (See govt’s pleadings filed May 7, 2007 and December 21, 2007.)

The government has recently uncovered evidence to support additional charges against defendant Foggo. For some of these additional charges, venue lies only in EDVA. Accordingly, at this time the government withdraws its opposition to the transfer of the case to EDVA and moves to dismiss without prejudice the

charges against defendant Wilkes,
pursuant to Fed. R. Crim. P. 48(a). [my
emphasis]

To which Wilkes responds:

Brent Roger Wilkes, through undersigned counsel, hereby opposes the government's motion to dismiss without prejudice and asks that any dismissal be with prejudice. **Defendants Kyle Dustin Foggo has amended his prior motion to transfer this matter to the Eastern District of Virginia to request instead that the matter be transferred to the District of the District of Columbia.** The Court has indicated that it looks favorably upon this motion and will likely approve a transfer to Washington, D.C.. There does not appear to be any motion by any defendant pending to transfer this case to Eastern District of Virginia. **The government, which has fought vehemently against all prior requests for transfer to the Eastern District of Virginia, in the face of imminent transfer to Washington, D.C., now withdraws its opposition to a motion no longer pending and agrees to a transfer to Virginia.** The government's proffered reason, that it has uncovered evidence of crimes prosecutable against Mr. Foggo only in Virginia, is made without support or specification. Simultaneously, the government moves to dismiss without prejudice the charges against Mr. Wilkes, no doubt intending to then indict Mr. Wilkes in Virginia, thus effectively transferring his case to a another district without Mr. Wilkes' consent. The government's action is a transparent attempt to forum shop. For some reason, it believes Virginia provides a more favorable forum and so it seeks to abrogate Mr. Wilkes' right to object to a transfer to that

district. [my emphasis]

Wilkes seems just as uncooperative as always.
Only now he's trying to prevent other
charges—something happening entirely in VA.