

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 02 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HEADWATERS FOREST DEFENSE,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF
CALIFORNIA,

Respondent,

THE COUNTY OF HUMBOLDT, CITY OF
EUREKA; DENNIS LEWIS, Sheriff; GARY
PHILP, Chief Deputy,

Real Parties in Interest.

No. 03-71883

D.C. No. CV-97-03989-VRW
Northern District of California,
San Francisco

ORDER

Before: BRIGHT,¹ PREGERSON, and W. FLETCHER, Circuit Judges.

Plaintiffs-petitioners are environmental activists who were injured by pepper spray applied to their eyes by law enforcement officials during a series of anti-logging protests in Humboldt County. The facts are recounted in detail in our first decision in this case, *Headwaters Forest Defense v. County of Humboldt*, 240

¹ The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

F.3d 1185, 1191-96 (9th Cir. 2000). Plaintiffs-petitioners request that this court order the return of the re-trial of this case to San Francisco, and that we direct the Clerk of the Northern District of California to reassign this case to another district judge. Plaintiffs brought suit against defendants under 42 U.S.C. § 1983. On defendants' motion for summary judgment, the district court granted all individual defendants qualified immunity except for officers Lewis and Philp. A nine day jury trial commenced in San Francisco on August 10, 1998. At the conclusion of the plaintiffs' case-in-chief, the defendants moved for judgment as a matter of law. In ruling on that motion, the district court held, contrary to its earlier decision, that Lewis and Philp were entitled to qualified immunity. The district court then dismissed the case against them, but denied judgment as a matter of law as to the remaining defendants – the County of Humboldt, the City of Eureka, and their respective sheriff's and police departments. The jury deadlocked four-to-four on the claims against the remaining defendants.

In a colloquy with counsel before declaring a mistrial because of a deadlocked jury, the district court on the record stated that the issue in this case is “a simple and straightforward one It's obviously one on which reasonable people can differ.” The district court then declared a mistrial, set a new trial date

in San Francisco, and took under submission defendants' renewed motion for judgment as a matter of law.

Eight weeks later, the district court issued an order reversing its earlier ruling, granted defendants' renewed motion for judgment as a matter of law, vacated the new trial date, and entered judgment for the remaining defendants—the County of Humboldt, the City of Eureka, and their respective sheriff's and police departments. In doing so, the district court stated “there is no reasonable basis for jurors to find that the officers' use of [pepper spray] was objectively unreasonable in light of the facts and circumstances confronting them.”

The case then came before us. We reversed. We held that (1) the district court erred in granting judgment as a matter of law on qualified immunity grounds to Lewis and Philp; and (2) the district court erred in granting the renewed motion for judgment as a matter of law to the County of Humboldt, the City of Eureka, and their respective sheriff's and police departments. 240 F.3d 1185 (9th Cir. 2000). The Supreme Court granted certiorari, vacated our judgment, and remanded for further consideration in light of its recent decision in *Saucier v. Katz*, 533 U.S. 194 (2001). *County of Humboldt v. Headwaters Forest Defense*, 534 U.S. 801 (2001). On remand from the Supreme Court, we applied the *Saucier* qualified immunity analysis, reaffirmed our earlier decision, and remanded for a

new trial. *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125 (9th Cir. 2002), *cert. denied*, *County of Humboldt v. Burton*, 123 S. Ct. 513 (2002).

On January 23, 2003, at a status conference not held on the record, the district court set May 12, 2003, as the date for the re-trial.² At the same time, the district court *sua sponte* transferred the trial to Eureka, California, the county seat of Humboldt County. One of the defendants is the City of Eureka itself, and another defendant is Humboldt County. Eureka and Humboldt County are home to the remaining defendants. The record shows that Eureka and Humboldt County are known for their strong ties to the logging industry and that there have been many incidents of hostility directed toward environmental activists in Eureka and its environs. Although there is a federal court facility in Eureka, no federal district judge has held a trial there in the last thirty years.³

On this record it appears that the district court's actions reveal an appearance of an absence of impartiality sufficient to warrant reassigning this case. We therefore GRANT petitioner's requested relief and direct the Clerk of

² We have stayed the re-trial of this case pending our disposition of the matter.

³ Almost thirty years have passed since the last time a federal district judge presided over a trial in Eureka. Judge Samuel Conti presided over a criminal trial in Eureka in 1973.

the Northern District of California to reassign this case to another district judge through the Northern District's random selection process; we also VACATE the order transferring the re-trial to Eureka.

SO ORDERED.