

Synopsis of the Duka Brothers' Hearing on January 6, 2016

The Ft Dix 5 Support Committee and Project SALAM, and the Duka family of course, want to express our gratitude to everyone who turned out on Jan 6 for the appeal hearing. We thank everyone who attended the rally preceding the hearing, despite the cold weather. And we especially appreciate those who traveled long distances to be in Camden in person for this important legal matter.



Whether you attended in person or in spirit, we wanted to send everyone a synopsis of what happened so we all understand the status of the case as it goes forward.

Outside Court

Supporters of the Duka brothers and the Fort Dix 5 gathered in front of the courthouse as early as 8am, with colorful banners (some of them made by Max -----) and handmade signs.

Court personnel set up a "free speech zone"—a fenced-in area on the sidewalk in front of the courthouse. Many of the supporters held banners in this area and chanted slogans. People were not required to stay in the zone.

Security was excessive. At least five police cars lined the median of the street, police were on every corner, and a mobile unit was set up across the street. When one of the Duka brothers was taken from the court back to the prison, there were two or three cars in front of the police van and two or three cars following. Each brother was transported separately; each brother had a similar police escort. Court personnel also walked a bomb-sniffing dog around the protesters many times.

At least 20 members of the Duka family came from New Jersey and Brooklyn. The vigil, organized by the Fort Dix Five Support Committee, also included people from Witness Against Torture, National Coalition to Protect Civil Freedoms (NCPFCF), The Aafia Foundation, Philly Coalition for Racial, Economic and Legal Justice, Project SALAM, International Action Center, International Concerned Family and Friends of Mumia Abu-Jamal and Catholic Workers. People traveled from Texas, Manhattan, Maryland, Washington D.C., Albany, Philadelphia, and Maine.

Burim Duka, the youngest Duka brother; Dr. Maha Hilal, executive director of NCPFCF; and Lynne Jackson representing Project SALAM gave brief statements to the group of supporters. At about 8:45, family members lined up to enter the courtroom. Everyone was required to go through a metal detector and to show ID at the entrance. All were required to go through a metal detector again at the entrance to the fourth-floor courtroom. The courtroom was not big enough to hold the more than 100 supporters who wanted to come in, so only about 50 family members and supporters were allowed in.

Inside Court

On December 28, 2011, the United States Court of Appeals for the Third Circuit refused to overturn their convictions. The Duka brothers consequently raised seven “ineffective assistance of counsel” claims in what are known as 28 U.S. Code § 2255 motions. U.S. District Judge Robert B. Kugler denied six of the motions but surprisingly ruled he would hold hearings (one for each Duka brother) limited to one issue: whether they had been denied their constitutional right to testify at their own trial. Kugler is the same judge who sentenced the three men to life in prison in 2008.

The first case was called—Dritan (also called Tony) Duka, the oldest Duka brother. His defense attorney, Chad Edgar, began by asking questions about Dritan’s background, including how he was brought here as a child by his parents from Albania and how he had left school after the 8th grade to support his family. Mr. Edgar also asked questions regarding Dritan’s trial attorney, Michael Huff, with special emphasis on whether Dritan wanted to testify at his trial and how Mr. Huff had responded to Dritan’s request. Dritan said that he believed that he would testify at his trial, and that he had wanted to testify. However, when he discussed this with Mr. Huff, Mr. Huff had indicated that he was not prepared to put Dritan on the stand. The government attorney cross-examined Dritan aggressively. However, Dritan was steadfast, and reiterated that he had wanted to testify, that he’d conveyed that request to Mr. Huff, but that Mr. Huff had told him that he was not prepared to have him testify.

The government then called Michael Huff. Mr. Huff vigorously denied Dritan’s claim that he had told Dritan he was not ready to put him on the stand. It should be noted that it is a violation to deny a defendant the right to testify. The hearing went on for three hours, with the defense attorney, Mr. Edgar, and the government attorney going through each witness’ statement in great detail.

The next hearing began at 1:30, with Eljvir Duka. The same procedure was observed: Eljvir answered questions from his defense lawyer, Charles Swift, and then the government attorney called Eljvir’s trial lawyer, Troy Archie, to the stand. Eljvir was also steadfast in saying that Mr. Archie said he was not prepared to put Eljvir on the stand, and Mr. Archie was equally steadfast in saying that he had indeed told Eljvir of his absolute right to testify at trial.

Shain Duka’s hearing was the last one of a very long day, beginning around 3:30 p.m. He was represented by Robert Boyle, and by Michael Riley at his trial. Once again, Shain said that he’d been told by Mr. Riley that he was not prepared to have him testify, and once again, Mr. Riley, like the other attorneys, testified that was untrue. Shain was eloquent in his statement: “The jury needed to hear from us, and we need the truth to come out, especially when you are innocent.”

Though none of the brothers saw each other or were in the courtroom together, their stories were much the same, and none of them changed their position, despite the government’s badgering.

The minutiae and detail of the examination and cross-examination of the witnesses was extensive and at times repetitive. These three men are fighting for their very lives—and yet the legal proceedings to

decide their fate seemed at times boring and mundane. Many of the repetitive questions by the Dukas' current attorneys were attempts to draw the truth out from the 2008 lawyers who "didn't remember", "had no notes" and in general seemed reluctant to reveal what really happened during the trial.

No judicial decision was made today; the judge gave the defense attorneys until February 16 to file another motion. A decision will be made after that date, probably in March. Shain Duka's Attorney Bob Boyle told Democracy Now after the hearings: "Well, we're hoping that the court rules in our favor on the narrow factual issue as to whether they were unconstitutionally deprived of their right to testify. If the court rules favorably on that, we'll have another hearing where they will, in more detail, describe what they would have said had they testified at trial. If we prevail on that part of it, we'll get a new trial."

When the Duka brothers, Mohamed Shnewer and Serdar Tatar – the so-called Fort Dix 5 – call on your help in the future, we hope you will once again respond.

All we are asking for is justice. With your help, we will win their freedom!

Ft Dix 5 Support Committee
Project SALAM

Link to 2255 Motion

<http://law.justia.com/cases/federal/district-courts/new-jersey/njdce/1:2013cv03664/290794/39/>

Links to a few of the massive number of articles written on the case:

WAMC – Northeast Public Radio (upstate New York) <http://wamc.org/post/albany-activists-support-fort-dix-5-brothers-new-jersey-court#stream/0>

Democracy Now!

http://www.democracynow.org/2016/1/7/fort_dix_five_prosecuted_by_christie

Bob Boyle Interview:

http://www.democracynow.org/2016/1/7/the_fbi_entrapping_muslims_web_exclusive

Aljazeera

<http://america.aljazeera.com/articles/2016/1/6/fort-dix-5-back-in-court.html>

Link to photos of the before-hearing rally:

<https://www.flickr.com/photos/109799466@N06/albums/72157663121621841>