

Judge orders federal prosecutors to explore whether State Police OT scandal was a 'conspiracy'

By [Matt Rocheleau](#) Globe Staff, Updated January 30, 2020, 3:45 p.m.



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A federal judge on Thursday ordered prosecutors to dig further into his question over whether the State Police overtime fraud scandal amounted to a criminal conspiracy.

US District Judge Mark L. Wolf made the demand in the case of former trooper Daren DeJong, one of 46 troopers and [higher-ranking officers](#) who have been implicated in a [payroll fraud scheme](#) that included writing phony tickets and falsifying time sheets to collect overtime pay for hours they never worked.

If the scandal were to be treated as a criminal conspiracy, that could mean much more serious charges with more serious penalties. But it's unclear whether prosecutors would pursue such charges, given how they didn't do so with the initial wave of cases, most of which are now done.

Nine people have pleaded guilty to criminal charges, including DeJong. The other federal cases were presided over by different judges and ended months ago.

But DeJong's sentencing has remained in limbo since May.

"There are many facts that suggest that DeJong's criminal conduct in this case was part of a conspiracy," Wolf wrote in a filing Thursday.

For example, Wolf wrote that DeJong had "received a phone call from a lieutenant who stated, 'We've all agreed not to write [traffic tickets]' and that 'it would be best if were on the same page,' ... which DeJong took to mean that he should ... just go home."

Wolf's order cancelled a sentencing hearing scheduled for next week. Wolf wrote that, despite additional filings this

week by prosecutors and defense attorneys, he did not feel confident he had all of the information necessary to sentence DeJong.

“The parties’ submissions do not address all of the questions the court has previously raised,” Wolf wrote, specifying later that their sentencing recommendations did not account for “any jointly undertaken criminal activity.”

State Police did not immediately respond to requests for comment Thursday. Prosecutors and DeJong’s attorney declined to comment.

At a hearing in May, Wolf grilled prosecutors from US Attorney Andrew E. Lelling’s office over why they didn’t pursue conspiracy charges, which are often used against mobsters who engage in elaborate criminal schemes.

At the time, Assistant US Attorney Mark Grady pushed back. While prosecutors found “an egregious lack of oversight,” they “didn’t have evidence of a conspiracy,” he said.

Wolf at that hearing also criticized prosecutors for not going back further to examine the roots of the scheme. Prosecutors called it impossible because State Police officials had destroyed older records as part of routine efforts to get rid of dated documents.

But one month later State Police suddenly unearthed boxes of records that had previously been subpoenaed by prosecutors, but State Police had said didn’t exist.

The records were from 2014 and earlier — years for which prosecutors said they suspected there was fraud but hadn’t been able to fully investigate. By the time those older records were given to prosecutors, they were just past, if not near, the five- and six-year statute of limitations for bringing additional fraud and embezzlement charges.

Legal specialists have questioned how it took State Police so long to discover the additional records and raised concerns about the ability and willingness of the [embattled department](#) to investigate its own troopers.

State Police officials have said the records were found after internal investigators in early June learned about the existence of copies of traffic citations, which prompted a broader search. The department has said it immediately told prosecutors about the unearthed records and made them available for review.

State Police have pointed to the “thousands of documents” the agency has provided to prosecutors, calling them “a massive referral of information that has made possible numerous criminal convictions and terminations.”

“As with any complex investigation involving large volumes of data spread over several years, the production of records is a collaborative process, a fact that the MSP and prosecutors mutually accept,” the department has said.

In a filing earlier this week, prosecutors wrote that, in June, once notified of the records discovery, they “renewed requests for previously subpoenaed materials from 2013 and 2014” for DeJong. A few weeks later, State Police produced payroll records and cruiser radio data for those years as well as cruiser fuel records dating back to 2012.

Prosecutors had initially only received records from State Police covering DeJong’s activity from 2015 to early 2017, estimating he stole about \$31,000 over those years. But, after reviewing the records they got in June, prosecutors more than doubled that estimate to \$63,600.

DeJong was charged with, and later [pleaded guilty to](#), embezzling about \$14,000 during 2016. But the alleged theft from other years, and whether his conduct amounts to a criminal conspiracy, may factor into his sentencing. No new

date has been set for his sentencing.

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