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JUDGE STEPS ASIDE FROM CASE

CONTROVERSY SWIRLS IN WAYNE COUNTY DRUG BUST RETRIAL

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A defense attorney says a Wayne County Circuit Court judge and prosecutor knowingly allowed perjured testimony in a drug trial last year that ended with a hung jury.

Shortly before this week's retrial, the judge in question, Mary Waterstone, stepped aside from the case at the urging of attorney David Moffitt of Bingham Farms.

"It would be inappropriate for me to comment," Waterstone said Wednesday. "I have disqualified myself to avoid any appearance of impropriety and bias."

The controversy stems from a March 11, 2005, drug bust that resulted in the seizure of 47 kilograms of cocaine. A confidential informant tipped off Inkster police prior to the bust, in which two cars were stopped Downriver, Moffitt said.

Waterstone was informed of the confidential informant's identify - Chad Povish, 35, of Inkster - during a closed hearing with police and prosecutors.

During the subsequent trial last fall, Povish, who drove one of the cars police found full of drugs, testified in a case against Alexander Aceval, 38, of Farmington Hills that he had never met the police officers involved before his arrest.

The officers similarly testified under cross-examination by Aceval's previous lawyer, James Feinberg, that they had never met Povish.

It turns out, Moffitt said, that Povish was the informant and had met with police prior to the arrest. He was released within hours of Aceval's arrest. Aceval had driven the second car that police stopped during the arrest.

Aceval's trial ended in a hung jury. A retrial was scheduled for Tuesday.

However, during a March 17 hearing, Moffitt argued that the case should be dismissed or that the police officers and Povish should be prohibited from testifying in a retrial.

According to transcripts, Judge Waterstone said: "Questions regarding whether any of the witnesses had any prior contact with police officers will not be allowed."

Wayne County Assistant Prosecutor Karen Plants said at the hearing: "If they don't want any perjured testimony to come out, then they shouldn't ask those questions."

On Tuesday, with a jury waiting in the hallway, Moffitt informed Waterstone that he planned to call her and Plants as witnesses in an evidentiary hearing on a motion to dismiss the case. Waterstone removed herself from the case, and the jury went home.

Plants said during the hearing Tuesday that the police lied "to protect the identify of the confidential informant."

Waterstone said during the hearing: "I don't think I took any, had any complicity, because I had no idea what people are going to testify to on cross-examination."

Jack Fennessey, a spokesman for the county Prosecutor's Office, said Feinberg ignored an order not to ask about Povish's identify during the first trial. "The defense created this issue and now seeks to profit from a mischief of their own making," Fennessey said Wednesday.

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