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Worthy covers up perjury

Knew for two years of perjury that Supreme Court now acknowledges

By Teresa Kelly

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DETROIT —“Witnesses must give truthful testimony. And we have to demand that they do.”

Wayne County Prosecutor Kym Worthy made this observation in announcing the 12-count indictment of Mayor Kwame Kilpatrick and former aide Christine Beatty last week.

However, according to the Supreme Court of Michigan, Worthy does not hold herself or her employees to the same standard.

An order dated March 19, 2008 remanding the case of People versus Alexander Aceval acknowledges the perjury of Assistant Prosecutor Karen Plants. The order asks the Appeals Court to consider “whether the prosecution’s acquiescence in the presentation of perjured testimony amounts to misconduct that deprived the defendant of due process such that retrial should be barred.”

The Michigan Attorney Grievance Commission filed a formal complaint against Plants, Monday .

“The Supreme Court does not ask whether perjury was committed, it takes it as a given,” Aceval’s attorney, David Moffitt of Bingham Farms, said in a phone interview April 2.

He said he is meeting with Robert L. Agacinski, administration of the Michigan Attorney Grievance Commission, to determine if the commission is seeking a complaint against Worthy.

The charges stem from a March 11, 2005 drug bust in which Inkster police seized 47 kilos of cocaine.

Aceval, of Farmington Hills, and a police informant named Chad Povish left a bar in Riverview. Povish tipped off the police beforehand who stopped the two cars in Wyandotte. No drugs were found in Aceval’s car, but the police found four duffel bags containing 100 pounds of cocaine in the trunk of Povish’s Oldsmobile.

Both men were taken to the police station. Povish was released while Aceval was charged with conspiracy with intent to distribute cocaine. A second suspect, Ricardo Pena, was later arrested and charged for delivering the drugs to the bar earlier in the day.

Three days later, the perjury scheme went into motion when the police officers took Povish’s

statement, Moffitt said in a Statement of Fact submitted to the Supreme Court.

In the station Povish signed a statement the officers provided him that was already written out in question and answer format. The statement contradicts what officers said in their reports and indicate Povish and the police lied, and that the prosecutor had to be aware of the contradictions.

Povish testified he did not know what was in the duffel bags. However, the police said he had tipped them off to what was going to happen while on his way to Kmart to buy the duffel bags saying what the bags were for.

Povish stood to make money from his testimony. He was promised 10 percent of the assets seized from Aceval, whose Farmington Hills home and other property were valued in the hundreds of thousands of dollars.

Yet Povish testified that nothing was promised him in exchange for his testimony.

The basic lie, according to Moffitt's statement to the courts, was that the officers claimed to observe Aceval putting the duffel bags into the trunk of Povish's car. Yet, the officers actually did not arrive before the bags went into the trunk.

Nor were Povish and Aceval driving in tandem as the police testified. Without these lies there was only circumstantial evidence to link Aceval to the drugs in Povish's car.

Plants was in on the fabrications from the beginning, yet she told the court she had not spoken to Povish before the March 24, 2005 Preliminary Examination. Without the perjury Aceval could not have been bound over.

Inkster Police Chief Gregory Gaskin complained in an Inkster Ledger Star report June 22, 2006 that he was "concerned the events that occurred under the prosecutor's watch have tainted a solid investigation for his department."

Gaskin said, "I believe my officers did exactly what they were asked to (by prosecutors)."

Plants revealed all of these lies to Judge Mary Waterstone in a closed meeting June 17, 2005 that Aceval's attorney knew nothing about. In that meeting, Plants said that Povish and the confidential informant were one and the same person.

Aceval's trial attorney James L. Feinberg suspected that Povish was the confidential informant despite the perjured testimony to the contrary. Waterhouse refused to allowing questions about the identity of the confidential informant (CI).

According to Moffitt and court documents, on Sept. 8, 2005, Judge Waterstone and Plants met to discuss the witnesses' perjury.

According to transcripts discovered later when Moffitt began the appeals process, Plants admitted to Judge Waterstone that Officer Rehtziegel "knowingly committed perjury to protect the identification of the CI."

Plants continues, "I let the perjury happen."

Judge Waterstone was complicit in the perjury noting she felt the confidential informant was in "grave danger", although no testimony exists to warrant the fear.

Povich is "alive and well and walking around for two years since," Moffitt says.

The defense was not told of the perjury nor was the jury.

Trial testimony was concluded Sept. 20, 2005 with separate juries for Aceval and Pena.

Waterstone declared a hung jury for Aceval; Pena was convicted.

Prosecutor's office filed a Confession of Error only in the Pena case when news reports broke telling of the perjury. Pena made a deal in exchange for a promise to testify against Aceval in the second trial March, 2006. Both are now in prison. Appeals continue and the Supreme Court wants the Appeals court to decide whether Plants' misconduct deprived Aceval of due process .

Worthy has glossed over the perjury since it began, Moffitt says.

Worthy let the matter drop, never investigated, instead defended Plants because she informed the court and her supervisors of the perjury. Worthy kept Plants as chief of the Major Narcotics Division.

In 2006 following the second trial, Worthy issued a statement in support of Plants.

"The way that this case has been reported is disturbing. The actions of the defense—not this office or any of our witnesses—led the press to question the character of one of my principal attorneys, Karen Plants. She is known throughout the criminal justice system as a lawyer of high integrity and competence. When questioned about this matter, I asked that some members of the press wait until the whole truth could be told as the prosecution would not and could not join in further exploitation of the facts of this case before its resolution. Not only was Ms. Plants vindicated, it was shown that it was Mr. Aceval was the one engaging in supporting and encouraging perjury in a grand scheme. He was caught and pled guilty to these charges. Even though this matter got ugly at times, the truth has prevailed, as I knew it would, and once again, justice has been served."

That was until Monday when the Attorney Grievance Commission filed a formal complaint. According to the Supreme Court and Grievance Commission Plants has yet to be vindicated and justice still waits.

"At worst, she is guilty of dereliction of office; at best, she may have crossed the line into criminal activity," Moffitt says of Worthy.

He wonders if "we can find any prosecutor gutsy enough to investigate or prosecute the police, prosecutor and court."