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## Judge, prosecutor wrangle over possible misstep in deputy DWI trial

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Staff writer

The prosecutor and judge in the drunken-driving trial of a former Monroe County sheriff's deputy April 25 squared off over whether the prosecutor misled the court about his conversations with a witness, trial transcripts show.

"Your honor, as I mentioned, I was very nervous in this case," Assistant District Attorney Christopher Rodeman told County Court Judge John Connell at one point. "And I'm not trying to intentionally mislead the court."

"Frankly, Mr. Rodeman, I don't know how you can say that to me," Connell responded.

Connell ruled Wednesday that former sheriff's Deputy James Telban Jr. wasn't criminally negligent in the drunken-driving death of motorcyclist Peter Volkmuth in Parma. The ruling angered Volkmuth's family and activists who fight against drunken driving.

Connell did find Telban guilty of misdemeanor drunken driving. Telban's blood alcohol level was three times the legal limit.

While talk radio and online chat forums in the last few days have been abuzz over the verdict, local legal circles have focused on the subplot involving Connell and Rodeman, who heads the district attorney's bureau that prosecutes drunken-driving cases.

The two sparred over whether Rodeman inappropriately talked to a witness during a break and whether Rodeman then did not tell the truth about the content of that conversation.

District Attorney Michael Green said he thinks the dispute played no role in Connell's acquittal of Telban on second-degree vehicular manslaughter. Because the case was a nonjury trial, the incident is of little legal consequence because there was no jury to hear and possibly be affected by Connell's challenge to the prosecutor.

But some defense lawyers contend that the episode should not be written off as a simple misstep by a prosecutor.

"On both sides of the aisle, we are officers of the court," defense lawyer Gary Muldoon said. "The issue is the integrity of the process."

Green said Friday that, while he thinks Rodeman did misspeak, the conflict arose from miscommunication.

Green said there were questions about whether Connell directed Rodeman not to talk to the witness during a break. Connell insisted he had, while Rodeman remembers no such instructions, Green said.

Connell and Telban's lawyer, Joseph Damelio, would not talk about the incident. Rodeman could not be reached Friday.

### Talk with witness

According to trial transcripts, Connell asked Rodeman after a break about whether he had ignored the judge's instructions and had spoken to a prosecution witness, Jon Northrup, a Rochester police officer who helped with the crash investigation. Rodeman answered that Northrup approached him with a question and "I just kind of shook my head, judge, and walked away because I knew I had to get away."

Once Northrup was again on the stand, Damelio asked him about any conversations he'd had with Rodeman during the break.

Northrup said that Rodeman approached him and talked to him about another witness's testimony. Northrup said he didn't remember who spoke first.

Asked later by the judge about the conflicting version of events, Rodeman didn't dispute Northrup's account and said, "I really don't recall the conversation."

"Mr. Rodeman, you have to help me out here," Connell replied. "I mean, we're not talking about a conversation that took place, you know, April of 2004. We're talking about a conversation that took place within the last hour after I told you there should be no conversation."

Rodeman answered that he'd forgotten the substance of the conversation with Northrup: "I'm nervous and I did not recall. And I apologize."

Rodeman said he wasn't trying to be deceitful and that he had "paraphrased the conversation" when the judge had asked him to recount it.

"What is paraphrasing when you said I didn't say anything to him?" Connell said.

### What the transcript says

The transcripts reflect no instructions from Connell to Rodeman not to talk to the witness before the initial recess. Sometimes "off-the-record" conversations are not transcribed, but Rodeman said he did not recall any such instructions from Connell, Green said. Connell was so insistent that he'd issued the order, however, that Rodeman answered as if the judge had, Green said.

Green said that Rodeman clearly erred by not revealing the content of the conversation with Northrup. He said Rodeman did apparently forget the substance of the conversation with Northrup under the heated questioning by Connell.

"According to Chris, he says, 'I wasn't intentionally trying to mislead (Connell),' " Green said.

"Clearly the ideal thing would have been that Chris relay exactly what happened," Green said. "That didn't happen. My sense is that fueled the judge's anger in some respects."

Green would not answer whether the incident warranted disciplinary action. "I don't make it a practice to comment on internal issues like that."

This was not the first time Connell has challenged actions by Rodeman. In 2003, Connell admonished Rodeman for apparently reading letters that a defendant had written to his defense lawyer but mistakenly sent to the District Attorney's Office.

Prosecutors said the letters were mistakenly opened by a clerk because the defense lawyer had previously worked in the office, so the clerk assumed the mail was properly sent there.

But Connell ruled that Rodeman's actions went beyond a simple error and breached the defendant's lawyer-client privilege. However, Connell refused the request for a special prosecutor in the case.



[Back](#)

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