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Ex-cop acquitted in manslaughter trial

Telban found not criminally responsible but guilty of DWI

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Staff writer

During a four-day trial last week in Monroe County Court, defense lawyer Joseph S. Damelio argued that off-duty Jr. wasn't criminally responsible for the drunken-driving death of motorcyclist Peter Volkmuth in Parma.

Members of Volkmuth's family sat in stunned silence Wednesday — then burst into tears outside court — when Damelio's assessment.

Ruling after a nonjury trial requested by Telban, Connell acquitted Telban of a felony of second-degree vehicular of failure to yield to oncoming traffic, but convicted him of two misdemeanor counts of driving while intoxicated.

At most, Telban faces probation to no more than one year in jail on the DWI charge when he's sentenced June 2 in prison had he been convicted of manslaughter.

Connell ruled that the prosecution failed to prove that Volkmuth's death was a direct result of Telban's intoxication the crash, while "horribly tragic," could have occurred regardless of either driver's sobriety.

Although a court-ordered test showed that Telban, 45, of Greece, had a blood-alcohol content that was 0.24 per level needed to bring a DWI charge — Telban's conduct as he pulled in front of Volkmuth's motorcycle "did not stem from causes which brought about the death of Mr. Volkmuth," Connell said.

"The fact that the defendant was intoxicated at the time, does not automatically result in his being guilty of vehicular degree," Connell said in a decision that he read into the court record.

The judge cited evidence that Volkmuth, 27, of Greece, was riding his motorcycle at 65 mph — 25 mph above the changed lanes "at least twice" before Telban pulled in front of him while leaving Braemar Country Club, 4704 W.

After the verdict, Volkmuth's widow, Shannon Volkmuth, left the courtroom aided by her father, Jim Jermyn. She

Shannon Volkmuth's stepmother, Sharren Jermyn, said she believed the District Attorney's Office proved manslaughter.

"This is a living hell," she said. "There's no place to go. There's no place to go."

Damelio said his client, who left court without comment, is relieved but anticipates facing a civil lawsuit by Volkmuth, a veteran of the Sheriff's Office, resigned eight days after the Sept. 6 crash.

The verdict doesn't ease Telban's remorse, Damelio said.

"While he was found not guilty of causing a death, he'll still live with what happened," Damelio said "He'll never f

Assistant District Attorney Christopher Rodeman said he respectfully disagreed with Connell's verdict.

"I feel the proof was there," Rodeman said. "This defendant had a 0.24 percent blood-alcohol content. It was not was the cause of the crash. It was the condition of the defendant."

Volkmoth, a machine operator at Birds Eye Foods Inc., was on his way to work when his motorcycle, which he w collided with Telban's pickup truck as Telban was leaving a golf outing.

Volkmoth died of head injuries, even though he was wearing a helmet.

Prosecution witness Ronald A. Birch testified that he was driving in the left lane of West Ridge Road at 46 mph v right and stared at him, then pulled away and pulled in front of him. Seconds later, Birch saw Volkmoth hit his br into Telban's truck.

A prosecution expert estimated Volkmoth's speed at 47 to 49 mph and a sheriff's deputy who didn't testify estima But mechanical engineer Manas Ucar, testifying for the defense, said Volkmoth was traveling at 65 mph when he he hit Telban's truck.

Although the prosecution offered a rebuttal witness to cast doubt on Ucar's testimony, Connell seems to have cr blocked Telban's view of the road as he left the country club.

"The excessive speed of the motorcycle in conjunction with the curvature of the road in the area that the cycle m prevented Mr. Volkmoth from stopping or avoiding the fatal collision with the defendant's vehicle," said Connell.

Connell's decision is the second controversial ruling he has made in a week in a DWI fatality.

Last Friday, over the objection of the prosecution, he offered a prison term of 4 1/2 to nine years to Samuel Sierra: plea to second-degree manslaughter, second-degree vehicular manslaughter, driving while intoxicated and first- operation of a motor vehicle in the Oct. 14, 2006, death of Michael H. Civiletti in Rochester.

Sierra has a previous conviction of second-degree manslaughter for a 1993 shooting. Prosecutors said they beli the maximum penalty of 7 1/2 to 15 years behind bars.

Civiletti's sister, Patricia Clemens, said her family was shocked by the plea offer, which was made without the fai

"We had hoped for the maximum sentence to impress upon others the serious consequences of drunk driving fo perpetrators," she said.

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