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News Hits

Worthy investigation

Perjury flap spurs inquiry into Detroit prosecutor

BY NEWS HITS STAFF



MT PHOTO: REBECCA COOK

Prosecutor Kym Worthy in court for the Kwame Kilpatrick perjury case.

News Hits has been following the story of the Wayne County assistant prosecutor, former judge and two cops accused of committing perjury ever since *Metro Times* first wrote about it nearly three years ago.

What has been particularly interesting — aside from the fact four people sworn to uphold the law are facing felony charges related to perjury alleged to have occurred during a drug trial in 2005 — is the way Wayne Prosecutor **Kym Worthy** has dealt with the issue.

But Worthy's role has gone largely unexplored by the area media, which jumped on the story in a big way last week when state Attorney General **Mike Cox** filed charges against **Karen Plants**, the former assistant prosecutor who once led the offices drug unit, and retired Wayne County Judge **Mary Waterstone**. Also charged were Inkster cops **Robert McArthur** and **Scott Rechtzigel**.

Plants is charged with six crimes, including conspiracy. Waterstone is charged with four felonies, including improper communications with Plants and concealing perjured testimony. The police officers are charged with conspiracy and perjury.

You can read all the details online in our original story ("Tainted testimony," June 3, 2006). The bare-bones background is this: On March 11, 2005, Inkster police, working with a confidential informant named **Chad Povish**, arrested **Alexander Aceval** of Farmington Hills, and a second man, **Ricardo Pena**, in connection with a drug deal involving more than 100 pounds of cocaine. During their prosecution, according to court records, two police officers and Povish all lied under oath in an attempt to keep the defendants from learning that Povish was working as a snitch and was promised 10 percent of the proceeds garnered from the seizure of Aceval's assets.

Plants knew of the perjured testimony, telling Waterstone about it in two meetings kept secret from the defense. Here's what Plants said about one of the officers in a conversation documented by a court reporter and eventually discovered by the defense:

"He knowingly committed perjury to protect the identification of the CI [confidential informant]." The two women worried that revealing Povish's identity would place his life in jeopardy, although there was never any evidence to support that concern.

Pena was convicted, but Aceval's trial ended when the jury could not reach a verdict and Waterstone declared a

mistrial. Aceval's current lawyer, **David Moffitt** of Bingham Farms, argues now that the law requires both the prosecution and the judge to have made the perjury known to both defense and the jury. Had that jury heard testimony from the prosecution's chief witnesses that they had lied under oath, he contends, there's a strong chance that Aceval would have gone free then.

He also argues that Waterstone declared the mistrial in an attempt to cover up her role in illegally concealing the perjury. That issue is key to an appeal now under way. Although both the state Supreme Court and the Court of Appeals condemned the perjury and efforts to conceal it, the Appellate Court has twice ruled against Aceval. Attorney Moffitt says he will again be asking the Supreme Court to review the lower court's ruling.

The argument is that the process has been so tainted that Aceval — who pleaded guilty in the midst of his second trial — cannot get a fair hearing. He is currently serving a 10- to 15-year sentence.

The one thing no one paid much attention to in last week's flurry of coverage is a request Aceval and Moffitt made to the Attorney Grievance Commission (AGC) last year calling for an investigation of Worthy's role in all this. For one thing, they argue, failure to press charges against Plants, the officers and Waterstone — called in by the prosecution to testify during Aceval's second trial — allowed them to sustain a level of credibility they wouldn't have had were they themselves facing felony perjury charges, as they are now. Worthy's failure constitutes obstruction of justice, alleges Moffitt. His letter to the AGC outlines numerous alleged instances of professional misconduct and ethical violations — and possible "criminal law violations" — on the part of Worthy in relation to the Plants case.

When News Hits contacted Worthy's office to get her response to these allegations, she issued this statement:

"In response to your questions regarding pending matters in the attorney grievance commission; I can confirm there has not been a complaint filed against me relating to the Karen Plants case. The Attorney Grievance Commission has never made a finding, or even an accusation, that I did anything wrong in relation to the plants case.

"I am unable to comment on any pending Attorney Grievance Commission investigation relating to the Plants case. Such investigations are not open to the public and they remain confidential. In addition, it would be inappropriate for me to comment because I am a potential witness for the defense, the prosecution, or both, in the Wayne County criminal case involving Ms. Plants."

The point Worthy glides past is that the investigation into her actions is still under way. It could be that the AGC is waiting to see how the case against Plants and the others goes before making a decision on how to proceed.

In her written response to the commission — included in court filings made by Moffitt — Worthy claims she wasn't "personally involved" in the decision not to disclose the false testimony. She also claims that, until the AGC filed a formal complaint against Plants in March 2008, she "believed that the issue was limited to the false statement made by the [one] officer during trial ..."

However, both the *Detroit Free Press* and this paper reported in the spring of 2006 that there was evidence of multiple instances of perjury. We quoted legal experts who characterized the actions of Plants, Waterstone and the cops as "outrageous" and said a special prosecutor should be called in immediately. This paper contacted Worthy's office before publication, but she refused to respond because the retrial was under way. When Aceval pleaded guilty, she characterized his admission as a vindication for Plants, and chastised "some in the media" for not holding their fire "until the whole truth could be told as the prosecution would not and could not join the further exploitation of the facts of this case before its resolution."

Worthy, in her response to the AGC, now claims that, despite the media attention given the matter in early 2006, she was not "personally aware of the series of false statements by the officers that the AGC alleges" until a formal complaint was issued against Plants in March of 2008.

Moffitt finds that claim mind-boggling.

"Only the baldest of mendacity or monumentally unforgivable ignorance of the actual state of affairs could generate" such a claim, he and Aceval write in the AGC complaint.

How this will conclude is an open question at this point. Two legal experts News Hits talked with said they would be surprised if actions are taken against Worthy, but did not rule out the possibility.

For his part, Moffitt continues to call for full disclosure of who knew what in the Prosecutor's Office, and when they knew it.

The truly ironic twist to all this is that, last week, Worthy was part of an elite group honored by *The Detroit News* as "Michiganians of the Year" for her successful prosecution former Detroit Mayor **Kwame Kilpatrick** on obstruction of justice and perjury charges.

"Oaths mean something," lectured Worthy when announcing that charges were being filed against Kilpatrick. "They are critically important. They matter. They matter when jurors take their oaths; they matter when lawyers, judges and elected officials take their oaths. ... They matter and that's why witnesses take them — every witness in every case. And it is so important, it is perjury if there is lying and perjury is a crime."

It appears that in Kym Worthy's world, it matters sometimes more than others.

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