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Narcotics prosecutor allowed lies at trial, state says

She's reassigned, but Worthy defends her

BY DAVID ASHENFELTER AND BEN SCHMITT • FREE PRESS STAFF WRITERS • APRIL 2, 2008

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The head of the Major Narcotics Unit of the Wayne County Prosecutor's Office has been charged with professional misconduct for allowing a confidential informant and two Inkster cops to give false testimony in a 2005 cocaine case, and for misleading jurors in her closing arguments, according to the state Attorney Grievance Commission.

Wayne County Assistant Prosecutor Karen Plants, 45, was reassigned from her supervisory position Tuesday, a move announced after the Free Press called Prosecutor Kym Worthy's office to seek comment on the misconduct charges. Filed Monday, the charges could lead to the suspension or revocation of Plants' law license if proven.

The charges came a week after Worthy scolded Detroit Mayor Kwame Kilpatrick and his former chief of staff, Christine Beatty, for perjuring themselves in a police

whistle-blower case. Worthy, in announcing criminal charges against the pair, said perjury cannot be tolerated in court proceedings.

In a statement Tuesday, Worthy conceded there was false testimony in the 2005 drug trial, but said Plants properly notified the trial judge after the testimony. Plants could not be reached, but has said she was trying to protect the identity and safety of a paid informant.

Worthy said that Plants has served the office "with distinction" for 17 years.

Worthy's statement did not address the allegations that Plants directly misled jurors in her closing arguments.

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Worthy has known since at least March 2006 that Plants had been accused by defense lawyers of allowing perjury to be committed in the cases.

"The Wayne County Prosecutor's Office does not condone perjury of any kind," Worthy wrote. "The office takes very seriously its obligations to the public, to the accused, and will continue to do so in the future."

Plants' lawyer, Kenneth Mogill of Lake Orion, said the misconduct complaint "appears to have been drafted in such a way as to make the charges look as sensational as possible. ... I believe the evidence will explicitly establish that at each stage, Ms. Plants ... acted responsibly, ethically and honorably in a case that was both difficult and legally and ethically complex."

A drug bust Downriver

The episode stems from a March 11, 2005, Downriver drug bust that resulted in the seizure of 47 kilograms of cocaine following a tip from a confidential informant.

During a preliminary examination, two evidentiary hearings and the trial in 2005, Plants allowed two Inkster cops -- Sgt. Scott Rechtzigel and Detective Robert McArthur -- and informant Chad Povish to repeatedly deny knowing each other. That prevented defense lawyers from knowing Povish was a paid informant and attacking his credibility before jurors, the commission charged.

It turned out Povish tipped off police to the drug buy, then took duffel bags filled with cocaine from one of the defendants before police moved in.

Povish later told jurors he had never met the cops before his arrest and did not know what was in the duffel bags. Both claims were untrue but went uncorrected by the prosecutor, the commission noted.

In her closing arguments to jurors, Plants characterized Povish and another witness as "dummies who were stupid enough to be carriers, the mules," which the commission argued misled jurors about his true role in helping police.

The commission said Plants told Wayne County Circuit Judge Mary Waterstone on two occasions -- privately, without notifying the defense -- that the cops and the informant had lied.

"He knowingly committed perjury to protect the identification of the" informant, Plants told the judge in one instance. "I let the perjury happen."

Waterstone took no action but said she understood the perjury was committed to protect the informant's life. The commission pointedly noted that prosecutors had produced no evidence Povish's life would be in danger if his role in the bust was disclosed.

The prosecutor's office subsequently filed a confession of error, conceding the false testimony, in the case of one of the defendants, Richard Pena, 49, after he was convicted. The Court of Appeals sent the case back to Wayne County for retrial. Pena then pleaded guilty and was sentenced to 5-15 years in prison.

The trial of the other defendant, Alexander Aceval, 41, ended with a hung jury.

He pleaded guilty to drug charges during a second trial and was sentenced to 10-15 years in

prison.

Defendant's lawyer upset

Both imprisoned men nevertheless appealed. Two weeks ago, the Michigan Supreme Court sent Aceval's case back to the appeals court to decide if the perjured testimony denied his right to a fair trial.

Aceval's lawyer, David Moffitt of Bingham Farms, called the episode "the worst instance of police, prosecutorial and judicial misconduct" he has seen. "Not only did they attempt to unfairly convict my client, they covered up and lied in the face of accusations about the scheme."

There was no immediate comment from Inkster police officials. Rehtzigel declined to comment. McArthur couldn't be reached.

Legal experts said the charges are serious.

"If a prosecutor violates a legal or ethical duty, the criminal justice system is perverted," said Larry Dubin, an ethics professor at University of Detroit Mercy School of Law.

Farmington Hills lawyer Michael Schwartz, grievance administrator for the commission in 1979-88, said: "The normal everyday result should be disbarment. But the mitigation is that she wasn't doing it for herself. She was trying to protect a confidential informant."

He said Waterstone should have declared a mistrial or told jurors that witnesses had lied once Plants told her of the lies.

"A judge simply cannot sit by and do nothing," Schwartz said. She "has to make sure the rules of ethics are adhered to."

Waterstone, who retired in December 2006, did not return calls. It's unclear if the matter ever went before the Michigan Judicial Tenure Commission, which investigates judges for alleged misconduct.

Contact **DAVID ASHENFELTER** at dashenfelter@freepress.com. Staff writer Joe Swickard contributed to this report.

In your voice

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Dave1234 wrote:

Intelligent: Yes, perjury is wrong, I'm not excusing that. But look at the whole picture. I.e. people lie in court everyday!! And contrary to what you may believe, the lying is usually done by the defense. For example: I swear I wasn't speeding! I swear I wasn't drunk! And if you follow the EMU murder trial. I didn't kill her! My semen was on her because I masturbated on her and didn't know she was dead at the time. That lie is ok though right? People lie everyday, which doesn't make it right, but it happens. Life will go on! Find a better system and then bring it to the table. Ya, the prosecutor made a mistake, but lets move on. She will be held accountable and it will have nothing to do with the fact that you wrote into the free press to express your dis like of a situation. Just as long as the drug dealer isn't in your neighborhood right?

4/4/2008 6:11:01 PM

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Intelligent wrote:

These lies were evidence

4/3/2008 9:43:55 PM

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Intelligent wrote:

Dave the informant got a percentage based on the value of the bust. Plants used the information she coached the liers to testify to in her closing arguement. In MI any lie inder oath is perjury regardless of how power hunger small minded people who justify them think. YOU ARE WRONG EVEN WITH OUR REPUBLICAN SUPREME COURT MAKING THE LAW!!! PATHETIC and SHAMEFUL. Plants is suspended with her taxpayer salary. At the sametime Worthy is crying for more money to prosecute KK. Even you must see a issue with that.

4/3/2008 9:42:31 PM

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Dave1234 wrote:

Mymee: This is the news paper!! Freepress! We never know all the facts. The only thing we know is what they think will sell papers. Did you also miss the part in the story that says they plead GUILTY after this information was known? Also, the informant was brought forward as a witness and was available to be questioned by the defense. So if he/she brought the drugs in and was setting up these poor drug dealers then their defense had a change to question him on that very possibility.

4/3/2008 5:37:08 PM

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ThisCrazyWorld wrote:

For everyone who thinks that the Kwame situation is being used to get these the judge, prosecutor and cops off, you are Wrong, it's just the opposite, I've not doubt that this is a ploy by Kwame's Klowns to make sure he gets off too!!

4/3/2008 10:06:01 AM

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