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Prosecution loses key expert witness in vehicular homicide case

By Ed Treleven
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A long-running vehicular homicide case against a Marshall man took a serious blow Thursday when a Dane County judge said the prosecutors' key expert witness cannot testify at the trial.

Circuit Judge Daniel Moeser

barred crash analyst Robert Krenz from testifying at the trial of Adam Raisbeck, 20. Raisbeck was charged nearly three years ago with homicide by negligent driving for causing the death of Jerry Pageloff, 33, on a rural Marshall road on Sept. 1, 2001.

Moeser's decision was punishment for prosecutors' failure to promptly turn over e-mail

messages between Krenz and Assistant District Attorney Paul Humphrey, who was assigned to the case at the time. In the messages, Krenz said that Humphrey could say that Raisbeck had applied, but not locked, his brakes before his car left Missouri Road and rolled over in a soybean field.

Despite the messages, Hum-

phrey continued to say in court and in a letter to Raisbeck's attorney, Joe Sommers, that Krenz did not know whether Raisbeck had applied the brakes before the crash. Raisbeck's speed has been a key issue in the case.

Moeser ruled that the failure to promptly turn over the e-mails was a violation of discovery — the process by which op-

posing sides in a legal dispute share information before a case is tried.

"The state's case is obviously very damaged," Sommers said. "I'm appreciative of what Judge Moeser did."

Deputy District Attorneys Judy Schwaermle and Tim Verhoff, who took over the case from Humphrey earlier this-

year, declined comment. Moeser put the case on hold at prosecutors' request so they can appeal to the state 4th District Court of Appeals.

The case had been scheduled to go to trial on Nov. 15.

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Judge: Expert may not testify

Rules prosecutor misled defense

By Mike Miller

The Capital Times

The prosecution in the Adam Raisbeck vehicular homicide case received a major setback Thursday when a judge ruled that a prosecutor had misled the defense on what its expert would say. The judge also ruled that the expert could not be called to testify at trial.

It was the latest twist in the strange case, which has yet to go to trial although the accident leading to the charges against Raisbeck, 20, of Marshall, occurred more than three years ago.

In the latest development, Dane County Circuit Judge Daniel Moeser said Assistant District Attorney Paul Humphrey distorted the position of his expert witness, Robert Krenz, on whether Raisbeck used his brakes just before the fatal crash. "I think it is quite misleading," Moeser said of Humphrey's description of what Krenz would have said at trial.

Under the rules of discovery, the prosecution and defense trade summaries of what experts contend happened in such crashes. At issue was an exchange of e-mails between then-prosecutor Humphrey and Krenz, his accident reconstruction expert. In one e-mail, Krenz said to Humphrey that instead of saying Raisbeck "did not brake," it would be better to say "he did not lock his brakes."

Humphrey, in an e-mail to defense attorney Joseph Sommers, phrased all of that differently. Humphrey said, "I don't know whether Mr. Krenz determined whether Mr. Raisbeck applied his brakes," but that he determined "he did not lock his

brakes."

Moeser said that was misleading enough to warrant sanctions against the prosecution and said the sanction would be that Krenz could not testify at trial.

That leaves the state with either having to appeal Moeser's decision before trial, or trying to get another expert to testify about the accident.

Raisbeck is charged with homicide by negligent operation of a motor vehicle for a Sept. 1, 2001, accident which killed Jerry Pageloff II, 33, also of Marshall, and with causing injury by negligent driving for injuries sustained by another passenger, Andre Ross.

Thursday's action was not the first time in the case that Humphrey has been found by a judge to have misled the defense or the court. Former Dane County Circuit Judge Paul Higginbotham, who was assigned to the Raisbeck case until he was appointed to the Court of Appeals, earlier ruled that Humphrey had lied in an affidavit.

Sommers also has raised the ire of judges, and at one hearing when the case was assigned to Reserve Judge Robert Pekowsky, shouted and yelled at the judge that he was railroading his client and was running a kangaroo court. Pekowsky found Sommers in contempt for his outburst and is thought to have turned the matter over to the Office of Lawyer Regulation.

The trial, which has been delayed several times in the past, is set for jury selection on Nov. 15.

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