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Lawyer seeks rare testimony of judges and prosecutors in sex abuse case

by Patrick Cliff / The Bulletin/

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The lawyer for David Lee Simmons wants two circuit court judges, a district attorney and a deputy district attorney to testify on behalf of Simmons, who faces misdemeanor sex abuse charges.

A request to have judges and prosecutors testify for the defense is rare, the state Attorney General's Office and Simmons' lawyer agree.

But for Simmons, it is just the latest twist in an unusual case.

Simmons, who lived in Antelope, went to jail in 2006 even though a grand jury heard evidence in the case and ruled he had not committed a crime.

And while lawyers agree that requesting judges and prosecutors to testify for the defense is rare, they disagree about its validity.

Simmons was originally arrested in September 2006, when he was 17, on suspicion of rape and sodomy involving his 14-year-old high school girlfriend. He pleaded guilty in October of the same year. But the charges should never have been filed. A grand jury had already heard evidence in the case and decided not to issue an indictment against Simmons.

No one involved in the case — judge, prosecution or defense lawyer — noticed the grand jury's decision. Once the error was discovered, all parties agreed to throw out the case. In effect, it had never happened. But Simmons had already served a 30-day jail sentence.

Then, in December 2006, Jefferson County prosecutors filed six misdemeanor counts of sex abuse against Simmons based on the same investigation.

Steven Richkind, Simmons' attorney, said the officials need to testify to describe the original error and how the misdemeanor charges were filed, but the Attorney General's Office argued the judges and prosecutors can offer no new evidence to help Simmons.

The two sides will have to wait longer to learn whether Simmons' lawyer can call the officials to testify for the defense.

In a hearing on that issue Thursday, Deschutes County Circuit Court Judge Stephen Tiktin recused himself from the case.

"I hope (the next judge) is not from this part of the state," Tiktin said.

Tiktin announced his recusal after Richkind confirmed that in his court filings, he says the judges, prosecutors and other officials jointly participated in depriving Simmons of his rights. They did this by failing to read the grand jury's decision and by prosecuting Simmons for the second time.

With the judge recusing himself, the issue of who will testify may remain in limbo until the state assigns another judge to the case. And the hearing to dismiss new charges against Simmons will also be on hold.

"These are the guys who always call witnesses and make people testify," Richkind said, referring to the prosecutors and judges. "When the tables are turned, they're looking for any rock or bush to hide behind."

Richkind wants Jefferson County and Crook County Circuit Court judges George Neilson and Daniel Ahern, Jefferson County District Attorney Peter Deuel and Jefferson County Deputy District Attorney Steven Leriche to testify and tell how the second round of charges came to be.

"All of them screwed up," Richkind said. "That shocks the conscious."

The Attorney General's Office, which took over prosecution of the Simmons case to avoid any conflict of interest, argues there isn't anything that justifies the unusual subpoenas, spokesman Jake Weigler said. The state sought to quash the subpoenas at Thursday's hearing.

"There's been no evidence or facts offered to support their contention," Weigler said referring to Simmons' request. "We don't think they offer a viable defense."