

Withheld evidence muddies '05 case

In tossing guilty pleas in case of abandoned corpse, a judge cites prosecutor misconduct.

By MARK MORRIS
The Kansas City Star

A Jackson County judge cited prosecutorial misconduct Tuesday when she threw out the guilty pleas of a man convicted in 2005 of abandoning a woman's body in his Jeep.

Assistant Prosecutor Dan Miller withheld hundreds of pages of investigative records from Matthew Davis' defense lawyers and "deliberately and fraudulently

mised the court and defense counsel," Judge Edith L. Messina wrote.

"As a result," Messina wrote in her ruling, "a continuing fraud was perpetrated upon the trial and motion courts."

Her order represents the third time in recent years that courts have criticized the prosecutor's office for not sharing all its evidence with defense lawyers.

Jackson County Prosecutor Jim Kanatzar responded to Messina's ruling by asking for an investigation by state authorities who oversee lawyer discipline. Kanatzar said he has taken Miller off the Davis case.

"Like any other investigation, we'll wait to see the results before deciding what to do," Kanatzar said. "He will continue to be an assistant prosecuting attorney and take on any cases I deem appropriate."



Miller

JUDGE: Jackson County prosecu

Miller acknowledged withholding some records related to an ongoing homicide investigation into McGathney's death.

"I felt my conduct was above board," Miller said. "I released what I was able to release and I did not do a close review of the investigation. If the judge disagrees with my interpretation of the discovery rules, that's one thing, but to say it was fraudulent conduct, I disagree with strongly."

Davis was sentenced to 22 years — seven years for abandoning a corpse and 15 years for three counts of possession of a controlled substance.

McGathney, 22, died of a drug overdose in Davis' apartment in June 2004. He loaded her body into his Jeep, parked it in the River Market area and let it



Davis

decompose for days. Davis' lawyer never had concluded that he contracted a lawyer and discussed the body with him, Messina said in her order that the records withheld from Davis' criminal defense attorney contained evidence supporting that claim. She noted that Davis' attorney had been given the information would have provided a complete defense to the charge of abandoning the body.

McGathney was the daughter of Parkville resident Boyd McGathney, a member of the Crime Stoppers' Plus Hotline board of directors, and Debra Augustinae of Waterloo, Ill.

"It's very frustrating," Augustine said Wednesday. "It's five years later and it's kind of like a bad dream. It's a nightmare."

Because of the withheld evidence, Davis' guilty plea was neither voluntary or intelli-

gent, Messina concluded.

Defense lawyer Pat Peters said his client has spent more than \$100,000 fighting his case and called for Davis' immediate release. Peters said he has spent two years arguing the evidence issue in court, which he described as an "outrage of its own."

"The Jackson County prosecutor learned about this and spent two years defending the indefensible," Peters said. "Every day Matt Davis stays incarcerated is additional damage."

Peters said his client was thrilled to hear of the ruling.

"The touching part was he said, 'I just want to go spend time with my two little girls,'" Peters said.

Miller is an experienced, well-regarded prosecutor specializing in violent crimes, and has been with the office since the early 1990s, Kanatzar said. In addition to his work in state courts, Miller helped prosecute five people in federal court in the deaths of six Kansas City firefighters in 1988.

Miller's future now lies in the hands of the state Office of

rs' evidence-sharing faulted again



McGathney

Missouri's chief disciplinary counsel, said that disciplinary measures could range from a written admonition issued by his office to disbarment, which would be ordered by the Missouri Supreme Court.

Messina's ruling is the latest in a series of cases in which courts have criticized how Jackson County prosecutors have shared evidence.

Last year, former lawyer Richard Buchli II was released from prison as prosecutors prepared to retry him in the May 2000 murder of his law partner, Richard Armitage.

A Missouri appeals court earlier had thrown out his 2002 first-degree murder conviction because prosecutors failed to disclose a building surveillance videotape that might have exonerated him.

Buchli, who was serving a life sentence, is scheduled for a new trial in September.

Also in 2008, a federal jury awarded \$16 million to Theodore W. White Jr., who was tried three times in Jackson County before a jury acquitted him on child molestation charges. That jury learned that the investigating officer and White's wife had become romantically involved before the first trial.

Prosecutors later acknowledged that they knew the couple had seen each other so-

Chief Disciplinary Counsel, which investigates allegations of lawyer misconduct.

Speaking generally,

Alan Pratzel, Missouri's chief disciplinary counsel, said that disciplinary measures could range from a written admonition issued by his office to disbarment, which would be ordered by the Missouri Supreme Court.

Messina's ruling is the latest in a series of cases in which courts have criticized how Jackson County prosecutors have shared evidence.

Last year, former lawyer Richard Buchli II was released from prison as prosecutors prepared to retry him in the May 2000 murder of his law partner, Richard Armitage.

A Missouri appeals court earlier had thrown out his 2002 first-degree murder conviction because prosecutors failed to disclose a building surveillance videotape that might have exonerated him.

Buchli, who was serving a life sentence, is scheduled for a new trial in September.

Also in 2008, a federal jury awarded \$16 million to Theodore W. White Jr., who was tried three times in Jackson County before a jury acquitted him on child molestation charges. That jury learned that the investigating officer and White's wife had become romantically involved before the first trial.

Prosecutors later acknowledged that they knew the couple had seen each other so-

cially, but did not disclose it to defense lawyers because they were told it was a one-time meeting for drinks or dinner.

And late last week, lawyer Dan Ross filed a motion with Messina, asking for sanctions against prosecutors for allegedly withholding evidence in the case of Gary S. Shephard, who is accused of second-degree murder and child abuse in the death of his 13-month-old stepson.

Ross contends that, through his own investigation, he obtained medical examiners' documents that Miller never disclosed to him. One of the reports, Ross contended, contained evidence supporting Shephard's contention that his stepson died accidentally after he tried to administer CPR at the urging of 911 operators. The tape of that 911 call also is missing, Ross noted.

"When I do not get all those reports, the defense and justice suffer," Ross said Wednesday.

Two years ago, a Jackson County judge ruled that Miller did not improperly withhold evidence in a 1995 murder case involving the drive-by shooting of a baby. Judge Jay Daugherty found there was no evidence that Miller withheld reports, saying it was more likely that defense lawyers had lost them.

In testimony during hearings on the Matt Davis issue, Miller suggested that the information he withheld was part of an ongoing murder investigation, an explanation that Messina wrote "defies logic."

"Mr. Miller's suggestion that a prosecutor can determine whether material may be withheld because, in the mind of

the prosecutor, it is not relevant has been resoundingly rejected by the court of appeals," Messina wrote.

Messina wrote that she soon would begin considering how to penalize the prosecutor's office for the discovery violations. She warned lawyers that such litigation likely would be complex. Generally, when guilty pleas and convictions are thrown out, a defendant merely returns to the same position he was in before the guilty plea — that is, facing a trial.

In this case, however, Messina noted that Davis already has paid three criminal lawyers for years and also has faced a civil case in which he was ordered to pay \$500,000 to McGathney's parents.

"Due to the fraud perpetrated by the prosecutor, to place (Davis) in the position he would have been prior to the fraud will be difficult," Messina wrote.

Kanatzar said that shortly after taking office he moved to tighten record-keeping so that lawyers would know exactly what documents had been shared and when. Such disputes arose because lawyers couldn't document exactly what had been turned over, he said.

"This is a professionally run prosecutor's office that handles one of the highest case-loads in the state," Kanatzar said.

"I can speak for every attorney in our office that they diligently follow all the rules of criminal procedure."

To contact Mark Morris, call 816-234-4310 or send e-mail to mmorris@kcstar.com.