



Judge tosses murder charge

■ Citing misconduct, Berkowitz rules that homicide prosecutor prejudiced grand jury when pursuing case

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A Nassau County judge threw out a murder indictment yesterday, saying the county's top homicide prosecutor improperly tried to influence the grand jury in the case.

Judge Meryl Berkowitz said in her decision that Mitchell Benson, chief of District Attorney Kathleen Rice's Major Offense Bureau, prejudiced the grand jury by aggressively interrogating the accused on videotape and showing that tape to the panel. Normally, prosecutors are not allowed to express any opinion to a grand jury panel.

Prosecutors said they disagree vehemently with Berkowitz' decision, and are looking into a possible appeal. Otherwise, they will have to start their case from scratch, presenting it to a new grand jury, this time without the videotape.



NEWSDAY PHOTO / DICK YARWOOD

Prosecutor Mitchell Benson

William Petrillo, the lawyer for defendant Charlene Blackman, said Benson's actions were inexcusable.

"The misconduct . . . at the hearing gave the judge no choice but to dismiss the indictment," said Petrillo, of Rockville Centre.

Prosecutors said Blackman, 41, of West Babylon, conspired with Ricardo Marsden to kill Peter Jones at his Freeport home on Sept. 3, 2006. They say she went to visit Jones, then left the door unlocked so Marsden could enter after her and shoot him. Blackman admitted that she went with Marsden to Jones' house, but said she did so only after Mars-



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Judge Meryl Berkowitz

den threatened her. Marsden's murder case is pending.

Police had initially treated Blackman as a witness — not a suspect — in the case.

Berkowitz had issued an earlier decision based on written arguments in which she said that, while she found Benson's conduct "troubling," there was not enough to throw out the indictment. She agreed to hold a hearing to explore the issue further.

"The judge upheld the grand jury proceeding in June and she reversed herself in November," said Eric Phillips, a spokesman for Rice. "We believe she is wrong on the law and we won't back down when it comes to fighting for the openness and



NEWSDAY PHOTO / DICK YARWOOD

Charlene Blackman, whose murder indictment was quashed

transparency that videotaping gives the public."

Petrillo said during the hearings that the only reason prosecutors showed the tape to the grand jury was so jurors could see Benson interrogating Blackman, calling her a liar.

In her latest ruling, Berkowitz said it was wrong to show the tape, including Benson's accusation, to grand jurors.

Berkowitz is the third judge this year to throw out a criminal indictment or indictments

because of mistakes made by prosecutors in the grand jury. It is the first time a judge has accused a prosecutor of acting intentionally.

In March, Judge Frank Gulotta Jr. dismissed 26 indictments after Grand Jury Bureau Chief Donald Berk gave improper instructions to a grand jury panel. In September, Judge Alan Honorof dismissed another indictment based on similar bad instructions by Berk.