

# Adjourned

## Prosecutor appeals retrial in '67 murder

By Joanne Maliszewski  
staff writer

A scheduled retrial in Oakland County Circuit Court for former Farmington Hills resident John Merlo — convicted 19 years ago of first-degree murder in the shooting death of his wife — has been adjourned.

Circuit Judge Fred Mester adjourned Merlo's retrial March 7, pending an appeal before the U.S. Court of Appeals in Cincinnati, said assistant prosecutor Gary Chopp, assigned to prosecute Merlo again. Merlo's retrial was scheduled to begin March 10.

John Merlo, then 25, shot and killed his 18-year-old estranged wife, Sharon, on Jan. 6, 1967, as she was working in a beauty shop on 8 Mile Road, in what was then Farmington Township. Merlo was convicted of first-degree murder in Oakland County Circuit Court in the death of his wife.

The Michigan Supreme Court twice upheld Merlo's conviction. After a first unsuccessful attempt in federal court to win a new trial, Merlo's request was granted by U.S. District Judge Stewart Newblatt on Dec. 27, 1985.

When Newblatt granted Merlo's request, the Oakland County Prosecutor's Office began working to prevent the retrial with an appeal to the U.S. Court of Appeals in Cincinnati.

CHOPP REQUESTED adjournment while the federal appeals court rules on his appeal requesting the court to overturn a federal judge's order for a retrial.

"The federal court of appeals said they wouldn't stop it (the retrial). But they said if the trial judge (Mester) wanted to adjourn it while the appeals court decides, he could," Chopp said.

When the appeals court takes action on Chopp's request to overturn the federal order for a retrial, Merlo's trial must begin within 48 hours following the decision — if the appeals court rules in Merlo's favor, Chopp said.

"That's not etched in granite. I hope we have more time than that to get everybody here," Chopp said.



Former Farmington Township resident John Merlo was 25 years old in January 1967 when he shot to death his 18-year-old estranged wife Sharon. Merlo was convicted of first-degree murder in Oakland County Circuit Court. On Dec. 27, 1985, Merlo was granted a retrial.

Defense attorney Frank Lawrence of Livonia, who has adopted a policy of not discussing the case, argued against the adjournment, Chopp said.

When Newblatt ordered a new trial, he included a condition. If Merlo was not retried within 90 days of Newblatt's Dec. 27 order, "he must be

unconditionally released to go free," Chopp said.

THAT STIPULATION will not affect the case, despite the adjournment, because regardless of what the federal courts do, Merlo is being held without bond as a state prisoner, Chopp said.

Although appeals generally take

some time before they are decided, Chopp said, the appeals court "is handling it (the appeal) in an expedited way."

Whether Merlo killed his wife was never a major question in the first trial and won't be in the scheduled retrial. Merlo shot his wife before six beauty shop customers, including a 5-year-old boy, investigators said.

"The only issue was whether it was first- or second-degree murder or manslaughter," Chopp said in February. "He (Merlo) wants to be found (guilty) on less than first-degree so he can get credit for his prison time and seek parole. He is trying to make an issue on his state of mind at the time."

Merlo won his new trial by arguing that the judge at his first trial gave the jury bad instructions. The judge told the jury Merlo had to be convicted of first-degree murder unless they felt he had proved he did not intend to kill his wife when he entered the beauty shop.

IN 1979, however, a new ruling was handed down that "said a certain type of instruction was not OK," Chopp said. "That (the 1979 ruling) is the only reason, according to Newblatt, that Merlo is getting a new trial."

If Merlo had been convicted of second-degree murder — based on his argument that when he entered the shop he did not intend to kill his wife, but later did so after becoming enraged — he could be out of prison today on parole. Second-degree murder does not carry a sentence of life imprisonment.

In its appeal, the Oakland County Prosecutor's Office is arguing two major issues. The first is that the judge's instructions to the jury in 1967 were "a 'harmless error.'"

"This didn't cause the jury to find him (Merlo) guilty," Chopp said.

The second argument is that "the law should not be retroactive — meaning a 1967 verdict should not be changed because of a change in jury instructions in 1979," Chopp said.

The U.S. Supreme Court is still considering the question of retroactivity of law, Chopp added.

## Focus is on trailer park

Thermington Hills Planning Commission scheduled a public hearing for 7 p.m. Thursday, March 20, to receive residents' comments on a request to rezone four lots, including the Oakdale Mobile Home Park, on Orchard Lake Road.

The hearing will be in Farmington Hills council chambers, 31555 11 Mile.

Mel Kaftan, owner of the 29 acres fronting Orchard Lake, is seeking rezoning the property on the east side of Orchard Lake, south of 11 Mile, from single-family residential (RA-1) to medium-density, multi-family (RC-2). Farmington Hills Planner Ed Gardiner said, "RC-2 zone allows a building density of 10 units an acre."

Theming requested by Kaftan allows cluster homes. But preliminary call for apartments that look like cluster homes, said Harold Wolke, Kaftan's attorney.

IF THE Farmington Hills City Council — on planning commissioners' recommendation — approves the rezoning request, the mobile home park would be shut down. "They will be given an opportunity to relocate," Wolke said.

Renters and owners of mobile homes in the park would be notified that the park would be shutting down, he added.

Although planning commissioners are revising the city's master zoning plan along Orchard Lake, Kaftan's rezoning request does not conform to what is proposed along the thoroughfare, Gardiner said.

The mobile home park, while not a single-family residential use as zoned in that area, has been at that location since at least the early 1950s — before city zoning ordinances — and has been grandfathered in as a non-conforming use, Gardiner said.

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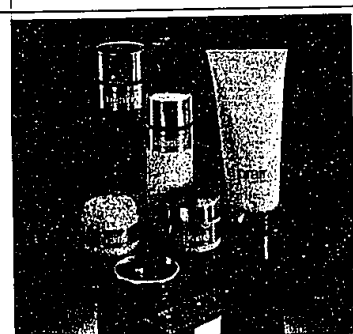
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