

# Judge raps 'entrapment' of addict

By PAT MURPHY  
STAFF WRITER

Finding the word of a convicted drug dealer to be more credible than the testimony of a Farmington Hills police officer, an Oakland Circuit Court judge has ordered a charge of delivering cocaine dismissed.

The dismissal by Judge David F. Breck — an outspoken critic of Michigan's mandatory drug penalties, the toughest in the nation — could mean freedom for David G. Ryan, of the Waikiki Lake area who has been incarcerated since 1988.

But the Oakland County prosecutor's office has filed a motion to block the release until it can appeal the judge's ruling.

"I don't know what will happen," Breck said Friday. "As far as I'm concerned, the defendant could have been released Wednesday."

Even if Ryan is not freed, however, Breck's opinion is likely to kick off a fire storm of criticism in the police community. "Here's a judge accepting the word of a convicted drug dealer over the word of a sworn police officer," said Oakland County chief assistant prosecutor Lawrence Bunting.

Last week's opinion is not the first time Breck has made a controversial decision involving Ryan. In 1988 after Ryan, then 35, was convicted, Breck refused to impose the mandatory sentence required by law. He considered it as "cruel or unusual punishment" — something he said is prohibited under the state and federal constitutions.

Breck sentenced Ryan to less than eight years in prison. The Michigan Supreme Court, however, ruled Breck had to comply with state law and ordered him to impose the mandatory sentence of life in prison without parole.

In last week's opinion, the judge was critical of the attorneys who represented Ryan and said the actions of police amounted to "entrapment by escalation."

The 17-page opinion was based on an evidentiary hearing between January and April 1995, during which Breck took testimony from a number of witnesses, including Ryan, Summers, the defendant's attorneys and expert witnesses.

Testimony at that hearing outlined how Ryan, then married and the father of three, had become addicted to cocaine in the late summer of 1987. That's about when a friend, identified only as "Marie," introduced him to Craig Summers, then a Farmington Hills officer on loan to the Oakland County Narcotics Enforcement Team (NET).

At the time, Ryan generally sold cocaine in quantities of an ounce or less, according to testimony. That changed over the next weeks, as the pair had numerous dealings, often preceded by Ryan keeping Summers on his pager.

Three times in October 1987, Summers purchased cocaine from Ryan in quantities of a fourth of an ounce or less, according to testimony in the 1995 evidentiary hearing. In November 1987, the undercover officer purchased two ounces of cocaine for \$1,850.

Ryan did not receive cash for his participation, Breck noted in his opinion. Instead his profit was a portion of the drugs that he used to feed his own habit that had already destroyed his family and business life.

"Bearing Summers and receiving cocaine as a result was

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David F. Breck

similar to a rat pressing a button bar and receiving food," Breck wrote. "Mr. Ryan, who was seriously addicted, just had to keep Summers and he would obtain 'free cocaine' from him."

According to court records, Ryan had agreed to sell Summers a kilo of cocaine for \$24,000 on Dec. 3. But when Ryan, while talking on the phone with his supplier, expressed "Breck wrote," and wanted to back out of the deal — the officer allegedly called him "chicken" and offered to increase the price by \$1,000, Ryan testified.

Having decided to go through with the deal, according to court records, the pair went to the place at which the drugs were located. When Ryan handed the cocaine to Summers, he field tested the content then arrested Ryan.

When contacted about the judge's ruling Friday, officer Summers said that is not the way the transaction occurred. He denied calling Ryan any names or offering any additional money.

"If anything, it was the supplier (on the telephone) who was reluctant," said Summers. "Ryan was the one who wanted the sale to go through."

Summers, now a sergeant with the Farmington Hills police, said he was aware of Breck's decision, but had not yet read it. He declined to comment further until he read the opinion and talked with prosecutors.

"It is this court's conclusion that Ryan is the more credible witness," Breck wrote. "... based upon his observations of the defendant's and Summers' while testifying, their testimony, and upon defendant's polygraph test results."

"However, this court wants to make it clear even without the benefit of the polygraph, this court finds defendant to have been a credible witness and Officer Summers to have been not credible," Breck said in his opinion.

Focusing on Ryan's defense counsel, Breck said, "The defendant went to trial completely unprepared and defenseless."

The judge agreed with John Minock, then president of the Criminal Defense Attorneys of Michigan, who was an expert witness in the 1995 evidentiary hearing. Minock testified that representation for Riddle was deficient by failing to raise the defense of entrapment by escalation, "which was the only potential theory of defense."

Ryan was initially represented by defense attorney Klenh Kemel. His trial attorney was Charles Riddle.

The first meeting at which he and Riddle discussed strategy, Ryan testified at the evidentiary hearing, was on the day of the trial. Ryan testified Riddle advised him to "head for the hills," which he interpreted as meaning the attorney was advising him to flee.

Riddle, who has an office in Warren, was not available for comment.

Kemel, whose office is in Farmington, said he remembers the case, although he did not tes-

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Lawrence Bunting

tify at the evidentiary hearing. He had not, however, seen Breck's opinion.

On the allegation that he and Riddle had not adequately repre-

sented Ryan by raising the only defense available, Kemel said he does not believe police entrapped his client. "Ryan was keeping the officer constantly," said the attorney. "He really wanted to sell the drugs."

The most recent decision came out of an evidentiary hearing between January 25 and April 26, 1995, followed by Birmingham attorney Neal H. Fink after Ryan had exhausted his appellate remedies.

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## TO CORRECTION June 13 Circular

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Attorney for Plaintiff: Kenneth E. Konop, P.C., 1400 N. Woodward, Suite 1900, Bloomfield Hills, Michigan 48304. Telephone: (810) 647-5000. Personal Representation: John H. Grant, 39027 Richard Avenue, Michigan 48156. Newspaper: Observer & Examiner. Public Hearing: June 17, 1996.

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