

Rape suspect asks quick trial in witness-intimidation case

By MARK BERGSTROM
Sentinel staff writer

SANTA CRUZ — The re-trial of South African rape suspect David Tolofane was put off a week Wednesday so he can first be tried on an allegation that he tried to dissuade a witness.

The postponement left prosecution and defense attorneys arguing unusual positions.

Tolofane's attorney, Lisa Martin, claims the intimidation charge is foolishness and wants to go to trial on that issue in Municipal Court before the second rape trial begins.

Chief Deputy District Attorney Jon Hopkins says his office does not, and will not, go to trial on that charge first.

At issue is whether Tolofane, who is accused of raping a 26-year-old Santa Cruz woman in September 1987, tried to dissuade a witness who testified against him at his first rape trial. That trial ended with the jury deadlocked 8-4 for conviction.

The District Attorney's Office wants to be able to tell a new jury that Tolofane tried to get the witness to change her story following that first trial.

Hopkins thinks a trial on the

intimidation charge should follow the second rape trial.

Martin says the district attorney's own investigative reports show that the witness never felt threatened or intimidated and is sure she can get the charge dismissed. Then, she says, that allegation could not be used in the new rape trial.

The witness was a friend of Tolofane and a woman who had hired him to do some yardwork at her Bonny Doon home on the day of the rape.

She testified that she saw Tolofane riding his bicycle away from her house at a time which would have put him in the area of the Grey Whale Ranch, where the rape was committed.

Her testimony contradicted Tolofane's estimate of when he finished work and returned to the UC Santa Cruz campus, where he was a student in the Farm and Garden Project.

The District Attorney's Office claims that Tolofane called the woman and threatened her after the trial.

Martin maintains it was a friendly conversation and that Tolofane merely asked her if she was sure of

her time estimate.

Martin accuses the prosecution of filing the charge to try to make Tolofane look guilty before the re-trial.

That misdemeanor charge had been trailing the rape case on the court calendar, but earlier this month Tolofane withdrew his time waiver and demanded a speedy trial on the intimidation charge.

Municipal Court Judge Tom Kelly ruled Tuesday that the intimidation case now could take priority if the rape trial in Superior Court could be postponed. And that's what Judge Tom Black did Wednesday, despite objections by Hopkins.

Hopkins said allowing the misdemeanor case to go first is like "letting the tail wag the dog."

After court, Hopkins said he believes testimony about the phone call is admissible in the rape trial regardless of what happens to the intimidation charge.

"As far as we're concerned, he (Tolofane) made a threat. That's admissible evidence," he said.

Hopkins said his office will not go to trial in Municipal Court first, no matter what, and will drop the case if need be.