

Thu, January 29, 2009 - 11:34:00

From the newsroom of The Express-Times, Easton, Pennsylvania, Thursday, January 29, 2009

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Northampton County Judge Stephen Baratta declares mistrial after testimony from deaf victim is given via instant messaging

By SARAH CASSI
The Express-Times

EASTON | A Northampton County judge declared a mistrial Wednesday for a New Jersey man facing burglary and assault charges after a deaf victim testified using instant messenger.

Iman Sharif, 36, of East Orange, N.J., is accused of breaking into Jennifer Davis' Easton apartment two times last February and punching her in the nose during the first break-in.

Davis, who lives in Allentown now, said she communicates primarily through sign language, but an interpreter could not be found in time for this week's trial.

The trial was scheduled after defense attorney Christopher Shipman filed a motion for his client's right to a speedy trial; Sharif has been in prison since last February.

So after almost two hours of working out the logistics Wednesday morning, Davis started testifying using the county's internal IM system, under the screen name of First Deputy District Attorney Terry Houck.

Under the arduous process, prosecutor Patricia Mulqueen would ask a question and Judge Stephen Baratta's law clerk would type the question to the victim on a laptop.

Davis, sitting in front of a different laptop, would type her answer and the law clerk would read it aloud. The IM conversation was projected on a large screen in the courtroom for the jury to see.

But Davis' grammar and sentence structure were difficult to understand, and after more than one hour of testimony, Baratta declared a mistrial.

"This is direct examination. I don't see how we can have cross-examination" and that violates a defendant's right to confront the accuser, Baratta said.

Baratta said Davis' difficulty typing also meant her answers were not spontaneous but that he didn't blame her. At times Davis had trouble with spelling or choosing the right word and would stop mid-answer and start over.

"It's just begging to be a mistrial, if not by me then by the Superior Court," Baratta said.

Answering questions written in a notebook, Davis said the typing was difficult and signing is

much easier for her.

Prosecutors have 90 days starting from Wednesday to retry Sharif.

Court Administrator Jim Onembo said it takes three weeks to secure an interpreter, and he may have one ready in time for the court's next civil trial week, which starts Feb. 23.

"There's no short solution," Onembo said.

Davis testified Sharif spoke to her Feb. 13, 2008, when she walking down Northampton Street with her son. Davis said she told Sharif she was deaf.

Later that night Davis said Sharif broke into her home and punched her in the nose.

Davis went to the police station Feb. 20 and identified Sharif in a photo lineup. When she came home, Davis found her bathroom window smashed.

According to court papers, police said Sharif was arrested for breaking into the same apartment two years earlier.

Sharif is charged with burglary, stalking, criminal trespass, simple assault and harassment.

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