

## No 'high-five' video for rape trial jury

Allegedly shows defense got witness to recant

By John Petrick  
Staff Writer

A state judge in Paterson on Monday barred a courthouse security video from being introduced as evidence in an upcoming rape trial though the prosecutors say the video indicates the defense persuaded the alleged victim to recant her accusations.

The security video shows a man appearing to be the South Orange defense attorney Timothy Smith "high fiving" the alleged sex assault victim as she emerged from recanting her allegations before state Superior Court Judge Ernest M. Caposela in 2008.

Passaic County Senior Assistant Prosecutor Christopher Freid argued that the video should be allowed as evidence in the April trial of Passaic resident William Beltran because it has "probative value." Beltran and his wife allegedly had an ongoing sexual relationship with a 15-year-old girl in 2004. The girl recanted her accusations after a series of breakfast meetings paid for by a defense investigator, according to Freid. The girl later reaffirmed her accusations.

Freid asked Superior Court Judge Ernest M. Caposela in Paterson to allow the video into evidence at trial so that the prosecution can contextualize why the girl recanted.

Freid argued that the defense will bring up her recanting during cross-examination as a way to erode her credibility.

Caposela, Freid and defense attorney Timothy Smith of South Orange viewed the brief security video during Monday's pretrial hearing.

"The high-five hand slap is a typical sign of camaraderie among friends," Freid said. "It signaled Mr. Smith's pleasure about a job well done. I think the jury needs to be able to see that, so it can weigh whether it [the recanting] came from her, or from some other kind of undue, outside influence."

Smith said he resented the prosecutor's "holier-than-thou" mentality, noting that both sides have myriad meetings with witnesses in preparation for trial and it doesn't mean anything sinister is happening.

As for the video, he said the prosecution was reading far too much into the hand gesture. "It was a greeting," Smith said. "It's an attorney who got to know a witness and I greeted her the way I would greet any one of my four teenage sons."

Caposela agreed that there was some merit to the idea of introducing the video and letting the jury decide what it meant but that, ultimately, it might prejudice them unfairly against the defense. "Is it relevant? Yes. But it's highly prejudicial," Caposela said.

He noted during the hearing that it is conceivable the attorney even did high five the victim but only because he was happy that she had finally told what he viewed to be the truth- that his client did not sexually assault her after all.

The judge noted that the jury can hear from the witness herself as to why she made the accusations, took them back and then reaffirmed them, without having to see the video.

The judge also allowed Smith to remain in the case, despite a separate request by Freid that he be disqualified based on even the “appearance of impropriety” between himself and the alleged victim.