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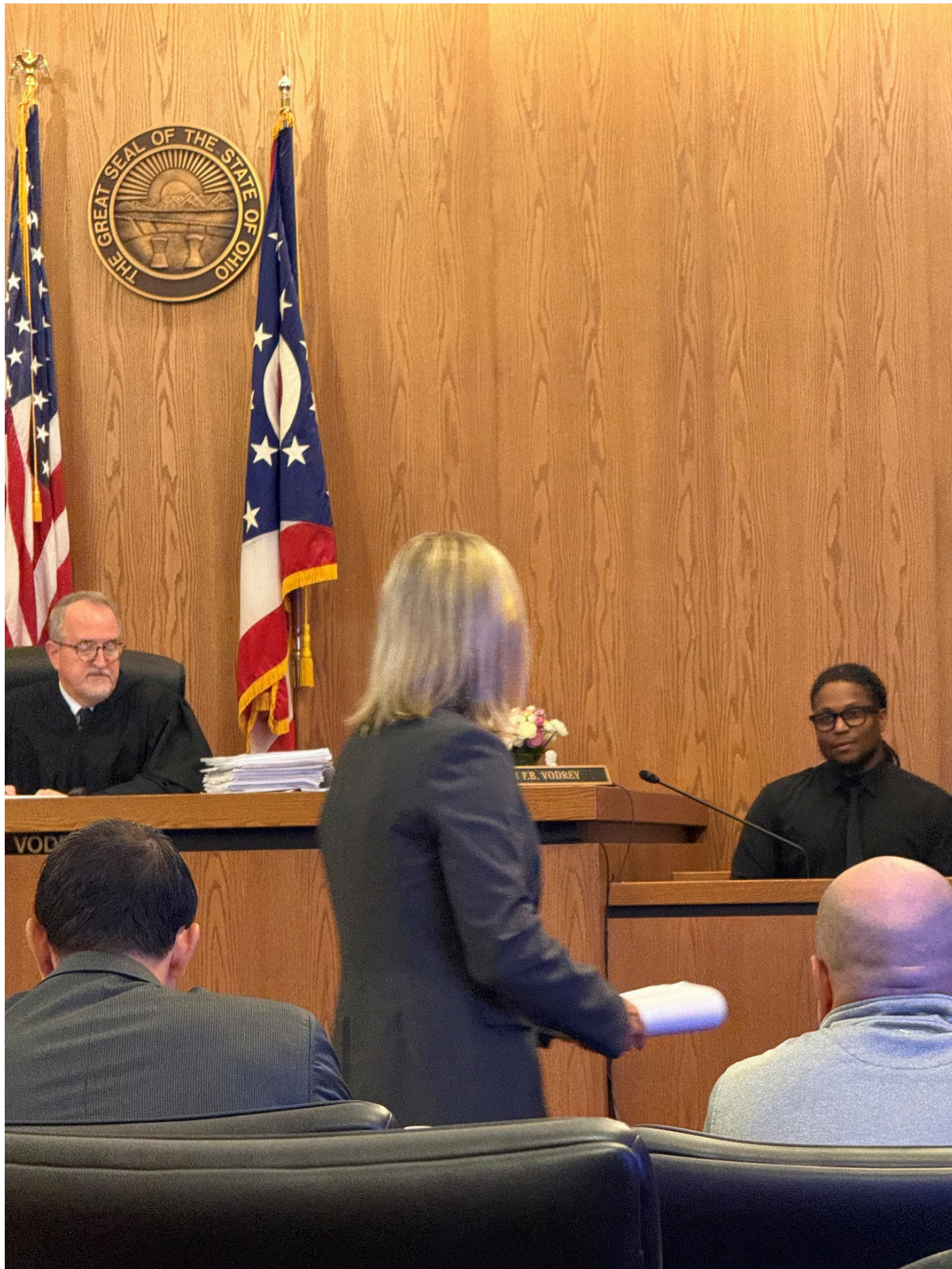
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Judge denies mistrial in Cleveland activist's case, despite prosecutors' filing with high court

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By [David Gambino, cleveland.com](#)



Judge William Vodrey rejected prosecutors' claims of unfair trial conditions in Antoine Tolbert's extortion case, allowing the five-week trial to proceed to closing arguments. David Gambino

CLEVELAND, Ohio - Cuyahoga County prosecutors filed an emergency motion with the Ohio Supreme Court on Thursday in the middle of an extortion trial.

Prosecutors went to the state’s highest court over a judge’s decision on jury instructions, a move that brought more drama to a highly charged case.

The filing came during the fifth week of Antoine “Fahiem” Tolbert’s trial before Common Pleas Judge William Vodrey. Ahead of closing arguments, Tasha Forchione, an assistant county prosecutor, asked Vodrey to declare a mistrial over what she said were unfair instructions.

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He refused.

She called the issue the “straw that broke the camel’s back,” one of a series of errors from Vodrey during the trial, according to Forchione.

She cited his approval of jury instructions that invited jurors to consider whether Tolbert’s case is the result of biased or retaliatory prosecution.

Before his arrest on extortion charges related to a series of August incidents at Race Fuel gas station in the Lee-Harvard neighborhood, Tolbert successfully sued Cleveland after an officer arrested him on a gun charge. The city settled the suit for \$85,000.

At trial, some testimony regarding the suit was allowed. Peter Pattakos, Tolbert’s attorney, has suggested that authorities have a vendetta against his client. He has said that he plans to sue over the “egregiously unconstitutional” prosecution.

The instructions approved by Vodrey also inform jurors that police generally have immunity from lawsuits and that, if the defendants are found guilty, they would be prohibited from filing claims against the police.

Forchione moved for a mistrial after Vodrey said he was “unpersuaded” by prosecutors’ request to adjust the instructions.

“The trial hasn’t been fair to the state from the beginning,” argued Forchione. She rattled off a series of what she described as compounding issues throughout the trial, such as witness testimony that shouldn’t have been allowed and behavior from audience members and defense attorneys — she accused Pattakos of “essentially testifying.”

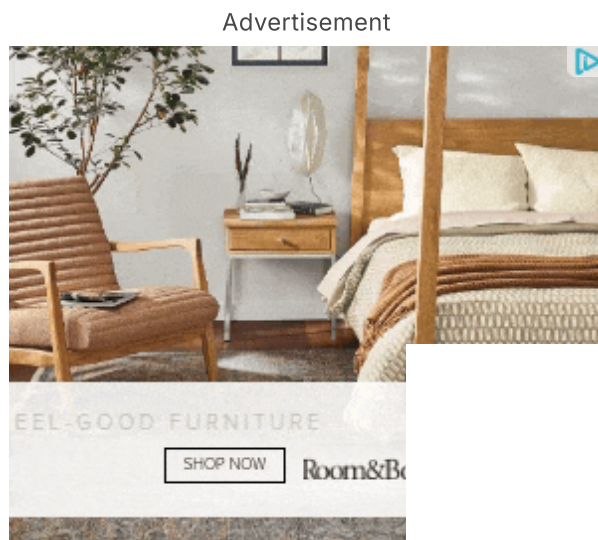
Pattakos, opposed to a dismissal, argued prosecutors were trying to throw a “last-minute Hail Mary.”

“Everybody in the room can see that there’s no crime here,” he said. “They (prosecutors) made their bed; they can sleep in it. ... If they had followed the Constitution, we wouldn’t be here.”

Vodrey, weighing the motion to dismiss, was unpersuaded. He released the parties for lunch, and when they returned, prosecutors informed him of their request to the state’s high court and asked him to pause the trial.

Pattakos, calling the move “completely unprecedented,” was firmly against a delay. He asked Vodrey to instead dismiss the case altogether.

“This is gamesmanship,” he told Vodrey. “They see the writing on the wall.”



Vodrey read through prosecutors’ filing, which asked the high court to put the trial on hold, compel him to issue lawful jury instructions or, in the alternative, grant a mistrial.

Vodrey said there were several factual errors in an affidavit included with the filing and said most of the issues raised had already been hashed out in his courtroom. He was especially mindful of the burden a delay would place on jurors.

“This case will proceed,” he said.

In a statement released Thursday by the prosecutor’s office, spokeswoman Lexi Bauer called the trial a “circus.”

“That, combined with repeated improper legal rulings, has caused the State of Ohio to seek a mistrial,” she said. “When that was denied, (emergency writs) were filed in the Ohio Supreme Court. While this filing is unprecedented, so have been the events and decisions that have unfolded in Judge Vodrey’s courtroom.”

Pattakos, in his own statement, agreed that the trial has become something of a circus.

“But that’s only because the prosecutor has made a mockery of justice by continuing to pursue these obviously retaliatory charges against a prominent activist and community servant,” he said.

He said prosecutors were desperate to keep the case from the jury because they have looked “ridiculous” in trying to prove their case.

“This is simply a case of play stupid games; win stupid prizes,” he said.

Tolbert faces charges of extortion, robbery and kidnapping.

Prosecutors say Tolbert and members of his group intimidated gas station workers and later demanded to be hired as security.

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Tolbert, who rose to prominence for leading armed patrols he describes as “community engagement walks,” maintained in court that his group was simply trying to create safer neighborhoods and help de-escalate violence.

The jury was expected to begin deliberations Friday morning.

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