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News

## Judge tosses slay verdict after fearful witness' words read to jury

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TRENTON — In a victory for witness intimidation, New Jersey's Supreme Court yesterday tossed out the convictions of two Trenton gangsters who allegedly shot and killed a rival known as "Minnesota Fats" in 2001.

The court ordered a new trial for the suspects and called on the Jersey Legislature to pass a law making it legal for statements made to detectives by witnesses and accomplices to be read into a trial record if they later refuse to testify in court.

That's what happened at the 2004 trial of Freddie "Kruger" Dean and ██████████ who were convicted in the slaying of Charles "Minnesota Fats" Simmons after the key witness against them changed his mind about testifying in court.

As a result, after talking with the witness and deciding gangsters had put him in fear for his life, Judge Bill Mathesius ordered the statement he gave to Detective Tony Manzo read to the jurors during the trial

"They were cursing each other and making reference to an alleged shooting incident," said the witness statement read in court by the detective, who ended up finding out that the two were arguing because ██████████ now 33, shot himself in the leg during the gunning of Simmons.

Despite the conviction reversals, Mercer County Prosecutor Joe Bocchini said he was happy with the ruling. He and the defense attorney, Andrew Schneider, agreed a law should be put on the books establishing clear rules for using witness statements at trial.

The decision, which was approved by four of the seven justices, was written by Justice Barry Albin, who argued that the statement the detective read into the record amounted to hearsay, which is not permitted under Jersey court rules.

Three justices had a slightly different opinion, also saying the court rule needs changing and arguing that the suspects should get a hearing on the intimidation questions in which they'd come face to face with the fearful witness, Kenneth Bush.

Yesterday's decision comes as Jersey authorities increasingly are confounded by witnesses who express fear of getting killed by gangsters who stand to beat the rap if the witnesses against them are killed before the trial, or decide against testifying.

Trenton's most notorious case of witness murder is the slaying of a gang "queen," Jerilyn Dotson, who was believed to know too much about the botched murder of a Latin Kings rival. That case also saw an accomplice ready to testify against the gang leader get splashed in the face with a caustic substance while awaiting trial at the Mercer jail.

How the case was handled might have helped them win the top court ruling, but Bocchini said he'll try the suspects again and that bail high enough to keep them locked up will likely be set when they get arraigned again on the charges.

"We're very satisfied with the opinion of the court," said Bocchini, sounding as if he expected state lawmakers and Gov. Jon Corzine to have the new rule on the books within days.

"Witness intimidation will always be out there, but this gives us another tool with which we can combat it, that is despite the case was remanded back for trial on a technicality. We're happy with the results," said Bocchini.

"The court determines whether, under the rules of evidence, a witness' hearsay statement implicating a defendant in a crime should be admissible when through violence, intimidation or other unlawful means, the defendant made the witness unavailable to testify at trial."

Bocchini said the witness must prove to the court that there is a real threat to him or her and their family or friends before they can allow an unsworn statement to be read in court, among other requirements.

Bocchini commended Attorney General Anne Milgram's appellate staff who also argued this case: "They did a phenomenal job in their presentation of this before the Supreme Court. They deserve to be commended."

Simmons, whose family has insisted he was no drug dealer or gang member, was shot dead while visiting a friend on Prospect Street at 9 p.m. on Aug. 26, 2001.

The two allegedly were driven to the apartment by Hassan Wilson and were also accompanied by Bush, who would end up informing on them. The plan, according to court records, was to rob "Minnesota Fats," who was thought to be carrying a large amount of cash.

Dean, now 41, allegedly was carrying a 9-mm handgun, and [REDACTED] was toting a shotgun as they forced their way into the apartment and encountered Simmons, who put up a fight.

During the fight, the handgun went off, and Simmons was hit in the chest and died immediately. [REDACTED] shot himself in the leg during the struggle.

[REDACTED] and Dean returned to the van and talked about the shooting as the four of them were fleeing the scene, Bush told police after he was arrested for another charge later and landed in jail. He signed a statement implicating the suspects but later declined to testify.

The court learned that Bush wanted to tell the judge about the threats. Without placing Bush under oath, the judge questioned Bush on the record in the absence of the defendants, their lawyers and the prosecutor.

He told the judge that what he had told the Trenton police was the truth, then refused to testify to it. Based on that, the court allowed the statement read to the jury.

He told the judge he feared for his life because he was incarcerated on the same floor with one of the defendants and one time was brought to court in the same van with one of the defendants, according to the decision.

The duo were convicted of felony murder, aggravated manslaughter, murder, robbery, and weapons offenses and sentenced to life in prison with a 30-year mandatory sentence.

An appellate court overturned the conviction for largely the same reasons cited in yesterday's Supreme Court ruling.