

# SJC bans prosecutors from reward programs

## Witnesses paid after conviction

By Jonathan Saltzman, Globe Staff | September 28, 2010

In summer 2008, a New Bedford man was convicted of second-degree murder based partly on the trial testimony of two eyewitnesses who each received rewards of \$2,000 from the local chamber of commerce because the case ended with a guilty verdict.

Yesterday, the Massachusetts Supreme Judicial Court unanimously upheld Wayne Miranda's conviction, but forbade state prosecutors from participating, even indirectly, in programs that reward witnesses contingent on convictions.

Bristol County prosecutors did not fund the rewards, decide who should receive them, or endorse the program, the high court said. But when the two witnesses for the state testified about the October 2005 shooting death of Christopher Barros, 25, they knew that prosecutors would write the New Bedford Area Chamber of Commerce to verify their assistance only if their testimony led to a conviction.

"We recognize that, to prove the crime charged, prosecutors often need to procure the cooperation and truthful information or testimony of reluctant witnesses," Justice Roderick L. Ireland wrote on behalf of the court. "The interests of justice, however, are not well served when a witness's reward is contingent on the conviction of a defendant, rather than the provision of truthful information or testimony."

Even before the trial, each of the two witnesses had received \$3,000 from the Chamber of Commerce for providing information that led to Miranda's indictment.

The high court let Miranda's conviction stand yesterday, saying the rewards to John G. Andrade and Carmen Rodriguez did not violate his due process rights. Nonetheless, the court, which oversees the state judiciary, said prosecutors cannot participate in future programs that reward witnesses for testimony only if it leads to guilty verdicts.

Contrary to the rules in other states and the apparent practice in federal courts, Ireland wrote, the Massachusetts justices "expressly disapprove" of prosecutors helping witnesses obtain rewards contingent on a conviction.

It was not immediately clear how unusual it is in Massachusetts for an organization to provide rewards to witnesses only if their testimony leads to a conviction.

The Boston Police Crime Stoppers program provides rewards of up to \$1,000 to people who help solve violent crimes, but tipsters need only provide information that leads to an arrest and an indictment.

The chief executive of Tedeschi Food Shops Inc. offered a \$25,000 reward last December for information leading to the arrest and conviction of the killer of a store clerk in Jamaica Plain. About two weeks later, a 63-year-old convicted murderer from Roslindale was arrested in the slaying, partly as a result of a tip from his parole officer. No one claimed the reward, according to Jake Wark, a spokesman for the Suffolk district attorney's office.

Bristol District Attorney C. Samuel Sutter said yesterday that his office played a minor role in the New Bedford reward program, sending letters to the chamber "merely to confirm what was already public information regarding witness cooperation and testimony."

"Nothing about today's SJC decision stops entities like the Chamber of Commerce from continuing to

operate reward programs,” said the statement from Sutter.

“However, because of today’s ruling, our office will no longer have any role in the programs in question and will not submit letters verifying a witness’s cooperation or testimony.”

Miranda’s appellate lawyer, Robert F. Shaw Jr. of Cambridge, was disappointed that the SJC allowed his client’s verdict to stand, despite forbidding prosecutors from participating in rewards tied to testimony that ends in a conviction.

“There seems to be something fundamentally wrong with affirming a conviction yet acknowledging at the end of the day that this isn’t something that can be permitted to permeate our criminal justice system,” Shaw said.

He said he had no objection to programs that reward tipsters for information that leads to arrests. But the Chamber’s program, he said, gave witnesses an incentive to tailor their testimony to help prosecutors win a conviction.

Roy Nascimento, president of the New Bedford Chamber of Commerce, said the organization began the Violent Crimes Reward Fund in 2004 after consulting police officers and prosecutors about how to break a code of silence in the community. The program has distributed \$33,000 in rewards, he said.

The chamber is phasing out the program because crime has decreased and police have received more cooperation from residents, he said.

Even before yesterday’s ruling, the Massachusetts Rules of Professional Conduct for lawyers prohibited lawyers from paying witnesses to testify contingent upon the outcome of cases.

The rules do allow lawyers to reimburse witnesses for expenses they incur attending trials and to pay a reasonable fee for the services of expert witnesses.

A Bristol Superior Court jury convicted Miranda of second-degree murder and related charges in the October 2005 shooting in New Bedford, said the SJC ruling. Barros had been shot twice with a 9mm pistol. Miranda was 26 at the time.

From a window in a fourth-floor apartment, the two witnesses saw an argument that preceded the shooting and heard gunfire, but did not see the shooting, said the ruling.

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