

The Enterprise

Brockton murder conviction vacated because of trooper's false testimony

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The Enterprise

Posted at 1:40 PM

The central issue in the appeal revolved around testimony at the trial regarding the location of the defendant shortly before the shooting and where he was picked up from.

BOSTON — The state's highest court vacated a murder conviction Friday, saying a trooper gave false testimony at trial and the prosecutor failed to correct it.

Darryene Ware was convicted in November 2012 of first-degree murder, on a theory of deliberate premeditation, in the shooting death of 16-year-old Chantel Matiyosus. Matiyosus was leaving her friend's baby shower on Addison Avenue around 11 p.m. on April, 25, 2009. Investigators said they believed her boyfriend was the intended target.

Ware was convicted following a six-day trial in Brockton Superior Court. He was sentenced by Judge Thomas F. McGuire Jr. to life in prison without the possibility of parole on the murder charge. The judge also imposed a sentence of 18-20 years from and after the life sentence and 22-25 years concurrent with the sentence on additional charges – armed assault with intent to murder, assault and battery with a dangerous weapon and illegal possession of a firearm.

Ware's attorney, Cambridge-based Robert F. Shaw Jr., filed a motion for a new trial in December 2015, arguing his client was adjudged guilty for a crime he didn't commit in a trial that was fundamentally unfair and a violation of his constitutional rights. McGuire, the trial judge, disagreed, and denied the motion for a new trial.

But Ware will now get a new trial after the state Supreme Judicial Court ruled Friday that Assistant District Attorney Jessica Kenny (then Healy) improperly

elicited and failed to correct false testimony by Trooper Robert F. Clements Jr., creating “a substantial likelihood of a miscarriage of justice.”

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The central issue in the appeal revolved around whether Ware ever told police he was picked up at or near a Dunkin' Donuts, “next to the very location where three people were observed jumping into a back yard after the shooting,” Justice David A. Lowy wrote in Friday's ruling.

The trooper testified at trial that Ware told police he had been picked up by someone he knew over in the area of that Dunkin' Donuts. But the justice said Ware “pointedly denied on at least four occasions being picked up there despite the police officers' questions and comments suggesting that he was.”

Lowy said the trooper's testimony was “blatantly false and pertained to a critical component of the Commonwealth's case.” Because of its importance to the prosecution's case, Lowy said the testimony “was likely to have influenced the jury's conclusion.”

The ruling was also critical of the prosecutor, saying she had elicited testimony from the trooper about Ware's statements to police and did not correct his false statements.

Lowy wrote that it's not clear whether the prosecutor purposely elicited false testimony, but that Kenny said at a sidebar she was “essentially going through” the interview transcripts.

“The prosecutor should have known, based on these transcripts, that the defendant had not said at the second interview that he was picked up at or near the Dunkin' Donuts, and she should have corrected the trooper's testimony to the contrary,” he wrote.

Shaw, Ware's attorney, called the "damning testimony" false. He said his client adamantly denied being picked up at the Dunkin' Donuts and repeatedly told police he was picked up at his Clinton Street home.

"Darryene Ware was adamant, not only in the interrogation that was the subject of the decision, but he was interrogated three times and he was consistent throughout that he was not picked up at the Dunkin' Donuts," Shaw told The Enterprise Friday morning, shortly after the ruling was issued. "The prosecutor also had an obligation to correct this and didn't."

Lowy, in a 24-page ruling, said "absent the uncorrected false testimony," that the only inconsistency about where Ware said he had been picked up was that he first said he was picked up at a friend's house and, in a second interview, said he was picked up at his own house.

"The trooper's false testimony about the defendant's second interview with the police created a substantial likelihood of a miscarriage of justice," Lowy wrote. "The false testimony went to 'a central point in the trial as a whole,' and the case against the defendant, although considerable, was not quite strong enough to overcome the prejudice from the Commonwealth's erroneous elicitation of and failure to correct the false testimony."

Shaw said he hadn't had an opportunity yet on Friday to speak to Ware, who is in prison, about the ruling.

"We are pleased with the outcome. There's no doubt about that," he said. "We're pleased with the fact that the Supreme Judicial Court demonstrates that our criminal justice system has the capacity to correct what was an unjust proceeding and provide the opportunity for a fair trial. That's what happened here."

The Supreme Judicial Court vacated and set aside Ware's convictions. The court remanded the case back to Brockton Superior Court and ordered a new trial.

The Plymouth County district attorney's office will have an opportunity to pursue a new trial, but a spokeswoman didn't immediately respond to a request for comment.

"Darryene Ware will now have an opportunity for a fair trial and that's what we were seeking," Shaw said.