

Court overturns conviction, citing prosecutorial misconduct

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BOSTON (AP) The state Appeals Court has overturned the conviction of a man charged with firing a gun in a neighborhood because a prosecutor improperly used cross-examination of the defendant to imply he had proof that didn't exist.

Suffolk County Assistant District Attorney Dan Hourihan disregarded a law that forbids prosecutors from using leading questions to leave innuendo that wasn't backed by evidence, Justice Janis Berry said. Granville Wynter was sentenced to up to four years in prison after a June 1997 incident during which a suspect fired several shots in and around a Dorchester apartment.

Wynter served two-and-a-half years in prison, 18 months of parole and then probation, his attorney, Robert Shaw, said.

"There were a lot of troubling inconsistencies in the facts and the troubling identity issue, which was not pursued by trial counsel," Shaw said. "We're just delighted with the result."

A witness identified Wynter as the shooter after police pulled him from the locked front bedroom of his apartment.

The defense argued the witness couldn't accurately identify Wynter because she was distracted by efforts to protect her son.

As an example of inappropriate questioning, Berry pointed to an exchange in which Hourihan repeatedly asked Wynter if he knew about a friend's brother who'd been beaten and robbed, and Wynter said he didn't. Berry said Hourihan used the questions to imply Wynter was seeking revenge for the incident, "thereby providing a motive for the shooting which the Commonwealth's evidence otherwise lacked."

Hourihan referred comment to Suffolk County District Attorney spokesman David Procopio.

Procopio said the office had "every confidence in the professionalism" of Hourihan, and that a review of the case would back that up. Procopio said the office had not decided whether to appeal.