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NJ orders new trial in witness intimidation case

By DAVID PORTER
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Two Trenton men convicted of murdering a drug dealer in 2001 were awarded a new trial Thursday after New Jersey's Supreme Court ruled they should have been allowed to challenge a prosecution witness who refused to testify because he said they had threatened him.

The ruling could significantly affect criminal cases in a state where prosecutors say witness intimidation is the biggest obstacle to convicting defendants accused of violent crimes.

While granting a new trial to Dionte Byrd and Freddie Dean Jr., Justice Barry T. Albin strongly recommended that New Jersey follow the lead of dozens of other states and adopt a federal law — referred to as "forfeiture by wrongdoing" — that denies defendants their Sixth Amendment right to confront a witness in court if they wrongfully cause the absence of that witness.

"The Court takes notice of the persistent problem of witness intimidation in New Jersey, including in cases involving gangs, drug racketeers, organized crime and domestic violence, and concludes that New Jersey should amend its evidence rules to embrace the forfeiture-by-wrongdoing doctrine," he wrote.

To expedite the process, the Supreme Court will submit a proposed rule to the state Legislature and Gov. Jon S. Corzine to consider, Albin continued.

"There's an overwhelming need for this," Deputy Attorney General Paul Heinzl said. "We're gratified that the court strongly endorsed this concept and urged the legislature and governor to take action, given the current climate in New Jersey."

Andrew Schneider, an attorney representing Byrd, praised the justices for applying existing law and not rushing to judgment.

"It's fair," Schneider said. "Our argument was not to get swept away by emotion. The court recognized that its powers are limited by the law."

In a concurring opinion, Justices Jaynee LaVecchia, Roberto Rivera-Soto and Helen E. Hoens recommended upholding the convictions if a separate hearing determined the threats were legitimate.

Byrd and Freddie Dean Jr. were convicted in 2004 of murdering Charles "Minnesota Fats" Simmons in Simmons' apartment in Trenton and were sentenced to life in prison with no parole for 30 years.

Helping to convict them was the statement of Kenneth Bush, who told police he rode in a van to Simmons' apartment with Byrd and Dean — both of whom were armed — and was smoking crack in the back while they went inside.

Bush said he saw the duo run back to the van and later saw that Byrd had suffered a gunshot wound to the leg. He also said he heard both men discuss the shooting.

Bush refused to testify at trial, claiming he'd been threatened by Byrd and Dean. Instead, he was interviewed in the chambers of the trial judge without attorneys present and his statements to police were later admitted as evidence.

An appeals court overturned the convictions in 2007 on the grounds that Bush's statement was improperly admitted into evidence.

The state's brief in the case notes that while New Jersey's rules of evidence don't include a forfeiture-by-wrongdoing provision, at least 31 other states and the District of Columbia have adopted the rule.



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