

Mass. court: DAs can't participate in rewards

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BOSTON - Prosecutors cannot participate in witness reward programs when payment is contingent upon a conviction, the state's highest court ruled Monday.

The Supreme Judicial Court ruled in the case of Wayne Miranda, a New Bedford man who was convicted of second-degree murder and other charges in a 2005 killing.

The court upheld Miranda's convictions, but the justices said they "expressly disapprove" of verification letters prosecutors sent to the New Bedford Area Chamber of Commerce confirming the testimony of two witnesses who received reward money. Under the program, the chamber pays \$3,000 for information that helps lead to an indictment in unsolved homicide cases, and another \$2,000 if the information leads to a conviction.

The court found the verification letters amounted to "the indirect provision of money" to witnesses "contingent on the outcome of a defendant's trial."

Bristol District Attorney Sam Sutter, whose office prosecuted Miranda, said he hopes the ruling will not discourage witnesses to violent crimes from coming forward.

Sutter said the chamber and other entities like it around the state began offering reward programs in response to the problem of getting witnesses to violent crimes to testify. Because of the court ruling, Sutter's office will no longer submit letters verifying a witness's cooperation or testimony.

"Nothing about today's SJC decision stops entities like the Chamber of Commerce from continuing to operate reward programs," Sutter said in a written statement.

"We hope and expect the community will continue to see the benefit of public cooperation in solving violent crimes and that this ruling will not hinder efforts to continue to persuade witnesses to come forward with information regarding violent crimes," he said.

The court noted in its ruling that the district attorney's office did not endorse the chamber's reward program or provide any funding for it.

But the court said the chamber conditioned its payment of the reward money on a letter from prosecutors verifying that a particular witness provided information that led to an indictment, conviction, or both. The court said prosecutors in the future cannot participate in programs that grant monetary awards to witnesses contingent on a defendant's conviction.

"In so declaring, we recognize that, to prove the crime charged, prosecutors often need to procure the cooperation and truthful information or testimony of reluctant witnesses. 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," Justice Roderick Ireland wrote for the court in the 6-0 ruling.

Miranda's lawyer, Robert F. Shaw Jr., argued that the contingent monetary rewards violated Miranda's due process rights. He sought a new trial in which the testimony of the two witnesses would be excluded.

Shaw said he was "extremely disappointed" by the ruling.

"Now, clearly the Supreme Judicial Court agrees that this is wrong and that it should not happen, and they have made clear that it will not happen in the future, but that doesn't help Mr. Miranda, who has been subjected to a process in which this occurred," Shaw said.

"These witnesses go into the trial understanding that if they testify in a manner to get a conviction, they get paid cash," he said.

The court noted that the professional rules of conduct for lawyers prohibits prosecutors from compensating witnesses beyond their lost work time and for expenses incurred in getting to court and testifying.

But the court found in Miranda's case that the payments to the two witnesses under the chamber's reward program "simply do not pose a fundamental problem of fairness that would amount to structural error."

Roy Nascimento, president and chief executive officer of the New Bedford Area Chamber of Commerce, said the reward program was established in 2004 during a violent time in the city of about 100,000, about 40 miles south of Boston. He said he did not know how much the chamber had paid out since the program began.

"There was a real problem getting people to come forward with information on some of these violent crimes back then, and we did make these payments," he said.

Nascimento said the chamber has not actively promoted the reward program in recent years because "the code of silence is not as much of a problem as it was in 2004."

"The ruling says it's OK for organizations like the chamber to get involved and help communities," he said. "I'm not too concerned about it because we were already phasing it out."