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Court raps prosecutor, overturns murder case

BY STEVE MILLS

In an unusual ruling, the Illinois Appellate Court has overturned the murder conviction of a Chicago man and barred Cook County prosecutors from trying him again, saying the evidence against him in a drive-by shooting was insufficient to sustain a conviction.

The court, in its ruling Tuesday, also took the unusual step of criticizing the trial prosecutor—one of State's Attorney Anita Alvarez's top assistants—for what he said during closing arguments at a 2012 retrial, especially a comment that compared defendant Anthony Johnson's defense to the defense that Nazis made at the Nuremberg trials.

"By invoking the Nuremberg trials of Nazis, the State drew a comparison between defendant and war criminals that were tried for the worst atrocities in modern human history," a three-judge panel of the court wrote in its opinion. "This type of conduct has no place in the courtroom."

The prosecutor, whom the court did not name, was Alvarez's chief of criminal prosecutions, Fabio Valentini, according to the trial transcript.

The case stemmed from the October 2003 shooting of Brandon Baity, 23. Chicago police charged Clayton Sims with the South Side slaying and charged Johnson, 17 at the time of the shooting, under Illinois' accountability law.

Police and prosecutors alleged that Johnson drove Sims to the slaying scene and then drove away with Sims after the shooting.

Sims was acquitted at trial. Johnson was convicted at his first trial and sentenced to 30 years, but the Appellate Court overturned the conviction and prosecutors tried him again. At that second trial, Sims testified that he committed the murder and that Johnson had no role.

A jury convicted Johnson, and the judge, Arthur Hill, sentenced him to 47 years in prison.

Johnson appealed, and the Appellate Court said the evidence was "so lacking" that it barred prosecutors from trying him again.

The court did not rule on Johnson's claims that Valentini's comments amounted to prosecutorial misconduct.

But the court did criticize Valentini for comparing Johnson to Nuremberg defendants when he told the jury, "Being afraid of retribution by your co-offenders is not a defense. That defense didn't work for the Nazis in Nuremberg and it doesn't work for (the defendant) today either."

The court said Valentini "inflamed the passions and prejudices" of the jury. "This is not conduct we would want to see again," it added.

Stephen Richards, who represented Johnson on appeal, said he filed a motion Thursday seeking bond for Johnson so he can be released from prison.

Prosecutors can drop the case, ask the Appellate Court for a rehearing or take the case to the Illinois Supreme Court.

Sally Daly, a spokeswoman for Alvarez, said Thursday that the office disagreed with the ruling and was exploring its options.