

METRO & STATE

Murder conviction rejected 2nd time

By Maurice Possley
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For the second time in four years, the Illinois Appellate Court on Friday set aside the murder conviction of Sammie Swarn, saying prosecutors disobeyed a court order and gave improper arguments.

The court ordered a third trial for Swarn, who has been in custody for seven years since his arrest in the 1993 fatal shooting of Andre Woods, whose body was found in a vacant lot in the 4400 block of South Calumet Avenue.

In setting aside Swarn's conviction and 50-year prison term, the court also severely limited the prosecution's evidence for the next trial, saying that the identification of Swarn by an alleged witness was too unreliable.

Jeff Pitzer, who along with attorney Andy Zahaykevich defended Swarn at the second trial, said the prosecutors stepped over the line out of overzealousness because the evidence was weak.

"There is no physical evidence linking Sammie Swarn to the murder," Pitzer said Friday. "If not for their actions, I believe the jury would have acquitted Sammie. We've got an innocent guy in jail for seven years."

John Gorman, a spokesman for the Cook County state's attorney's office, said the decision would be appealed.

The chief witness for the prosecution was a man who picked Swarn out of a lineup six months after the shooting, despite being unable to identify a photograph of Swarn a month after the incident, according to the ruling.

During the trial, the witness was asked if he could see facial features. He replied, "No, not really." He also was unable to describe the clothing of the gunman or give any descriptions of two men he said were with the gunman, according to the opinion.

Circuit Judge Lon Schultz, who presided over the second trial, had barred prosecutors David Gaughan and Patrick Kelly from eliciting any testimony or arguing to the jury that prosecution witnesses were afraid to testify.

The appeals court ruled that the prosecution, "in obvious violation of the order," suggested that the witness identified Swarn the second time because he was with police for the lineup and felt safe.