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Proposals focus on witnesses who are intimidated

Evidence: Legislators and the Court of Appeals weigh the use of out-of-court statements by threatened - or murdered - accusers.

By Julie Bykowicz
Sun Staff

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Angela Sipe witnessed a killing during a card party at an apartment in Forestville. She called 911. When police arrived, she gave them a statement and picked 20-year-old Keith Leon Carroll's picture out of a photo array. Three days later, Carroll returned to the apartment with two friends, and they fatally shot the 27-year-old mother of two boys.

When it came time for Carroll's trial in July 1999, a Prince George's County Circuit Court judge allowed Sipe's identification and police interview to be used as evidence - even though it meant depriving Carroll of his constitutional right to confront an accuser. A state appeals court later upheld the conviction, making the Carroll case an anomaly in Maryland's history.

"Even though she couldn't be there, her words were there," said Sipe's mother, Carol Grim. "And they made an impression on the jury."

Prosecutors across the state, including in Baltimore and Prince George's County, want to make that one-time courtroom exception a law.

Several bills that would permit out-of-court statements by threatened or murdered witnesses to be used as evidence are in the works, and the issue will come before a General Assembly committee at a hearing next week.

Long a problem in Baltimore, witness intimidation is gaining renewed attention. Over the past week, six men have been arrested and could face federal charges in the firebombing of the home of a Harwood woman who provided police with information about drug trafficking in her North Baltimore neighborhood.

Last month, the subject received national attention in the form of a locally produced DVD called Stop Snitching. The profanity-filled documentary was popularized by the brief appearance of Baltimore native and rising NBA star Carmelo Anthony. It features drug-smoking and freestyle-rapping men delivering the same message: Witnesses to crimes better keep their mouths shut.

In an effort to combat the problem, the rules committee of the state's highest court recommended this month allowing three kinds of statements to be allowed as evidence if a witness has been made unavailable for court by some wrongdoing of the defendant. The Court of Appeals, the state's highest

court, will consider adopting the committee's recommendation after a hearing at an undetermined future date.

Lawmakers in [Annapolis](#) also expect to debate various other approaches.

Ehrlich bill

Gov. Robert L. Ehrlich Jr. will introduce a bill as soon as tomorrow that features an even broader exception for allowing statements by intimidated witnesses to be used in court. His bill also increases the maximum penalty for witness intimidation from five years in prison to 20 years.

Baltimore State's Attorney Patricia C. Jessamy, who said witness intimidation has become so pervasive in the city that it touches nearly every shooting and homicide case, spent part of this week in [Annapolis](#) lobbying for Ehrlich's bill.

The governor introduced a similar measure last year, but it was killed in the House Judiciary Committee. Fearing a similar outcome, Prince George's County State's Attorney Glenn F. Ivey said he is pushing a bill that his county's Democratic senator, Leo E. Green, introduced last week. That proposal addresses only increased penalties for witness intimidation.

Yesterday, Sens. Brian E. Frosh and Jennie M. Forehand, Montgomery County Democrats, introduced a bill that resembles Ehrlich's. Witness intimidation will be discussed for the first time this legislative session at a Senate committee hearing Tuesday.

Defense attorneys worry that both the rules committee's recommendation and the legislation pending in [Annapolis](#) gnaw away at defendants' rights, said Timothy Mitchell, a Greenbelt attorney and president of the Maryland Criminal Defense Attorneys Association.

"To our founding fathers, it was of paramount importance that the person be able to confront an accuser and challenge an accusation," Mitchell said. "Taking away that right is a dangerous precedent to set."

But Ehrlich's legal counsel, Jervis S. Finney, said the bill is firmly rooted in court precedent.

"There's no doubt about its constitutionality," he said. Similar legislation exists at the federal level and in eight other states and in Washington.

The basis for Ehrlich's bill is outlined in the Maryland Court of Special Appeals opinion on the 1999 Prince George's murder trial, some prosecutors said.

Tempers flared at that Forestville card game Dec. 12, 1998, because 34-year-old John Thomas was winning most of the hands and money, court documents show.

Carroll, 20, followed another player into the bathroom and asked him to summon Thomas. The man called out, "John, he's trying to rob us." Thomas approached, and Carroll shot him in the face, killing him, prosecutors said at his trial.

When Prince George's County police arrived, the witnesses, including Angela Sipe, said Carroll was the killer and identified him in a photo lineup.

But in the early-morning hours of Dec. 15, before police had arrested him, Carroll returned to the apartment with two friends, court documents show. Carroll demanded to know why Sipe had implicated

him in the murder, and then he shot her, prosecutors said. Sipe stumbled to the stairwell and collapsed. There, someone shot her three more times.

John M. Maloney, the Prince George's County prosecutor who tried the case, said he knew he was trying something new by introducing Sipe's statement to police into evidence, but felt confident his approach would withstand appeal.

His gamble paid off. The appeals court upheld Carroll's conviction in an unpublished opinion filed Sept. 11, 2000. By killing Sipe, the court concluded, Carroll had forfeited two important rights: his right to confront an accuser and his right to object to the absent accuser's statement as hearsay.

Quoting from a federal opinion on a similar matter, Judge Marvin H. Smith wrote, "Courts will not suffer a party to profit by his own wrongdoing."

Smith also noted that "all federal circuits to have considered the matter have agreed that a defendant who wrongfully procures the absence of the witness or potential witness may not assert confrontation rights as to that witness."

Hearsay exception

In both Ehrlich's bill and in the rules committee's recommendation, the hearsay exception asserted in Carroll's case would be expanded to include the statements of not only murdered witnesses, but also of witnesses who are being hidden by defendants or who were so threatened by defendants that they did not appear for court.

A judge would decide in each case whether an intimidated witness's statements could be admitted as evidence.

The difference between the two proposals lies in the scope of what statements would be allowed if a witness is intimidated.

The Court of Appeals' rules committee, a body of prosecutors, attorneys, judges and lawmakers, wants to limit the evidence to statements given under oath, statements signed by the witness and statements recorded nearly verbatim by electronic means or a stenographer.

Ehrlich's legislation more closely resembles the much broader federal hearsay exception. It would also permit statements an intimidated witness made to another person, such as a relative or a fellow gang member.

Problems

Mitchell, the defense attorney, sees both proposals as problematic.

"If we have a system where convictions can be obtained by written statements without the ability to challenge those witnesses' statements for bias, motive or recollection, I think it could potentially result in wrongful convictions," he said.

He said that while no one approves of witness intimidation, "we need to find a reasonable way to combat the problem without weakening the constitutional rights of all of us."

Sipe's killer was sentenced to two life terms - one for her death and one for the death of Thomas.

Her mother, who attended every day of Carroll's trial and the court proceedings of his accomplices, said it was Sipe's willingness to "do the right thing" that helped put Carroll behind bars.

"She knew right from wrong," said Grim, who lives in Calvert County. "She wanted to tell people that he needed to be caught and taken off the street."

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