

Man says evidence was withheld, seeks voiding of conviction for assaulting officer

He says witness accounts weren't shown to defense

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A man who was shot by an off-duty Baltimore police officer then found guilty of assaulting him is asking to have his conviction thrown out, saying that city prosecutors failed to turn over key evidence during his trial.

The issue is a touchy one for city prosecutors and police, who have lost cases or had them badly compromised because of problems involving withheld evidence.

Margaret T. Burns, a spokeswoman for State's Attorney Patricia C. Jessamy, said she couldn't comment on the case because it is in litigation, but she said the office will "investigate thoroughly any and all allegations of prosecutorial error."

The case stems from an incident in October 1999 when Dwight D. Allen and Officer Stuart Parker argued during a "road rage" incident north of downtown, at St. Paul and Preston streets, according to court documents.

Allen, accused of charging at Parker, was tried and convicted in July 2000 and handed a two-year, suspended jail sentence. Parker was not criminally charged with shooting Allen.

After the trial, Allen's lawyers say, they found transcripts of police interviews with three witnesses who said Allen did not charge at Parker and one who said Allen was holding his hands "in the air" when he was shot.

Allen's lawyers filed a petition in Circuit Court this month requesting that the case be retried or dismissed because they did not receive the evidence from Assistant State's Attorney Cynthia Johnson, who was handling the case.

Under the law, the state's attorney's office was to have turned over that evidence before his trial, said Matthew E. Bennett, one of Allen's lawyers.

"One of the fundamental principles of fairness is that the defendant is entitled to all evidence that shows he is not guilty," said Bennett. "We simply did not receive that information."

Burns said, "If there is merit to Mr. Allen's allegations, this office will take appropriate action."

A judge will review Allen's petition and schedule a hearing to determine whether he got a fair trial.

Problems involving the exchange of evidence — called discovery — can be minimized, but they're difficult to eliminate, said Judge John N. Prevas, who runs the city's discovery court, which was established to settle evidence disputes before they get to trial.

"It's endemic to the whole competitive business of law enforcement and prosecutors to not necessarily know how to determine what is [mandatory evidence to turn over]," he said.

Bennett said he found the evi-

dence while representing Allen in a civil suit stemming from the incident. It accuses Parker of assault, battery, false imprisonment and false arrest, among other things.

While preparing for the case, he asked Parker's defense lawyer, Myron T. Brown, for all of his evidence. Brown gave him a package that included the three interviews.

The civil case, which is scheduled for trial in September, seeks millions of dollars in damages.

Parker, a 16-year police veteran, is expected to repeat what he told investigators: that he fired his weapon because he was concerned about his safety.

Allen is expected to say he was wrongfully shot. Allen had been previously arrested on charges including attempted murder, two cases of second-degree assault and two cases of disorderly conduct. He was not convicted in any of those cases.