

The Boston Globe

Lawyer wants Connolly's conviction voided

1992 ruling is cited in challenge

By Shelley Murphy

Globe Staff / December 16, 2008

A lawyer for former FBI agent John J. Connolly Jr. filed a 36-page legal brief in Miami yesterday, arguing that Connolly's recent conviction of second-degree murder with a gun for a 1982 gangland slaying in Florida must be tossed out "to prevent a manifest injustice."

Connolly, 68, was found guilty last month after being accused of leaking information to longtime FBI informants James "Whitey" Bulger and Stephen "The Rifleman" Flemmi that prompted them to enlist a hit man to kill Boston business consultant John B. Callahan in Florida.

A judge postponed sentencing until Jan. 15 after Connolly's defense filed a motion arguing that jurors had been erroneously instructed that if they rejected charges against Connolly of first-degree murder and conspiracy to commit first-degree murder, they could consider the lesser charge of second-degree murder with a gun.

Under Florida law, there is a four-year statute of limitations for second-degree murder, but no time limit on the charge of second-degree murder with a firearm.

However, in a brief yesterday, Miami defense attorney Manuel L. Casabielle argued that a 1992 Florida Supreme Court ruling indicates that a defendant may only be convicted of second-degree murder with a firearm if he personally possessed the weapon.

"The fact that (John) Martorano shot the victim in Fort Lauderdale while Mr. Connolly was in Massachusetts has never been contested," wrote Casabielle, arguing that Connolly's conviction should be voided.

But the prosecution, which is scheduled to respond to the defense claims in a brief due to the court on Monday, has argued that Connolly didn't have to be the triggerman, or even present when Callahan was killed, to be guilty of the crime.

Miami-Dade Assistant State Attorney Michael Von Zamft said in a telephone interview yesterday that it was sufficient that jurors found that Connolly, then an FBI agent, was armed with his government-issued gun when he met with Bulger and Flemmi and warned them that

Callahan was being sought for questioning by the FBI and would probably implicate the gangsters in the 1981 murder of a Tulsa businessman.

Martorano, a hit man-turned-government witness, testified that at Bulger's and Flemmi's urging, he lured Callahan to Florida and shot him.

The 45-year-old businessman's body was found on Aug. 2, 1982, in the trunk of his Cadillac at Miami International Airport.

"There's no manifest injustice because a guilty man got convicted," Von Zamft said.

"The manifest injustice in this case would be for a Florida jury to have its verdict overturned," he said.

The prosecution has also argued that the judge who presided over the trial has no jurisdiction to set aside the verdict because the defense was required to file its challenge within 10 days of the verdict. ■

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