## Summary of SC91021, State ex rel. Mark Woodworth v. Larry Denney, Warden

Original proceeding in habeas corpus

Argued and submitted Oct. 4, 2012; opinion issued Jan. 8, 2013, and modified on the Court's own motion Jan. 29, 2013

**Attorneys:** Woodworth was represented by Robert B. Ramsey of the Law Offices of Michael R. Bilbrey PC in Glen Carbon, Ill., (618) 288-6784; and the state was represented by Theodore A. Bruce and Stephen D. Hawke of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

**Overview:** A man convicted of murder, assault, burglary and armed criminal action for the killing of his neighbor and the serious assault of her husband sought relief from the Supreme Court of Missouri. A special master the Court appointed to review the man's case determined that the state withheld material, favorable evidence from the defense. This violates the state's duty under *Brady v. Maryland* to disclose all such evidence. The master found that the lack of disclosure of this exculpatory evidence was prejudicial and, in combination with other recently discovered evidence, made the verdict in the prior trial not worthy of confidence. In a 6-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri adopts the master's recommendation and orders that Woodworth's convictions be vacated. The state has indicated an intent to retry Woodworth; therefore, on the date the mandate issues in this case, Woodworth shall be returned to the custody of the Livingston County sheriff and be entitled to such release as the circuit court shall determine pursuant to Rule 33.

Facts: Lyndel and Catherine Robertson were shot while sleeping in their rural Livingston County home in November 1990. The husband eventually recovered from the shooting, but his wife died at the home. Nearly three years after the shooting, Mark Woodworth, a neighbor of the Robertsons, was charged by indictment with second-degree murder of Catherine Robertson, firstdegree burglary and first-degree assault of Lyndel Robertson, and two counts of armed criminal action. Although Woodworth was only 16 years old at the time of the shooting, he was certified as an adult and, after a jury found him guilty of all charges, he was sentenced to consecutive prison terms totaling 31 years. The appeals court reversed the conviction, but a second jury again found Woodworth guilty, and he was sentenced to four consecutive life sentences plus 15 additional consecutive years in prison. Woodworth ultimately sought relief from this Court, which appointed a special master to take evidence and issue a master's report regarding Woodworth's claims in his petition. After several evidentiary hearings, the master filed his report, in which he found that the state violated its duty under Brady v. Maryland, 373 U.S. 83 (1963), to disclose material, favorable evidence and that these violations prejudiced Woodworth to a degree that undermined the master's confidence in the verdict. The master strongly recommended that this Court set aside Woodworth's conviction and that the case be reviewed by an independent prosecutor before any decision is made as to retrial.

CONVICTIONS VACATED; PETITIONER DISCHARGED TO RESPONDENT'S CUSTODY PENDING DETERMINATION WHETHER TO RETRY PETITIONER.

Court en banc holds: (1) Brady v. Maryland, 373 U.S. 83 (1963), held that the prosecution's suppression of evidence favorable to the accused upon his request violates due process regardless of whether the prosecution was acting in good or bad faith. To prove a Brady violation, a petitioner must prove the evidence is favorable to him, the state suppressed the evidence and he was prejudiced as a result. Here, the master concluded that the state violated its duty under Brady when it failed to disclose a trio of letters exchanged between the original trial judge, the assistant attorney general appointed as special prosecutor, and Lyndel Robertson and that the nondisclosure was material and prejudicial. The master also found that the state committed a second *Brady* violation when it failed to disclose reports to police by the Robertsons' daughter about violations of an ex parte order of protection she obtained against her ex-boyfriend, Brandon Thomure. The master found that these reports were favorable to the defense and that their nondisclosure was prejudicial because Woodworth could have used them to strengthen his argument that Thomure had motive and opportunity to commit the shooting and because they would have rebutted the state's claim that Thomure never had threatened harm against the daughter. The master's conclusions that the state failed to disclose to the defense the letters and the order of protection violation reports and that the nondisclosures were material and prejudicial are supported by substantial evidence and are not against the weight of the evidence.

(2) In addition to the nondisclosures discussed in Paragraph 1, the master considered additional evidence relevant to his determination whether the verdict in the second trial was worthy of confidence. Various individuals testified before the master that they had reported pertinent evidence to the sheriff shortly after the shooting. None of these alleged reports were provided to the defense or were part of the prosecution file. Additionally, a friend of Thomure's testified that, in 2007, Thomure threatened to kill the friend and said that he had gotten away with murder before. The master's report also detailed the actions of a private investigator, whom the master concluded had been given improper authority in the investigation and access to evidence. The master determined that the suppressed letters and violation reports, along with the totality of the other evidence uncovered following Woodworth's last trial, showed a violation of Brady that caused sufficient prejudice to undermine confidence in the outcome of the second trial and render the prior verdict no longer worthy of confidence. This determination is supported by substantial evidence, is not against the weight of the evidence, and does not erroneously declare or apply the law. This Court, therefore, adopts the master's recommendation and orders that Woodworth's convictions be vacated. The state has indicated an intent to retry Woodworth; therefore, on the date the mandate issues in this case, Woodworth shall be returned to the custody of the Livingston County sheriff and be entitled to such release as the circuit court shall determine pursuant to Rule 33.