

Summary of SC90314, *State ex rel. Gary W. Engel v. Dave Dormire, Superintendent*
Proceeding originating in the Cole County circuit court, Judge Richard Callahan
Argued and submitted Jan. 27, 2010; opinion issued Feb. 23, 2010

Attorneys: Engel was represented by Kent E. Gipson of the Law Office of Kent E. Gipson LLC in Kansas City, (816) 363-4400; and the state was represented by Andrew W. Hassell 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 in 1991 of kidnapping and armed criminal action, largely on the testimony of a drug dealer whose testimony later was found to have been perjured and paid for by investigators, seeks this Court's writ of habeas corpus releasing him from custody. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri vacates the man's convictions and orders him released from custody 60 days after this Court issues its mandate (noting that the decision in this case is final) unless the state elects, within that time frame, to retry the man. The man has established his due process rights have been violated and that he is entitled to relief. The evidence shows the drug dealer was paid for his testimony and that investigators coached the drug dealer to align his testimony with theirs. This is impeachment evidence that is favorable to the man. The state suppressed the evidence about the drug dealer's testimony, and this suppression prejudiced the man, whose defense rested on his ability to undermine the credibility of the drug dealer's testimony against him.

Facts: In July 1990, Gary Engel was arrested on charges stemming from a 1984 armed kidnapping. The state alleged that drug dealer Anthony Mammolito hired Engel and two accomplices to kidnap and rob a competing drug dealer. The crime was not investigated actively until 1989, when authorities interviewed Mammolito while he was in federal prison on an unrelated matter. Based largely on Mammolito's testimony, a jury convicted Engel in June 1991 of two counts of kidnapping and two counts of armed criminal action. He was sentenced to consecutive terms in prison totaling 90 years. Engel's accomplice, Steven Manning, also was convicted in the kidnapping and was sentenced to two life sentences. Engel appealed and sought post-conviction relief, but in 1993 his convictions were affirmed. *State v. Engel*, 859 S.W.2d 822 (Mo. App. 1993). He later unsuccessfully sought habeas corpus relief (to be released from custody) both in the state and federal courts. Manning, however, did obtain habeas relief after a federal court determined his kidnapping convictions were based on improper testimony from a jailhouse informant. *Manning v. Bowersox*, 310 F.3d 571, 575-77 (8th Cir. 2002), and was released from Missouri's custody in 2004 after the prosecutor declined to retry him. Manning subsequently brought a federal civil suit against the lead FBI investigator and others whom he alleged framed him in the kidnapping case and for an Illinois murder charge. Discovery in Manning's federal suit unearthed evidence calling into question the testimony Mammolito provided at the kidnapping trials of both Manning and Engel. The federal jury unanimously found in Manning's favor and awarded him \$6.5 million in damages, finding that the lead FBI agent "knowingly induced or caused law enforcement officers to induce" Mammolito "to give false testimony and concealed information from prosecutors" and that the agent promised to pay

Mammolito for his testimony. Although that verdict later was set aside on other grounds, the federal court opined that “[t]here is no question that a deal was made at some point before Mammolito testified at Manning’s [Missouri] trials to pay him some amount of money” and that “[t]he deal to pay Mammolito was not disclosed to Manning’s attorney in the Missouri case.” *Manning v. United States*, No. 02 C 372, 2006 WL 3240112, at *37 (N.D. Ill. Sept. 28, 2006). Nothing in the court’s decision to set aside the jury verdict negated the jury’s findings that investigators in the kidnapping case had perjured testimony. Based on the information from Manning’s federal proceedings, Engel renewed his efforts to obtain habeas relief. The circuit court denied his new petition. Engel now seeks this Court’s relief.

HABEAS RELIEF GRANTED AND CONVICTION VACATED.

Court en banc holds: Engel is entitled to habeas relief. Because his arguments challenge the validity of his convictions and were cognizable in his direct appeal or post-conviction motion, he is afforded extremely limited review; he must show manifest injustice, cause and prejudice, or a jurisdictional defect. Cause is established where there is a factor at issue external to the defense or beyond its responsibilities; Engel, therefore, must establish that the grounds on which he seeks relief were not known to him during his direct appeal or post-conviction case. Here, Engel’s claims rest on a collection of new evidence developed in Manning’s federal proceedings and were unknown or unavailable when Engel previously sought relief. Accordingly, he has established the cause needed to overcome the procedural bar to reviewing his claims. He also must establish that this Court’s failure to review his habeas claims would prejudice him. Engel’s main argument for habeas relief is that the prosecution wrongly failed to disclose to him material impeachment evidence related to Mammolito, which Engel argues violated his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963).

Under *Brady*, a due process violation occurs where the prosecution suppresses, intentionally or not, evidence the accused requests that is favorable to the accused and that is material either to guilt or punishment. To prevail on his claims, Engel must show the evidence at issue is favorable to him, either because it is exculpatory or impeaching; the state suppressed the evidence, either willfully or inadvertently; and Engel was prejudiced as a result. Here, the evidence supports Engel’s allegations that Mammolito was paid for his testimony against Engel and Manning and that investigators coached Mammolito to align his testimony with theirs. This is impeachment evidence favorable to Engel. Further, there is no dispute that, during Engel’s trial, the state did not provide Engel the Mammolito impeachment evidence. It is enough that the deal existed at the time of Engel’s trial, even if the deal had not yet been documented. It is irrelevant to Engel’s *Brady* claim that the Mammolito evidence at issue involves non-Missouri investigators because these investigators essentially acted as the prosecutor’s agents during the investigation of the kidnapping cases against Engel and Manning. Similarly, it is no hindrance to Engel’s *Brady* claim that the prosecutor did not know about the investigators’ deal with Mammolito. Accordingly, the state wrongly suppressed the Mammolito impeachment evidence. This evidence is material to Engel’s case. The unknown impeachment information, coupled with the impeachment information the defense presented at Engel’s trial, could have led the jury to a different assessment of Mammolito’s credibility. Knowledge of the undisclosed facts significantly could have undermined the legitimacy of Mammolito’s testimony, and, having failed to disclose this evidence, the state was able to claim much greater credibility from

Mammolito's testimony than the true facts would have warranted. Because Engel's defense hinged on undermining the credibility of Mammolito – a chief prosecution witness – the nondisclosure of the impeachment evidence caused Engel to suffer prejudice under *Brady*. The jury's verdict in Manning's federal proceeding demonstrates the nondisclosed impeachment evidence would have aided Engel in discrediting Mammolito's testimony at Engel's criminal trial.

Because Engel has established the cause and prejudice necessary to overcome the procedural bar to granting him habeas relief, Engel's convictions are vacated. On retrial, Engel will have the opportunity to present the exculpatory and impeachment evidence discovered since his trial. Given this new evidence and the long delay since Engel's first trial, Engel is ordered to be discharged from the states' custody 60 days from the date the mandate issues in this case, unless within that time the state files in the circuit court an election to retry Engel. If the state so elects, the new trial shall be held expeditiously.