

Summary of SC90503, *State of Missouri v. Zackary Lee Stewart*

Appeal from the Greene County circuit court, Judge Timothy W. Perigo
Argued and submitted April 15, 2010; opinion issued May 25, 2010

Attorneys: Stewart was represented by Rosalynn Koch of the public defender's office in Columbia, (573) 882-9855, and the state was represented by Karen L. Kramer 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 first-degree murder challenges the circuit court's denial of a new trial based on evidence discovered after the trial. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case for further proceedings, finding the man is entitled to a new trial. The newly discovered evidence – including statements the man's brother-in-law made to relatives that he had killed someone and that he had been at the victim's home the night of the murder, coupled with DNA results showing the brother-in-law's DNA was on a bloody hat found at the crime scene – meets the criteria warranting a new trial.

Facts: Zackary Stewart, then an 18-year-old high school student, was arrested and charged with first-degree murder for the November 2006 shooting death of David Dulin. Following a jury trial, Stewart was convicted as charged and sentenced to life in prison. He moved for a new trial, arguing in part that, after the trial, evidence was discovered indicating that his brother-in-law, Tim Seaman, had told his brother that Seaman had murdered Dulin. At the hearing on Stewart's motion, a police detective testified that after Stewart's trial he received a tip that Seaman told his brother he had "taken someone's life." The detective testified that the brother said he did not take Seaman's statements seriously until after the brother heard about a bloody hat found by Dulin's body; the brother said the hat was either Seaman's or identical to one Seaman had for a long time. Seaman's nephew also testified at the hearing that Seaman told him the morning after the murder that Seaman and his friend were at Dulin's house when Dulin was killed. Evidence also was presented at the hearing that DNA evidence found on the bloody hat was confirmed after the trial as a match to Seaman's DNA. The circuit court ultimately concluded that a new trial was not warranted. Stewart appeals.

REVERSED AND REMANDED.

Court en banc holds: The newly discovered evidence that Stewart offered in support of his motion for a new trial warrants a new trial. The state concedes the new evidence meets three of the four factors for determining whether a new trial is warranted: the evidence was not known at trial; its being unknown was not attributable to a failure of due diligence by the defense; and the newly discovered evidence is not merely cumulative or impeaching. The only remaining issue is whether the new evidence is so material that it is likely to produce a different result at trial because it is credible and reasonably sufficient to raise a substantial doubt in the mind of a reasonable person as to the result of a new trial.

The newly discovered evidence here is credible. Self-incriminatory statements made to close family members shortly after an alleged crime that also are corroborated by confirmed DNA evidence carry substantial indicia of reliability that lends to their trustworthiness. Here, the circumstances under which Seaman's alleged statements were made lend credence to their credibility: his purported statements to his nephew about his presence at the crime scene were made the day after the murder; these statements were corroborated by Seaman's DNA being found on the bloody hat at the crime scene; his purported statements to his brother were made shortly after the murder; and these statements were made spontaneously in the context of their conversation about family issues. In addition, this evidence was generated by his family members, who presumably would be more likely to protect him over Stewart.

The newly discovered evidence here also raises substantial doubt about the result of the trial. At trial, the state's theory was that Stewart was one of the men to whom the victim referred in his 911 call. Because no forensic evidence connected him to the crime scene, the state relied on the testimony of Stewart's cellmates. If presented to and believed by a jury, Stewart's newly discovered evidence allows him to present an alternative theory in his defense, beyond his sister's testimony, that he did not leave her home the night of the murder. During retrial, it is likely that the newly discovered evidence will produce a different result if the jury concludes that the two men to whom the victim referenced were Seaman and the unknown person whose DNA also was found on the bloody hat.