

Summary of SC91112, *State ex rel. Reginald Griffin v. Larry Denney, Superintendent*
Proceedings originating in the DeKalb County circuit court, Judge J. Warren McElwain
Argued and submitted May 4, 2011; opinion issued Aug. 2, 2011

Attorneys: Griffin was represented by Kent E. Gipson of the Law Office of Kent Gipson LLC in Kansas City, (816) 363-4400; and the state was represented by 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 for the stabbing death of a fellow inmate seeks relief from his sentence, alleging that newly discovered evidence proves the state withheld material evidence during his trial. In a 4-3 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri grants the man's requested relief. The man has proven he is entitled to such relief. The state's failure to disclose evidence that prison guards confiscated a weapon near the murder scene shortly after the murder constitutes cause to overcome the objection that the man failed to raise this issue at trial. The state suppressed this evidence, and the other inmate was similar in build and complexion to the man convicted, supporting a viable alternative perpetrator defense. The man has established prejudice because no physical evidence connects him to a knife found near the murder scene and because the evidence now shows at least five substantial post-trial developments that raise serious doubts about the factual accuracy of his conviction. Accordingly, the Court vacates the man's sentence and orders him released within 60 days of when the mandate in this case issues, unless within that time the state elects to retry him, in which case the trial should begin as soon as practicable.

Judge Russell dissents. She would find that the man failed to demonstrate that the state suppressed evidence in violation of due process and, therefore, would not grant relief. He failed to connect the confiscated weapon either to the fatal wound or to the alleged alternate perpetrator, thereby failing to establish that this evidence was favorable to him. He also failed to prove the state suppressed the evidence; he alleges only that it was not in the defense file, and, as such, it is possible the state supplied it but defense counsel did not copy it.

Facts: In July 1983, a man was stabbed fatally in the chest at the Missouri Training Center for Men in Moberly. Within minutes of the stabbing, prison guards confiscated a sharpened screwdriver from inmate Jeffrey Smith as Smith attempted to leave the area where the victim was stabbed. Smith ultimately was convicted of unlawful use of a weapon for possessing the screwdriver. During the investigation of the victim's murder, inmates Paul Curtis and Wyvonne Mozee told prison investigators that fellow inmate Reginald Griffin stabbed the victim and that fellow inmates Doyle Franks and Arbary Jackson assisted Griffin. The state charged Griffin with murder. At trial, the state relied primarily on live testimony from Curtis, who received early release from prison in exchange for his testimony, and deposition testimony from Mozee, who died before the trial. The state also introduced into evidence a 13-inch-long knife found near where the murder occurred. The state did not disclose Smith's conviction involving the screwdriver to Griffin before Griffin's trial. The jury found Griffin guilty of murder, and he ultimately was sentenced to life in prison without the possibility of probation and parole. In 2005, Griffin filed a petition for a writ of habeas corpus (to be released from custody) alleging

the state failed to disclose evidence that prison guards seized the sharpened screwdriver from Smith and that Smith was convicted of unlawful use of that weapon. He alleged these failures to disclose violated *Brady v. Maryland*, 373 U.S. 83 (1963), because the evidence implicates Smith as an alternate perpetrator. The circuit court denied habeas relief. Griffin now seeks such relief from this Court.

HABEAS CORPUS RELIEF GRANTED.

Court en banc holds: Griffin has met his burden of proving he is entitled to habeas relief under *Brady*. He overcomes the procedural bar to raising a *Brady* claim now, instead of in his direct appeal and post-conviction relief proceeding, because the evidence demonstrates cause and prejudice. The state's failure to disclose to Griffin the evidence that Smith possessed a weapon near the murder scene is an objective factor external to Griffin's defense that constitutes cause to overcome the objection that Griffin did not raise this issue at trial. To establish prejudice based on new evidence, a petitioner must demonstrate that the newly discovered evidence is favorable to him, either because it is exculpatory or because it is impeaching; that the state suppressed the evidence, either willfully or inadvertently; and that the petitioner was prejudiced as a result, resulting in a verdict not "worthy of confidence." The evidence here that Smith possessed a sharpened screwdriver and was similar in height, weight and complexion to Griffin supports a viable alternative perpetrator defense and, therefore, is favorable to Griffin. The state suppressed the fact that prison guards confiscated a sharpened screwdriver from Smith shortly after the victim was stabbed. Even if the prosecutor was subjectively unaware that the weapon was confiscated from Smith, the state had a duty to discover and disclose any material evidence known to the prison guards. Griffin has established prejudice because the current state of the evidence shows at least five substantial post-trial developments that raise serious doubts about the factual accuracy of Griffin's conviction. Further, no physical evidence connects Griffin to the knife found near the murder scene. In light of these circumstances, Griffin's conviction no longer is "worthy of confidence," and he has established the prejudice necessary to overcome the procedural bar to granting him habeas relief. Accordingly, his conviction for Beasley's murder is vacated. He is ordered discharged from that sentence within 60 days from the date the mandate in this case issues, unless within that time the state elects to retry him, in which case the trial should begin as soon as practicable.

Dissenting opinion by Judge Russell: The author would find that Griffin failed to demonstrate that the state suppressed evidence in violation of due process and, therefore, would not grant relief. She would find that Griffin failed to establish a violation of *Brady v. Maryland* because he failed to prove the evidence is favorable to him. Unlike the knife found discarded near the murder scene, the screwdriver confiscated from Smith was clean of blood or human proteins, and based on the medical examiner's testimony, it could not have caused the fatal wound. Griffin fails to establish any direct connection between Smith and the murder and, therefore, fails to present an alternate perpetrator theory. Because the screwdriver is not consistent with the victim's fatal wound, it does not establish a direct connection between Smith and the murder, would not have been admissible at trial and, therefore, cannot be used to establish that the state suppressed evidence in violation of *Brady*. The author also would find Griffin failed to show the state suppressed the evidence of the screwdriver. He infers suppression by alleging this evidence was not found in the defense file; it is possible that the state provided the information but that defense counsel failed to copy it.