

Summary of SC95110, *State of Missouri v. Daniel Hartman*

Appeal from the Jasper County circuit court, Judge Gayle L. Crane

Argued and submitted December 14, 2015; opinion issued March 15, 2016, and modified March 25, 2016

Attorneys: Hartman was represented by Amy M. Bartholow of the public defender's office in Columbia, (573) 777-9977; and the state was represented by Dora A. Fichter 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 defendant appeals a judgment of conviction for second-degree murder, armed criminal action and first-degree burglary. In a 5-2 decision written by Judge George W. Draper III, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case to the trial court. The trial court abused its discretion in excluding a proposed witness's testimony, which met the standards of reliability and could have exonerated the defendant. The defendant was prejudiced by its exclusion.

Judge Paul C. Wilson dissents. He would hold the exclusion of the proposed witness's testimony did not prejudice the defendant. There already was evidence before the jury that someone other than the defendant shot the victim, and the evidence did not exonerate the defendant because the jury still could have found him guilty as an accomplice rather than the actual shooter.

Facts: While investigating the July 2012 shooting death of a man in his home, police found three bullets, including the one that killed the victim. Their subsequent investigation of the events and people surrounding the victim's homicide resulted in various and inconsistent statements. Eventually, the state filed charges against Daniel Hartman, Jonathan Taylor and three codefendants. Hartman was charged with first-degree murder, armed criminal action and first-degree burglary. During the guilt phase of the trial, two codefendants testified pursuant to a plea agreement in which each would be sentenced to no more than 15 years in prison. The state stipulated it would not call Taylor, who would refuse to testify, invoking his Fifth Amendment rights against self-incrimination. Hartman did not testify in the guilt phase of the trial, but he sought to call a witness about statements Taylor made to the witness shortly after the victim's death in which Taylor allegedly confessed to shooting the victim. The trial court sustained the state's objections to this witness's testimony as hearsay. The jury found Hartman guilty as charged. During the penalty phase, Hartman testified he did not shoot the victim and was not present in the man's house when he was killed. When the jury was unable to agree on a sentence of life in prison without the possibility of probation or parole, the trial court vacated the jury's verdicts for first-degree murder and accompanying armed criminal action, instead finding Hartman guilty of second-degree murder and accompanying armed criminal action, as the court was required to do because Hartman was a minor at the time of the crime. The court sentenced him to concurrent prison terms of life for the murder and armed criminal action convictions and 15 years for the burglary conviction. Hartman appeals.

VACATED AND REMANDED.

Court en banc holds: The trial court abused its discretion in excluding the proposed witness's testimony. A recognized exception to the rule generally excluding hearsay, constitutionally based on

the due process clause, is founded on the United States Supreme Court's decision in *Chambers v. Mississippi*. This narrow exception applies to out-of-court statements that exonerate the accused and that meet three indicators of reliability – that the confession was made spontaneously to a close acquaintance shortly after the crime, was corroborated by other evidence, and was self-incriminatory and unquestionably against the confessor's own interest.

Hartman sought to introduce a witness's testimony that Taylor confessed to shooting the victim three times. The trial court sustained the state's objections to this testimony both before and during trial. Hartman then made an offer of proof – to introduce the witness's testimony to the court outside the jury's presence – in which the witness explained that he received 20 to 30 calls from Taylor; that, when he picked Taylor up, Taylor was “just freaking out” and scared; and that Taylor told the witness a robbery “went wrong” and he had shot a man three times as the man got out of bed. The witness then reported this information to the police.

The proposed testimony meets the three indicators of reliability. First, the witness was friends with Taylor but had no relationship with Hartman, and Taylor's confession was made spontaneously to the witness shortly after the murder. Second, Taylor's statements to the witness were corroborated by evidence presented at trial placing Taylor at the scene of the crime, about the unsuccessful robbery, that the victim was shot while getting out of bed and that only three bullets were recovered from the scene. Third, Taylor's confession was self-incriminatory and against his interest, implicating himself as the only shooter responsible for the man's death. The trial court should have admitted the proposed testimony.

Hartman was prejudiced by the exclusion of the proposed testimony. He was not charged as an accomplice but as the actor in the murder. He never admitted to any participation in the crime. The state's clear evidence was that there was only one shooter, but each of its witnesses had reason to implicate someone other than Taylor as the victim's killer. Had the proposed witness's testimony been introduced, the jury could have believed that witness, whose testimony would have been the only evidence that a single person other than Hartman was the shooter. This would have provided evidence from which the jury could have exonerated Hartman of first-degree murder based on a codefendant's confession.

Dissenting opinion by Judge Wilson: The author would hold there was no prejudice from the trial court's exclusion of the proposed witness's testimony and, therefore, would affirm the judgment. For the exclusion of the testimony to be prejudicial, this Court must conclude that – had Taylor's statement to the witness been admitted – the jury would not have found Hartman guilty of first- or second-degree murder as either a principal or accomplice or of second-degree felony murder, all doubtful propositions. The jury already had before it evidence that Taylor and two other codefendants each claimed to have shot the victim. The defense could have argued that Taylor or someone else other than Hartman was the shooter, but it did not do so. Further, the proposed testimony would not have exonerated Hartman – the state still could have had the jury instructed to find Hartman guilty as an accomplice (and the jury was so instructed as to second-degree murder).