

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN RE: RYAN FERGUSON

PETITIONER,

**v.
DAVE DORMIRE,
SUPERINTENDENT, JEFFERSON
CITY CORRECTIONAL CENTER**

RESPONDENT.

DOCKET NUMBER WD76058
DATE: November 5, 2013

Writ From:

Missouri Court of Appeals Western District

Appellate Judges:

Writ Division: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Cynthia L. Martin,
Judge

Attorneys:

Samuel Henderson, St. Louis, MO, and Kathleen T. Zellner and Douglas H. Johnson, Downers
Grove, IL, for petitioner.
Shaun J. Mackelprang and Stephen D. Hawke, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN RE: RYAN FERGUSON,

PETITIONER,

v.

**DAVE DORMIRE,
SUPERINTENDENT, JEFFERSON
CITY CORRECTIONAL CENTER,**

RESPONDENT.

No. WD76058

Before Writ Division: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Cynthia L. Martin, Judge

Ryan Ferguson was convicted in 2005 of felony murder in the second degree and first degree robbery. Ferguson filed a petition for writ of habeas corpus, petitioning this court to grant him a new trial either: (i) because newly discovered evidence clearly and convincingly establishes that he is actually innocent thus undermining confidence in his conviction, or (ii) because he has established a gateway permitting review of procedurally defaulted claims that his due process rights were violated depriving him of a fair trial.

We conclude that Ferguson has established the gateway of cause and prejudice, permitting review of his procedurally defaulted claim that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by withholding material, favorable evidence of an interview with Barbara Trump, the wife of Jerry Trump, one of the State's key witnesses at trial. The undisclosed evidence renders Ferguson's verdict not worthy of confidence.

Writ of Habeas Corpus is issued. Ferguson's convictions are vacated and Ferguson is ordered discharged from the custody of the department of corrections unless the State elects to retry him.

Writ Division holds:

1) We are required to independently consider Ferguson's Petition as an original writ filed pursuant to the authority of Rule 91 and Rule 84.22, and subject to the procedure set forth in Rule 84.24.

2) Ferguson has the burden of proving he is entitled to habeas corpus relief. Ferguson has met his burden by establishing the gateway of cause and prejudice to permit habeas review of his procedurally defaulted claim of a *Brady* violation, and by establishing that the State committed a *Brady* violation in connection with an undisclosed interview of Barbara Trump, the wife of an important State witness.

3) "Cause" is partially established with proof that the State withheld favorable evidence, as that act by its essence constitutes an objective factor external to the defense. The State admits that the Barbara Trump interview was not disclosed, and that the interview was favorable because it was potentially impeaching. It remains Ferguson's burden, however, to demonstrate that the State's nondisclosure explains his failure to raise a related *Brady* claim on direct appeal or in his Rule 29.15 motion.

4) The State acknowledges that Ferguson did not learn about Barbara Trump's possible testimony or about the State's failure to disclose its interview with Barbara Trump until after Jerry Trump, her husband, recanted his trial testimony identifying Ferguson. Until Jerry Trump recanted his trial testimony, Ferguson had no reason to suspect that the source of Trump's claimed ability to identify Ferguson and Erickson was fabricated, and could have been impeached by Barbara Trump's testimony at trial. Cause is established for purposes of the gateway of cause and prejudice.

5) Prejudice under the cause and prejudice gateway is coextensive with *Brady* prejudice. *Brady* prejudice requires a demonstration that the suppressed evidence was material. *Brady* materiality does not require demonstration by a preponderance that disclosure of the Barbara Trump interview would have resulted ultimately in Ferguson's acquittal. Materiality is established if the Barbara Trump interview can reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. The question is not whether Ferguson would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial resulting in a verdict worthy of confidence.

6) Ferguson has established that the undisclosed interview with Barbara Trump was material. The undisclosed interview impeached an important government witness whose testimony was heavily relied on by the State to secure Ferguson's conviction. The undisclosed interview could have led Ferguson to discover additional evidence that would have aided in his defense. And the undisclosed interview is material when cumulatively considered with other evidence the State failed to disclose to Ferguson.

7) Under the facts and circumstances of this case, we conclude that Ferguson did not receive a fair trial. His verdict is not worthy of judicial or public confidence.

8) Because the relief sought by Ferguson as to each of his habeas claims is the same, our grant of a writ of habeas corpus as to one claim negates the need to consider other claims. Thus, all of Ferguson habeas claims besides the claim involving the undisclosed Barbara Trump interview are dismissed without prejudice to their re-filing.

Opinion by Cynthia L. Martin, Judge

November 5, 2013

This summary is UNOFFICIAL and should not be quoted or cited.