

Summary of SC89846, Jason Merriweather v. State of Missouri

Appeal from the St. Louis city circuit court, Judge Thomas C. Grady

Attorneys: The state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321, and Merriweather was represented by Nick Zotos of the Nick A. Zotos Law Office in St. Louis, (314) 534-1797.

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 circuit court overturned a man's conviction for forcible sodomy, finding the state's failure to disclose the alleged victim's prior criminal convictions for retail thefts deprived the man of his right to a fair trial. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the circuit court's decision. A rule of criminal procedure requires the state to make diligent good-faith efforts to locate materials and information favorable to the defendant not only in the state's own possession or control but also in the control of other governmental personnel. Here, the state's failure to search two available databases to find the prior convictions falls below the diligence required. Because credibility at trial was pivotal, and the woman's convictions would have affected the jury's assessment of her credibility, the state's failure to exercise due diligence prejudiced the man.

Facts: The state charged Jason Merriweather with forcible sodomy, armed criminal action, kidnapping and attempted forcible rape based on T.B.'s account that, in March 2002, she was walking home in St. Louis when Jason Merriweather pulled his car in front of her, brandished a handgun and ordered her into his car, then drove her to an alley where he sexually assaulted her. Before trial, Merriweather's counsel ran T.B.'s name through a local database to ascertain her criminal history and found no criminal record. His counsel also made discovery requests to the state for T.B.'s criminal record. The prosecutor's investigator ran a criminal background check, also using the local database, and found no criminal record. At trial, Merriweather testified that T.B. had flagged him down as he was driving, entered his car and offered to exchange oral sex for drugs and that, after she performed oral sex and he refused to pay her, she got out of the car and began screaming at him. No physical evidence was introduced at trial. The jury found Merriweather guilty of forcible sodomy but acquitted him of attempted forcible rape, armed criminal action and kidnapping, and his conviction was affirmed on appeal. *State v. Merriweather*, 196 S.W.3d 636 (Mo. App. 2006). At the subsequent hearing on Merriweather's motion for post-conviction relief, the prosecutor testified that, just that morning, she ran a criminal record check on T.B. using an updated local database and found T.B. had three prior convictions for retail thefts in Illinois and was facing a pending charge in St. Louis County for fraudulent use of a credit device. All the charges predated Merriweather's trial. The prosecutor's investigator testified he did not know

why his search did not reveal the prior convictions or the pending charge and could not recall whether he had searched for T.B.'s criminal record using other databases or using her known aliases. Merriweather contended the state's failure to disclose T.B.'s criminal record to the defense before trial – while not intentional – nonetheless violated *Brady v. Maryland*, 373 U.S. 83 (1963), and Rule 25.03. The circuit court vacated Merriweather's conviction, finding the state's failure to disclose the information deprived Merriweather of his right to a fair trial. The state appeals.

AFFIRMED.

Court en banc holds: The circuit court correctly concluded that the state's failure to disclose T.B.'s prior convictions violated the law and deprived Merriweather of his right to a fair trial. *Brady* requires the prosecution to disclose to the defense evidence in its possession that is favorable to the accused and material to guilt or punishment. *Brady* is violated if the prosecution suppresses such evidence, either willfully or inadvertently, and prejudice ensues. Beyond *Brady*, however, Rule 25.03 – adopted after *Brady* was decided – specifically governs disclosure requirements in criminal proceedings in Missouri. On the defendant's written request, the rule requires the state to disclose certain materials and information, "within the possession or control of the state," and provides that "the state shall use diligence and make good faith efforts to cause such materials to be made available to the defense counsel." Unlike *Brady*, Rule 25.03 imposes an affirmative requirement of diligence and good faith on the state to locate records not only in its own possession or control but also in the control of other governmental personnel. Here, the investigator testified that, at the time of Merriweather's trial in 2005, he had access to the Missouri Uniform Law Enforcement System (which would have provided access to T.B.'s pending Missouri charge) as well as the National Crime Information Center database (which would have provided access to T.B.'s Illinois convictions) but that the investigator ran criminal history checks only on REJIS, the regional justice information service database through which criminal records from the city and county of St. Louis could be accessed. This evidence is sufficient to support a finding that the state failed to meet its burden to show it made a diligent effort to provide Merriweather with favorable evidence. Such a failure deprived Merriweather of his right to a fair trial because credibility at trial was pivotal and the convictions probably would have affected the jury's assessment of T.B.'s credibility.