

## **Summary of SC92003, *State of Missouri v. Jermane Clark***

Appeal from the St. Louis circuit court, Judge Bryan L. Hettenbach

Argued and submitted Jan. 5, 2012; opinion issued May 1, 2012

**Attorneys:** Clark was represented by Jessica M. Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Robert J. (Jeff) Bartholomew 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 appeals his conviction for the shooting death of another man because the trial court refused to allow him to cross-examine a key witness about the witness's belief that he might receive favorable treatment in his own unrelated criminal case in exchange for his testimony in the murder trial. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case. It is well-established that cross-examination that shows bias or interest that could affect the reliability of the witness's testimony is permissible. Because the man was convicted largely based on the testimony of this witness and another whose testimony had credibility problems, there is a reasonable probability that the trial court's decision to exclude the cross-examination affected the outcome of the trial, causing prejudice to the man.

Judge Michael W. Manners, a circuit judge in the 16th Judicial Circuit (Jackson County), sat in this case by special designation in place of Judge George W. Draper III.

**Facts:** A St. Louis metropolitan police officer responded to two calls in the same area two days apart in December 2008. In responding to the first call, the officer found the body of Morris Thompson, who had been shot to death, face-down in a grassy area behind a vacant residence. In responding to the second call, the officer caught and arrested Glenn Shelby, who took off running when the officer arrived. Immediately after the arrest, Shelby showed the officer where he had hidden a gun in a nearby trash dumpster. After experts later concluded the gun was used to kill Thompson, officers again arrested Shelby. During an interrogation, Shelby told detectives that, shortly before Thompson's death, he had given the gun to Jermane Clark, whom Shelby said had admitted to killing Thompson. Shelby also told officers that another man, Maurice Payne, had been in the area of the murder shortly before Thompson was killed. When police questioned Payne, he said he had seen Clark shoot Thompson to death. Based on these two accounts, police arrested Clark, and the state charged him with first-degree murder and armed criminal action. Both Payne and Shelby testified against Clark at trial. Payne had pleaded guilty in an unrelated criminal case, and, in lieu of traditional sentencing, his case had been transferred to a drug court program. Failure to comply with the program's requirements would result in his case being retransferred for traditional sentencing on the criminal charges. Before Payne testified at Clark's trial, Clark's attorney notified the court and the prosecutor that he planned to elicit testimony that, should Payne not complete the drug court program successfully, Payne hoped for leniency in his criminal sentencing in exchange for testifying against Clark. The trial court permitted Clark to cross-examine Payne about Payne's guilty plea but sustained the prosecutor's

objection to Clark cross-examining Payne about Payne's hope for leniency, noting that Payne had not even been offered a plea deal in exchange for his testimony in Clark's case. The court permitted Clark to submit an offer of proof that demonstrated that Payne would have testified that he hoped for leniency in a possible future sentencing as a result of his testimony against Clark. The jury found Clark guilty of first-degree murder and armed criminal action, and the trial court sentenced him to two concurrent terms of life in prison. Clark appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** The trial court abused its discretion by refusing Clark the opportunity to cross-examine a key witness about whether the witness was biased. It long has been the rule in Missouri that, on cross-examination, a witness may be asked any questions to test his accuracy, veracity or credibility. It also is well-established that the interest of a witness never is irrelevant. As such, cross-examination is permissible if it shows bias or interest that could affect the reliability of the witness's testimony. Here, Payne admitted during the offer of proof that, in the event his own criminal case were retransferred for sentencing, he hoped he would benefit because he testified against Clark. The fact that the state never had offered Payne a plea deal in exchange for his testimony does not account for the subjective nature of bias. It is possible for a witness to perceive a fact mistakenly and yet be biased as a result of the mistaken perception. Payne's belief that his testimony would have a favorable effect on future sentencing may have been mistaken or speculative, but a reasonable jury could have concluded that Payne's misplaced hope was a source of bias making him want to help the state, and Clark should have been allowed to cross-examine Payne about this issue.

This error prejudiced Clark. The state presented no physical evidence linking Clark to Thompson's murder, relying mainly on the testimony of Payne and Shelby. Shelby owned the gun used to kill Thompson, and the officer recovered the gun from Shelby after he arrested Shelby, who failed to come forward with information about Thompson's death before he was arrested. Shelby's version of events also diverges from Payne's version, including when Shelby arrived at the murder scene and how Thompson, Payne and Clark came to be in the same place. Payne also did not come forward with information before detectives approached him, and he pleaded guilty to unrelated charges just weeks before Clark's trial. Information Clark might have elicited during cross-examination might have caused the jury not to believe Payne and then conclude that Shelby's testimony alone was insufficient to find Clark guilty beyond a reasonable doubt. As such, there is a reasonable probability the court's decision to exclude the cross-examination affected the outcome of the trial.