

## **Summary of SC94503, *State of Missouri v. Demetrick Taylor***

Appeal from the St. Louis circuit court, Judge Jimmie M. Edwards

Argued and submitted February 3, 2015; opinion issued August 4, 2015

**Attorneys:** Taylor was represented by Amy E. Love of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Shaun J. Mackelprang 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 the judgment convicting him of possession of a controlled substance. In a 4-3 decision written by Chief Justice Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment. The trial court did not abuse its discretion in excluding the proposed defense witness's testimony, as direct evidence or as contradiction evidence to be used for impeachment purposes or as character impeachment evidence. Some of her testimony would have been inadmissible hearsay, and the rest of her testimony would have been neither logically nor legally relevant to the circumstances leading to the man's arrest nor contradictory to any of the police officers' testimony nor admissible to impeach their character. The trial court also did not commit plain error in sentencing Taylor, who failed to prove the court did not consider all the mitigating evidence before determining the sentence.

Judge Laura Denvir Stith dissents. She believes that the trial court abused its discretion by not allowing a witness to testify about what she saw and heard prior to and after the man's arrest and that the witness's testimony was relevant for purposes of impeachment.

**Facts:** Demetrick Taylor was arrested in January 2012, and the state charged him, as a prior and persistent drug offender, with one count of possession of a controlled substance. During Taylor's May 2013 trial, the arresting officers testified that they observed Taylor walking down a street looking into parked vehicles and that Taylor ran when they approached him. They testified that, during the ensuing chase, Taylor took an object from his waistband and threw it over a fence into an adjacent residential yard. One of the officers testified that he retrieved from the yard a plastic bag containing nine smaller baggies of what later was determined to be crack cocaine. Taylor's counsel informed the trial court that he intended to call as his sole witness a woman who lived near where Taylor was arrested. Taylor's counsel made a narrative offer of proof to the court, indicating the witness would testify that she heard the commotion near her home, saw that officers had Taylor handcuffed on the ground and attempted to record video of the events with her cell phone but the officers seized her phone. Counsel indicated the witness also would testify that she observed the officers searching the yard but found nothing there. The court sustained the state's objection to this witness's testimony as well as to questions Taylor's counsel attempted to ask of the officers. The jury found Taylor guilty, and Taylor moved for a judgment of acquittal or a new trial, arguing the court erred in excluding the witness's testimony. The court overruled his motion and proceeded to sentence Taylor. The court told Taylor it had received, on his behalf, a letter from a reverend the court respected. The court indicated it had told Taylor's counsel its intentions about sentencing, gave Taylor an opportunity to speak with the court and then sentenced Taylor to 16 years in prison. Taylor appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The trial court did not abuse its discretion in excluding the proposed defense witness's testimony, as direct evidence or as contradiction evidence to be used for impeachment purposes or as character impeachment evidence.

(a) Although the witness would have testified another man was outside that night and did not see the police find any drugs when they searched the yard, she did not see these events personally. As such, her testimony would have been inadmissible hearsay, and Taylor did not call the other man as a witness. Taylor concedes the witness did not observe his conduct prior to his arrest or pursuit and initial apprehension by the officers. As such, the proposed testimony regarding her personal observations of Taylor's interactions with police and the circumstances surrounding his arrest had little logical or legal relevance, and the trial court reasonably could have concluded this evidence's potential to confuse or mislead the jury justified its exclusion. Her observations began when Taylor was on the ground and handcuffed. She did not see Taylor's conduct the officers observed, how he reacted to his encounter with the police, whether he ran from the officers or threw a bag of cocaine, or whether the police apprehended Taylor in the manner they claim. There is nothing in the witness's observations after Taylor was handcuffed that would aid in his defense. To the extent the witness would have testified about the police seizing her cell phone, the offer of proof did not indicate whether she was attempting to record anything that might have aided in Taylor's defense or shown any misconduct by the officers.

(b) Contradiction evidence is not admissible for impeachment purposes if the contradiction relates to a collateral matter (not key to the main issues in the case). Whether the other man was outside before and during Taylor's arrest, nothing in the offer of proof indicated the man was visible to the officers at the time and so would not have contradicted the officers' testimony that they did not see anyone else besides Taylor. As to the witness's proposed testimony about the officers preventing her from videorecording them, the trial court sustained the state's objections to Taylor's questions about this issue to the police, and Taylor did not appeal this issue. As such, nothing in the proposed witness's testimony would have contradicted any testimony by the officers. Because there would have been no contradiction, her testimony would not have been relevant.

(c) As noted previously, the offer of proof did not include any testimony by the proposed witness that the officers prevented her from recording their actions to hide something that would have aided in Taylor's defense or that would have shown misconduct by the officers. That they prevented her from recording events after Taylor's arrest is of little probative value to whether police previously planted drugs on Taylor. To the extent Taylor claims, for the first time on appeal, that the police conduct in seizing the witness's phone showed a consciousness of guilt, a consciousness of guilt of a testifying witness is not a recognized form of impeachment.

(2) The trial court did not commit plain error in sentencing Taylor. Rule 29.07(b)(1) did not mandate that the trial court allow Taylor and his counsel an opportunity to present mitigating

evidence. The court did give Taylor an opportunity to be heard in his motion for a new trial before sentencing. Although the court's routine practice of announcing its sentencing decision before a scheduled hearing regarding sentencing is at odds with the long-standing right that a defendant personally be given the opportunity to speak and present mitigating evidence prior to sentencing, there is nothing in Rule 29.07(b)(1) or this Court's prior decisions that such a practice constitutes reversible error. Taylor fails to make a persuasive argument that this Court should reexamine existing law and overrule its precedent. He also fails to show the trial court did not consider all the evidence – both mitigating and aggravating – before informing Taylor's counsel that the court intended to impose a 16-year prison sentence. Mitigating evidence was in the sentencing assessment report and the reverend's letter the court received before the sentencing hearing, and Taylor did not present additional mitigating evidence at the hearing.

**Dissenting opinion by Judge Stith:** (1) The author believes that if it was relevant and material for the prosecution to introduce evidence related to the portion of the events that occurred prior to the police officers' chase of Taylor, then it was relevant and material evidence for the defense to present testimony of a witness who says that different facts led up to and followed Taylor's arrest. Different rules of admissibility and relevance do not apply to the prosecution and the defense, and the *res gestae* ("things done" or "events at issue") does not shrink in size once the prosecution rests.

(2) The author disagrees with the principal opinion's assertion that the testimony of a witness who says that different facts led up to and followed Taylor's arrest are merely collateral matters that do not impact on the police version of events or the credibility of the police officers' testimony. The principal opinion also essentially states that once a police witness testifies about the actual arrest, the police witness can testify about what occurred next without fear of being impeached because the impeachment evidence will be excluded as being collateral. That is not the law. Instead, the author believes that the witness's testimony would have been relevant for purposes of impeachment. After the witness testifies, then it is up to the jury to weigh the evidence and determine which version of events it believes.