

COURT OF APPEALS OF MARYLAND

Williams v. State, 416 Md. 670

7 A.3d 1038 (2010) · No. No. 30, September Term, 2009 · Decided October 27, 2010

SUMMARY

The Court of Appeals of Maryland held that the State violated its discovery obligations by failing to disclose that a key deceased witness had described herself as legally blind. Because the witness's videotaped prior testimony was admitted at the defendant's second trial, the nondisclosure prejudiced the defendant's ability to challenge her observations. The court reversed the convictions and remanded for a new trial.

CASE DETAILS

|                       |                                                                                                                                                                                                                                         |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Maryland                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Raker, J.; Bell, C.J.; Harrell, J.; Greene, J.; Murphy, J.; John C. Eldridge, J. (retired, specially assigned); Lawrence F. Rodowsky, J. (retired, specially assigned); Irma S. Raker, J. (retired, specially assigned)                 |
| JURISDICTION          | Maryland                                                                                                                                                                                                                                |
| DECIDED               | October 27, 2010                                                                                                                                                                                                                        |
| DOCKET                | No. 30, September Term, 2009                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Petition for writ of certiorari from the affirmance of Williams's second criminal conviction by the Court of Special Appeals of Maryland.                                                                                               |
| STANDARD OF REVIEW    | Abuse of discretion for the trial court's selection of a discovery-violation sanction; the Court of Appeals also reviewed the legal adequacy of the opportunity and motive to develop former testimony under Maryland Rule 5-804(b)(1). |
| PRECEDENTIAL VALUE    | Published opinion of the Court of Appeals of Maryland; binding Maryland precedent.                                                                                                                                                      |
| PARTIES               | Tony Williams v. State of Maryland                                                                                                                                                                                                      |

TOPICS

- discovery criminal
- hearsay
- impeachment
- evidence
- criminal procedure

## PRACTICE AREAS

criminal procedure

evidence

appellate procedure

post-conviction relief

## QUESTIONS PRESENTED

1. Whether the State's disclosure of O'Carroll's statement about her legal blindness before the second trial eliminated a Brady violation and whether the indictment should nevertheless have been dismissed.
2. Whether O'Carroll's prior recorded testimony was admissible under the former-testimony hearsay exception when Williams had not known at the first trial that she considered herself legally blind.
3. Whether the circuit court abused its discretion by permitting the entire videotaped testimony to be played and by allowing only supplemental evidence concerning O'Carroll's vision as a remedy for the discovery violation.

## HOLDINGS

1. Because the State disclosed the information before the second trial, the information was not suppressed for Brady purposes in that trial. Nevertheless, the State violated its independent discovery obligations under Maryland Rule 4-263 by failing to disclose the information within the time required by the Rule.
2. Although Williams had an opportunity to cross-examine O'Carroll at the first trial, that opportunity was not adequate for purposes of Maryland Rule 5-804(b)(1) because he did not know that she considered herself legally blind and therefore had no meaningful reason to question her visual perception.
3. The circuit court abused its discretion by admitting O'Carroll's entire videotaped testimony while allowing only supplemental evidence concerning her vision. The remedy did not mitigate the significant prejudice caused by the State's nondisclosure.
4. Dismissal of the indictment was not required because there was no Brady violation in the second trial; the Court therefore did not reach the question whether dismissal would have been an appropriate sanction.

## KEY QUOTATIONS

*"We hold that although petitioner may have had an opportunity to cross-examine Ms. O'Carroll at the first trial, it was not an adequate one, because he had not been informed that Ms. O'Carroll was "legally blind," or at least considered herself to be so." (7 A.3d 1053-54)*

*"Ordinarily, a court will "impose the least severe sanction that is consistent with the purpose of the discovery rules." (7 A.3d 1054)*

*"We hold that the remedy that Circuit Court devised at petitioner's second trial was inadequate to mitigate the prejudice arising from Det. Massey's nondisclosure of Ms. O'Carroll's vision issues, and constituted an abuse of discretion." (7 A.3d 1054-55)*

## FACTUAL BACKGROUND

Brenda O'Carroll was the State's key eyewitness in Williams's murder trial and testified that she saw Williams chase the victim, shoot her, and leave in a car. O'Carroll later died, and before Williams's second trial a detective

disclosed that she had told police she was legally blind. The State had not timely disclosed that information under Maryland's discovery rules, yet the circuit court admitted O'Carroll's entire videotaped prior testimony and allowed the defense to present evidence concerning her vision. Williams was convicted again.

## PROCEDURAL HISTORY

Williams was convicted in 1999 of first-degree murder and handgun offenses. After post-conviction proceedings established that the State had violated Brady by withholding impeachment information concerning a jailhouse informant, the Court of Special Appeals ordered a new trial. Before the second trial, the State disclosed that a deceased eyewitness had described herself to police as legally blind, but the circuit court permitted the State to introduce the witness's entire videotaped testimony. Williams was convicted again, and the Court of Special Appeals affirmed. The Court of Appeals reversed and remanded for a new trial because the late discovery disclosure prejudiced Williams and the trial court's remedy was inadequate.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The judgment of the Court of Special Appeals was reversed, and that court was instructed to reverse the judgment of the Circuit Court for Baltimore City and remand for further proceedings. If the State sought to introduce portions of the prior recorded testimony, the trial court was instructed to redact any portion relating to what O'Carroll might have seen or testimony dependent upon her vision.

## CASES CITED

- Brady v. Maryland, 373 U.S. 83 (1963)
- State v. Williams, 392 Md. 194, 896 A.2d 973 (2006)
- Williams v. State, 152 Md. App. 200, 831 A.2d 501 (2003)
- Williams v. State, 183 Md. App. 517, 962 A.2d 440 (2008)
- Giglio v. United States, 405 U.S. 150 (1972)
- Strickler v. Greene, 527 U.S. 263 (1999)
- Yearby v. State, 414 Md. 708, 997 A.2d 144 (2010)
- Thomas v. State, 397 Md. 557, 919 A.2d 49 (2007)
- Taliaferro v. State, 295 Md. 376, 456 A.2d 29 (1983)
- United States v. Salim, 855 F.2d 944 (2d Cir. 1988)
- United States v. DiNapoli, 8 F.3d 909 (2d Cir. 1993)
- Myer v. State, 403 Md. 463, 943 A.2d 615 (2008)
- Smith v. State, 399 Md. 565, 924 A.2d 1175 (2007)
- McCarter v. State, 363 Md. 705, 770 A.2d 195 (2001)
- United States v. Presser, 844 F.2d 1275 (6th Cir. 1988)

- Bielanski v. County of Kane, 550 F.3d 632 (7th Cir. 2008)
- United States v. Bencs, 28 F.3d 555 (6th Cir. 1994)
- Evans v. State, 304 Md. 487, 499 A.2d 1261 (1985)
- Ware v. State, 348 Md. 19, 702 A.2d 699 (1997)
- Henry v. State, 324 Md. 204, 596 A.2d 1024 (1991)
- Bruce v. State, 318 Md. 706, 569 A.2d 1254 (1990)
- United States Gypsum Co. v. Mayor of Baltimore, 336 Md. 145, 647 A.2d 405 (1994)
- Gov't of the Virgin Islands v. Fahie, 419 F.3d 249 (3d Cir. 2005)
- United States v. Kearns, 5 F.3d 1251 (9th Cir. 1993)
- State v. Arrasmith, 132 Idaho 33, 966 P.2d 33 (Ct. App. 1998)

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