

WV Supreme Court Slapped Down For Ignoring Brady Disclosure Obligation

Denver Youngblood was convicted in 2003 of sexual assault, brandishing a firearm and indecent exposure. Youngblood learned after his trial that the prosecution had not informed him about a one-page handwritten note by an eyewitness and friend of the alleged victim. The note contained evidence that the crimes Youngblood had been convicted of committing had not even occurred. Thus the note supported Youngblood's claim of innocence and could have been used to impeach the alleged victim's testimony.

After discovering existence of the note and its contents, Youngblood filed a motion for a new trial on the basis that the prosecution violated its legal obligation to disclose the note's existence under *Brady v. Maryland*, 373 U.S. 83 (1963). The trial judge denied the motion on the basis that the prosecution hadn't committed a *Brady* violation because the note constituted impeachment evidence only, and thus the failure to disclose its existence didn't constitute grounds for a new trial.

In affirming Youngblood's conviction, the West Virginia Supreme Court ruled in 2005 that the trial judge did not abuse his discretion by denying a new trial. Relying on an 1894 state case, the Court majority reasoned, "the new trial will generally be refused when the sole object of the new evidence is to discredit or impeach a witness on the opposite side."¹ By the way it handled the issue of the undisclosed note, the Court sidestepped considering Youngblood's claim that its concealment was a constitutional *Brady* due process violation.

However, in his dissent, Justice Davis tackled Youngblood's claim of a *Brady* violation head on. He wrote,

"I believe the writing provided both exculpatory and impeachment evidence. However, assuming for the sake of argument that the writing was purely impeachment evidence, under *Brady* and its progeny, due process still required its disclosure. ... In fact, the United States Supreme Court has expressly "disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes."²

Youngblood appealed to the U.S. Supreme Court. On June 19, 2006, the Court issued a GVR (Grant, Vacate and Remand) ruling, *Youngblood v. West Virginia*, No. 05-6997 (U.S. 06/19/2006), on the basis of the written briefs, and without oral arguments:

The trial court denied Youngblood a new trial, saying that the note provided only impeachment, but not exculpatory, evidence. The trial court did not discuss *Brady* or its scope, but expressed the view that the investigating trooper had attached no importance to the note, and because he had failed to give it to the prosecutor the State could not now be faulted for failing to share it with Youngblood's counsel.³

...
A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused. See 373 U.S., at 87. This Court has held that the *Brady* duty extends to impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), and *Brady* suppression occurs when the government fails to turn over even evidence that is "known only to police investigators and not to the prosecutor," *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). See *id.*, at 437 ("[T]he

individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"). "Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,'" *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (quoting *Bagley*, supra, at 682 (opinion of Blackmun, J.)), although a 'showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,' *Kyles*, 514 U.S., at 434. The reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.*, at 435.

Youngblood clearly presented a federal constitutional *Brady* claim to the State Supreme Court. ... We, therefore, grant the petition for certiorari, vacate the judgment of the State Supreme Court, and remand the case for further proceedings not inconsistent with this opinion.⁴

Interestingly, the three dissenters, Scalia, Thomas and Kennedy, didn't do so because they disagreed with the substance of the Court's decision about Youngblood's *Brady* claim. They objected to the use of the GVR procedure to expedite resolution of the case.

Endnotes:

- ¹ *State v. Youngblood*, 618 S.E.2d 544, 217 W.Va. 535 (W.Va. 06/24/2005); 2005.WV.0000065 ¶ 83 <<http://www.versuslaw.com>>
- ² *Id.* at ¶ 115 <<http://www.versuslaw.com>>
- ³ *Youngblood v. West Virginia*, No. 05-6997 (U.S. 06/19/2006); 2006.SCT.0000111 ¶ 11 <<http://www.versuslaw.com>>
- ⁴ *Id.* at ¶ 14-15 <<http://www.versuslaw.com>>



Salim Ahmed Hamdan v. Donald H. Rumsfeld, No. 05-184, 548 U.S. ____ (U.S. 06/29/2006)

[3] 2006.SCT.0000136<www.versuslaw.com>

[35] Petitioner Salim Ahmed Hamdan, a Yemeni national, is in custody at an American prison in Guantanamo Bay, Cuba. In November 2001, during hostilities between the United States and the Taliban (which then governed Afghanistan), Hamdan was captured by militia forces and turned over to the U. S. military. In June 2002, he was transported to Guantanamo Bay. Over a year later, the President deemed him eligible for trial by military commission for then-unspecified crimes. After another year had passed, Hamdan was charged with one count of conspiracy "to commit ... Offenses triable by military commission." ...

Supreme Court Nixes Guantanamo Bay Military Commissions

[36] Hamdan filed petitions for writs of habeas corpus ... His objection is that the military commission the President has convened lacks such authority, for two principal reasons: First, neither congressional Act nor the common law of war supports trial by this commission for the crime of conspiracy — an offense that, Hamdan says, is not a violation of the law of war. Second, Hamdan contends, the procedures that the President has adopted to try him violate the most basic tenets of military and international law, including the principle that a defendant must be permitted to see and hear the evidence against him.

[37] The District Court granted Hamdan's request for a writ of habeas corpus. ... The Court of Appeals for the District of Columbia Circuit reversed. ... Recognizing, as we did over a half-century ago, that trial by military commission is an extraordinary measure raising important questions about the balance of powers in our constitutional structure, *Ex parte Quirin*, 317 U.S. 1, 19 (1942), we granted certiorari.

[38] For the reasons that follow, we conclude that the military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the Geneva Conventions. Four of us also conclude ... that the offense with

Hamdan cont. on p. 44