DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

DAVID M. DEREN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-2039

[July 15, 2009]

ON REMAND FROM THE SUPREME COURT OF FLORIDA

PER CURIAM.

In *Deren v. State*, 962 So. 2d 385 (Fla. 4th DCA 2007), we rejected appellant's claim of a *Brady v. Maryland*, 373 U.S. 83 (1963), violation because appellant could have obtained the withheld evidence himself with reasonable diligence. For this holding, we relied upon *Melendez v. State*, 612 So. 2d 1366, 1368 (Fla. 1992). *See Deren*, 962 So. 2d at 387.

The Florida Supreme Court reversed our decision, pointing out that the *Brady* test enunciated in *Melendez* had been abandoned in "numerous" cases. *Deren v. State*, 985 So. 2d 1087, 1088 (Fla. 2008). The case was remanded to us to apply the correct *Brady* test outlined by the United States Supreme Court in *Strickler v. Greene*, 527 U.S. 263 (1999).

Under the *Strickler* test, to establish a *Brady* violation the defendant has the burden to show "(1) that favorable evidence, (2) was willfully or inadvertently suppressed by the State, and (3) because the evidence was material, the defendant was prejudiced." *Deren*, 985 So. 2d at 1088.

Appellant was convicted of two battery offenses and one count of disorderly conduct. The convictions arose from a fight at a bar. Appellant intervened in an altercation between his good friend and the bar's bouncer, Jerry Fitzpatrick. As a result of injuries sustained in the fight, Fitzpatrick submitted a worker's compensation claim.

The state withheld a letter from the bar's compensation insurance provider detailing that Fitzpatrick had received $20,956.47 for medical bills and $2,946.84 for lost wages. Section 440.09(3), Florida Statutes (2007), provides that "[c]ompensation is not payable if the injury was occasioned primarily . . . by the willful intention of the employee to injure or kill . . . another." The defense wanted to use the letter to demonstrate Fitzpatrick's financial motive to paint appellant and his friend as the instigators of the initial fight. This type of financial interest is a proper subject of cross examination. Had such information been disclosed by the state "a reasonable probability exists that the outcome of the proceedings would have been different." *Young v. State*, 739 So. 2d 553, 558 (Fla. 1999) (quoting *Robinson v. State*, 707 So. 2d 688, 693 (Fla. 1998)). "A 'reasonable probability' of a different result is . . . shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Young*, 739 So. 2d at 557 (quoting K*yles v. Whitley*, 514 U.S. 419, 434-36 (1995) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)). For these reasons, we reverse appellant's convictions and remand for a new trial.

GROSS, C.J., POLEN and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Robert E. Belanger, Judge; L.T. Case No. 04-1814 CFA.

Paul Morris of Law Offices of Paul Morris, P.A., Miami, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Laura Fisher Zibura, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.