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*Strickler v. Greene***Reasonable Probability that Disclosure of Withheld Evidence Would Have Led to a Different Outcome at Trial Is Required to Obtain Relief under the Brady Rule**

By Rosemary E. Allulis

The United States Supreme Court held that to establish a constitutional violation under *Brady v. Maryland*, 373 U.S. 83 (1963), there must be a reasonable probability that disclosure of evidence withheld by the prosecution would have changed the outcome of the trial. *Strickler v. Greene*, 527 U.S. 263, 119 S. Ct. 1936 (1999). Affirming a decision in the United States Court of Appeals for the Fourth Circuit, the Court held that although the petitioner demonstrated cause for failure to raise a timely claim, and satisfied two of the three elements of a *Brady* violation, petitioner failed to establish material prejudice sufficient to obtain relief.

In January 1990, Leanne Whitlock ("Whitlock") was abducted from a Virginia shopping mall, robbed, and brutally murdered. The murder weapon was a sixty-nine pound rock that was dropped on her head. Given the weight of the rock, forensic evidence suggested that two people had committed the murder; one by holding Whitlock down, the other by dropping the rock that crushed her skull. Police arrested and charged Tommy Strickler ("Strickler") and Ronald Henderson ("Henderson") for the three offenses. During separate trials, the prosecutor presented evidence from the murder scene, Whitlock's abandoned car, and eyewitness accounts linking both

defendants to the crime. One essential eyewitness, Anne Stoltzfus ("Stoltzfus") provided the only narrative account of what transpired during the abduction. Claiming she possessed "an exceptional memory," Stoltzfus confidently described in vivid detail the aggressive and dominant role Strickler played, portraying him as the one who had initiated and directed the abduction.

Although both defendants were found guilty, Henderson was convicted of the lesser offense of first-degree murder, while Strickler was convicted of capital murder and sentenced to death. The Virginia Supreme Court affirmed Strickler's conviction and sentence. After appointing new counsel to represent Strickler during state habeas corpus proceedings, the circuit court dismissed the petition and the state supreme court affirmed. During each state proceeding, Strickler's attorney relied on the prosecutor's open file policy, believing the files contained all information in possession of, and known to, the state.

In 1996, Strickler filed a federal habeas corpus petition in the United States District Court for the Eastern District of Virginia. The district court granted Strickler's *ex parte* petition to obtain all files that were relevant to his case. While examining these documents, Strickler's attorney

discovered previously undisclosed notes taken from interviews between a police detective and Stoltzfus, which the attorney concluded could have significantly impeached Stoltzfus's credibility. A comparison of her testimony and the documents would have revealed the disparity between Stoltzfus's detailed description of the violent abduction, and her previously "vague memory" of the same incident that she "totally wrote [ ] off as a trivial episode of college kids carrying on." Strickler contended that because the documents contained critical exculpatory and impeaching evidence that was withheld from defense counsel, the resulting *Brady* violation rendered his conviction constitutionally invalid.

The district court granted summary judgment in favor of Strickler, holding that the prosecution's failure to disclose the documents amounted to prejudice sufficient to undermine confidence in the verdict. However, the United States Court of Appeals for the Fourth Circuit reversed the district court, holding that the *Brady* claim was procedurally flawed because Strickler failed to raise it during state proceedings. Alternatively, the court of appeals held that the evidence would not have materially affected Strickler's conviction or sentence. The United States Supreme Court

granted certiorari to determine: 1) whether there was a *Brady* violation; 2) whether there was sufficient cause for the procedural default by raising the *Brady* claim; and 3) whether the undisclosed evidence prejudiced Strickler's right to a fair trial.

The Supreme Court began its analysis with a discussion of the essential elements of a *Brady* violation. *Strickler*, 527 U.S. at \_\_\_\_, 119 S. Ct. at 1948. The *Brady* rule requires the prosecution to disclose all evidence favorable to an accused, where that evidence is material to either guilt or punishment. *Id.* (citing *Brady v. Maryland*, 373 U.S. at 87). The rule encompasses both exculpatory and impeachment evidence known to anyone acting on behalf of the government that has been withheld either purposefully or inadvertently, regardless of whether it was requested. *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)). The Court noted that a true *Brady* violation does not result, however, unless the accused establishes prejudice by meeting the "reasonable probability" standard that suppressed evidence would have produced a different verdict had it been disclosed to the defense. *Id.*

The Supreme Court held that in the instant case, two of the three essential elements of a *Brady* violation, the prosecution's failure to disclose documents to the defense, and the impeaching character of that evidence, were "unquestionably established." *Id.* The Court was also satisfied that Strickler showed cause sufficient to excuse the procedural default. *Id.* at

\_\_\_\_, 119 S. Ct. at 1952. The Court stated that by relying on the prosecutor's open file policy, Strickler was justified in believing the file would contain everything known to the state. *Id.*

In narrowing the issue to whether Strickler satisfied the "materiality" element of *Brady*, the Court noted that "without a doubt," Stoltzfus's testimony made Strickler's conviction "more likely than not," without which the outcome of the trial "might have" been different. *Id.* To obtain relief, however, the Court reiterated the correct standard as being a "reasonable probability" of a different outcome, and not a "more likely than not" standard. *Id.* The question, thus, was whether 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.* (quoting *Kyles*, 514 U.S. at 435). Applying this standard to the facts of the case, the Supreme Court held that Strickler failed to satisfy his burden. *Id.* at \_\_\_\_, 119 S. Ct. at 1955. Although a "reasonable possibility" of a different outcome existed, Strickler's burden was to establish a "reasonable probability." *Id.* at \_\_\_\_, 119 S. Ct. at 1953 (quoting *Kyles*, 514 U.S. at 434).

In his dissenting opinion, Justice Souter parted company with the majority, concluding that Strickler had satisfied his burden with respect to the sentence. *Id.* at \_\_\_\_, 119 S. Ct. at 1956. Reiterating that the materiality analysis does not end at the conviction stage, he maintained that there was a reasonable probability that

impeachment of Stoltzfus's testimony would have swayed at least one juror away from recommending the death sentence. *Id.* During the sentencing phase, Justice Souter reasoned, it was likely that Stoltzfus's testimony portraying Strickler as the ringleader influenced the jury's assessment of his future dangerousness. *Id.* at \_\_\_\_, 119 S. Ct. at 1960.

Justice Souter emphasized that the continued use of the shorthand term "reasonable probability" creates the risk of confusing the correct standard. *Id.* at \_\_\_\_, 119 S. Ct. at 1956. Suggesting "significant possibility" as a better standard, Justice Souter opined that this alternative would more clearly demonstrate the degree to which undisclosed evidence actually undermined a verdict or sentence. *Id.* at \_\_\_\_, 119 S. Ct. at 1957.

With its decision in *Strickler v. Greene*, the United States Supreme Court has firmly established the standard for obtaining relief under *Brady* as a "reasonable probability" that the outcome would be different. Although the Court stresses the special role of prosecutors to ensure justice through truth, the use of this ambiguous nomenclature leaves little promise for the truly innocent in the face of an erroneous decision. Likewise, the application of this vague standard during the sentencing phase could mean the difference between life and death.