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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PAUL E. LAMBERTH,

APPELLANT

APPELLATE CASE NO. 2023-001827

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in denying Appellant's motion to dismiss the indictment based on spoliation where the State lost the coffee mug and coffee that was alleged to have been tampered with prior to any forensic testing being performed on the items because the loss of this key evidence precluded Appellant from presenting a complete defense, rendering Appellant's trial fundamentally unfair and depriving him of due process under both the United States and South Carolina Constitutions?

STATEMENT OF THE CASE

Appellant was indicted during the April 2023 term of the Pickens County grand jury for one count of tampering with a human drug product or food item. R.___(Indictment). On November 7-9, 2023, the State, represented by Wes Stolarski, called the case to trial before the Honorable G.D. Morgan, Jr., and a jury. Appellant was represented by J. Max Gravlee and Stephen Snow. Tr. 1. The jury found Appellant guilty as indicted. Tr. 380, ll. 16-21. Judge Morgan sentenced Appellant to five years of incarceration, suspended upon the service of time served and four years of probation.[1] The court also issued a permanent restraining order barring Appellant from any contact with the alleged victim. Tr. 394, l. 17-Tr. 396, l. 8; R.___ (Sentencing Sheet).

[1] Special conditions of probation included substance abuse counseling, random drug and alcohol screening, and inpatient mental health treatment. Due to Appellant's lack of employment or housing, the court waived all fees associated with his probation. Tr. 394, l. 17-Tr. 396, l. 8.

STANDARD OF REVIEW

Appellant has been unable to locate a standard of review for this issue. As such, Appellant would suggest that the proper standard of review for this constitutional matter would be the two-step analysis performed in State v. Frasier, 437 S.C. 625, 633-634, 879 S.E.2d 762, 766 (2022) ("Accordingly, appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to *de novo* review.") Appellant proposes that appellate review of a motion to dismiss or suppress based on spoliation involves review of the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion – whether due process was violated – is a question of law subject to *de novo* review.

ARGUMENT

The circuit court erred in denying Appellant's motion to dismiss the indictment based on spoliation where the State lost the coffee mug and coffee that was alleged to have been tampered with prior to any forensic testing being performed on the items because the loss of this key evidence precluded Appellant from presenting a complete defense, rendering Appellant's trial fundamentally unfair and depriving him of due process under both the United States and South Carolina Constitutions.

Relevant Facts

On September 19, 2021, Scott Carrick was brought to the ER complaining of transient confusion. Carrick told ER personnel that he had gone to bed the night before and woken up confused. Carrick was coherent and able to answer questions while being attended to in the ER. He was alert and oriented to person, place, and time. R.____ (State's Ex. 1, Medical Records pg. 7 of 40).[2] Due to the unspecified nature of Carrick's complaint the on-call ER doctor, Michael Dillard, ran a battery of tests that included labs, a urinalysis and toxicology screen, and a CT of Carrick's head. Tr. 179, l. 1-21, R.___ (State's Ex. 1 Medical Records). The only unusual finding Dr. Dillard reported was a positive urinalysis showing THC and benzodiazepine[3] in Carrick's system. Tr. 179, ll. 22-25.

Carrick informed Dr. Dillard that he was training for a marathon and only took Advil. Carrick, who was a property owner and landlord, believed that he had been "poisoned" by one of his tenants. Tr. 232, ll. 18-22. Carrick maintained that he did not use narcotics and that there was

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2 Carrick's medical records showed that EMS reported that Carrick had woken up with confusion that morning which lasted five to ten minutes. R.___ (State's 1, Medical Records pg. 17 of 40).

3 The level of narcotics in Carrick's system was not quantified for presentation during trial. Tr. 173, ll. 20-25.

not any THC or benzodiazepine in his home that he could have accidentally ingested. Tr. 276, ll. 7-11. Upon being released from the ER, Carrick went to church. He then proceeded to mow his lawn. Tr. 288, l. 19-Tr. 289, l. 9.

Between going to church and doing yard work, Carrick called the police regarding his suspicion that he had been "poisoned." Tr. 287, ll. 22-25; Tr. 290, l. 14-Tr. 291, l. 20. According to Carrick, he brought a travel mug of coffee with him to the properties he owned and managed every day and did so on September 18, 2021. When he was finished drinking his coffee for the day, he placed the mug and left over coffee on top of the black refrigerator in the hallway in the common area and went about doing his various jobs around the property. Carrick stated that he drank his coffee black, and he always left about a third of his coffee in the mug. He left coffee in the mug so that the following day he could pour fresh coffee into the mug and the old coffee would cut the temperature of the fresh, hot coffee. He stated he would use the same mug for three to four days. Tr. 226, ll. 12-17; Tr. 287, ll. 7-15.

Carrick recalled coming home and placing the coffee mug next to his coffee maker. The following morning Carrick awoke, poured new coffee into the old coffee in his coffee mug, took several swigs of coffee and then went to review a script for a church bible school skit. While drinking his coffee, Carrick noted an "orange flavor" that was unusual. The flavor reminded him of a hand cleaner that smelled of oranges and he thought "that guy put hand cleaner in my coffee." Carrick poured the remaining coffee down the drain and without washing or rinsing the mug, refilled the mug with fresh coffee that he continued to drink. Tr. 226, l. 18-Tr. 229, l. 17; Tr. 287, l. 19-Tr. 288, l. 2. Carrick stated he had some vague memories of that morning but had no solid memory of the events before being in the ER. Tr. 230, ll. 2-14. He stated his only symptoms were

confusion and amnesia. Tr. 231, ll. 8-16. Carrick asserted that his memory of the day of September 19 was patchy but that he was back to normal the next day. Tr. 285, l. 20-Tr. 289, l. 9.

Carrick provided police with the DVR of the security system[4] that monitored the common areas of the rental property managed by Carrick where Appellant lived. From that DVR, police pulled footage onto three DVD's spanning twelve hours of September 18, 2021.[5] At approximately 9:38 in the morning, Carrick can be seen placing a black travel mug on top of a black refrigerator that is in the hallway. State's Ex. 2, Clip 1; State's Ex. 4, Clip 1. The mug does not move and is not touched until approximately 12:42 in the afternoon when Appellant can be seen walking across the hallway from a neighboring unit, grabbing the cup from the top of the refrigerator and taking it into his apartment. State's Ex. 2, Clip 7; State's Ex. 4, Clip 4. Roughly ninety seconds later, Appellant comes out of his apartment and places the travel mug back on the top of the refrigerator. State's Ex. 2, Clip 7; State's Ex. 4, Clip 4. Appellant can be seen at 4:29 in the afternoon moving the mug from the top of the refrigerator to a small table by Carrick's office. State's Ex. 2, Clip 11; State's Ex. 4, Clip 8. Finally, shortly after eight o'clock that evening, Carrick is seen exiting his office, picking up the coffee mug, and leaving for the evening. State's Ex. 3, Clip 3; State's Ex. 4, Clip 12.

Police also obtained and executed a search warrant on Appellant's apartment. A gel-capsule, a couple of vaporizer smoking devices, and a small funnel were collected during the search warrant. None of these items were ever forensically tested, nor were they entered at trial.

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4 Although Carrick owned the cameras and the DVR device, Appellant was tasked with running and maintaining the system, and acting as "security" for the building. Tr. 129, l. 1-Tr. 131, l. 2.

5 State's Exhibit 2, 3, and 4 – the DVD's containing the security footage – are on file with this Court.

Tr. 81, l. 15-Tr. 82, l. 1; Tr. 82, ll. 6-16. Appellant and his wife went to the police department the day after the execution of the search warrant for an interview. Tr. 84, ll. 5-13. Appellant spoke with Police Chief Randall Beach for approximately an hour. Tr. 91, ll. 13-18. Although Appellant was not in custody and was free to leave, Chief Beach provided him with Miranda[6] warnings prior to any questioning. Tr. 84, l. 14-Tr. 85, l. 18; Tr. 87, l. 2-18. The interview was not audio or visual recorded, nor did Chief Beach take notes about his conversation with Appellant. Tr. 102, l. 20-Tr. 103, l. 7. According to Chief Beach, Appellant admitted to taking the coffee mug into his apartment but denied putting "an object or poison" inside the coffee. However, Appellant did state that "if he was under oath, he's fifty percent positive that he urinated in Mr. Carrick's coffee cup." Appellant purportedly explained that "he disliked Mr. Carrick. He thought Mr. Carrick should be investigated." Tr. 90, ll. 3-23. Chief Beach further relayed that Appellant talked about the "aggressive nature of the landlord/tenant relationships" and thought Carrick needed to be "taught a lesson." Tr. 91, ll. 4-12.

Appellant informed Chief Beach that he had recently sustained a blow to the head, and he had a black eye during the interview. Tr. 100, ll. 8-17; Defense Exhibit 2[7]. Appellant stated that he had "a few memories of the day [of the interview]. The day before, I don't have any memory of it whatsoever. The police had come the day before and told me to come the next day." Tr. 105, ll. 10-13. Appellant had "amnesia" because of the head injury and his memory of the interview was very hazy. He maintained that Chief Beach was the person that brought up urinating in the coffee cup, to the point where Appellant was "fifty percent convinced that I had done it." Tr. 106, l. 16-Tr. 107, l. 8; Tr. 112, ll. 7-21.

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6 Miranda v. Arizona, 384 U.S. 436 (1966).

7 Defense Exhibit 2 – the photograph of Appellant's black eye – is on file with this Court.

During the pre-trial motions, defense counsel moved to dismiss the indictment against Appellant based on spoliation. Tr. 47, ll. 12-14. Defense counsel explained that Chief Beach had taken the coffee mug and coffee into evidence marking them specifically for forensic testing. Tr. 48, l. 9-Tr. 50, l. 4. Defense counsel stated, "...Chief Beach says I met with the victim in this case, who provided me with the coffee mug he suspected had been tampered with that still contained coffee. He transferred the remaining coffee into an evidence receptable suitable for liquids. He secured the mug for later examination..." Tr. 49, ll. 3-24. However, when defense counsel inquired about the testing of the coffee mug and coffee, he was informed that no testing had been done on those items and they had, in fact, been lost prior to testing and trial. Tr. 51, ll. 2-16. The State conceded that the mug and coffee had been logged into police custody but that "they don't know what happened to the cup." Tr. 53, ll. 1-7. Defense counsel argued that under the test laid out in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), the coffee mug and coffee had apparent exculpatory value and that there was no other way Appellant could obtain comparable evidence. The coffee mug and finite amount of coffee in the mug were the evidentiary crux of the case and had "just went poof." Defense counsel explained that Appellant's case as different from Arizona v. Youngblood, where there was other evidence and testimony that could be challenged. In Appellant's case "what was in that cup is what matters and [that is] what we can't replicate." Defense counsel argued that due to the loss of the evidence Appellant was denied due process under both the United States and South Carolina constitutions.[8] Tr. 59, ll. 8-17.

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8 Defense counsel specifically stated, "And it deprives Mr. Lambeth of the opportunity to test it and due process under the 14th, Article 1, Section 10 of South Carolina Constitution." Tr. 59, ll. 14-17. Admittedly, defense counsel cited to Article 1, Section 10 the South Carolina Constitution, the privacy provision, which is not at issue in this case. It is apparent from the record that counsel was arguing about violations of due process under Article 1, Section 3 of the South Carolina Constitution and merely misspoke when quoting the applicable section.

The State maintained that the "contaminated coffee" never came into the custody of the State because Carrick had poured the tainted coffee down the drain when he noticed the coffee tasted funny. Tr. 53, ll. 11-25. The State asserted that the coffee mug and coffee had "zero evidentiary value. Certainly, no apparent exculpatory value." Tr. 54, ll. 2-8. The State argued that "there's really not much that that coffee cup can say one way or another."

The trial court agreed that the loss of the coffee mug and coffee posed "some problems for the Defendant in his case." Tr. 59, ll. 18-19. However, the court questioned whether the exculpatory value of the evidence was apparent before it was lost. Tr. 60, ll. 18-19. The court recognized defense counsel's argument that the evidence could have proved exculpatory and could have shown that Appellant had not tampered with the coffee but found that Appellant had not met his burden under the test laid out in Youngblood and Cheeseboro, *supra*. Tr. 62, l. 2-Tr. 63, l. 14. The court found the spoliation of the coffee mug and coffee did not violate Appellant's due process rights. Tr. 64, ll.16-20. After the testimony of Chief Beach, but prior to the testimony of Carrick, defense counsel renewed the spoliation motion and was again denied. Tr. 218, l. 20-Tr. 220, l. 25

Discussion

"Regardless of intent or lack thereof, police action that results in a defendant's receiving an unfair trial constitutes a deprivation of due process." Arizona v. Youngblood, 488 U.S. 51, 62 (1988) (Blackmun, J. Dissenting). The loss of the coffee mug and coffee that was taken into evidence by police **specifically for testing** resulted in Appellant receiving an unfair trial, as he was precluded from presenting a complete defense. The coffee mug and coffee were the only evidentiary items that could show what substance, if anything, was used to tamper with the coffee. The lack of an unequivocal confession, coupled with the lack of evidence that Appellant had access to the narcotics that later appeared in Carrick's system, made the exculpatory value of the coffee

mug and coffee apparent - it was the only evidence Appellant could use to fully exonerate himself of the charge. The failure of the police to preserve the evidence, regardless of bad faith, was a violation of due process under both the United States and South Carolina Constitutions. The lower court erred when it denied the motion to dismiss the indictment based on spoliation.

Spoliation under the 14th Amendment

"Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." State v. Mabe, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) *citing* California v. Trombetta, 467 U.S. 479 (1984). "Included in the opportunity to present a complete defense is a defendant's privilege to request and obtain material evidence from the state for testing." Id.; *see also* Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985). The United States Supreme Court has considered various cases under "what might loosely be called the area of constitutionally guaranteed access to evidence." Youngblood at 55.

In Brady v. Maryland, 373 U.S. 83 (1963), the Supreme Court held the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In United States v. Agurs, 427 U.S. 97 (1976) the Court held "that the prosecution had a duty to disclose some evidence of this description even though no requests were made for it..." While both of those cases involved due process concerns under the 14th Amendment, neither required a showing of bad faith.[9]

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9 Similarly, in Giglio v. United States, 405 U.S. 150 (1972) the Court required a federal prosecutor to reveal a promise of non-prosecution if a witness testified, holding that "whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor." In Roviaro v. United States, 353 U.S. 53 (1957), the Court held that in some cases the Government must disclose to the defense the identity of a confidential informant. There was no discussion of any requirement of bad faith in either case. The good or bad faith of the State was irrelevant for purposes of due process.

In Youngblood, *supra*, the Court imposed a new requirement on criminal defendants claiming violations of due process due to the loss or destruction of evidence. The Court announced a new test holding that "unless a criminal defendant can show bad faith on the part of police, failure to preserve potentially useful evidence does not constitute denial of due process of law." Id. at 58. While many states apply the strict "bad faith" test in determining violations of due process under the federal constitution, our Supreme Court has held that a defendant must demonstrate **either** that the state destroyed evidence in bad faith, **or** that the state destroyed evidence that possessed an exculpatory value that is apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means. State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990); State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) (emphasis added).

The test articulated in Cheeseboro was based in part on the United States Supreme Court holding in California v. Trombetta, 467 U.S. 479, (1984). In Trombetta, the Court was asked to determine whether the State's failure to retain breath samples for the defendant's DUI case was a violation of due process. The Court reasoned that the officers were acting in good faith and in accord with their normal practice when the samples were discarded after the results were obtained from the breathalyzer. The Court wrote "[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a *significant role in the suspect's defense."* Id. at 488 (1984) (emphasis added). When the destroyed evidence is material, meaning it has "an exculpatory value that was apparent before the evidence was destroyed," and was "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means" then the accused has been deprived of due process and dismissal is the appropriate remedy. Id. at 489.

In State v. Breeze, 379 S.C. 538, 665 S.E.2d 247 (2008) this Court considered whether the trial court's failure to give an adverse inference jury instruction against the State for the inadvertent destruction of marijuana was a violation of Breeze's right to a fair trial under the Due Process clause. Breeze was approaching a driver's license checkpoint when he abruptly stopped and jerked his car into a driveway without using a turn signal. Id. at 541, 665 S.E.2d at 249. A member of the South Carolina Highway Patrol approached Breeze and requested his driver's license. Breeze "took off running" instead of complying with the request to provide identification. Breeze was ultimately taken into custody and searched incident to arrest. The search revealed a substance, believed to be marijuana, in five separate bags in Breeze's pockets. Id. at 541-542, 665 S.E.2d at 249.

Field testing of the substance was presumptive for marijuana. Prior to trial the substance was tested by an expert drug analyst who opined that the substance was marijuana weighing 394.34 grams. Id. at 546, 665 S.E.2d at 252. Upon being arrested and given Miranda warnings, Breeze informed police that he ran because he "had five bags of marijuana in his pockets." Id. at 541-542, 665 S.E.2d at 249. Breeze failed to appear for his initial trial and a bench warrant was issued. When police looked at the official case status, it was marked as "disposed" due to the issuance of the bench warrant, and it was the policy of the highway patrol to destroy drugs once a case was listed as disposed. Subsequently, the marijuana was destroyed prior to Breeze having the opportunity to perform independent testing. Id. at 546, 665 S.E.2d at 251. Based on the facts of the case, this Court found that the **previously tested** evidence was inculpatory rather than exculpatory and Breeze admitted he could not demonstrate the destroyed marijuana had **any** exculpatory value. This Court concluded that Breeze had failed to establish that the destruction of the marijuana violated his Due Process rights. Id., 665 S.E.2d at 252 (emphasis added).

Appellant's case is easily distinguished from the facts of Trombetta and Breeze, *supra*. First, the coffee mug and coffee were never tested, not even by the State, thus there were no forensic results regarding what, if anything, was in the mug and coffee. Second, the coffee mug and coffee were not destroyed in good faith and in accord with the police's normal practice – the items were negligently lost. The State had no idea what happened to the evidence after it was collected and logged for testing. Third, Appellant never confessed to putting narcotics in the coffee mug and coffee, nor were any narcotics seized from Appellant's apartment. Even Appellant's statement that he urinated in the coffee mug was not unequivocal – he was only fifty percent convinced he had urinated in the mug after talking with Chief Beach for an hour. Fourth, Carrick maintained that the only thing he had ingested the morning he went to the ER was the coffee from his coffee mug. Therefore, according to the victim, the only way he could have ingested the drugs was through his coffee. Fifth, there was no evidence presented that had Appellant urinated in the cup, the urine would contain enough narcotics to intoxicate another person. Sixth, the lost evidence is this case was material and it might have reasonably been expected to play a significant role in Appellant's defense. See Trombetta, *surpa.*

Applying the Cheeseboro test to the facts of Appellant's case shows that the mug and coffee contained exculpatory value that was apparent prior to its destruction. The mug and coffee were critically important pieces of evidence in the case that were directly material to the guilt or innocence of Appellant. The mug and coffee could have been tested for narcotics and narcotic residue, urine, DNA, and fingerprints. The **only way** for Appellant to present a complete defense of innocence to the charge against him was to be able to forensically exam the mug and coffee. The mug and coffee were evidence that might have reasonably been expected to play a significant role in Appellant's defense. That Appellant could not show the exact exculpatory nature of the

evidence was due to the negligence of the police, not his own. The law does not require Appellant to show precisely how the evidence would be exculpatory when it has been lost or destroyed by the State. Appellant must only show that within the facts of the case, the exculpatory value of the evidence was apparent prior to the destruction of the evidence. Based on the facts of the case, Appellant has met that burden.

The lost evidence was also of such a nature that Appellant was unable to obtain comparable evidence by other reasonably available means. The only evidence of what was in the mug and coffee, disappeared with the mug and coffee. There was no way to replicate that evidence and there were no test results that could be offered in place of the evidence. Appellant has met the test laid out in Cheeseboro, *supra*. The lower court erred in denying the motion to dismiss the indictment.

Spoliation under the South Carolina Constitution

Appellant maintains that, under the federal standard, he has shown a deprivation of due process sufficient to render his trial fundamentally unfair and his conviction invalid. He also asserts that his due process rights were violated under the South Carolina Constitution. In State v. Reaves, 414 S.C. 118, 127, 777 S.E.2d 213, 217 (2015) our Supreme Court wrote, "[a] number of state courts have declined to follow the bad faith standard established in Youngblood based on state law grounds. However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution." Appellant does what Reaves did not and respectfully requests that this Court determine that the South Carolina Constitution offers broader due process protections than the federal Constitution and hold that a showing of "bad faith" is not required when evidence is lost or destroyed by the State.

It is well settled that the interpretation of the state's constitution is a matter for the courts." Baddourah v. McMaster, 433 S.C. 89, 103, 856 S.E.2d 561, 568 (2021). "State courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." State v. Easler, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 622 n.13 (1997), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018). "This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

The due process rights enshrined in the United States Constitution are reflected in the South Carolina Constitution. The Due Process clause of the South Carolina Constitution reads,

> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

S.C. Const. art. I, § 3. Notably, this clause is modified by other sections of the Constitution, such as Article 1, § 12, the prohibition against double jeopardy, and Article 1, § 14, which reads,

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to be fully heard in his defense** by himself or by his counsel or by both.

S.C. Const. art. I § 14 (emphasis added). This right "to be fully heard in his defense" is not found in the federal Constitution and suggests that South Carolina affords its citizenry a higher level of due process protections.

Notably, our Supreme Court has found that our State Constitution affords broader protections under other provisions. In Planned Parenthood S. Atl. v. State, 438 S.C. 188, 882

S.E.2d 770 (2023), our Supreme Court recognized that article I, section 10 of our State Constitution granted a broader right to privacy than the federal Constitution based on the plain language of the text. As then Chief Justice Beatty wrote in his separate opinion in Planned Parenthood S. Alt., "[w]e interpret our constitution to ensure South Carolinians retain the rights it guarantees." Id. at 232, 882 S.E.2d at 794. *See Also* Moore v. Stirling, 436 S.C. 207, 223, 871 S.E.2d 423, 432 (2022) ("The discussion in Pulley as to the Eighth Amendment is not controlling of a defendant's right to due process under our state constitution."); State v. Counts, 413 S.C. 153, 174, 776 S.E.2d 59, 70 (2015) (holding police use of knock and talk to target homeowners must satisfy "the heighten privacy protection afforded by the South Carolina Constitution"); State v. Nelson, 431 S.C. 287, 308, 847 S.E.2d 480, 492 (Ct. App. 2020) ("Our courts have long recognized a defendant's constitutional right to compulsory process [under both the federal and state constitutions] may be violated if the defendant is forced to go forward in a trial without the presence of a material witness"). The South Carolina Supreme Court's interpretation of our State Constitution throughout the years strongly supports the conclusion that South Carolina offers greater due process protections to an accused above and beyond those found in the United States Constitution.

As noted in Reaves, *supra*, other states have entirely abandoned the test in Youngblood on state law grounds. See, e.g., State v. Ferguson, 2 S.W.3d 912, 917 (Tenn.1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis in its pure form."); State v. Osakalumi, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) ("As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record."); Commonwealth v. Henderson, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) ("The rule under the

due process provisions of the Massachusetts Constitution is stricter than that stated in the Youngblood opinion."; Lee v. State, 503 P.3d 811, 818 (Alaska Ct. App. 2021) ("Unlike the federal constitution, the Alaska Constitution does not require a finding of bad faith in order to establish a due process violation."); Hammond v. State, 569 A.2d 81, 87 (Del. 1989) ("We remain convinced that fundamental fairness, as an element of due process, requires the State's failure to preserve evidence that could be favorable to the defendant '[to] be evaluated in the context of the entire record.'"); State v. Matafeo, 787 P.2d 671, 673 (Haw. 1990) ("We believe the strict reading of the due process principles in Arizona v. Youngblood would preclude us, in cases where no bad faith is shown, from inquiring into the favorableness of the evidence or the prejudice suffered by the defendant as a result of its loss."); State v. Tiedemann, 162 P.3d 1106, 1115 (Utah 2007) ("[T]he culpability or bad faith of the state should be only one consideration, not a bright line test, as a matter of due process under article 1, section 7 of the Utah Constitution."); State v. Delisle, 648 A.2d 632, 643 (Vt. 1994) ("We believe, however, that Youngblood is both too broad and too narrow. It is too broad because it would require the imposition of sanctions even though a defendant has demonstrated no prejudice from the lost evidence. It is too narrow because it limits due process violations to only those cases in which a defendant can demonstrate bad faith, even though the negligent loss of evidence may critically prejudice a defendant.").

These states have realized that "there may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair." Youngblood, *supra*, (Stevens, J. concurring). These states focus the inquiry on the constitutionally material nature of the evidence along with the state's duty to preserve evidence and evaluate the failure to preserve the evidence that could be favorable to the defendant in the context of the entire

record. See e.g., State v. Ferguson, 2 S.W.3d 912, (Tenn. 1999); State v. Osakalumi, 461 S.E.2d 504 (W.Va.1995); Ex parte Gingo, 605 So.2d 1237 (Ala.1992); Thorne v. Department of Pub. Safety, 774 P.2d 1326 (Alaska 1989); State v. Matafeo, 71 Haw. 183, 787 P.2d 671 (1990); Commonwealth v. Henderson, 411 Mass. 309, 582 N.E.2d 496 (1991).

"[T]he Youngblood analysis apparently permits no consideration of the materiality of the missing evidence or its effect on the defendant's case. The conclusion is that this analysis substantially increases the defendant's burden while reducing the prosecution's burden at the expense of the defendant's fundamental right to a fair trial." Ferguson at 916-917. South Carolina's Constitution affords a broader level of due process protections than the United States Constitution. A defendant's fundamental right to a fair trial should be the main consideration, not any good or bad faith on the part of the state. Appellant requests that this Court adopt and apply a test similar to the test developed in other states that eliminates the requirement of showing bad faith and requires the courts to consider the materiality of the evidence within the context of the entire record in determining whether to dismiss the charge against the accused. If proof demonstrates the existence of a duty to preserve the evidence, and shows the State has failed in that duty, the court should consider 1) the degree of negligence involved; 2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains; and 3) the sufficiency of the other evidence used at trial to support the conviction. See Ferguson, *supra*,

Applying the above articulated test to the facts of Appellant's case shows that the court should have dismissed the charge against him. The coffee and mug were material evidence as they related directly to the guilt or innocence of Appellant. Therefore, the State had a

constitutionally imposed duty to preserve those items. The record shows that the State failed in its duty to preserve that evidence.

The degree of negligence involved in this matter is high. Chief Beach took the mug and coffee into evidence with the specific intent of having forensic testing performed on the items. The evidence was given a property receipt, marked for testing, and stored in the evidence room at the police station. However, it mysteriously disappeared prior to testing and trial, without any explanation. Such conduct is highly negligent on the part of the State as the most significant evidence in the case just vanished.

The significance of the evidence, considering its exculpatory probative value and the inability of Appellant to obtain secondary or substitute evidence, is exceedingly high. The State's assertion that the mug and coffee had "no evidentiary value" is pure hokum. Unlike in Breeze and Trombetta, no conclusive tests were performed on the relevant lost evidence. While the defendants in those cases lost the ability to retest or use potentially impeaching evidence, Appellant lost the possibility of complete exoneration through testing due to the negligence of law enforcement. There is no comparable evidence that could be obtained or in any way minimize the prejudice Appellant has suffered.

Finally, the sufficiency of the other evidence used at trial is minimal. The State alleged that Appellant urinated in Carrick's mug and coffee, which caused Carrick to ingest narcotics which caused him mental confusion. The State offered no evidence that Appellant had access to THC or benzodiazepines. The State offered no evidence that urine can transmit drugs between two individuals. The State's entire case rested on the large, and rather unbelievable, inference that urine in a beverage would contain enough unprocessed narcotics to intoxicate another individual if they drank the beverage. Appellant's unequivocal statement that he may have urinated in the

cup and the video of Appellant taking the cup into his apartment for approximately ninety seconds is not proof beyond a reasonable doubt of tampering with a human food product with the intent to cause bodily harm.

As Justice Blackman wrote in his dissent in Youngblood, "the Constitution requires that criminal defendants be provided with a fair trial, not merely a "good faith" try at a fair trial." When a defendant is denied the opportunity to present a full defense, even if it is due to nothing more than police ineptitude, the defendant is deprived of due process of law. Appellant was denied the opportunity to present a full defense in violation of the United States and South Carolina Constitutions. This Court should hold that the lower court erred in denying the motion to dismiss based on spoliation.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court find that Appellant's due process rights were violated, reverse the holding of the lower court and dismiss the charge against Appellant.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of October, 2024.