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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY  
The Honorable G.D. Morgan, Jr., Circuit Court Judge

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Appellate Case No. 2023-001827

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THE STATE,

Respondent,

v.

PAUL ELBERT LAMBERTH, JR.,

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Appellant.

**INITIAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUE ON APPEAL**

The trial judge did not err in denying Appellant's motion to dismiss the indictment based on spoliation where the coffee mug and coffee that was alleged to have been tampered with was lost because the missing evidence was not lost in bad faith and did not possess any apparent exculpatory value at the time it was lost.

## STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant for one count of tampering with a human drug product or food item. Appellant proceeded to a jury trial on November 7-9, 2023, before the Honorable G.D. Morgan, Jr. The jury found Appellant guilty as indicted. Appellant was sentenced to five years' incarceration, suspended upon the service of time served and four years' probation. This appeal follows.

## STATEMENT OF FACTS

On September 18, 2021, Scott Carrick was working on his building where he was a landlord. (Tr. 223). Carrick brought his black thermos coffee mug with him that day to work on the building and placed it on top of the refrigerator in the building's hallway when he was finished. (Tr. 224-225). Carrick retrieved his coffee mug around 8 pm that night and took it home with him to place by his coffee maker. (Tr. 225-226). Carrick testified he generally saves about a third of his coffee from the previous day to mix with his freshly made coffee so that it cools down faster. (Tr. 226).

On the morning of September 19, 2021, Carrick testified he made a fresh pot of coffee and poured it over the coffee from the day before. (Tr. 227). Carrick testified he took a few large swigs and noticed an unusual orange flavor, so he poured it out and made a fresh pot. (Tr. 229). Roughly fifteen to twenty minutes later, Carrick began exhibiting extreme confusion and was very lethargic. (Tr. 230). Carrick went to the ER and a number of tests were run, including labs, a urinalysis a toxicology screen, and a CT. (Tr. 179). Shockingly, the results of the urinalysis showed THC and Benzodiazepine were present in Carrick's system. (Tr. 179). Carrick informed the ER doctor that he was training for a marathon, only took Advil, and believed he had been poisoned by one of his tenants. (Tr. 232).

Carrick provided police with the DVR of the security system 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.<sup>1</sup> 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 Exhibit 2, Clip 1; State's Exhibit 4, Clip 1). The

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<sup>1</sup> State's Exhibit 2, 3, and 4- the DVD's containing the security footage- are on file with this Court.

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 Exhibit 2, Clip 7; State's Exhibit 4, Clip 4). Roughly ninety seconds later, Appellant can be seen coming out of his apartment and placing the travel mug back on top of the refrigerator. (State's Exhibit 2, Clip 7; State's Exhibit 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 Exhibit 2, Clip 11; State's Exhibit 4, Clip 8). Finally, shortly after 8:00 that evening, Carrick can be seen exiting his office, picking up the coffee mug, and leaving for the evening. (State's Exhibit 3, Clip 3; State's Exhibit 4, Clip 12).

The following day, Appellant and his wife went to the station for a voluntary interview with Chief Randall Beach of the Pickens Police Department. (Tr. 84). Chief Beach testified that Appellant made some admissions to tampering with Carrick's coffee. (Tr. 89). According to Chief Beach, Appellant denied putting "an object or poison" inside the coffee, but that "if he was under oath, he's fifty percent positive that he urinated in Mr. Carrick's coffee cup." (Tr. 90). Appellant further explained that he disliked Mr. Carrick and thought he should be investigated. (Tr. 90). Chief Beach further testified that there was a lot of conversation about the tenants and the aggressive relationships between the landlord and tenants and that Mr. Carrick "needed to be taught a lesson." (Tr. 91).

During pre-trial motions, defense counsel moved to dismiss the indictment against Appellant based on spoliation. (Tr. 47). Defense argued that the coffee mug and coffee were taken into evidence and marked specifically for forensic testing. (Tr. 48-50) Defense further argued that when they inquired about the testing of the coffee mug and coffee, he was informed

that no testing had been done, and the items had been lost prior to testing. (Tr. 51). The State conceded that the coffee and mug were logged into evidence, but that it was unclear where the items were now. (Tr. 53). The State further stated that the coffee that was contaminated never came into police custody because it was either in Carrick's stomach or down the drain and therefore the only thing missing was the coffee cup and that would have no exculpatory value because, if anything, it would have been inculpatory since it would likely have had Appellant's prints on the coffee mug. (Tr. 53-55). The trial court focused on the two-prong test in Arizona v. Youngblood<sup>2</sup>, holding that the Defendant has to demonstrate bad faith or intentional actions of the persons who got rid of the evidence, or the defendant has to prove that it was exculpatory and they knew before they got rid of the evidence. (Tr. 56-59). The trial court ultimately denied Appellant's motion, stating that Appellant did not demonstrate that the coffee cup and the coffee possessed an exculpatory value that was apparent before the evidence was lost or destroyed. (Tr. 62-63). This appeal follows.

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<sup>2</sup> Arizona v. Youngblood, 488 U.S. 51, 62 (1988).

## STANDARD OF REVIEW

“In criminal cases, the Appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E. 2d 216, 220 (2006). The reviewing court is bound by the trial court’s factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge’s ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

## ARGUMENT

**The trial judge did not err in denying Appellant's motion to dismiss the indictment based on spoliation where the coffee mug and coffee that was alleged to have been tampered with was lost because the missing evidence was not lost in bad faith and did not possess any exculpatory value at the time it was lost.**

Appellant argues that the trial judge erred by denying Appellant's motion to dismiss the indictment based on spoliation. Specifically, because the State lost the coffee mug and coffee that was alleged to have been tampered with prior to any forensic testing being done, it purportedly precluded Appellant from presenting a complete defense, rendering Appellant's trial fundamentally unfair and depriving him of due process. To the contrary the trial judge properly denied Appellant's dismissal motion because the lost evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost.

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). However, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). In order to warrant the dismissal of a case based on the loss or destruction of evidence, the defendant must show either: (1) the State destroyed the evidence in bad faith; or (2) the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991).

“Whatever 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.” Trombetta, 467 U.S. at 488. Critically, “[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.” United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) (“[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.”).

In this case, Appellant failed to demonstrate that there was any evidence of bad faith. In fact, Appellant has actually conceded that there was no bad faith and focused his entire argument on the second prong. (Tr. 60). Appellant argues that the coffee mug and coffee were the only evidentiary items that could show what substance, if any, was used to tamper with the coffee. Further, Appellant argues that 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 nature of the coffee and coffee mug apparent.

Importantly though, the mere possibility the lost evidence **might** theoretically have potentially possessed exculpatory value was not sufficient to entitle Appellant to the extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 (“Trombetta speaks of evidence whose exculpatory value is ‘apparent.’ The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta. Second, we made clear in Trombetta that the exculpatory value of the evidence must be apparent ‘before the evidence was destroyed.’ ”

(citations omitted) (italics in original)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) (“If, on the other hand, Adams’ purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an ‘exculpatory value that was apparent’ before the State lost it. . . . Speculation about such things, our Supreme Court has held, will not do.” (citations omitted)).

Here, if anything, the coffee mug would have been inculpatory evidence. See State v. Breeze, 379 S.C. 538, 546, 665 S.E.2d 247, 252 (Ct. App. 2008). (“Here, the destroyed evidence Breeze complains of was inculpatory rather than exculpatory.”). There is surveillance video showing that Appellant grabbed the mug, took it into his apartment, and then returned with the cup. Testing of the coffee mug would have likely resulted in the discovery of Appellant’s fingerprints on the mug, which would have been inculpatory corroborating evidence. Meanwhile, in regard to the coffee in the mug, it also could not be exculpatory because it was not the coffee alleged to have been tampered with. Instead, Carrick testified that he drank a few large gulps of the coffee and, when he found that it tasted funny, he **poured the remaining coffee down the drain** and poured a fresh cup. (Tr. 275). Thus, the coffee taken into evidence and then lost had no apparent exculpatory value.

Despite the fact that evidence was lost and unaccounted-for in Appellant’s case, that mistake did not deprive Appellant of a fair trial under the circumstances involved, and the loss of the evidence, which did not possess any apparent exculpatory value, was ultimately used to Appellant’s advantage. During cross examination of Chief Beach, Appellant went through the process of how evidence should be handled and brought attention to the jury that the evidence was lost. In Appellant’s closing argument, Appellant impressed upon the jury that the main issue

of the case was the tampered with coffee mug and coffee and that it was lost. (Tr. 335-347). Further, the jury was instructed it could infer the lost evidence was adverse to the State's case. (Tr. 352). The lost evidence was not destroyed in bad faith and did not possess any apparent exculpatory value at the time the items went missing, and Appellant only benefited from the evidence's loss. Therefore, the trial judge did not err in denying Appellant's motion to dismiss the charges based on the loss of the missing evidence. Appellant's conviction should be affirmed.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

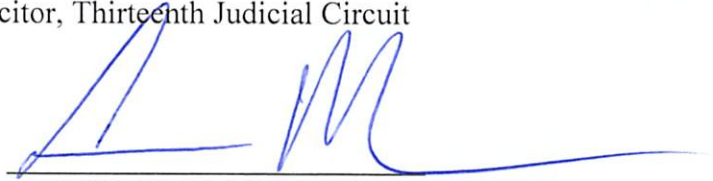
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