

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

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

Opinion No. 2026-UP-316 (submitted March 19, 2026 – filed June 24, 2026)

THE STATE,

RESPONDENT,

V.

PAUL E. LAMBERTH, JR.

APPELLANT

APPELLATE CASE NO. 2023-001827

PETITION FOR REHEARING

On June 24, 2026, this Court affirmed the trial court’s denial of Appellant’s motion to dismiss the indictment due to spoliation of evidence holding “[t]he trial court did not err by denying Lamberth’s motion to dismiss his indictment. The record supports the trial court’s determination that the coffee and mug possessed, at best, speculative exculpatory value at the time the State lost the items.” State v. Lamberth, 2026-UP-316 (S.C. Ct. App. filed June 24, 2026). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests that this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

Spoliation under the 14th Amendment

In California v. Trombetta, 467 U.S. 479, 481 (1984), the United States Supreme Court considered to what extent the Fourteenth Amendment demanded that the state preserve *potentially exculpatory evidence* on behalf of criminal defendants. In devising a test to determine the impact of lost or destroyed evidence, the Court wrote:

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*. To meet this standard of *constitutional materiality*, evidence must *both* possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Trombetta at 488-89 (emphasis added). The Court developed a test that turned on the constitutional materiality of the evidence that was lost or destroyed. To determine whether the evidence was material, the Court considered two factors: the apparent exculpatory value of the evidence and whether there was a way for a defendant to obtain comparable evidence.

Our South Carolina 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 was 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). This test, based on the one developed in Trombetta, requires the court to consider *both* the apparent exculpatory value *and* the ability of the defendant to replicate the lost evidence in reaching its decision – neither the trial court nor this Court undertook the second step of the test.

Applying the test to the facts of the case reveals that the exculpatory value of the coffee mug and coffee in this matter is apparent. 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 would have reasonably been expected to play a significant role in Appellant's defense, considering he denied putting anything into the coffee mug. That Appellant could not show the exact exculpatory nature of the evidence was due to the negligence of the police, not his own, and 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.

Further, 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. Even more critically, despite being taken into custody specifically for testing, the items never underwent forensic testing, and there were no results that could be offered in place of the evidence. Cf. State v. Breeze, 379 S.C. 538, 665 S.E.2d 247 (2008) (holding the previously tested evidence was inculpatory rather than exculpatory, and Breeze admitted he could not demonstrate the destroyed marijuana had any exculpatory value). Appellant has met the test laid out in Cheeseboro, *supra*. Appellant requests that this Court rehear this matter to

consider the constitutional materiality of the evidence, both its exculpatory value and the ability to replicate the evidence, as required by the Cheeseboro test.

Spoliation 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 requested that this Court reconsider the use of the test developed in Arizona v. Youngblood, 488 U.S. 51, 62 (1988), on state constitutional grounds. Appellant asserts South Carolina should develop a test in line with other jurisdictions that consider the materiality of the evidence within the context of the entire record in determining whether to dismiss the charge against the accused, without any consideration of bad faith.

Appellant suggested the test set forth in State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999), under which 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.

Applying the above articulated test to the facts of Appellant’s case shows that the trial 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.

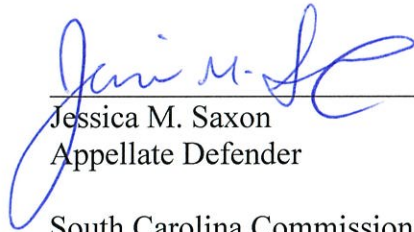
The degree of negligence involved in this matter is high. Chief Beach took the mug and coffee into evidence with the specific intent of having forensic testing performed on the items. The evidence was given a property receipt, marked for testing, and stored in the evidence room at the police station. 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 merely 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. Due to the negligence of law enforcement, Appellant lost the possibility of complete exoneration through testing. There is no comparable evidence that could be obtained nor any way to 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 neither offered evidence that Appellant had access to THC or benzodiazepines nor offered 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 upon ingestion. Appellant's equivocal 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.

Appellant requests this Court rehear the matter to adopt a new standard in South Carolina that focuses on the materiality of the evidence, the degree of negligence, and the sufficiency of

the other evidence used at trial when the State loses or destroys evidence it had a duty to maintain prior to trial. Appellant further requests this Court rehear the matter and determine that under the new test, Appellant has met his burden and hold the spoliation of the coffee mug and coffee denied Appellant a fair trial under both the United States and South Carolina Constitutions.



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ATTORNEY FOR APPELLANT

This 9th day of July, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Pickens County

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

THE STATE,

RESPONDENT,

V.

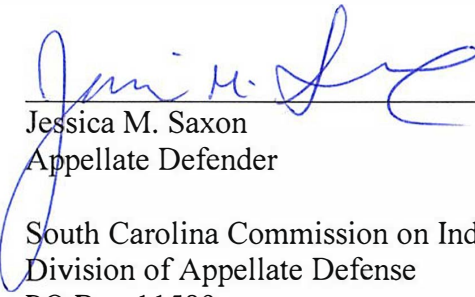
PAUL E. LAMBERTH, JR.,

APPELLANT

APPELLATE CASE NO. 2023-001827

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 9th day of July, 2026.



Jessica M. Saxon
Appellate Defender

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ATTORNEY FOR APPELLANT

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Thursday, July 9, 2026 11:48 AM
To: Ambree Muller
Cc: Saxon, Jessica; Grace Sommer
Subject: 2023-001827 The State v. Paul E. Lamberth, Jr.
Attachments: 2023-001827 The State v. Paul E. Lamberth, Jr. Petition for Rehearing.pdf

Good Morning,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today, July 9, 2026, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

(803) 734-1330

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Jul 09 2026

SC Court of Appeals