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Jul 23 2026

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
Appellate Case Tracking No. 2023-001827
Opinion No. 2026-UP-316 (submitted March 19, 2026-filed June 24, 2026)

THE STATE,

Respondent,

v.

PAUL ELBERT LAMBERTH, JR.,

Appellant.

RETURN TO 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-315 (S.C. Ct. App. filed June 24, 2026).

"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. (R. 15). 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 the Victim’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, the Victim 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. (R. 134). Thus, the coffee taken into evidence and then lost had no apparent exculpatory value because it was not the same coffee that had been in Appellant’s possession.

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. (R. 159-171). Further, the jury was instructed it could infer the lost evidence was adverse to the State's case. (R. 176). 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 Petition for Rehearing should be denied.

CONCLUSION

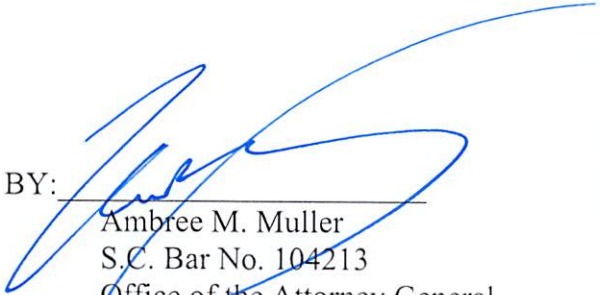
For all the foregoing reasons coupled with the reasons articulated in the State's brief and during oral argument before this Court, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming the decision of the Court of Appeals.

Respectfully submitted,

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PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Return to Petition for Rehearing on Jessica M. Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 23rd day of July, 2026.


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