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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
Appeal From Pickens County
The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2026-001812

THE STATE,Respondent,

v.

PAUL ELBERT LAMBERTH, JR.,Petitioner.

Opinion No. 2026-UP-316 (S.C. Ct. App. Filed June 24, 2026)

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Statement of Issue on Appeal	1
Statement of the Case.....	2
Statement of Facts.....	3
Standard of Review.....	6
Argument.. ..	7
I. The Court of Appeals properly affirmed the trial court’s denial of Petitioner’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	7
Conclusion	11

STATEMENT OF ISSUE ON APPEAL

- I. The Court of Appeals properly affirmed the trial court's denial of Petitioner'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 Petitioner for one count of tampering with a human drug product or food item. Petitioner proceeded to a jury trial on November 7-9, 2023, before the Honorable G.D. Morgan, Jr. The jury found Petitioner guilty as indicted. Petitioner was sentenced to five years' incarceration, suspended upon the service of time served and four years' probation.

Petitioner filed a timely notice of appeal and final briefing was completed. The Court of Appeals issued an opinion affirming Petitioner's conviction and sentence on June 24, 2026. A petition for rehearing was timely filed on July 9, 2026. A return to the petition for rehearing was requested and the return was timely filed on July 20, 2026. The petition for rehearing was denied on July 28, 2026. Petitioner filed a timely petition for writ of certiorari on August 14, 2026. This return follows.

STATEMENT OF FACTS

On September 18, 2021, Scott Carrick was working on his building where he was a landlord. (R. 82). 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. (R. 83-84). Carrick retrieved his coffee mug around 8 pm that night and took it home with him to place by his coffee maker. (R. 84-85). 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. (R. 85).

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. (R. 86). Carrick testified he took a few large swigs and noticed an unusual orange flavor, so he poured it out and made a fresh pot. (R. 88). Roughly fifteen to twenty minutes later, Carrick began exhibiting extreme confusion and was very lethargic. (R. 89). Carrick went to the ER and a number of tests were run, including labs, a urinalysis, a toxicology screen, and a CT. (R. 76). Shockingly, the results of the urinalysis showed THC and Benzodiazepine were present in Carrick's system. (R. 76). 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. (R. 91).

Carrick provided police with the DVR of the security system that monitored the common areas of the rental property managed by Carrick where Petitioner lived. From that DVR, police pulled footage onto three DVD's spanning twelve hours of September 18, 2021.¹ At approximately 9:38 in the morning, Carrick can be seen placing a black travel mug on top of a black refrigerator

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

that is in the hallway. (State's Exhibit 2, Clip 1; State's Exhibit 4, Clip 1). The mug does not move and is not touched until approximately 12:42 in the afternoon when Petitioner 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, Petitioner 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). Petitioner 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, Petitioner and his wife went to the station for a voluntary interview with Chief Randall Beach of the Pickens Police Department. (R. 24). Chief Beach testified that Petitioner made some admissions to tampering with Carrick's coffee. (R. 29). According to Chief Beach, Petitioner denied putting "an object or poison" inside the coffee, but that "if he was under oath, he's 50 percent positive that he urinated in Mr. Carrick's coffee cup." (R. 30). Petitioner further explained that he disliked Mr. Carrick and thought he should be investigated. (R. 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." (R. 31).

During pre-trial motions, defense counsel moved to dismiss the indictment against Petitioner based on spoliation. (R. 2). Defense argued that the coffee mug and coffee were taken into evidence and marked specifically for forensic testing. (R. 3-5). 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. (R. 6). The State conceded that the coffee and mug were logged into evidence, but that it was unclear where the items were now. (R. 8). 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 Petitioner's prints on the coffee mug. (R. 8-10). The trial court focused on the two-prong test in Arizona v. Youngblood², 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. (R. 11-14). The trial court ultimately denied Petitioner's motion, stating that Petitioner did not demonstrate that the coffee cup and the coffee possessed an exculpatory value that was apparent before the evidence was lost or destroyed. (R. 17-18). This appeal follows.

² 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

- I. The Court of Appeals properly affirmed the trial court's denial of Petitioner'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.**

Petitioner contends the Court of Appeals erred in affirming the circuit court's denial of Petitioner'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. Specifically, that the loss of this evidence precluded Petitioner from presenting a complete defense, rendering Petitioner's trial fundamentally unfair and depriving him of due process under both the United States and South Carolina Constitutions.

"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, Petitioner failed to demonstrate that there was any evidence of bad faith. In fact, Petitioner actually conceded that there was no bad faith and focused his entire argument on the second prong. (R. 15). Petitioner 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, Petitioner argues that the lack of an unequivocal confession, coupled with the lack of evidence that Petitioner 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 Petitioner 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 Petitioner 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 Petitioner’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. (R. 134). 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 Petitioner’s case, that mistake did not deprive Petitioner 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 Petitioner’s advantage. During cross-examination of Chief Beach, Petitioner went through the process of how evidence should be handled and brought attention to the jury that the evidence was lost. In Petitioner’s closing argument, Petitioner 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 Petitioner only benefited from the evidence's loss. The Court of Appeals properly found that the trial court did not err because the record supports the trial court's determination that the coffee and the mug possessed, at best, speculative exculpatory value at the time the State lost the items and therefore the petition for writ of certiorari should be denied.

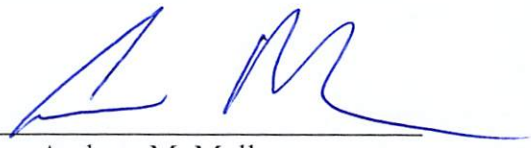
CONCLUSION

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

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