



The Supreme Court of South Carolina

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29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

July 15, 2015

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Kevin Jerome Gilliard
Lower Court Case No. 2009GS0401737
Appellate Case No. 2012-213344

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Wanda H. Carter, Esquire
Deborah R.J. Shupe, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Kevin Jerome Gilliard, Petitioner.

Appellate Case No. 2012-213344

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 2015-MO-041
Heard June 16, 2015 – Filed July 15, 2015

**CERTIORARI DISMISSED AS IMPROVIDENTLY
GRANTED**

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Petitioner.

Attorney General Alan M. Wilson and Senior Assistant
Deputy Attorney General Deborah R.J. Shupe, both of
Columbia, for Respondent.

PER CURIAM: We granted certiorari to review the court of appeals' decision in *State v. Gilliard*, Op. No. 2012-UP-351 (S.C. Ct. App. filed June 13, 2012). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED

**PLEICONES, Acting Chief Justice, BEATTY, KITTREDGE,
HEARN, JJ., and Acting Justice James E. Moore, concur.**

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Kevin Jerome Gilliard, Appellant.

Appellate Case No. 2009-147948

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-351
Heard March 14, 2012 – Filed June 13, 2012

AFFIRMED

Tristan M. Shaffer, of Dessausure Law Firm, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney Deborah R.J. Shupe, all of Columbia; and
Solicitor Christina T. Adams, of Anderson, for
Respondent.

PER CURIAM: Kevin Gilliard (Gilliard) appeals his conviction for trafficking crack cocaine, arguing the circuit court erred in refusing to provide a jury instruction on spoliation of evidence based on the State's failure to produce a videotaped recording of the booking area at the detention center. We affirm pursuant to Rule 220(b)(1), SCACR.

We find the circuit court properly refused Gilliard's request for a jury instruction because there was no evidence the State acted in bad faith, and Gilliard failed to show the exculpatory value of the destroyed videotape. Moreover, Gilliard's counsel specifically stated he did not think the videotape was destroyed in bad faith. *See Arizona v. Youngblood*, 488 U.S. 51, 58 (1988) (holding that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process); *see also State v. Cheeseboro*, 346 S.C. 526, 538-539, 552 S.E.2d 300, 307 (2001) ("The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant. To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.").

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.