

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County  
John C. Hayes, III, Circuit Court Judge  
Appellate Case No. 2013-002391

**RECEIVED**

APR 25 2016

**SC Court of Appeals**

THE STATE,

Respondent,

vs.

JUSTIN MCBRIDE,

Appellant.

**RETURN TO PETITION  
FOR REHEARING**

The Respondent now makes this return in opposition to Appellant McBride's petition for rehearing. Respondent only responds to arguments raised in Appellant's petition and would crave reference to Respondent's previous arguments in its brief and at oral argument. Respondent respectfully submits the following:

(1) McBride argues his case is unique and also falsely claims the lost evidence possesses apparent exculpatory value. In the instant case, the shirt, if not lost, most likely would possess inculpatory value for the State. However, no evidence indicates it likely would possess exculpatory value.

The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or

2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991)). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

As discussed in Respondent's final brief, McBride's case is not unique, but factually similar to Youngblood, where DNA evidence that was not preserved might have been helpful or might not have been helpful. McBride fails to distinguish this case from Youngblood. See United States v. Agurs, 427 U.S. 97, 109-10 (1976) ("The 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."). Additionally, McBride does not argue in the petition for rehearing that the evidence was destroyed in bad faith.

Admitting a photograph of the shirt does not alter analysis of the issue. Both sides were free to argue the evidentiary value of the shirt and whether the absence of the shirt amounts to the failure of the State to meet its burden of proof.

(2) McBride also argues that this Court erred in finding that the trial court did not err in suppressing McBride's statement to law enforcement, primarily based on McBride's age.

First, McBride advises the Court that McBride disagrees with the Court's holding

that the issue is not preserved, but is at a loss to explain why. Case law is clear that an objection to the admission of evidence needs to be renewed before the jury. Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary and subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

Further, the trial court did not err in admitting the statement as McBride simply was not in custody. Custodial interrogations are made up of two key components: custody and interrogation. State v. Whitner, 380 S.C. 513, 518, 670 S.E.2d 655, 658 (Ct. App. 2008). “Miranda warnings are required for official interrogations only when a suspect ‘has been taken into custody or otherwise deprived of his freedom of action in any significant way.’” State v. Easler, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997) (quoting Miranda, 384 U.S. at 444). In the present case, McBride was not in custody and indicated willingness to engage in what was clearly non-confrontational questioning lasting a mere five to ten minutes. Accordingly, Miranda would not apply in the present case. See In re Drolshagen, 280 S.C. 84, 310 S.E.2d 927 (1984) (finding juvenile questioned by school officials in the principal’s office while police officers were present was not in custody for purposes of Miranda).

Accordingly, the State respectfully requests the petition for rehearing be denied.

Respectfully Submitted,

ALAN WILSON  
Attorney General

DAVID SPENCER  
Senior Assistant Attorney General  
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BY:   
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ATTORNEYS FOR RESPONDENT

April 25, 2016

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Appeal From Williamsburg County  
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THE STATE

Respondent,

v.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Return To Petition For Rehearing, has been served upon the applicants by mailing two (2) copies in the United States mail, postage prepaid, addressed to:

Andrew B. Greenlee, Esquire  
P.O. Box 2047  
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Adam Owensby, Esquire  
P.O. Box 21043  
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This 25<sup>th</sup> day of April, 2016.

  
NORMA BIGBEE  
LEGAL ASSISTANT  
FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

April 25, 2016

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**VIA HAND DELIVERY**

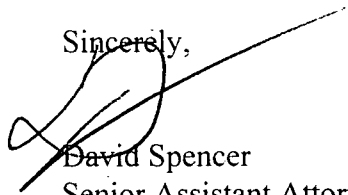
The Honorable Jenny A. Kitchings  
Clerk of the Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: **The State v. Justin McBride**  
**Appellate Case No: 2013-002391**

Dear Ms. Kitchings:

Enclosed please find the original **Return-To Petition For Rehearing**, along with a **Proof of Service**, in the above-referenced case, which I am today serving upon opposing counsel as shown below.

Sincerely,



David Spencer  
Senior Assistant Attorney General

DS/nb

Enclosures

cc: Wendy J. Keefer, (2 copies)  
Adam Owensby, Esquire, (2 copies)  
Andrew B. Greenlee, Esquire (2 copies)  
Trisha Allen, Victim Services (1copy)