

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
MAR 23 2018  
SC Court of Appeals

Appeal from Pickens County  
The Honorable Edward W. Miller, Circuit Court Judge  
Appellate Case No. 2017-000869

The State,

Respondent,

v.

Michael Taquarius Rencher,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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## **STATEMENT OF ISSUES ON APPEAL**

The circuit court properly denied Appellant's request for spoliation of evidence charge because Appellant failed to present any evidence the police investigator acted in bad faith when he deleted a digital photograph taken of Appellant's head when he was in custody, and Appellant was able to establish through other evidence that he sustained a head injury during the struggle with Victim.

## **STATEMENT OF THE CASE**

The State concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF FACTS

On March 21, 2017, the Pickens County Grand Jury indicted Appellant Michael Taquarius Rencher on one count of voluntary manslaughter arising from the September 11, 2014, stabbing death of Cameron Flores (“Victim”). The case was called for a jury trial on March 27, 2017, before the Honorable Edward W. Miller, Circuit Court Judge.

Prior to jury selection, Appellant moved to dismiss the case based on spoliation of evidence. In support of the motion, Appellant called Detective James Peppers of the Clemson Police Department, who testified he questioned Appellant after the incident, and Appellant stated the Victim hit him several times on the back of the head, but told Peppers “it really hadn’t fazed him very much.” Peppers attempted to take a digital photograph of a purported injury on Appellant’s head, but stated “it didn’t turn out well enough to see,” so he deleted it. (Trial Testimony [TT], pp. 20-24; Record on Appeal [R.], pp. \_\_\_\_).

Peppers testified Appellant never asked for medical treatment of any kind or complained of pain. He described the injury he saw on Appellant’s head as “a very small scratch/cut,” but he could not get a picture because “it was just in [Appellant’s] hair.” (TT, pp. 24-28, R., pp. \_\_\_\_).

Appellant argued the deleted photograph was “a substantial and integral part” of his self-defense claim because a forensic pathologist hired to review the file was unable to form an expert opinion on the self-defense claim without the photograph. When the court noted the State did not dispute Appellant sustained an injury, and asked why the photograph was necessary, Appellant’s counsel responded:

Quite honestly, Your Honor, I don’t know. I can’t speak to that because, again, we never got any information that would allow him to make a determination. All I can say is that after he received the entire contents of the file, that was the one thing that he asked for and it was the one thing that has not been provided.

(TT, pp. 30-33; R., pp. \_\_\_\_).

The court denied the motion to dismiss, finding the failure to provide the deleted photograph did not prejudice Appellant to the extent the case should be dismissed. The court further noted it was unable to find any nexus between the degree of injury and whether or not it involved a defensive maneuver. The court then stated it would review the interrogation video as it related to Peppers taking the photograph, and Appellant was entitled to a charge on spoliation of evidence. (TT, 34-36; R., pp. \_\_\_\_).

The State's witnesses testified the Victim was at a friend's apartment in the early morning hours of September 11, 2014, when Appellant arrived at the apartment with the friend's neighbor. The Victim believed Appellant had robbed him several weeks earlier, ultimately confronted Appellant, and punched him. Appellant grabbed a butcher knife from the kitchen counter, stabbed Victim once in the abdomen with a butcher knife, and ran out of the apartment. The stabbing caused significant internal injuries and led to the Victim's death. (TT, pp. 56-127, 227-241; R., pp. \_\_\_\_).

After stabbing Victim, Appellant ran out of the apartment with the butcher knife in his hand, and went to a friend's residence approximately 200 yards from the incident location, where he threw the knife under the outside front steps. He told his friend he had been in a fight and needed a place to crash. The friend saw blood running down Appellant's face from behind his left ear, gave him a paper towel for the blood, left Appellant on the couch and went back to bed. When the friend got up later that morning, Appellant was gone. Even though law enforcement was at the crime scene approximately 200 yards away, Appellant did not approach them to tell them what happened. (TT, pp. 128-138, 194, 214; R., pp. \_\_\_\_).

While at his friend's apartment, Appellant called his father, asked him to call the police and come pick him up. After the father called 911, officers surveilled his home, followed him when he left to pick Appellant up, and stopped the vehicle after Appellant entered the car. During the traffic stop, Appellant did not indicate he was injured or needed medical attention, and the officers did not observe any injuries on him. (TT, pp. 170-179, 186-195; R., pp. \_\_\_\_).

Peppers testified about his involvement in the investigation and Appellant's interrogation. He stated Appellant mentioned he was bleeding from a place on his head, and Peppers observed a "tiny scratch" behind Appellant's left ear that was not bleeding. He tried to take a digital photograph of the scratch, but the scratch could not be seen in the photograph because of Appellant's hairstyle, so he deleted the photograph. Appellant did not complain of any injuries or ask for medical treatment. (TT, pp. 200-224; R., pp. \_\_\_\_).

Appellant testified the Victim suddenly started punching him with no provocation, and hit him multiple times. He reached out, grabbed the knife and swung it one time. Appellant felt the knife "hit and stop," ran out of the apartment with the knife in his hand, and went to his friend's residence. He called his father, and stayed at his friend's residence until his father arrived to pick him up. (TT, pp. 269-322; R., pp. \_\_\_\_).

During a charge conference, Appellant requested charges on involuntary manslaughter, self-defense, and spoliation of evidence. The State objected to the involuntary manslaughter and spoliation charges, arguing the spoliation charge was unwarranted because Appellant failed to establish Peppers acted in bad faith, or that the photograph had exculpatory value, and there was evidence of comparable value on the issue of Appellant's injury. (TT, pp. 324-329; R., pp. \_\_\_\_).

Appellant proposed a spoliation charge without the adverse inference language, but admitted there was no case law supporting the proposed charge. The State objected to the charge, again arguing the charge was not warranted in the absence of any evidence of bad faith, and the existence of other evidence regarding Appellant's injury. The court denied Appellant's request for the spoliation charge, but cautioned law enforcement to bring all collected evidence, including photographs, to court for examination. The court also indicated Appellant would not be limited in arguing regarding the deleted photograph. (TT, pp. 332-337; R., pp. \_\_\_\_\_).

During closing arguments, the State acknowledged the photograph of Appellant's injury was deleted, but referenced other evidence showing Appellant's appearance after he stabbed the Victim, including the traffic stop and interrogation videos and the photograph of Appellant's face Peppers took during the interrogation. Appellant also referenced the deleted photograph in closing argument. (TT, pp. 348, 351-352, 360, 371-372, State's Exhibit 11 [Photograph of Defendant Rencher]; R., pp. \_\_\_\_\_).

The jury convicted Appellant of voluntary manslaughter, and the court sentenced him to twelve years incarceration. (TT, pp. 420, 429; R., pp. \_\_\_\_). This appeal followed.

## ARGUMENT

**The circuit court properly denied Appellant's request for a spoliation of evidence charge because Appellant failed to present any evidence the police investigator acted in bad faith when he deleted a digital photograph taken of Appellant's head when he was in custody, and Appellant was able to establish through other evidence that he sustained a head injury during the struggle with Victim.**

Appellant contends the circuit court erred by denying his request for a spoliation of evidence charge based on Peppers' deletion of the digital photograph he took of a purported injury on Appellant's head within hours of the incident, because the photograph was exculpatory evidence regarding his self-defense claim. Appellant's contention is conclusory, and ignores the actual record in this case.

### **A. Standard of Review**

A jury charge which is substantially correct and covers the law does not require reversal. State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 464 (Ct. App. 2003). "An appellate court will only reverse a trial court's decision regarding a jury charge if there is an abuse of discretion." State v. Cottrell, 421 S.C. 622, 809 S.E.2d 423, 435 (2017) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144, 166 [2007]); State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 584 (2010) (same). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Marin, 415 S.C. 475, 783 S.E.2d 808, 812 (2016).

## **B. Spoliation Jury Charge**

The trial court is required to charge only the current and correct law in South Carolina. Marin, 783 S.E.2d at 812 (*citing* State v. Brandt, 393 S.C. 526, 713 S.E.2d 591, 603 [2011]). The law to be charged must be determined from the evidence presented at trial.<sup>1</sup> *Id.*

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. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300, 307 (2001); 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]) (same). 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 a threshold matter, contrary to Appellant's contention the photograph was exculpatory on its face, at best it was "potentially" useful evidence, and the State did not have an absolute duty to preserve it. Therefore, Appellant must show either bad faith by the police in deleting the photograph, or the photograph had "readily apparent" exculpatory value before Peppers deleted it. The State submits he cannot meet either prong of the spoliation analysis, and the extreme remedy of a spoliation jury charge was not warranted in this case.

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<sup>1</sup>Appellant makes much of the circuit court's pre-trial indication a spoliation charge was warranted, a preliminary ruling which the court then "summarily" changed during the charge conference. At the pre-trial stage, the court had not heard the evidence in its entirety. After Appellant failed to present any evidence of bad faith or exculpatory value during trial, however, the circuit court had to consider the lack of evidence on those issues whether a spoliation charge was appropriate.

There is no evidence indicating Peppers intentionally deleted the photograph to avoid revealing exculpatory evidence. Rather, Peppers was clearly aware Appellant's interrogation was being recorded, and everything he did in the interrogation room was a matter of record. The video shows him noting the injury, and he did not try to hide his attempt to take a photograph of it. As a result, subsequently deleting the photograph because it **did** show the injury he noted would be completely counter-intuitive, and jeopardize Peppers' law enforcement career.<sup>2</sup> In the absence of evidence Peppers deleted the photograph because it revealed exactly what he said he saw on Appellant's head, and he was willing to put his job and career on the line to avoid its use as evidence, Appellant cannot meet the bad faith prong of the spoliation analysis.

Other than conclusory statements regarding the photograph's value, Appellant cannot show the photograph had any exculpatory value, much less the required "readily apparent" exculpatory value. During the pre-trial hearing, Appellant's stated reason for needing the photograph was some unknown opinion a forensic expert might reach in relation to Appellant's self-defense claim if the photograph was available. When the court sought further explanation regarding how the photograph could make any difference to the expert's conclusions, Appellant candidly admitted he did not know. (TT, pp. 30-36; R., pp. \_\_\_\_\_).

During trial, the State did not dispute Victim made the first physical move by punching Appellant, or that Appellant sustained an injury from the punch. Beyond the undisputed evidence, Appellant's friend only saw some blood on Appellant's face, the officers at the traffic stop did not observe any injury on Appellant, Peppers testified he saw the injury, a photograph Peppers took of Appellant's uninjured face was presented, and Appellant testified he was not

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<sup>2</sup>The State does not condone the photograph's deletion, but law enforcement officers are human and do make mistakes. In the absence of bad faith or evidence the photograph was exculpatory, Peppers' mistake in this case simply did not warrant a spoliation charge or require reversal.

even aware of the injury until his friend saw the blood. (TT, pp. 84-86, 99-100, 132-133, 136-138, 176, 199, 208-212, 216-217, 219-220, 222-224, 243, 290, 304-305, 314, State's Exhibit 11 (Photograph of Defendant Rencher); R., pp. \_\_\_\_\_).<sup>3</sup> There is no evidence the photograph would have shown more than the testimony revealed.

In the absence of any evidence the State acted in bad faith, or the photograph had exculpatory value, the State was not required to preserve it, and failure to do so did not violate Appellant's due process rights. Appellant essentially contends he was entitled to a spoliation charge simply because the photograph was not available. Mandating a spoliation charge under the circumstances of this case effectively eviscerates the limits established in Youngblood, and adopted by the courts of South Carolina, by requiring the State to preserve any evidence the defense might claim was "potentially" useful, even if there is no indication the evidence had any real exculpatory value.

To distract from his failure to present any evidence on either prong of the spoliation analysis, Appellant cites and discusses cases that are legally and factually distinguishable from this case. For instance, he contends this case is "more akin" and "analogous" to State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990), in which the Supreme Court reversed a DUI conviction based on the destruction of a video showing the defendant's field sobriety and breathalyzer tests. The Court found the video was clearly exculpatory because the Solicitor's Office initially decided not to pursue the charges after viewing the video, and informed the defendant the charge would be dropped. The Solicitor's Office subsequently announced it intended to proceed to trial, but two months later the video was destroyed, and the defendant had no other evidence

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<sup>3</sup>State's Exhibit 11 (Photograph of Defendant Rencher) will be transported to the Court for consideration.

of comparable value. Based on those facts, the Court held the defendant's due process rights were violated. *Id.* at 102.

Contrary to Appellant's analysis of Jackson's applicability to the instant case, the Solicitor's Office never reviewed the deleted photograph, much less made any prosecutorial decisions based on it. There was no evidence the deleted photograph was exculpatory, or even critical to Appellant's self-defense claim, and there was other evidence of comparable value available to Appellant. Unfortunately for Appellant, all the evidence regarding his injury, including Appellant's own testimony, established the injury was not significant.

### **C. Harmless Error**

Assuming error for argument purposes only, failure to give the requested charge was harmless beyond any reasonable doubt. Harmless error analyses are fact-intensive inquiries, which are not governed by a definite set of rules. State v. Jenkins, 412 S.C. 643, 773 S.E.2d 906, 909–10 (2015).<sup>4</sup> Appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case, and an error is harmless if it did not reasonably affect the trial results. *Id.*; *see also* State v. Tapp, 398 S.C. 376, 728 S.E.2d 468, 475 (2012) (“Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.”).

As set forth above, there was extensive evidence in the record regarding Appellant's actions and appearance after the incident. The jury was aware Victim started the physical altercation, there was a deleted photograph of the purported injury on Appellant's head, Peppers

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<sup>4</sup>Appellant asserts Jenkins holds “defensive wounds are indications of resisting bodily harm.” Rather than the overstated and broad holding Appellant asserts, however, the Court merely referenced the victim's defensive wounds as one piece of evidence serving as physical evidence indicating the defendant committed the assault. Jenkins, at 910.

saw the injury which he described as a “scratch,” and there was other evidence from which the jury could determine the injury’s severity, or lack thereof. Appellant testified about the physical altercation, and acknowledged he was not even aware of the injury until his friend gave him a paper towel to wipe blood off his face. In light of that evidence, there is no basis to conclude the failure to give Appellant’s requested spoliation charge impacted the verdict in this case, and Appellant’s conviction should be affirmed.

CONCLUSION

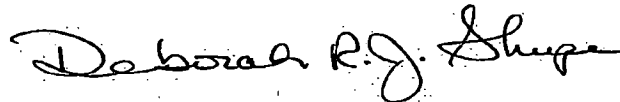
Based on the above arguments, the State respectfully submits Appellant's conviction should be affirmed.

Respectfully submitted,

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**PROOF OF SERVICE**

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Victor R. Seegar  
Assistant Appellate Defender  
S.C. Commission on Indigent Defense  
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I further certify that all parties required by Rule to be served have been served.

This 23<sup>rd</sup> day of March, 2018.

  
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RE: State v. Michael Taquarius Rencher  
Appellate Case No. 2017-000869

Dear Mr. Seegar:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

Deborah R.J. Shupe  
Senior Assistant Deputy Attorney General

Enclosures

cc: ✓ Honorable Jenny A. Kitchings (original and one enclosed)  
Victim Advocacy Division