

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MICHAEL TAQUARIUS RENCHER,

PETITIONER

APPELLATE CASE NO. 2017-000869

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 2019-UP-078

PETITION FOR REHEARING

RECEIVED
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SC Court of Appeals

Petitioner respectfully requests rehearing pursuant to Rule 221(a), SCACR, because this Court misapprehended the holding in State v. Cheeseboro, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001). In Cheeseboro the South Carolina Supreme Court held that a defendant was entitled to a spoliation instruction if he could demonstrate: (1) the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and that the defendant cannot obtain other evidence by comparable means. Id. In this case, Petitioner respectfully showed both.

In its summary opinion in this case, this Court held that Petitioner was not entitled to a jury charge on spoliation because he could not show bad faith in the destruction of the corroborating photograph of the injuries to the back of his head. Additionally, this Court held that Petitioner could have obtained other evidence of comparable value. However, Detective Peppers' destruction of the photograph corroborating Petitioner's testimony that he acted in self-defense was strong evidence of bad faith, and it was impossible for Appellant to obtain other evidence of comparable value by other means.

In Petitioner's case, he stated that the deceased attacked him, and that Petitioner acted in self-defense. R. 79, ll. 9 – 13; R. 260, ll. 11 – 13; R. 264, ll. 4 – 20. Evidence of Petitioner's self-defense case was an injury to the back of Petitioner's head. R. 191, l. 16 – R. 192, l. 5.

During Petitioner's interview with police, Detective Peppers took two photographs of Petitioner, one of Petitioner's face and the other of the back of Petitioner's head. R. 192, ll. 9 – 10. Detective Peppers deleted the photograph of the back of Petitioner's head, which would have corroborated Petitioner's self-defense claim, before trial because Peppers claimed it had no evidentiary value as it showed no injuries to the back of Petitioner's head. R. 204, ll. 18 – 23. However, Peppers carefully preserved the photograph of Petitioner's face, and at trial the state introduced the photograph of Petitioner's face, because it showed no injuries to Petitioner. R. 216, ll. 4 – 11.

The fact that Detective Peppers treated the two photographs, which both purportedly showed no injury to Petitioner, in such a drastically different manner, and coincidentally destroyed the photograph which would have corroborated Petitioner's self-defense claim, demonstrated strong evidence of bad faith. The destruction of the corroborating photograph of the back of Petitioner's head was especially dubious where Detective Peppers already knew

Petitioner claimed self-defense and where Detective Peppers knew Petitioner claimed that a blow to the back of his head from the deceased was what caused Petitioner to act in self-defense.

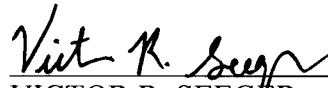
Petitioner could not take a replacement photograph of the back of his head while he was in police custody and *had no reason to believe that the original photograph would be deleted while trial was pending*. By the time Petitioner discovered the photograph had been destroyed, his wounds were already healed.

Petitioner's, or his friend Justin Shove's, testimony that Petitioner sustained an injury to the back of his head could not replace the photograph because the photograph would have provided strong corroboratory evidence of self-defense and would have been taken at face value by the jury. Whereas a jury always be skeptical of defense witnesses, including the defendant. Regardless, Petitioner was in no position to obtain *other evidence of comparable value* by other means.

The destruction of the corroborating photograph of the injuries to the back of Petitioner's head, the most important piece of physical evidence is Petitioner's defense, left Petitioner with only uncorroborated testimony about his injuries. Petitioner could not have obtained evidence of comparable value initially as he was in police custody. Moreover, after the interview with Detective Peppers, the photograph of the back of his head was already taken and Petitioner held the legitimate belief that the photograph would not be destroyed.

Therefore, Petitioner was entitled to a jury instruction on spoliation and it was prejudicial error for the trial court to deny the requested charge. Rehearing should be respectfully granted on this issue.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Vict R. Seeger", is written over a horizontal line.

VICTOR R. SEEGER
Appellate Defender

This 27th day of February, 2019.

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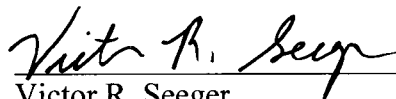
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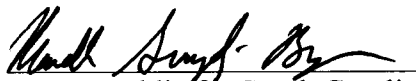
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Michael Taquarius Rencher, #372018, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 27th day of February, 2019.



Victor R. Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 27th day of February, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 26, 2028