

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Pickens County

Honorable Edward W. Miller, Circuit Court Judge  
\_\_\_\_\_

Opinion No. 2019-UP-078 (S.C. Ct. App. filed February 13, 2019)  
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THE STATE,

RESPONDENT,

V.

MICHAEL TAQUARIUS RENCHER,

APPELLANT

APPELLATE CASE NO. 2019-000673  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

VICTOR R. SEEGER  
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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**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.

Michael Taquarius Rencher, Appellant.

Appellate Case No. 2017-000869

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Appeal From Pickens County  
Edward W. Miller, Circuit Court Judge

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Unpublished Opinion No. 2019-UP-078  
Submitted January 1, 2019 – Filed February 13, 2019

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**AFFIRMED**

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Appellate Defender Victor R. Seeger, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Deputy Attorney General Deborah R.J. Shupe,  
both of Columbia; and Solicitor William Walter Wilkins,  
III, of Greenville, for Respondent.

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**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities: *State v. Cottrell*, 421 S.C. 622, 643, 809 S.E.2d 423, 435 (2017) ("An  
appellate court will only reverse a trial court's decision regarding a jury charge if

there is an abuse of discretion." (citing *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007)); *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) ("[T]o warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." (quoting *State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011))); *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001) ("To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that 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." (emphasis added)); *State v. Batson*, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973) ("[A spoliation] charge . . . to a jury on a behalf of either the State or the defense is not warranted except under most unusual circumstances."); *State v. McBride*, 416 S.C. 379, 389, 786 S.E.2d 435, 440 (Ct. App. 2016) ("Adverse inference charges are rarely permitted in criminal cases.").

**AFFIRMED.**<sup>1</sup>

**LOCKEMY, C.J., and THOMAS and GEATHERS, JJ., concur.**

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APPELLATE DEFENSE

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

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

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,



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VICTOR R. SEEGER

Appellate Defender

This 27th day of February, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TAQUARIUS RENCHER,

APPELLANT

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*  
Victor R. Seeger  
Appellate Defender  
ATTORNEY FOR APPELLANT

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

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

# The South Carolina Court of Appeals

The State, Respondent,

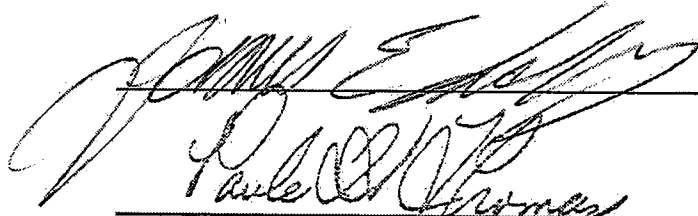
v.


Michael Taquarius Rencher, Appellant.


Appellate Case No. 2017-000869

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
 \_\_\_\_\_ C.J.

  
 \_\_\_\_\_ J.

  
 \_\_\_\_\_ J.

Columbia, South Carolina

cc:  
 Alan McCrory Wilson  
 Deborah R.J. Shupe  
 Victor R. Seeger  
 William Walter Wilkins, III

**FILED**

March 21, 2019