

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MICHAEL TAQUARIUS RENCHER,

APPELLANT

APPELLATE CASE NO. 2017-000869

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to instruct the jury with a charge of spoliation, because the evidence destroyed by the prosecution before the trial began was exculpatory on its face?

STATEMENT OF THE CASE

Appellant was indicted for voluntary manslaughter by the Pickens County Grand Jury. R. 423. His case was called to trial on March 27, 2017, before the Honorable Edward Miller, and a jury. Assistant Solicitors Brandi Hinton and Durham Hill represented the state. R.

1. David Cantrell and Daniel King represented Appellant. R. 1.

After a four-day trial, the jury found Appellant guilty. R. 401, ll. 18 – 19. Judge Miller sentenced Appellant to twelve years in prison. R. 410, l. 14.

This appeal follows.

ARGUMENT

The trial judge erred in failing to instruct the jury with a charge of spoliation, because the evidence destroyed by the prosecution before the trial began was exculpatory on its face.

Relevant Facts

The facts giving rise to the indictment took place on the evening of September 10, 2014 into the morning of September 11, 2014. R. 50, l. 2 – R. 60, l. 12.

Appellant and a friend, Lamar Woods, were invited into an apartment as guests by Adele Henderson, who was living in the apartment with several other people. R. 50, l. 13 – R. 51, l. 4. Appellant had no idea who lived in the apartment, he followed Lamar, who apparently knew Adele Henderson and her boyfriend Ben Smith who also lived there, into the apartment. R. 55, l. 25 – R. 73, l. 8.

Once inside the apartment Appellant ran into the decedent, Cameron Flores, with whom Appellant had prior difficulties. The decedent erroneously thought that Appellant had been part of a robbery of the decedent, “awhile back”. R. 277, l. 21 – R. 278, l. 20. After Appellant entered the apartment, and a period of time passed, the decedent became agitated and confronted Appellant. R. 76, l. 21 – R. 77, l. 10. The decedent and Appellant exchanged words and then the decedent, a man of a much larger stature, struck Appellant about the head and face. R. 79, ll. 9 – 13; R. 260 ll. 11 – 13. The blows caused a resulting gash behind Appellant’s left ear. R. 126, ll. 10 – 13. Appellant was in fear for his life. Appellant was lured into a strange apartment, confronted by a larger man, who believed Appellant robbed him in the past, and then was attacked by the larger man. Appellant reached out for the closest object to him, which turned out to be a knife, and swung it, resulting in the fatal injury of his attacker. R. 264, ll. 4 – 20.

Appellant fled the apartment immediately. However, since Appellant was acting in self-defense, he turned around in the road to apologize to Ben Smith, who ran to the doorway, for any harm Appellant had done. Appellant testified that he did not realize decedent was so badly hurt. R. 265, l. 4 – R. 266, l. 3.

Appellant still frightened from the encounter fled to his friend, Justin Shove's house, who described the look on Appellant's face as looking, "like he'd seen a ghost." R. 125, l. 19 – R. 126, l. 5. Justin never inspected the wound, but saw the blood flowing down Appellant's head and gave him paper towels to clean himself up. R. 126, ll. 10 – 13. Appellant telephoned his father and told his father to call the police to tell them what happened and to pick Appellant up from Justin's house early that morning. R. 271, l. 22 – R. 273, l. 22. Shortly after Appellant's father picked him up, Officer Ren Johnson pulled them over. R. 154, l. 12 – R. 156, l. 19. After Officer Johnson arrested Appellant, he brought Appellant to the police station to be interviewed by Detective Peppers. R. 158, l. 22 – R. 159, l. 3.

Detective Peppers began the interview with Appellant, and he inspected the gash on the back of the left side of Appellant's head. R. 191, l. 16 – R. 192, l. 5. The wound was serious enough for Detective Peppers to immediately go get a camera to take a photograph of the wound. R. 192 ll. 9 – 10. However, this photograph was destroyed by Peppers before trial. R. 193, ll. 4 – 6.

Defense counsel moved for a dismissal for spoliation of evidence and a pre-trial evidentiary hearing began. R. 8, l. 23 – R. 9, l. 1; R. 12, l. 19. At the pre-trial evidentiary hearing, Detective Peppers' explanation for destroying the photograph was that, "it just didn't – didn't come through." R. 23, ll. 8 – 9. Since he used a digital camera the photograph saved automatically, but he decided to destroy it before presenting it to anyone else to review because, "there was nothing to review." R. 23, l. 20 – R. 24, l. 4. Detective Peppers, the sole person to inspect the wound, minimized it in his

description as a, "very small cut / scratch." R. 25, ll. 21 – 22. Judge Miller ruled that, "Regardless of the quality of the photograph, it should not have been destroyed," and in an effort to avoid dismissal the Solicitor agreed with him. R. 34, ll. 18 – 23. Judge Miller denied the motion to dismiss but correctly stated, without objection from the Solicitor, that Appellant was, "entitled to [a] charge on spoliation of evidence." R. 34, l. 24 – R. 36, l. 17.

During the jury trial, Detective Peppers' reasons for destroying the photograph changed. On direct examination he claimed the photograph did not develop. R. 192, ll. 15 – 16. However, during cross-examination, Detective Peppers stated he destroyed the photograph because of the length of Appellant's hair covering the cut. R. 204, ll. 18 – 23.

Defense counsel argued during closing that Peppers' actions show that he recognized the severity of the wound because he immediately took a photograph of it. R. 353, ll. 1 – 4. Peppers' destruction of the photograph usurped the jury's fact finding function at trial. The only person who actually inspected the wound for the jury to hear from was Peppers, who destroyed the photograph, and he testified that it was only a small wound. His minimization of the wound was calculated to hurt to Appellant's self-defense case.

At the jury charge conference, relying on the judge's earlier decision that the defense was entitled to a charge on spoliation, Defense counsel crafted the spoliation instruction which was more than reasonable as it did not even include any adverse inference language: "When evidence is lost or destroyed by a party, you may place whatever weight to the absence of that evidence you deem appropriate when you weigh all the evidence together." R. 315, ll. 12 – 16. Before the motion to dismiss for spoliation was decided, the Solicitor agreed with the judge that the photograph should not have been destroyed and the Solicitor did not object to a jury charge on spoliation. However after dismissal had been denied, the Solicitor now argued against the spoliation instruction. R. 34, ll.

18 – 23; R. 317, ll. 9 – 22. Without stating a reason, the judge summarily reversed his earlier decision and stated he would not charge spoliation. R. 317, ll. 23 – 24. The judge charged self-defense without the requested spoliation charge. R. 382, l. 5 – R. 385, l. 6.

That was an error, and it prejudiced Appellant.

Discussion

In California v. Trombetta et. al., 467 U.S. 479, 104 S. Ct. 2528 (1984), the Supreme Court held that although the Constitution imposes on the states a duty to preserve evidence, “that duty must be limited to evidence that might be expected to play a significant role in the suspect’s defense.” Id. at 488. The evidence destroyed in Appellant’s case was a photograph of a defensive wound on the back left-hand side of his head and Appellant’s sole defense was self-defense. The United States Supreme Court and the South Carolina Supreme Court have held, that defensive wounds are indications of resisting bodily harm. Bell v. Cone, 543 U.S. 447, 449, 125 S. Ct. 847, 849 (2005); State v. Jenkins, 412 S.C. 643, 652, 773 S.E.2d 906, 910 (2015). Thus, the exculpatory value and the significance to the defense of the only photograph of Appellant’s defensive wounds was apparent on its face when Detective Peppers destroyed it and by doing so he violated the state’s duty to preserve evidence.

After Trombetta, the Supreme Court of the United States elaborated on the impropriety of the destruction of evidence in Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333 (1988). In Youngblood, the spoiled evidence was DNA samples from the victim’s body and clothing. The state had their own criminologist examine the evidence, but afterwards the evidence spoiled and the defense argued that they did not have a chance to test the evidence themselves. The trial court properly instructed the jury that if it found the state had destroyed or lost evidence, they might, “infer that the true fact is against the state’s interest.” Id. at 54. The jury still found the defendant

guilty, but the Arizona Court of Appeals reversed the conviction on the grounds that the lost or destroyed evidence was material to the defense. Id. The Supreme Court disagreed and overturned the Arizona Court of Appeals reversal of Youngblood's conviction, holding that:

The Due Process Clause of the Fourteenth Amendment... makes the good or bad faith of the state irrelevant when the state fails to disclose to the Defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with the failure of the state to preserve evidentiary material of which no more can be said than that it *could have been subjected to tests*, the results of which *might* have exonerated the defendant.

Id. at 57. (emphasis added)

The rule laid out in Youngblood is illuminating for Appellant's case in several aspects. The Youngblood trial court properly instructed the jury on the adverse inference against the state for the spoliation of evidence, and although the Supreme Court overturned the reversal of the conviction by the Arizona Court of Appeals, it did not find error on the trial court's spoliation instruction to the jury. Furthermore, the grounds that the Supreme Court overturned the conviction regarded the nature of the evidence. In Youngblood, the state failed to preserve evidence that would only have *possible value* to the defense *pending the results of testing*. Id.

In Appellant's case the police did not, "fail to preserve," evidence, the photograph was intentionally destroyed. Detective Peppers used a digital camera to photograph Appellant's wound. A digital camera saves photographs in perpetuity, Detective Peppers had to access the photograph then intentionally click the delete button for the evidence to spoil. Therefore, in Appellant's case the state did not merely mishandle the evidence as in Youngblood.

Moreover, the destroyed evidence was a photograph of a defensive wound. Its value was obvious at the time Peppers took the photograph of it. There was no testing required of the photograph, only that it be available at trial to be shown to the jury, the finder of fact. Detective Peppers took from the jury its primary function when he alone destroyed it.

South Carolina has handled its spoliation cases in a similar manner placing an emphasis on the nature of the evidence and the timing of the spoliation. Four years before the U.S. Supreme Court's decision in Trombetta, the South Carolina Supreme Court addressed the issue of spoliation of evidence in State v. Newton, 274 S.C. 287, 262 S.E. 2d 906 (1980). In Newton, the defendant was charged with a DUI. Id. at 289. On the scene, he blew a .18 BAC level on a Breathalyzer. Immediately prior to the defendant's Breathalyzer test, an operator ran a simulator test in a controlled setting to validate the Breathalyzer's accuracy. Sometime after the defendant's test was completed, the simulator and the test ampoules were nonmaliciously destroyed. Id. at 290. The defendant argued that the destruction of the simulator and test ampoules deprived him of the opportunity to examine the evidence against him and amounted to the destruction of material evidence which could have established his guilt or innocence. Id. The Court held, analogous to Youngblood, that, "appellant's contentions constitute mere speculation on his part, with nothing advanced to realistically suggest the probability that information of any definite value would be obtained from any reliable process of reexamination." Id. at 292. In other words, in Newton the state destroyed evidence, "of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." Youngblood, 488 U.S. at 57, 109 S. Ct. at 337.

In Appellant's case the evidence that was destroyed had evidentiary value on its face. Unlike in Youngblood and Newton, in the instant case *Appellant is not looking to "test" the photograph of his head wound*, he needed the photograph for what it depicted. There was no speculation Appellant had raised, nor was there a possible malfunction that if Appellant were to uncover would exonerate him. Appellant only wanted the photograph to show the jury, but was deprived of that right when Detective Peppers destroyed it.

The timing of the spoliation is an important factor in South Carolina spoliation jurisprudence as well. In State v. Mabe, 306 S.C. 355, 412 S.E. 2d 386 (1991), the Supreme Court of South Carolina denied relief based on evidence spoliation because the destruction of evidence happened after a guilty plea was entered. In Mabe, the respondent pled guilty to trafficking in cocaine. Respondent was granted post-conviction relief and his guilty plea vacated. Id. at 357. Before trial, respondent sought to have an independent expert test and weigh the cocaine which was seized at the time of his arrest. The state sought to comply, but found that the cocaine had been destroyed by the York County Sheriff's Department in accordance with routine procedures. The trial judge found that the respondent had been denied his right to independently test the cocaine and granted respondent's motion to suppress testimony and evidence regarding the amount, weight, and analysis of the cocaine. Id. The South Carolina Supreme Court disagreed.

The Supreme Court held that the state does not possess an absolute duty to preserve potentially useful evidence which could be subjected to tests which might exonerate a defendant, citing Youngblood. Mabe, 306 S.C. at 358, 412 S.E.2d at 388. However, the Court also explained the timing of the destruction as a factor to be considered, "it appears that the cocaine was destroyed in reliance on respondent's having pled guilty to trafficking and in accordance with the normal procedures after respondent entered his plea." Id. at 359. Therefore, since the evidence was destroyed *after the guilty plea* was entered the state no longer had any duty to preserve the evidence. This timing concern distinguishes State v. Mabe, and other cases of its lineage (see State v. Breeze, 379 S.C. 538, 665 S.E.2d 247 (2008), explaining there was no due process violation because the evidence was destroyed after the police thought the trial was "disposed") from Appellant's case. The evidence in Appellant's case was destroyed prior to his trial and against normal police procedure.

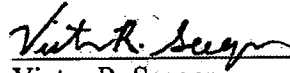
Appellant's case is more akin to State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990). In Jackson, Appellant was arrested for DUI and taken into the police department where he was videotaped performing the field sobriety tests and given a Breathalyzer. The Assistant Solicitor dismissed the case; however, a few months later Appellant was notified that the charges would be prosecuted. Two months after the Solicitor's office notified Appellant they were moving forward with prosecution, the videotape of the sobriety test was erased. Additionally, the Solicitor's office lost the original Breathalyzer report. Id. at 314. The trial proceeded despite the missing evidence and Appellant was convicted of DUI, second offense. Id.

Our Supreme Court concluded that Jackson's due process rights had been violated and overturned his conviction. Id. at 316. The Court held that the videotape was clearly exculpatory and that Jackson had no other evidence of comparable value to replace it. Id.

Appellant's case is analogous to Jackson. In the instant case the state deprived Appellant of exculpatory evidence in his only defense argument, self-defense, and Appellant had no other physical record of the defensive wound to replace the destroyed photograph. In Jackson, the state deprived Appellant of the video evidence of his sobriety test, evidence that went directly to his only defense argument that he was driving sober, and he had no other physical evidence to replace the destroyed videotape. Moreover, in Appellant's case, as in Jackson, and unlike in Mabe and in Breeze, the state destroyed the evidence prior to trial, prejudicing Appellant's right to put forth critical evidence in his self-defense case.

CONCLUSION

By reason of the foregoing arguments Appellant's conviction should be reversed, and this case remanded to the Pickens County Court of General Sessions for a new trial.



Victor R. Seeger
Appellate Defender

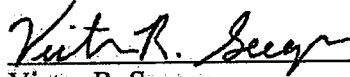
ATTORNEY FOR APPELLANT

This 30th day of April, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 30, 2018



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STATE OF SOUTH CAROLINA

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Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

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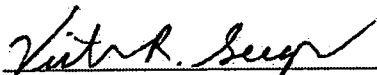
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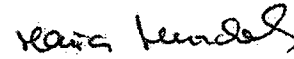
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of April, 2018.


Victor R. Seeger
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of April, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023