

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Pickens County

Honorable Edward W. Miller, Circuit Court Judge

RECEIVED

MAY 02 2019

SC Court of Appeals

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

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THE STATE,

RESPONDENT,

V.

MICHAEL TAQUARIUS RENCHER,

PETITIONER

APPELLATE CASE NO. 2019-000673

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PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
—————

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ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 21, 2019.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the trial judge's erroneous failure to instruct the jury on spoliation where the state destroyed the photograph of the wound on Petitioner's head that was the sole piece of corroborating physical evidence that Petitioner acted in self-defense, and thus, was exculpatory on its face?

STATEMENT OF THE CASE

On the evening of September 10, 2014 into the morning of September 11, 2014, Petitioner 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. 2 – R. 51, l. 4; R. 55, l. 19 – 56, l. 5. Petitioner 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 – 56, l. 5; R. 72, l. 21 – 73, l. 8.

Once inside the apartment Petitioner ran into the decedent, Cameron Flores, with whom Petitioner had prior difficulties. The decedent erroneously thought that Petitioner had been part of a robbery of the decedent, “awhile back”. R. 277, l. 21 – R. 278, l. 20. After Petitioner entered the apartment, and a period of time passed, the decedent became agitated and confronted Petitioner. R. 76, l. 21 – R. 77, l. 10.

The decedent and Petitioner exchanged words and then the decedent, a man of a much larger stature, struck Petitioner about the head and face. R. 79, ll. 9 – 13; R. 260 ll.11 – 13. The blows caused a resulting gash behind Petitioner’s left ear. R. 126, ll. 10 – 13. Petitioner was in fear for his life. App. 261, l. 20 – 270, l. 5. Petitioner was lured into a strange apartment, confronted by a larger man, who believed Petitioner robbed him in the past, and then was attacked by the larger man. Petitioner 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.

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

Petitioner still frightened from the encounter fled to his friend, Justin Shove's house, who described the look on Petitioner'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 Petitioner's head and gave him paper towels to clean himself. R. 126, ll. 10 – 13. Petitioner telephoned his father and told his father to call the police to tell them what happened and to pick Petitioner up from Justin's house early that morning. R. 271, l. 22 – R. 273, l. 22. Shortly after Petitioner's father picked him up, Officer Ren Johnson pulled them over. R. 154, l. 12 – R. 156, l. 19. After Officer Johnson arrested Petitioner, he brought Petitioner to the police station to be interviewed by Detective Peppers. R. 158, l. 22 – R. 159, l. 3.

During the interview Detective Peppers inspected the gash on the back of the left side of Petitioner'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, Peppers destroyed this photograph before trial. R. 193, ll. 4 – 6.

Petitioner 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 Petitioner. R. 1.

Defense counsel made a pretrial motion to dismiss Petitioner's case for spoliation of evidence and a pre-trial hearing was held. R. 8, l. 23 – R. 9, l. 1; R. 12, l. 19.

At the pre-trial hearing, Detective Peppers' explanation for destroying the photograph of the back of Petitioner's head was that, "it just didn't – didn't come through." R. 23, ll. 8 – 9. Peppers used a digital camera; therefore, the photograph was automatically saved in perpetuity. R. 23, l. 20 –

R. 24, l. 4. Peppers took it upon himself to destroy the photograph before anyone else could to review it because, “there was nothing to review.” Id.

Detective Peppers, the sole person to inspect the gash on the back of Petitioner’s head, minimized Petitioner’s wound in his description at the pretrial hearing as a, “very small cut / scratch.” R. 25, ll. 21 – 22. Judge Miller ruled that, “[R]egardless of the quality of the photograph, it should not have been destroyed.” R. 34, ll. 18 – 23. In an effort to avoid dismissal the Solicitor agreed with him. Id. Judge Miller denied the motion to dismiss but correctly stated, without objection from the Solicitor, that Petitioner was, “entitled to [a] charge on spoliation of evidence.” R. 34, l. 24 – R. 36, l. 17.

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

Petitioner filed a final brief of appellant on April 30, 2018. The Court of Appeals dismissed the Petitioner’s appeal in an unpublished opinion on February 13, 2019 holding instructions on spoliation are proper only in most unusual circumstances. State v. Rencher, 2019-UP-078 (2019) (*see* State v. Baston, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973)). A petition for rehearing was filed on February 27, 2019. The Court of Appeals denied it on March 21, 2019.

This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial judge's erroneous failure to instruct the jury on spoliation where the state destroyed the photograph of the wound on Petitioner's head that was the sole piece of physical evidence corroborating that Petitioner acted in self-defense, and thus, was exculpatory on its face.

Reasons to grant certiorari

Pursuant to Rule 242 (b)(3) the reason to grant certiorari in this case is because the Court of Appeals unpublished opinion in conflict with this Court's holdings in State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990) where this Court held that the destruction of exculpatory evidence, where the defendant had no other evidence of comparable value to replace it, required the conviction to be vacated.

Relevant Facts

Petitioner was interviewed by Detective Peppers. He told Peppers that he was attacked by the decedent and that the attack resulted in a gash on the back of Petitioner's head. Detective Peppers inspected the gash on the back of the left side of Petitioner's head. R. 191, l. 16 – R. 192, l. 5. The wound was serious enough for Detective Peppers to immediately take a photograph of the wound. R. 192 ll. 9 – 10. Therefore, at the time Peppers took the photograph he was on notice that Petitioner claimed self-defense. Moreover, Peppers was on notice that the gash on the back of Petitioner's head was the injury that showed Petitioner acted in self-defense.

At the pre-trial hearing, Detective Peppers' explanation for destroying the photograph of the back of Petitioner's head was that, "it just didn't – didn't come through." R. 23, ll. 8 – 9. However, in front of the jury Detective Peppers' reasons for destroying the photograph changed.

On direct examination he claimed the photograph did not develop, even though a digital photograph does not “develop.” R. 192, ll. 15 – 16. Inexplicably, during cross-examination, Detective Peppers changed his story again and stated he destroyed the photograph because Petitioner’s hair obscured the photograph. 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.

During the 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.

Earlier in the trial, 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. R. 36, l. 7 – 37, l. 7. However, when there was no risk of dismissal, the Solicitor 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.

Discussion

In California v. Trombetta et. al., 467 U.S. 479 (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 Petitioner’s case was a photograph of a defensive wound on the

back left-hand side of his head and Petitioner's sole defense was self-defense. This photograph was the sole piece of physical evidence that corroborated Petitioner's defense.

Moreover, 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 (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 Petitioner'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.

In State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990) this Court handled the issue of spoliation as well. In that case Jackson 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 Petitioner was notified that the charges would be prosecuted. Two months after the Solicitor's office notified Petitioner 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 Petitioner was convicted of DUI, second offense. Id.

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

The Supreme Court of the United States elaborated on the impropriety of the destruction of evidence in Arizona v. Youngblood, 488 U.S. 51 (1988). In Youngblood, the spoiled evidence was DNA samples from the victim's body and clothing. The state's criminologist examined the evidence, but the evidence spoiled before the defense could examine it. Id. at 53 – 55.

In Youngblood, 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 Petitioner’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 contrast to Youngblood, here the photograph was intentionally destroyed. Detective Peppers used a digital camera to photograph Petitioner’s wound. A digital camera saves photographs in perpetuity. Detective Peppers had to access the photograph and intentionally click the delete button. Therefore, in Petitioner’s case the state did not merely mishandle the evidence as in Youngblood.

Moreover, *the destroyed evidence was a photograph of a defensive wound in a case where the officer who deleted the photograph knew Petitioner claimed self-defense.* The value of the photograph 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.

Peppers' destruction of the photograph usurped the jury's fact-finding function at trial. Peppers' had a wrongful intention when he deleted the photograph and that intention was belied by his testimony at trial, where he minimized the severity of the gash as a calculated measure to hurt Petitioner's self-defense case. Peppers did not want to the jury to think that Petitioner suffered a significant wound and he destroyed the best evidence corroborating Petitioner's story.

None of the testimony presented at trial could replace the photograph's evidentiary value because Peppers' testimony was designed to minimize the gash's significance and Shove's testimony indicated that he never got a good look at the wound. R. 23, ll. 8 – 9; R. 126, ll. 10 – 13; R. 192, ll. 15 – 16; R. 204, ll. 18 – 23. Thus, the photograph was necessary for Petitioner to properly make his self-defense case such that its deletion cannot be harmless.

Petitioner's case is more analogous to Jackson than to Youngblood. In the instant case the state deprived Petitioner of exculpatory evidence for his only defense argument, self-defense. Petitioner had no other physical record of his defensive wound and thus he could not replace the destroyed photograph. In Jackson, the state deprived Petitioner of the video evidence of his sobriety test, evidence that went directly to his only defense argument that he was driving sober. In Jackson, the defense had no other physical evidence to replace the destroyed videotape. Moreover, in Petitioner's case, as in Jackson, the state destroyed the evidence prior to trial, prejudicing Petitioner's right to put forth critical evidence in his self-defense case.

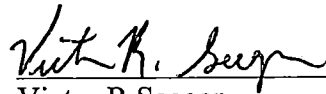
In Petitioner's case the evidence that was destroyed had evidentiary value on its face. Unlike in Youngblood, in the instant case *Petitioner is not looking to "test" the photograph* of his head wound. Petitioner needed the photograph solely for what it depicted. There was no speculation Petitioner had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

Therefore, the trial court erred when it refused to give a jury instruction on spoliation of evidence. Accordingly, Petitioner's conviction should be vacated and his case remanded to the circuit court for a new trial.

CONCLUSION

By reason of the foregoing arguments, Petitioner respectfully requests that this Court vacate his conviction and remand his case to the circuit court for a new trial, or in the alternative, grant Certiorari to allow for full briefing on this issue.

Respectfully Submitted,



Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of May, 2019.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Pickens County
Honorable Edward W. Miller, Circuit Court Judge

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SC Court of Appeals

Opinion No. 2019-UP-078 (S.C. Ct. App. filed 2/13/2019)
2017-GS-39-00791

THE STATE,

RESPONDENT,

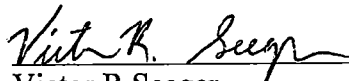
V.

MICHAEL TAQUARIUS RENCHER,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 2920, The South Carolina Court of Appeals, at 1220 Senate Street, Columbia, SC 29201; and Michael Taquarius Rencher, #372018, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 2nd day of May, 2019.



Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 2nd day of May, 2019.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027.



SCCID

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MAY 02 2019
SC Court of Appeals

Re: The State v. Michael Taquarius Rencher

Dear Ms. Shupe:

Enclosed are two copies of the Petition for Writ of Certiorari and the Appendix in the above case that I have filed with the South Carolina Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

Victor R Seeger
Appellate Defender

VRS/mba

Enclosures

~~cc: Court of Appeals~~