

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Petitioner for Writ of Certiorari to the Court of Appeals
Op. No. 2019-UP-078 (S.C. Ct. App., Filed February 13, 2019)
Appeal from Pickens County
The Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2019-000673

The State,

Respondent,

v.

Michael Taquarius Rencher,

Petitioner.

**RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS**

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TABLE OF CONTENTS

RESPONDENT'S STATEMENT OF ISSUE PRESENTED1
STATEMENT OF THE CASE.....2
ARGUMENT6

The Court of Appeals properly affirmed the circuit court's denial of Petitioner's request for a spoliation of evidence charge because there was no evidence the police investigator acted in bad faith when he deleted a digital photograph taken of Petitioner's head when he was in custody, and Petitioner was able to establish through other evidence that he sustained a head injury during the struggle with Victim.. 6

CONCLUSION.....12

RESPONDENT'S STATEMENT OF ISSUE PRESENTED

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

STATEMENT OF THE CASE

On March 21, 2017, the Pickens County Grand Jury indicted Petitioner 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, Petitioner moved to dismiss the case based on spoliation of evidence. In support of the motion, Petitioner called Detective James Peppers of the Clemson Police Department, who testified he questioned Petitioner after the incident, and Petitioner 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 Petitioner’s head, but stated “it didn’t turn out well enough to see,” so he deleted it. (Record on Appeal [R.], pp. 20-24).

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

Petitioner 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 Petitioner sustained an injury, and asked why the photograph was necessary, Petitioner’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.

(R., pp. 30-33) (emphasis added).¹

The court denied the motion to dismiss, finding the failure to provide the deleted photograph did not prejudice Petitioner 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 Petitioner was entitled to a charge on spoliation of evidence. (R., pp. 34-36).

The State's witnesses testified Victim was at a friend's apartment in the early morning hours of September 11, 2014, when Petitioner arrived at the apartment with the friend's neighbor. Victim believed Petitioner had robbed him several weeks earlier, ultimately confronted Petitioner, and punched him. Petitioner grabbed a butcher knife from the kitchen counter, stabbed Victim once in the abdomen with it, and ran out of the apartment. The stabbing caused significant internal injuries and led to Victim's death. (R., pp. 49-117, 208-222).

After stabbing Victim, Petitioner 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 Petitioner's face from behind his left ear, gave him a paper towel for the blood, left Petitioner on the couch and went back to bed. When the friend got up later that morning, Petitioner was gone. Even though law enforcement was at the crime scene approximately 200 yards away, Petitioner never approached them to tell them what happened. (R., pp. 118-128, 175, 195).

¹Petitioner repeatedly assigns motives to the prosecutor in connection with the State's position on the propriety of a spoliation jury charge. The State craves reference to the record regarding the prosecutor's statements, which do not indicate any ulterior motives.

While at his friend's apartment, Petitioner called his father, asked him to call the police and them come pick him up. After the father called 911, officers surveilled his home, followed him when he left to pick Petitioner up, and stopped the vehicle after Petitioner entered the car. During the traffic stop, Petitioner did not indicate he was injured or needed medical attention, and the officers did not observe any injuries on him. (R., pp. 151-160, 167-176).

Peppers testified about his involvement in the investigation and Petitioner's interrogation. He stated Petitioner mentioned he was bleeding from a place on his head, and Peppers observed a "tiny scratch" behind Petitioner'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 Petitioner's hairstyle, so he deleted the photograph. Petitioner did not complain of any injuries or ask for medical treatment. (R., pp. 181-205).

Petitioner testified Victim suddenly started punching him with no provocation, and hit him multiple times. He reached out, grabbed the butcher knife and swung it one time. Petitioner stated he felt the knife "hit and stop," he 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. (R., pp. 250-303).

During a charge conference, Petitioner 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 Petitioner failed to establish Peppers acted in bad faith, or that the photograph had any exculpatory value, and there was evidence of comparable value on the issue of Petitioner's injury. (R., pp. 305-310).

Petitioner 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 Petitioner's injury. The court denied Petitioner's request for the spoliation charge, but cautioned law enforcement to bring all collected evidence, including photographs, to court for examination in future cases. The court also indicated Petitioner would not be limited in arguing about the deleted photograph during closing argument. (R., pp. 313-318).

The State acknowledged during its closing argument that the photograph of Petitioner's injury was deleted, but referenced other evidence showing Petitioner's appearance after he stabbed Victim, including the traffic stop and interrogation videos and the photograph of Petitioner's face Peppers took during the interrogation.² Petitioner also referenced the deleted photograph in closing argument. (R., pp. 329, 332-333, 341, 352-353).

The jury convicted Petitioner of voluntary manslaughter, and the court sentenced him to twelve years incarceration. (R., pp. 401, 410). This appeal followed.

By unpublished opinion filed February 13, 2019, the Court of Appeals affirmed the circuit court's denial of Petitioner's request for a spoliation charge. (Appendix pp. 1-2). Petitioner petitioned for rehearing on the spoliation charge issue, which the Court of Appeals denied by Order filed March 21, 2019. (Appendix, pp. 3-8). Petitioner now seeks review of the Court of Appeals decision.

²State's Exhibit 11 (Photograph of Defendant Rencher) was transported to the Court of Appeals for consideration.

ARGUMENT

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

Petitioner 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 Petitioner's head within hours of the incident, which he contends was exculpatory evidence regarding his self-defense claim. Petitioner'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.³ *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 Petitioner'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, Petitioner 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.

³Petitioner 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 Petitioner 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 in deciding whether a spoliation charge was appropriate.

Notwithstanding Petitioner's conclusory declaration that Pepper "had a wrongful intention when he deleted the photograph," there is no evidence indicating Peppers intentionally deleted the photograph to avoid revealing exculpatory evidence. Rather, Peppers was clearly aware Petitioner'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.⁴ In the absence of evidence Peppers deleted the photograph because it revealed exactly what he said he saw on Petitioner's head, and he was willing to put his job and career on the line to avoid its use as evidence, Petitioner cannot meet the bad faith prong of the spoliation analysis.

Further, other than conclusory statements regarding the photograph's value to his self-defense claim, Petitioner cannot show the photograph had any exculpatory value, much less the required "readily apparent" exculpatory value. During the pre-trial hearing, Petitioner's stated reason for needing the photograph was some unknown opinion a forensic expert might reach in relation to Petitioner's self-defense claim if the photograph was available.⁵ When the court sought further explanation regarding how the photograph could make any difference to the expert's conclusions, Petitioner candidly admitted he **did not know**. (TT, pp. 30-36; R., pp. 30-36).

⁴The 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.

⁵It is difficult to even imagine how a forensic expert's opinion could turn on the existence of a photograph in light of other evidence the injury existed. Petitioner's failure to request or seek medical treatment was more likely the reason the forensic expert could not reach a conclusion.

During trial, the State did not dispute Victim made the first physical move by punching Petitioner, or that Petitioner sustained an injury from the punch. Beyond the undisputed evidence, Petitioner's friend testified he only saw some blood on Petitioner's face, the officers at the traffic stop did not observe any injury on Petitioner, Peppers testified he saw the injury but Petitioner never asked for medical treatment, a photograph Peppers took of Petitioner's uninjured face was presented, and Petitioner testified he was **not even aware** of the injury until his friend saw the blood. (R., pp. 77-79, 92-93, 122-123, 126-128, 157, 180, 189-193, 197-198, 200-201, 203-204, 224, 271, 285-286, 295). Accordingly, 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, the photograph had "readily apparent" exculpatory value, or there was no comparable evidence available, the State was not required to preserve the photograph, and failure to do so did not violate Petitioner's due process rights. Petitioner 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, Petitioner cites and discusses cases that are legally and factually distinguishable from this case. For instance, he cites the "more analogous" case of 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 charge 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 the video was destroyed two months **after** the announcement, and the defendant had no other evidence of comparable value. Based on those facts, the Court held the defendant's due process rights were violated. *Id.* at 102.

Contrary to Petitioner'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 which were then conveyed to Petitioner. As discussed above, there was no evidence the deleted photograph was exculpatory, or even critical to Petitioner's self-defense claim, and there was other evidence of comparable value available to Petitioner. Unfortunately for Petitioner, all the evidence regarding his injury, including Petitioner'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).⁶ 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

⁶Petitioner asserts Jenkins holds “defensive wounds are indications of resisting bodily harm.” Rather than the overstated and broad holding Petitioner 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.

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 Petitioner’s actions and appearance after the incident. The jury was aware Victim started the physical altercation and there was a deleted photograph of the purported injury on Petitioner’s head. Peppers testified he saw the injury, which he described as a “scratch,” and Petitioner testified he was **not even aware** of the injury until his friend gave him a paper towel to wipe blood off his face. Thus, there was other evidence from which the jury could determine the injury’s severity, or lack thereof. In light of that evidence, there is no basis to conclude the failure to give Petitioner’s requested spoliation charge impacted the verdict in this case, and the Petitioner for Writ of Certiorari should be denied.

CONCLUSION

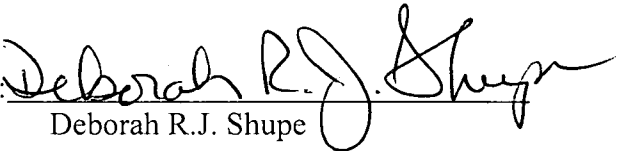
Based on the above arguments, the State respectfully submits the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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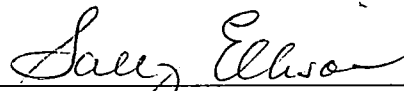
PROOF OF SERVICE

I, Sally Ellison, certify I served the Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner by depositing copies in the United States mail, postage prepaid, addressed to:

Victor R. Seegar
Assistant Appellate Defender
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I further certify that all parties required by Rule to be served have been served.

This 13th day of June, 2019.



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