

Commonwealth v Hallett

COMMONWEALTH OF PENNSYLVANIA v. DAVID HALLETT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 2255-2011

Criminal Law; Discovery; Duty to Disclose

1. Under *Brady v. Maryland*, prosecutors have a mandatory duty to disclose to defense counsel evidence which is either directly exculpatory or which is material for impeachment purposes.
2. To prove a *Brady* violation, a defendant must show: 1) the evidence was favorable to him, either exculpatory or impeaching; 2) the evidence was either willfully or inadvertently suppressed by the State; and 3) he was prejudiced by reason of the suppression.
3. A defendant is prejudiced by the suppression of evidence when the evidence is both relevant and material.
4. Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed.
5. Suppressed evidence is to be considered collectively under a *Brady* analysis.

Criminal Law; Discovery; Duty to Preserve

1. Failure to preserve potentially useful evidence does not constitute a denial of due process unless the defendant can show bad faith on the part of the police.
2. Potentially useful evidence is such that it could have been subjected to tests, the results of which might have exonerated the defendant.

LEGAL POINTS

PROVING EVIDENCE IS EXCULPATORY

When there is a legitimate factual dispute as to what a Mobile Video Recording would have shown, Defendant's testimony that the recording would have been exculpatory is insufficient on its own to prove the first prong of a *Brady* violation.

POTENTIALLY USEFUL EVIDENCE

A Mobile Video Recording cannot be subject to tests in a lab, but rather the potential exculpatory value of such a recording would be a matter for the fact finder to determine. Therefore, by definition, a Mobile Video Recording is not potentially useful evidence under *Youngblood*.

DUTY TO INTRODUCE VIDEO RECORDING

The Commonwealth is under no duty to introduce a video recording of each traffic stop that comes before the Court, particularly when no such video exists.

Appearances:

David R. Erhard, Esq., *Attorney for the Defendant*
John M. Lisko, Esq., *Assistant District Attorney*
David Hallett, *Defendant*

OPINION

STATEMENT OF THE CASE

On September 25, 2011, at approximately 12:55 a.m., Trooper James Shearer of the Pennsylvania State Police effectuated a traffic stop upon the Defendant for failing to use his turn signal when making a turn. The Commonwealth alleges that, upon contact with the Defendant, Trooper Shearer detected an odor of alcoholic beverage on the Defendant's breath and noticed that the Defendant's eyes were bloodshot and that the Defendant spoke in a slurred manner. Trooper Shearer then asked the Defendant to perform field sobriety tests, which indicated that the Defendant was impaired, and the Defendant was placed under arrest. Defendant was transported to the Chambersburg Hospital for blood testing; the results showed that the Defendant had a blood alcohol level of 0.217 percent.

Following the Defendant's arrest, Trooper Shearer completed a report on the incident and indicated in his report that the Mobile Video Recording ("MVR") of the incident would be preserved. However, Trooper Shearer failed to actually request that the MVR be preserved. As a result, in compliance with the Pennsylvania State Police's policy to erase and re-use the MVR hard drives, the hard drive containing the recording of the Defendant's traffic stop was erased at the end of October 2011.

On or about November 3, 2011, Defense Counsel faxed and mailed letters to the Commonwealth, requesting that the MVR for this case be preserved. On February 3, 2012, Defense Counsel made its standard discovery request to the Commonwealth, which did not specifically mention the MVR. When the Commonwealth provided discovery materials, the MVR was not included. Defense Counsel then specifically requested a copy of the MVR on February 27, 2012 and was informed by the Commonwealth on March 13, 2012 that the proper steps for preserving the MVR had not been taken.

Defendant filed an Omnibus Pretrial Motion on March 23, 2012 arguing that the Commonwealth's failure to preserve the MVR denied the Defendant of his due process rights under the 14th Amendment to the U.S. Constitution and was a violation of Pennsylvania Rule of Criminal Procedure's 573, Pa.R.Crim.P. 573. Further, the Defendant moved to suppress the evidence as it was obtained after an illegal stop of the Defendant because the vehicle stop was unsupported by probable cause, reasonable suspicion, or other legally sufficient cause. The Commonwealth answered on April 12, 2012, arguing that because an MVR did not exist for this case, the Court should deny the Defendant's motion.

An Omnibus Hearing was scheduled for June 19, 2012, continued until August 6, 2012, and continued again until September 17, 2012, on which date the hearing was finally held. The Court ordered at that hearing that counsel had until October 1, 2012 for the Defense and October 8, 2012 for the Commonwealth, to file memoranda in support of their legal arguments. The Court now rules on the Defendant's Omnibus Pretrial Motion.

DISCUSSION

The Defendant and the Commonwealth provide differing theories as to how this case should be decided. The Court finds that neither theory is entirely on point, as discussed below.

The Defendant asserts that his due process rights were violated under *Brady v. Maryland* because the MVR was not provided to him during discovery. Under the *Brady* rule, prosecutors have a mandatory duty to disclose to defense counsel evidence which is either directly exculpatory or which is material for impeachment purposes. See *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963); *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375 (1985); *U.S. v. Pelullo*, 105 F.3d 117, 122 (3d Cir. 1997). Three elements must be proven to show *Brady* has been violated. See *Commonwealth v. Causey*, 833 A.2d 165, 170 (Pa. Super. Ct. 2003), appeal denied, 848 A.2d 927 (Pa. 2004). First, the evidence must have been favorable to the accused, either exculpatory or impeaching. See *Strickler v. Greene*, 527 U.S. 263, 281, 119 S. Ct. 1936 (1999). Second, the evidence must have been either willfully or inadvertently suppressed by the State. See *id.* at 282. Finally, the Defendant must demonstrate prejudice by reason of the suppression. See *id.*

Prejudice occurs when the evidence suppressed is not only relevant, but also material. See *Banks v. Dretke*, 540 U.S. 668, 691, 124 S. Ct. 1256 (2004). Evidence is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler*, 527 U.S. at 281. If the evidence "could reasonably be taken to put the whole case in such a different light" so as to "undermine confidence in the verdict" and "raise a reasonable probability that the result of trial would have been different," a constitutional violation has occurred, and a new trial is merited. See *id.* at 290; *Commonwealth v. Strong*, 761 A.2d 1167, 1171 (Pa. 2000). Finally, in the analysis of materiality, suppressed evidence should be considered collectively, rather than item by item, as the Constitution is not violated "every time the government fails or chooses not to disclose evidence that might prove helpful to the defense." *Kyles v. Whitley*, 514 U.S. 419, 436-37, 115 S. Ct. 1555 (1995) (citing *Bagley*, 473 U.S. at 675).

In the instant case, the Court finds that the Commonwealth has not violated the Defendant's due process rights under a *Brady* analysis. As to the first prong of the *Brady* test, the Defendant argues that because he testified under oath as to

the events that would have been displayed on the MVR and because his testimony is different than that of Trooper Shearer's, the MVR would serve to impeach Trooper Shearer's testimony. The Defendant argues that his sworn testimony is enough to bring the assertion beyond a "mere assertion" because he risks charges of perjury if he testifies untruthfully. While the Court agrees that the Defendant would risk charges of perjury if his testimony was determined to be untruthful, this does not convince the Court that the MVR would, in fact, show that the Defendant was not intoxicated. There is a legitimate factual dispute as to what the MVR would show and the Defendant has not demonstrated to the Court that the MVR would be exculpatory or impeaching. It may, in fact, corroborate the testimony of Trooper Shearer and be anything but exculpatory.

The second prong requires the Defendant to show that the evidence was willfully or inadvertently suppressed by the State. There is no dispute that the MVR did once exist and that it was destroyed as part of an established Pennsylvania State Police procedure to erase and reuse the MVR hard drive after 30 days. Even if the Commonwealth were charged with the destruction of the MVR by the Pennsylvania State Police, the Defendant has done nothing more to prove that this destruction was willful or inadvertent than to state that "Shearer's testimony was that a video did exist, and Anderson's testimony was that Anderson erased it." Therefore, this prong has not been satisfied.

Third, the Defendant has not demonstrated that he has been prejudiced by the destruction of the MVR. Defendant argues that the MVR would have served to undermine Trooper Shearer's overall credibility because the video contrasts his testimony, and as a result, the Court would be more inclined to believe the Defendant's version of events, creating a reasonable probability that the outcome of the proceeding would change. The Court is not convinced. As reasoned above, there is a legitimate factual dispute of the contents of the MVR. As a result, any argument that the destruction of the MVR would have led to a different outcome of the proceeding is speculative at best. Therefore, the three prongs of the Brady test not having been met, the Court cannot find that there has been a Brady violation in the instant case.

Likewise, the Court finds that the instant case does not fall within the parameters of *Arizona v. Youngblood*, as the Commonwealth argues. The U.S. Supreme Court in *Youngblood* held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." See *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). The Court found that potentially useful evidence differed from material exculpatory evidence in that potentially useful evidence "could have been subjected to tests, the results of which might have exonerated the defendant." *Id.* at 57.

The Commonwealth argues that the MVR would not be exculpatory because Trooper Shearer testified that it would not be and that the trooper's testimony was more credible than the Defendant's. However, in the alternative, the Commonwealth argues that even if the Court finds that it is unable to determine whether the MVR would be exculpatory, there was no bad faith on the part of the police in failing to preserve the MVR. The failure to preserve the video, the Commonwealth argues, was simply a mistake, and therefore, under *Youngblood*, the Court should deny the Defendant's Motion.

The Court finds that the instant case does not fit squarely into a *Youngblood* analysis. In *Youngblood*, the defendant was convicted of child molestation, sexual assault, and kidnaping. The defendant appealed, arguing that because the State of Arizona failed to preserve and test semen samples from the victim's body and clothing, he was denied due process. The Supreme Court held that this failure could, at worst, be described as negligence on the part of the police, not bad faith. As the Commonwealth points out, Pennsylvania Courts have adopted a *Youngblood* analysis in various cases. However, the instant fact pattern differs from those found in the Pennsylvania cases employing a *Youngblood* analysis.

Like in *Youngblood*, in each of the Pennsylvania cases where *Youngblood* has been applied, the evidence at issue was such that it could have been subjected to tests by the Commonwealth, making it "potentially useful evidence" as described by the *Youngblood* Court. See *Commonwealth v. Moss*, 689 A.2d 259 (Pa. Super. 1997) (hair samples); *Commonwealth v. Free*, 902 A.2d 565 (Pa. Super. 2006) (marijuana plants); and *Commonwealth v. Borovichka*, 18 A.3d 1242 (Pa. Super. 2011) (blood sample). However, in the instant case, the evidence at issue, the MVR, is different in that it couldn't be subject to a test in a lab. Instead, the potential exculpatory value of the MVR, whether the Defendant used his turn signal and whether he appeared intoxicated, would be a matter for a jury to determine. Therefore, because the MVR is such that it couldn't have been subjected to tests, the MVR does not fit into the *Youngblood* Court's definition of "potentially useful evidence."

Moreover, even if the Court were to find that a *Youngblood* analysis were proper, the Defense has not shown that there was bad faith on the part of the Commonwealth in failing to preserve the MVR. Trooper Shearer testified that it is his practice to mark on his report that a MVR was being saved and to fill out the request form subsequently. He testified that he doesn't know why he didn't fill out the request form for the MVR in question, but that it wasn't done deliberately. The Court finds Trooper Shearer's testimony to be credible and that his failure to request that the MVR be saved was an oversight on his part, not intentional, and thus there was no bad faith on the part of the Commonwealth in failing to

maintain this evidence.

The Court further finds that the Commonwealth is under no duty to introduce a video recording of each traffic stop that comes before the Court, particularly when no such video exists. If the Court were to side with the Defense on its Motion, thereby finding that the Commonwealth should be punished for failing to introduce the MVR of the Defendant's traffic stop, the Court would be setting a precedent that such a duty does exist. The Court will not do so. Instead, the Court will allow each side to present testimony as to what happened during the traffic stop and it will be up to the jury to decide which witnesses it finds more credible, as is the case whenever there is conflicting testimony presented.

CONCLUSION

The Court finds that neither the Defense nor the Commonwealth's theory squarely fits the issue in the instant case. A Brady analysis fails because the Defendant has not proven that the MVR would be beneficial to him or that he was prejudiced because he did not receive the MVR. A Youngblood analysis also fails because the MVR doesn't fit the definition of "potentially useful evidence" and also because bad faith on the part of the Commonwealth has not been shown. Further, the Court is unwilling to impose a duty on the Commonwealth to introduce a video recording each time they bring a traffic violation before the Court, as granting the Defense Motion would require the Court to do. Accordingly, the attached order denies the Defendant's Omnibus Pretrial Motion.

ORDER OF COURT

AND NOW THIS October, 2012, the Court having reviewed and considered the Defendant's Omnibus Pretrial Motion, the Commonwealth's Answer in Opposition, evidence offered at a Omnibus Hearing on September 17, 2012, and briefs from both the Defense and Commonwealth in support of their legal arguments at the hearing, and having reviewed the applicable law;

IT IS HEREBY ORDERED THAT the Defendant's Omnibus Pretrial Motion is DENIED.

Pursuant to the requirements of Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.