

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACEY LAMONT BRUNER,

Defendant-Appellant.

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UNPUBLISHED

January 30, 2001

No. 218590

Oakland Circuit Court

LC No. 96-149972-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), for which he was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to 120 days in jail. We affirm.

Defendant's sole issue on appeal is that the trial court improperly denied his motion to suppress evidence that may have been tampered with or to conduct an evidentiary hearing on the matter. We disagree.

The police have a duty to preserve evidence seized pursuant to a search warrant. MCL 780.655; MSA 28.1259(5). It is generally preferable that the police "keep all evidence until the criminal prosecution is concluded without concern for its value at trial." *People v Tate*, 134 Mich App 682, 692; 352 NW2d 297 (1984). However, it sometimes happens that evidence is lost or destroyed. The failure to preserve evidence that may have exonerated the defendant does not constitute a denial of due process unless the defendant shows that the police acted in bad faith, *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993); *People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989), or intended to deprive the defendant of evidence. *People v Ricardo Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992); *People v Petrella*, 124 Mich App 745, 752-753; 336 NW2d 761 (1983), aff'd 424 Mich 221 (1985). Where evidence has been destroyed, the court is to consider whether the destruction was deliberate, whether the evidence had previously been requested, and whether the defendant could have put the evidence to significant use. *People v Paris*, 166 Mich App 276, 283; 420 NW2d 184 (1988). "Defendant bears the burden of showing that the evidence was exculpatory or that the police acted in bad faith." *Johnson, supra*.

The material evidence supporting the charges, i.e., the crack cocaine, was preserved. Because it was recovered from defendant's vomit, it was rinsed off before being tested by the lab. Thus, it does not appear that the police acted in bad faith or to deprive defendant of evidence. Defendant contends that the washing may have altered the crack and thus deprived him of the opportunity to have it tested before it was altered. The lab chemist testified that rinsing the crack in water has no effect on it because it is not water soluble and defendant has not made any showing to the contrary. Furthermore, the chemical analysis of the substance, which presumably was available for independent testing upon request, MCR 6.201(A)(6), showed that it was indeed cocaine and defendant has not explained how the analysis would have been different had the substance been covered with vomit. Because defendant has not shown that the evidence was materially altered or that it could have been put to significant use had it remained in its original state, defendant failed to prove a basis for suppression. Given that, it appears that further factual development would not have led to a different conclusion and thus an evidentiary hearing was not warranted. Cf. *People v James Johnson*, 202 Mich App 281, 287; 508 NW2d 509 (1993).

Affirmed.

/s/ Jeffrey G. Collins  
/s/ Martin M. Doctoroff  
/s/ Helene N. White