STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 17, 2002
v	No. 232169 Cass Circuit Court
LISA ANNE FAHNDRICH, Defendant-Appellant.	LC No. 00-010301-FH

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of operating a motor vehicle under the influence of intoxicating liquor causing death, MCL 257.625(4), and involuntary manslaughter with a motor vehicle, MCL 750.321. The trial court sentenced defendant to serve concurrent terms of three to fifteen years' imprisonment for each conviction. Defendant appeals as of right. We affirm.

This case arises from a fatal automobile accident wherein defendant was alleged to have run a stop sign while intoxicated, causing a collision that killed her passenger.[1] On appeal, defendant argues that she was denied due process and a fair trial as a result of the trial court's failure to suppress evidence relating to any portion of the vehicle she was alleged to have been driving at the time of the crash that had not been preserved by the police. We disagree.

The United States Supreme Court has held that unless a criminal defendant can show bad faith on the part of the police or prosecutor, failure to preserve evidence does not constitute a denial of due process. *Arizona v Youngblood*, 488 US 51, 58; 109 S Ct 333; 102 L Ed 2d 281 (1988). Accordingly, where there is no such showing, use of the evidence against a defendant does not constitute error warranting relief. *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993).

In this case, defendant moved before trial to suppress the subject evidence after discovering that the vehicle had been sold for salvage and destroyed before the defense had an

[1] Defendant denied being the driver of the vehicle at the time of the crash, claiming that the victim, who was found in the passenger seat, was the driver.

opportunity to examine it.[2] At the hearing on this motion, a police witness testified that following the accident the vehicle was taken to a tow yard where it was to be stored during the investigation in this matter. When the police investigation was completed a few months later, the witness informed the tow yard's proprietor that the police were "done with the vehicle." The witness indicated that he assumed from past experience that the proprietor knew that he should nonetheless continue to hold the vehicle until released by the prosecutor, and that it was not his intent to convey to the proprietor that the vehicle could be destroyed or otherwise released. However, while attempting to accommodate a defense request for access to the vehicle several months later, the witness learned that the vehicle had been sold by the proprietor as scrap, and subsequently destroyed.

Relying on this testimony, the trial court denied defendant's motion, finding that the vehicle's destruction was simply the result of a "miscommunication," and not a matter of bad faith on the part of the police or the prosecutor. Giving deference to the trial court's apparent determination that the police witness' testimony was credible, see *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997), we find no error in the trial court's decision. MCR 2.613(C). Defendant presented no evidence that the police or the prosecution intentionally destroyed or suppressed the evidence at issue. *Youngblood*, *supra*. Indeed, as noted by the trial court, the vehicle was destroyed not by the police or the prosecutor, but rather by a private party who was never specifically informed to do so by either the police or the prosecutor. Accordingly, due process did not require that the trial court suppress evidence concerning portions of the vehicle that had not been preserved.[3] *Hunter*, *supra*.

In any event, even assuming the trial court erred in failing to suppress the subject evidence, we agree with the prosecutor that such error was harmless given the weight and strength of the evidence in support of defendant's guilt that was properly admissible and to which defendant did not object at trial. *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994).

Defendant also argues that the trial court erred in failing to give an adverse inference instruction to the jury regarding destruction of the vehicle. However, to properly present an issue on appeal an appellant must argue the merits of the issue she identifies in her statement of the questions presented. *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). Here, defendant fails to explain her argument or cite any authority in support of her claim that the trial court erred in failing to give the requested instruction. Accordingly, we

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[2] Defendant never specifically identified the evidence she sought to preclude as "unpreserved."

[3] In reaching this conclusion, we reject defendant's assertion that the prosecution's failure to ensure that the vehicle was preserved constitutes a "dereliction" of duty that is tantamount to bad faith. "To establish bad faith, . . . a defendant must prove 'official animus' or a 'conscious effort to suppress exculpatory evidence.'" *United States v Jobson*, 102 F3d 214, 218 (CA 6, 1996), quoting *California v Trombetta*, 467 US 479, 488; 104 S Ct 2528; 81 L Ed 2d 413 (1984). As noted above, the record in this case is devoid of any evidence of such conduct by the police or prosecutor.

decline to review this issue. See *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000).

We affirm.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra