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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1098

Filed: 15 September 2020

Mecklenburg County, No. 16CRS204676

STATE OF NORTH CAROLINA

v.

BRADLY SIKORSKI, Defendant.

Appeal by Defendant from judgment entered 30 May 2019 by Judge Jesse B. Caldwell in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 August 2020.

Attorney General Joshua H. Stein, by Senior Deputy Attorney General Elizabeth Leonard McKay, for the State.

Sandra Payne Hagood for the defendant.

BROOK, Judge.

Bradly Sikorski (“Defendant”) appeals from a judgment entered upon a jury verdict finding him guilty of breaking or entering a motor vehicle. On appeal, Defendant contends that the trial court erred in finding the State did not act in bad faith in the destruction of certain body-worn camera (“BWC”) footage and in denying Defendant’s motion to dismiss. We hold Defendant received a trial free from error.

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Opinion of the Court

I. Background

A. Factual Background

On 5 February 2016 around 11 p.m., Juan Alvalbrado Robles began work laying tile flooring at a Bank of America in downtown Charlotte. He parked his burgundy Ford F-350 truck with the doors locked and the windows shut in a loading dock next to the Bank of America building and returned to his truck around midnight to get some tools. He noticed that the interior lights in his truck were lit, and he saw two white men and one Black man behind the open front passenger door. He yelled at them, and they ran.

Mr. Alvalbrado Robles noticed that papers that he kept in a box in the front seat had been disturbed and that his global positioning system (“GPS”) device was missing. He did not immediately call the police; instead, he got into his truck and drove after the three men to determine whether they had taken any of his tools that he kept in his truck. He located the men in a parking deck and determined that they did not have any of his property; however, Mr. Alvalbrado Robles testified that the Black man had a belt in his hand and attempted to fight with Mr. Alvalbrado Robles. Mr. Alvalbrado Robles pulled out a pocketknife. Two security guards were in the parking deck, and Mr. Alvalbrado Robles asked them to call the police. Instead, the security guards requested that all of the men leave, and they did.

Mr. Alvalbrado Robles began to drive back to Bank of America, but he was pulled over a few minutes after midnight by a Charlotte-Mecklenburg police officer, Timothy Illuminati, who stopped Mr. Alvalbrado Robles's car in response to an armed person call. Officer Illuminati questioned Mr. Alvalbrado Robles, who then reported the breaking or entering of his truck and gave descriptions of the perpetrators. Officer Illuminati broadcast the descriptions to other officers in the area.

Officer Jana Higa responded to Officer Illuminati's broadcast regarding the breaking or entering. She saw two men matching the descriptions running down an alley; one of the men was Defendant. She arrested them and took them to the Law Enforcement Center of the Charlotte-Mecklenburg Police Department ("CMPD") to be interviewed. Detective Gerren Willis interviewed Defendant. Defendant waived his *Miranda* rights and admitted that he opened the door of Mr. Alvalbrado Robles's truck to look for loose change inside. Defendant was charged with breaking or entering a motor vehicle and attempted misdemeanor larceny.

B. Procedural History

The State voluntarily dismissed the attempted misdemeanor larceny charge before trial. Defendant was tried at the 27 May 2019 criminal session of Mecklenburg County Superior Court on the charge of breaking or entering a motor vehicle.

On the second day of trial, before the continuation of jury selection, the assistant district attorney informed the trial court that she had just learned that a

BWC video had been made during Officer Illuminati's interactions with Mr. Alvalbrado Robles, but the footage had subsequently been deleted. Officer Illuminati had activated the camera when he first encountered Mr. Alvalbrado Robles. He turned the BWC off after approximately four minutes, after he determined, in accordance with CMPD policy, that his interaction with Mr. Alvalbrado Robles would not "evolve into a use of force." The assistant district attorney informed the court that no one in the District Attorney's Office had ever seen the footage, nor did she know it existed until that morning. The video had been incorrectly labeled "non-criminal" and, in accordance with CMPD's automatic retention policies, had been deleted 45 days after 5 February 2016.

Defendant requested a continuance and an order requiring the State to attempt to recover the footage. The trial court denied the motion. At the close of the State's evidence, Defendant moved to dismiss the charges against him pursuant to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, arguing that the destruction of the BWC footage resulted in substantial and irreparable prejudice to Defendant's case. A hearing was held on the motion to dismiss, and the parties conducted voir dire examinations of the officers involved.

Officer Illuminati testified on voir dire that, when he filed his report of the incident, he accidentally mischaracterized the video as relating to a "non-criminal"

as opposed to a “felony criminal” matter and that CMPD’s evidence retention system automatically deleted non-criminal material after 45 days. Detective Willis also testified on voir dire that no individual employee or supervisor is responsible for retaining video evidence; rather, the videos are retained or deleted by an autonomous system.

The trial court found that the State had not acted in bad faith in failing to retain the video and denied Defendant’s motion to dismiss. The jury convicted Defendant of breaking or entering a motor vehicle on 30 May 2019. The trial court sentenced Defendant to an active term of six to seventeen months and suspended that term upon a 30-month term of supervised probation. Defendant gave notice of appeal in open court.

II. Standard of Review

“This Court reviews alleged violations of constitutional rights *de novo*.” *State v. Williams*, 208 N.C. App. 422, 424, 702 S.E.2d 233, 236 (2010). “Under a *de novo* review, th[is C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal marks and citation omitted).¹

¹ While Defendant argues that the trial court “abused its discretion in finding no bad faith in the State’s destruction of body-worn [sic] camera footage[.]” we review the alleged deprivation of Defendant’s due process rights *de novo*. Had Defendant made a motion for sanctions, we would review the grant or denial of that motion for an abuse of discretion. *See State v. Graham*, 200 N.C. App. 204, 209, 683 S.E.2d 437, 441 (2009). Regardless, under either standard, we conclude the trial court did not err.

III. Analysis

Defendant appeals from the denial of his motion to dismiss pursuant to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Sections 19 and 23 of the North Carolina Constitution. Defendant argues that the trial court erred in concluding that the State did not act in bad faith and in denying Defendant's motion to dismiss the charges against him where the State failed to preserve footage recorded on a BWC that depicted a responding officer's first four minutes of interaction with the victim. Because we agree with the trial court that the State did not act in bad faith in destroying the video, we hold Defendant received a trial free from error.

"Whether a failure to make evidence available to a defendant violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Sections 19 and 23 of the North Carolina Constitution depends in part on the nature of the evidence at issue." *State v. Taylor*, 362 N.C. 514, 525, 669 S.E.2d 239, 252 (2008). In *Brady v. Maryland*, the Supreme Court of the United States held that "suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L. Ed. 2d 215, 218 (1963). However, the rule in *Brady* does not apply "when the evidence is only potentially useful[.]" *Taylor*, 362

N.C. at 525, 669 S.E.2d at 253 (internal marks and citation omitted). Under such circumstances, the defendant must show bad faith on the part of the State in order to prevail on a motion to dismiss based on the destruction of evidence. *Id.* at 526, 669 S.E.2d at 253. Accordingly, where the record shows that “any failure by law enforcement to follow procedures in securing . . . evidence was unintentional[,]” a criminal defendant cannot show that his due process rights were violated by the State’s failure to preserve evidence of only “speculative exculpatory value.” *Id.*

Here, Defendant did not offer any evidence that the police acted in bad faith in failing to preserve the BWC footage at issue. Indeed, Defendant concedes that “the most that can be said [about the BWC footage] is that it might have been exonerating.” Detective Illuminati testified on voir dire that his erroneous classification of the video as non-criminal in nature was accidental. Further, the evidence showed the video, once so labeled, was deleted in accordance with the department’s automated system and that neither Officer Illuminati nor his superiors had any ability to preserve the video. “Because the [S]tate’s failure to preserve potentially useful evidence . . . ‘can at worst be described as negligent[,]’ . . . [D]efendant’s due process rights were not violated.” *Id.* (quoting *Arizona v. Youngblood*, 488 U.S. 51, 58, 109 S. Ct. 333, 337, 102 L. Ed. 2d 281, 290 (1988)).

IV. Conclusion

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We hold the trial court properly denied Defendant's motion to dismiss upon finding that the State did not act in bad faith in destroying evidence potentially useful to Defendant's defense. We therefore hold Defendant received a trial free from error.

NO ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).