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# IN THE COURT OF APPEALS OF INDIANA

Michael D. Alexander,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

October 24, 2022

Court of Appeals Case No. 22A-CR-725

Appeal from the St. Joseph Superior Court

The Honorable Elizabeth C. Hurley, Judge

Trial Court Cause Nos.
71D08-1801-F5-2
71D08-1912-F6-1435
71D08-2001-F5-15

**Tavitas, Judge.**

## Case Summary

[1] Michael Alexander appeals his conviction for domestic battery, a Level 5 felony, and the revocation of his probation in a separate case as a result of his

domestic battery conviction.[1] Alexander contends that his due process rights were violated by the State's failure to collect and preserve a surveillance video. Alexander, however, has failed to demonstrate that the surveillance video was materially exculpatory. Further, even if the video was potentially useful, Alexander has failed to demonstrate bad faith by the officers involved. Accordingly, we affirm.

## Issue

[2] Alexander raises one issue, which we restate as whether Alexander's due process rights were violated by the State's failure to collect and preserve a surveillance video.

## Facts

[3] In April 2018, Alexander was convicted of battery, a Level 5 felony, and battery, a Class A misdemeanor, in Cause No. 71D02-1801-F5-2 ("Cause No. F5-2"). The trial court sentenced Alexander to six years with four years suspended and two years of probation.

[4] Alexander is the father of S.J.'s two children. According to S.J., on October 14, 2019, she was at a liquor store in South Bend and, as she stood in the open doorway, Alexander "fist punched" S.J. in her eye. Tr. Vol. II p. 40. The store clerk saw Alexander "snatch" S.J. out of the doorway and break the door. *Id.*

[1] Although Alexander also mentions charges in Cause No. 71D08-1912-F6-1435, those charges were dismissed. Accordingly, we do not address that cause further.

at 9. Alexander then physically attacked S.J. in the parking lot by kicking, stomping, and hitting her. The clerk called 911 and tried to intervene as S.J. was on the ground bleeding from her scalp.

[5] Officer Samuel Cruz of the South Bend Police Department was dispatched to the liquor store for a report of a domestic disturbance. He found S.J., who was accompanied by her young child. S.J. had a "[b]ig knot on her [forehead]" and she was "crying, upset, and intoxicated." *Id.* at 60.

[6] Officer Jeremy Wright with the South Bend Police Department later went to the liquor store to inquire about video surveillance of the incident. Officer Wright watched the video for the interior camera, but the video did not depict the altercation.[2] Officer Wright "reviewed the video on the [store's] server" and, "once [he] saw there was nothing of evidentiary value, [he] didn't preserve [the video]." *Id.* at 71. Although exterior cameras existed, Officer Wright contacted the owner and learned that the exterior cameras "do not record." *Id.* at 70.

[7] The State charged Alexander with domestic battery, a Class A misdemeanor, and domestic battery, a Level 5 felony, in Cause No. 71D02-2001-F5-15 ("Cause No. F5-15"). The State also filed a petition to revoke Alexander's probation in Cause No. F5-2.

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[2] The record does not indicate whether the camera's angle showed the front door.

[8] In Cause No. F5-15, a jury found Alexander guilty as charged, and the trial court entered judgment of conviction on domestic battery, a Level 5 felony. The trial court sentenced Alexander to five years in the Department of Correction ("DOC"). The trial court also found that Alexander violated the terms of his probation in Cause No. F5-2 and ordered Alexander to serve his previously suspended four-year sentence in the DOC. Alexander now appeals.

## Discussion and Decision

[9] Alexander argues that the State's failure to preserve the liquor store's surveillance video violated his due process rights. In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196 (1963), the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to the accused upon request 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."[3] *See also Arizona v. Youngblood*, 488 U.S. 51, 55, 109 S. Ct. 333, 336 (1988). "The State's failure to preserve materially exculpatory evidence is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Bennett v. State*, 175 N.E.3d 331, 334 (Ind. Ct. App. 2021), *trans. denied*. "[T]he failure to preserve 'potentially useful

[3] These principles apply to both police and prosecutors. *See Banks v. Dretke*, 540 U.S. 668, 675-76, 124 S. Ct. 1256, 1263 (2004) ("When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight."); *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 1567 (1995) ("[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

evidence'—as opposed to material exculpatory evidence—violates the Fourteenth Amendment only when the defendant can show bad faith on the part of police." *Noojin v. State*, 730 N.E.2d 672, 676 (Ind. 2000) (citing *Youngblood*, 488 U.S. at 58, 109 S. Ct. at 337). Accordingly, to determine whether a defendant's due process rights have been violated by the State's failure to preserve evidence, we must first decide whether the evidence in question was "potentially useful evidence" or "materially exculpatory evidence." *Land v. State*, 802 N.E.2d 45, 49 (Ind. Ct. App. 2004) (quoting *Chissell v. State*, 705 N.E.2d 501, 504 (Ind. Ct. App. 1999), *trans. denied*), *trans. denied*.

[10] "Potentially useful evidence is defined as 'evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.'" *Id.* (quoting *Youngblood*, 488 U.S. at 57, 109 S. Ct. at 337). "The State's failure to preserve potentially useful evidence does not constitute a denial of due process of law 'unless a criminal defendant can show bad faith on the part of the police.'" *Id*. (quoting *Chissell*, 705 N.E.2d at 504). "Bad faith is defined as being 'not simply bad judgment or negligence, but rather implies the conscious doing of wrong because of dishonest purpose or moral obliquity.'" *Id.* (quoting *Wade v. State*, 718 N.E.2d 1162, 1166 (Ind. Ct. App. 1999), *trans. denied*).

[11] Materially exculpatory evidence, on the other hand, is evidence that "possesses an exculpatory value that was apparent before the evidence was destroyed" and must "be of such a nature that the defendant would be unable to obtain

comparable evidence by other reasonably available means." *Id.* (quoting *Chissell*, 705 N.E.2d at 504). "Exculpatory is defined as '[c]learing or tending to clear from alleged fault or guilt; excusing.'" *Id.* at 49-50 (quoting *Wade*, 718 N.E.2d at 1166). "The scope of the State's duty to preserve exculpatory evidence is 'limited to evidence that might be expected to play a significant role in the suspect's defense.'" *Id.* at 50 (quoting *Noojin*, 730 N.E.2d at 675). "Unlike potentially useful evidence, the State's good or bad faith in failing to preserve materially exculpatory evidence is irrelevant." *Id.* (quoting *Chissell*, 705 N.E.2d at 504).

[12] Alexander argues that the liquor store's surveillance video was "materially exculpatory" given discrepancies between the store clerk's testimony and S.J.'s testimony as to S.J.'s actions in the store prior to Alexander's attack on S.J. Alexander also claims that the video "would discount the testimony of [S.J.] who claimed that not only did she fall back into the store after being hit, her hat and wig flew across the store as well." Appellant's Br. p. 9. Alexander, however, concedes that he did not raise this issue to the trial court and must show fundamental error in order to prevail on appeal. "An error is fundamental, and thus reviewable despite failure to object, if it 'made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.'" *Young v. State*, 30 N.E.3d 719, 726 (Ind. 2015).

[13] We conclude that Alexander has failed to demonstrate the surveillance video was materially exculpatory. S.J. and the store clerk both testified that S.J. was

in the doorway of the liquor store when Alexander attacked S.J. Officer Wright testified that he watched the video for the interior camera and was unable to see the altercation. Officer Wright "reviewed the video on the [store's] server" and, "once [he] saw there was nothing of evidentiary value, [he] didn't preserve [the video]." Tr. Vol. II p. 71.

[14] There is no indication that the video contained exculpatory evidence that was apparent to the officer. Discrepancies about S.J.'s actions in the store before the altercation and whether the battery occurred inside or outside of the store are not material to the issues here. Accordingly, the video was not materially exculpatory. At most, the surveillance video would have been "potentially useful." Alexander has also failed to demonstrate that Officer Wright acted in bad faith. As a result, Alexander has failed to demonstrate that his due process rights were violated or that fundamental error occurred due to Officer Wright's failure to preserve the liquor store's surveillance video.

## Conclusion

[15] Alexander failed to demonstrate that his due process rights were violated by the State's failure to preserve the liquor store's surveillance video. Accordingly, we affirm Alexander's conviction for domestic battery, a Level 5 felony, and the revocation of his probation as a result of the domestic battery conviction.

[16] Affirmed.

Brown, J., and Altice, J., concur.