

DIVISION OF ST. THOMAS/ST. JOHN

Plaintiff

VERNE M. SMITH
EUGENE G. WILLIAMS

Defendant

ACTION FOR: 19 V.I.C. 607

19 V.I.C. 604

TO: BRENDA SCALES, ESQ. Esquire
JULIE SMITH-TODMAN, ESQ. Esquire
DARREN JOHN-BAPTISTE, ESQ. Esquire

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JUDGES AND MAGISTRATES OF THE SUPERIOR COURT

Please take notice that on March 22, 2011 a Memorandum Opinion and Order was

Dated: March 30, 2011

Clerk of the Superior Court

By: KHALILA FREY

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MEMORANDUM OPINION

³ 467 U.S. 479, 488 (1984).

defendants be preserved, and that Williams believed such video evidence was exculpatory. The arraignment was postponed once upon request of the People, and on May 13, 2010, both Defendants pleaded not guilty to a two-count Information charging possession of a controlled substance (marijuana) with intent to distribute. After the arraignment of the Defendants, Williams's attorney again reminded the Government on May 14, 2010 in writing of its duty to preserve evidence.

On May 18, 2010, Williams requested that a subpoena duces tecum be forwarded to the Government to produce video footage taken of the purported traffic stop in question. On June 23, 2010, in response to the subpoena duces tecum, the People filed a communication with the Court attaching a memorandum from Sgt. Maria Colon-Jones stating that she had searched the camera system and had not found the evidence in question. Sgt. Colon-Jones stated that the information was faxed to the office requesting the data on June 16, 2010, 57 days after the incident, and the system only holds data for 15 to 20 days before it is written over.

Based on this information regarding the destroyed data, Williams moved to dismiss based upon the destruction of evidence resulting from the breach of the People's duty to preserve. The People argue in their opposition that the Defendant has not shown that the material would have been exculpatory, and that he has not shown bad faith on the part of the prosecution.

The Court conducted a hearing concerning the motion to dismiss on February 7, 2011. At the hearing, Attorney John-Baptiste pointed out that the video footage may have had evidence that would have been helpful to Williams, since it would have showed that the stop of Williams was not based upon the fact that Williams was not wearing a seat belt, as Officer Francis Brooks testified, but rather that it was based upon the fact that Officer Brooks wanted to be paid by Williams. The Court took judicial notice of the fact that the officer who conducted the stop and search of the vehicle, Officer Brooks, had been found guilty by a federal jury of several felonies involving fraud before the date of the hearing,⁴ and that he was awaiting sentence. Based upon this proffer, the Court stated that there was some evidence that the video if produced may have been helpful to Williams.

ANALYSIS

In criminal proceedings, the People have an obligation to preserve evidence that may be "expected to play a significant role in the suspect's defense."⁵ The government's failure to preserve evidence may, at times, constitute a violation of an accused's rights to Due Process. To succeed on a Due Process claim, a defendant must prove that the government acted in bad faith when it failed to preserve the evidence.⁶ If the government did not act in bad faith, the defendant

⁴ *Corrupt Cops Face Up to 20 Years in Jail After Guilty Verdicts*, ST. THOMAS SOURCE, Jan. 15, 2011, available at <http://stthomassource.com/content/news/local-news/2011/01/15/corrupt-cops-face-20-years-jail-after-guilty-verdicts>.

⁵ *California v. Trombetta*, 467 U.S. 479, 488 (1984).

⁶ *United States v. Deaner*, 1 F.3d 192, 200 (3d Cir. 1993).

will not succeed in his challenge.⁷ To determine whether the government acted in bad faith, the Court must consider whether the exculpatory value of the evidence was apparent at the time it was lost or destroyed.⁸ It is not enough for a defendant to show that the police did not follow its normal procedures, or that the government was negligent in its duty to preserve evidence.⁹

In this matter, there is no evidence that the People knew of the video's alleged exculpatory value at the time it was lost or destroyed.¹⁰ Although Defendants claim that the video would have showed that the stop of Williams was not based upon the fact that Williams was not wearing a seat belt, but rather that it was based upon the fact that Officer Brooks wanted to be paid by Williams, such claim has not been corroborated, and there was no concrete evidence presented at the hearing that the video had any exculpatory value.¹¹

Because the lost video may not have been exculpatory, and because there is no evidence that the People believed the video was exculpatory at the time the video was lost, the Court cannot find that the video was "constitutionally material to the defense."¹² In addition, regardless of the video's exculpatory value, the evidence presented painted only a picture of negligent conduct and not malicious intent.¹³ Importantly, the Defendants presented no evidence that the police or the Attorney General's Office acted in bad faith in destroying the video. Therefore, the Defendants' Due Process challenge must fail and the Court will deny their Motion to Dismiss.¹⁴

Although the Court finds that the Government did not violate the Defendants' Due Process rights in this case, the Court takes the opportunity to express its deep concern regarding the negligent handling of the video surveillance tape. At the outset, the Court observes that this is not the first case presented to the undersigned in which the People have failed to preserve a copy of a surveillance video material to its case. The facts of this case are particularly unique because the surveillance video is owned by the Government. It is absolutely unacceptable that the People have taken such a cavalier attitude towards the preservation of critical evidence in a criminal matter. It is their responsibility, not only as officers of the Government but as officers

⁷ *Id.*; *United States v. Christian*, 302 Fed. Appx. 85 (3d Cir. 2008).

⁸ *Arizona v. Youngblood*, 488 U.S. 51, 56 n.1 (1988) ("The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.").

⁹ *Deaner*, 1 F.3d at 200-01 (holding that the failure to follow common police procedures did not, by itself, constitute a Due Process violation).

¹⁰ *Youngblood*, 488 U.S. at 56 n.1.

¹¹ The Court is aware that it is difficult to determine the value of evidence which it cannot examine. *Trombetta*, 467 U.S. at 486 ("Whenever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.").

¹² *Trombetta*, 467 U.S. at 488 ("To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defense would be unable to obtain comparable evidence by other reasonably available means.").

¹³ See *Youngblood*, 488 U.S. at 58 (describing the police's failure to preserve evidence as conduct that "at worst" could be "described as negligent," and therefore declining to find a Due Process violation).

¹⁴ *Id.* ("We therefore hold that unless a criminal defendant can show bad faith on the part of the police, the failure to preserve potentially useful evidence does not constitute a denial of Due Process law.").

of the Court. In addition, the concerns expressed by the Third Circuit in *U.S. v. Ramos* are familiar:

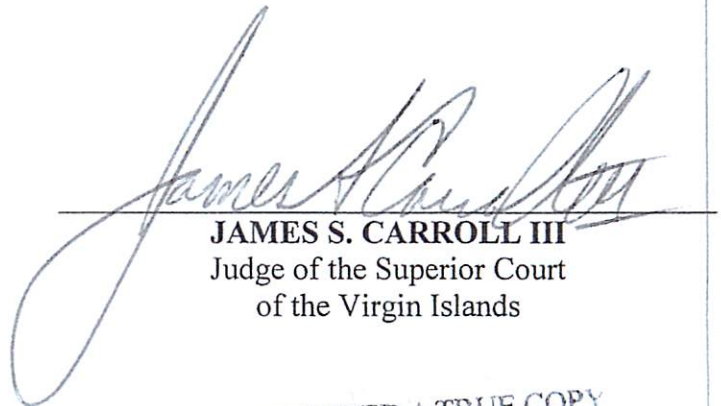
We confront, once again, a problem which no court, trial or appellate, should have to face in this circuit. Although we have unequivocally required since 1977 that government agents preserve rough notes of interviews with prospective trial witnesses, this case presents yet another instance in which notes were destroyed. We do not reverse here because it is apparent to us that the destroyed notes did not constitute Jencks Act or Brady material and that the officers who destroyed them acted in good faith. Nonetheless, we take this opportunity to emphasize that the fortuitous mix of legal and factual circumstances which might excuse the destruction of notes, and this constrain us to leave a conviction undisturbed, are few and far between. We should not encounter such cases in the future.¹⁵

Although this Court has not “unequivocally required” the preservation of surveillance tapes, it is nonetheless disturbing that the Government so often fails to preserve surveillance evidence clearly material to its case. As the Third Circuit opined in *Ramos*, this Court repeats here: “[This Court] should not encounter such cases in the future.”

CONCLUSION

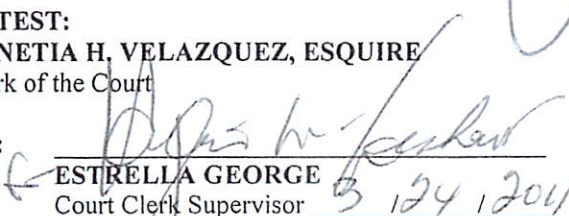
Because there is no evidence the Government acted in bad faith, and because the Defendants failed to prove that the surveillance video, if it had been preserved, would have been exculpatory, the Defendants’ Motion to Dismiss will be denied. A separate Order of even date will follow.

DATED: March 23, 2011

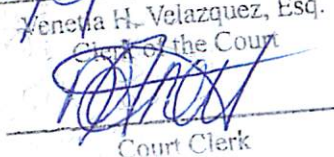


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY: 
ESTRELLA GEORGE
Court Clerk Supervisor 3 124 1201

CERTIFIED A TRUE COPY

Date: 3/3/11
Venetia H. Velazquez, Esq.
Clerk of the Court
By: 
Court Clerk

¹⁵ 27 F.3d 65, 66 (3d Cir. 1994) (citations omitted).

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO. ST-10-CR-216
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VERNE M. SMITH,	)	
	)	
	)	
	)	
Defendant.	)	
THE PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO. ST-10-CR-217
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
EUGENE G. WILLIAMS,	)	
	)	
	)	
	)	
Defendant.	)	

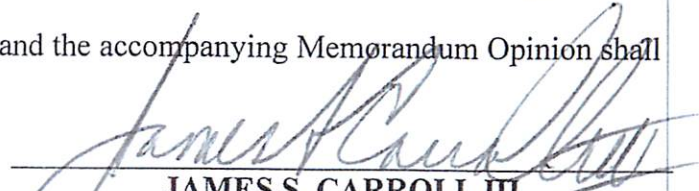
ORDER

AND NOW pursuant to the Memorandum Opinion of today's date, it is hereby

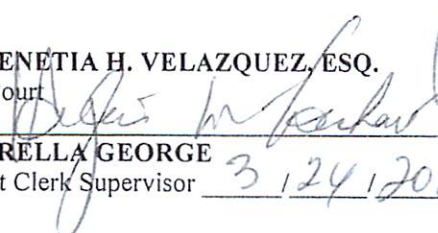
ORDERED that the Defendants' Motion to Dismiss is **DENIED**; and it is further

ORDERED that a copy of this Order and the accompanying Memorandum Opinion shall be directed to counsel of record.

DATED: March 23, 2011


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST: VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 
ESTRELLA GEORGE
Court Clerk Supervisor 3/24/2011

CERTIFIED A TRUE COPY

Date: 3/24/11
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Court Clerk

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DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

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