

FILED
SUPREME COURT
STATE OF WASHINGTON
9/5/2018 8:00 AM
BY SUSAN L. CARLSON
CLERK

NO. 96204-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHARLES MARCELUS TAYLOR,

Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

ANSWER TO PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

GAVRIEL JACOBS
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

TABLE OF CONTENTS

	Page
A. <u>IDENTITY OF RESPONDENT</u>	1
B. <u>COURT OF APPEALS DECISION</u>	1
C. <u>ISSUES PRESENTED</u>	1
D. <u>STATEMENT OF THE CASE</u>	2
E. <u>LEGAL ARGUMENT</u>	2
1. THE COURT OF APPEALS CORRECTLY APPLIED <u>STATE V. LOUCKS</u> , AND THE COURT’S SUFFICIENCY ANALYSIS DOES NOT CONSTITUTE A MATTER OF SIGNIFICANT PUBLIC INTEREST	2
2. THE COURT OF APPEALS DECISION DOES NOT PERMIT NON-DISCLOSURE OF KNOWN EXCULPATORY INFORMATION	5
F. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Brady v. Maryland, 373 U.S. 83,
83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)..... 1, 5, 8

California v. Trombetta, 467 U.S. 479,
104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)..... 6

Washington State:

State v. Burden, 104 Wn. App. 507,
17 P.3d 1211 (2001)..... 6

State v. Camarillo, 115 Wn.2d 60,
794 P.2d 60 (1990)..... 3

State v. Davila, 184 Wn.2d 55,
357 P.3d 636 (2015)..... 5

State v. Ellis, 48 Wn. App. 333,
738 P.2d 1085 (1987)..... 3

State v. Groth, 163 Wn. App. 548,
261 P.3d 183 (2011)..... 6

State v. Houston-Sconiers, 188 Wn.2d 1,
391 P.3d 409 (2017)..... 3

State v. Loucks, 98 Wn.2d 563,
656 P.2d 480 (1983)..... 1, 2, 5

State v. Nicholas, 34 Wn. App. 775,
663 P.2d 1356 (1983)..... 3

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 4

State v. Charles Marcelus Taylor, No. 76837-9-I
 (July 23, 2018) 1, 2, 4, 5, 7

State v. Wittenbarger, 124 Wn.2d 467,
 880 P.2d 517 (1994)..... 6

Rules and Regulations

Washington State:

RAP 13.4..... 1

WAC 139-05-915 7

Other Authorities

Permanent Rules Criminal Justice Training Commission,
<http://lawfilesexternal.wa.gov/law/wsr/2017/01/17-01-059.htm>
 (accessed 9/4/2018)..... 7

A. IDENTITY OF RESPONDENT

The State of Washington asks this Court to deny review of the Court of Appeals decision affirming Taylor's conviction.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), Taylor seeks review of the Court of Appeals' unpublished decision in State v. Charles Marcelus Taylor, No. 76837-9-I (July 23, 2018).

C. ISSUES PRESENTED

1. Taylor argues that the Court of Appeals' decision conflicts with this Court's holding in State v. Loucks. However, the Courts of Appeals correctly applied the holding of Loucks, and Taylor simply disagrees with the evidentiary inferences the Court drew. Does Taylor's challenge to the sufficiency of the evidence constitute a matter of substantial public interest?

2. The Court of Appeals determined that no exculpatory evidence existed in this case, and that the State had no legal duty to create the evidence desired by Taylor. Does the Court of Appeals' holding comport with this Court's Brady jurisprudence?

D. STATEMENT OF THE CASE

The State of Washington charged Charles Taylor with one count of attempting to elude a pursuing police vehicle, and further alleged that he caused endangerment by eluding. CP 8.

The jury found Taylor guilty of attempting to elude. CP 58. The jury was unable to reach a verdict regarding the sentencing enhancement. CP 64. The trial court sentenced Taylor within the standard range. CP 95-98. Taylor timely appealed, alleging that the evidence of his guilt was insufficient, and that the State withheld exculpatory information regarding training records of the canine used in this case.

The Court of Appeals affirmed, holding that the total evidence of guilt, including the dog track, was sufficient, and that the State was not required to retain records of unsuccessful training tracks. Taylor, No. 76837-9 at 2-8.

E. LEGAL ARGUMENT

1. THE COURT OF APPEALS CORRECTLY APPLIED STATE V. LOUCKS, AND THE COURT'S SUFFICIENCY ANALYSIS DOES NOT CONSTITUTE A MATTER OF SIGNIFICANT PUBLIC INTEREST.

Dog tracking evidence is admissible in Washington courts as evidence of a defendant's guilt. State v. Loucks, 98 Wn.2d 563, 566, 656 P.2d 480 (1983). However, dog track evidence alone cannot sustain a

conviction, and must have some corroboration. Id. The question of whether there is adequate corroboration is a challenge to the sufficiency of the evidence. State v. Nicholas, 34 Wn. App. 775, 779, 663 P.2d 1356 (1983). A reviewing court examines the totality of the evidence as it would in any question of sufficiency, the only additional caveat being that this body of evidence must include something besides a dog track. State v. Ellis, 48 Wn. App. 333, 335, 738 P.2d 1085 (1987).

Trooper Gruener initially described the fleeing suspect as a white male wearing a white shirt. RP 277. In his report, Trooper Gruener further noted the male was white or light-skinned and wearing dark pants. RP 305. Taylor contends that “[w]hether an officer’s description of a suspect that is altered after the officer sees a suspect in custody can constitute corroborating evidence is a matter of substantial public interest.” Brief of Pet. at 10-11.

Taylor’s argument is essentially an attack on the credibility of Trooper Gruener’s later statement. But this is not a matter of public concern. A sufficiency challenge “leaves determinations of witness credibility to the fact finder,” and credibility determinations are not reviewable on appeal. State v. Houston-Sconiers, 188 Wn.2d 1, 15, 391 P.3d 409 (2017); State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 60 (1990). Furthermore, Taylor implies that any discrepancies in Trooper

Gruener's statements should have led the court to assume his testimony was unreliable. But this contradicts the Court's duty to draw all reasonable inferences in favor of the State and "most strongly against the defendant." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In any event, Taylor overstates the Court of Appeals' reliance on Trooper Gruener's description as corroborating evidence. The opinion highlighted only Trooper Gruener's description of Taylor's clothing:

Taylor was arrested at 2:45 a.m., within 30 minutes of the beginning of the dog track, in an empty business park 400 yards from the vehicle, hiding between a knee high hedge and a closed business building whose parking lot was empty. **He had on dark pants and a light colored shirt as the officer described.**

Taylor, No. 76837-9 at 4 (emphasis added). Trooper Gruener's description of a light colored shirt was consistent over time. While the "white" shirt ended up being "light green," any reasonable juror would understand that these two shades could easily be confused in the dark. RP 282-85, 311-12.

Taylor also claims that "[t]he Court of Appeals erroneously noted that Taylor was found in an 'empty business park...though there were employees associated with a nearby business present as well as another person officers encountered on the track who was sleeping in a shed.'" Brief of Pet. at 12. Whether these individuals were "nearby" depends on how one defines the term. However, the bakery employees were also inside their factory, not milling about in the area of the track. RP 454. The

point was that these other people were in distinct areas merely traversed en-route to the adjacent closed business park where Taylor was discovered in isolation. RP 452-56. It is also worth noting that the tracking animal ignored these distractions as it tenaciously followed Taylor's scent trail. RP 451, 458.

The opinion below accurately stated the standard of review for a sufficiency challenge, and also correctly noted that there must be "corroborating" evidence to a canine track. Taylor, No. 76837-9 at 2-3. Thus, the Court of Appeals correctly applied Loucks to these facts. Taylor simply disagrees with the evidentiary inferences drawn by the Court of Appeals. Taylor understates the State's evidence and fails to appreciate the inferences that must be drawn in the State's favor. There is no conflict with Loucks, and Taylor has presented no other issues of public concern.

2. THE COURT OF APPEALS DECISION DOES NOT PERMIT NON-DISCLOSURE OF KNOWN EXCULPATORY INFORMATION.

Brady and its progeny held that due process requires the prosecution to preserve and disseminate to the defense any evidence favorable to the accused that is material to either guilt or punishment. State v. Davila, 184 Wn.2d 55, 68, 357 P.3d 636 (2015) (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)).

Whether or not the State's withholding of evidence violates a defendant's right to due process depends on two factors: (1) the nature of the evidence, and (2) the motivation of law enforcement. State v. Groth, 163 Wn. App. 548, 557, 261 P.3d 183 (2011). If suppressed evidence is "materially exculpatory," the good or bad faith of the police is irrelevant, and the charges must be dismissed. State v. Burden, 104 Wn. App. 507, 514-15, 17 P.3d 1211 (2001). However, simply showing that the evidence "might have exonerated the defendant" is insufficient. State v. Wittenbarger, 124 Wn.2d 467, 475, 880 P.2d 517 (1994). Evidence is materially exculpatory only if it (1) "possesses an exculpatory value that was apparent before it was destroyed"; and (2) "be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonable available means." Id. (citing California v. Trombetta, 467 U.S. 479, 489, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)).

Taylor argues that the Court of Appeals' decision presents an issue of significant public interest because it permits the State to avoid disclosing exculpatory information simply by declining to document it. Brief of Pet. at 17. This is not the case. The Court of Appeals did not in any sense hold that no duty existed to surrender exculpatory material, whether it was formally documented or not. Rather, it found that Taylor had not shown that there was

any exculpatory information to produce, nor did he show that the State had a specific legal duty to create such material. Taylor, No. 76837-9 at 7-8.

Taylor contends that former WAC 139-05-915(7) required the State to maintain the records he sought. As the Court of Appeals correctly noted, the plain language of the WAC does not comport with Taylor's position. Taylor, No. 76837-9 at 7. Furthermore, it is difficult to see how an interpretation of the former WAC could be an issue of any significant concern considering it has since been withdrawn.¹ Permanent Rules Criminal Justice Training Commission, <http://lawfilesextd.leg.wa.gov/law/wsr/2017/01/17-01-059.htm> (accessed 9/4/2018). WAC 139-05-915 now states in relevant part simply that canine teams must be certified to standards set by the criminal justice training commission, and that any individual canine must perform at "a level that is deemed acceptable."

The underlying dispute is that Taylor believes incomplete tracks (where a tracking animal is simply unable to locate its quarry), as opposed to erroneous tracks (where the animal affirmatively misidentifies an innocent person), are materially exculpatory. Under Taylor's logic, a fingerprint analyst being unable to reach a conclusion as to the origin of a print, or a

¹ The State acknowledges the cited WAC was in force on the date of the offense. Taylor was arrested on June 17, 2016. The new rule took effect on January 14, 2017. Permanent Rules Criminal Justice Training Commission, <http://lawfilesextd.leg.wa.gov/law/wsr/2017/01/17-01-059.htm> (accessed 9/4/2018).

detective being unable to work up a suspect from an investigation, would be considered materially exculpatory information when those witnesses later testified in completely unrelated matters. This is plainly not the case. The Court of Appeals decision does not contradict this Court's line of Brady jurisprudence, and Taylor's arguments do not otherwise constitute a matter of public concern.

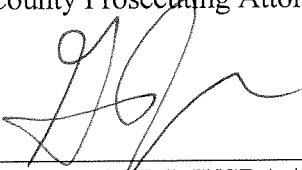
F. CONCLUSION

The State respectfully requests this Court deny Taylor's petition for review.

DATED this 4 day of September, 2018.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
GAVRIEL JACOBS, WSBA #46394
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

September 05, 2018 - 7:55 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96204-9
Appellate Court Case Title: State of Washington v. Charles Marcelus Taylor
Superior Court Case Number: 16-1-04258-5

The following documents have been uploaded:

- 962049_Answer_Reply_20180905075416SC967669_4288.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 96204-9 Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- MarchK@nwattorney.net
- Sloanej@nwattorney.net
- lrbernheim@gmail.com
- lucie@luciebernheimlaw.com
- paoappellateunitmail@kingcounty.gov

Comments:

Sender Name: Eileen Miyashiro - Email: Eileen.Miyashiro@kingcounty.gov

Filing on Behalf of: Gavriel Gershon Jacobs - Email: gavriel.jacobs@kingcounty.gov (Alternate Email:)

Address:
King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98504
Phone: (206) 477-9498

Note: The Filing Id is 20180905075416SC967669