

FILED

MAY 18 2012

NO. 297519
Consolidated with NO. 297985

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

JOEL MATTHEW GROVES,

Petitioner.

BRIEF OF RESPONDENT

GREGORY L. ZEMPEL
Prosecuting Attorney
Kittitas County, Washington

L. CANDACE HOOPER
Deputy Prosecuting Attorney
Kittitas County, Washington

Office Address:

205 West 5th, Room 213
Ellensburg, WA 98926

Telephone: (509)962-7520

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RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR

- A. The Trial Court's conclusions are supported by fact.**
- B. The evidence, if it existed, was not material to Mr. Groves' defense and was not Brady evidence.**

I. STATEMENT OF FACT¹

On December 4, 2009, Kathy Sampson opened the door to Joel Groves, her ex-boyfriend, at about 6 a.m., while her children were still sleeping. (RP trial, p.22) Groves had driven over from the West Side of the mountains in the Nissan she had given to Groves when they broke up. (RP trial, p. 20, 24-25) Groves talked about being okay with their break-up and wanting to be friends. (RP trial, 22-23) He also told her he had something that would help her financially—he pulled a black plastic baggie from his coat pocket. Although Kathy did not see methamphetamine in the bag, she assumed from his conversation that that was what was in it. She told him she didn't want anything to do with it. (RP Trial, 25-27)

After the children left for school at 7:30 a.m., Ms. Sampson told Mr. Groves she had been using an online dating service and that several men had responded. (RP Trial, 23) Mr. Groves became upset. He demanded to see what she was doing on her computer. As the conversation went on, he yelled, he was

¹ The State has a transcript from appellant's counsel for this appeal, and because it contains a number of hearings the pagination is different than that of the original appellate transcript from #28838-2-III, but because it is more complete, I have used it here. Also, it is unclear whether the correct page number is at the top or bottom of the page. The State has elected to use the page number at the top.

very anxious, he was threatening. (RP Trial, 23,27) Ms. Sampson said she knew she was in trouble “because his switch had gone off.” (RP trial, 24) She testified that when he is angry he is “a different person. The color of his eyes almost change.” (RP 24) She said she was afraid for her life. She did not want to show him what was on her computer because she thought it might make things worse. (RP 28)

She stalled for a while, trying to pretend to plug the computer in, but Mr. Groves kept escalating. (RP 28) He picked up different objects, including a kitchen knife, and threatened her. (RP 29) He told her he would kill her if she did not show him the computer, and he said he was going to cut her up and put her in the bathtub for her children to see. (RP 29) He hit her with a heavy cast iron pan. (RP 29) Ms. Sampson estimated that this conduct lasted for about 45 minutes. (RP 36) Eventually he calmed down and dozed off. (RP 30) Soon she heard Brian Cox, a friend pull into her driveway. (RP 30) Ms. Sampson left the house and got into Cox’s car, and he drove her to her friend, Jessica Storey’s house. Mr. Cox testified how frightened she seemed when she got into his car, and he said she told him Mr. Groves was in the house and had threatened to cut her up and put her in the bathtub. (RP 31, 59-60) Ms. Storey described Ms.

Sampson as “crazy” and “frantic” at the house. (RP 68)

Ms. Sampson later left Ms. Storey’s house and drove to meet another friend. (RP 32) It was at this time that Deputy Sheriff Eric Vraves pulled her over to warn her about her tinted window and cracked windshield. (RP 32, 82) Deputy Vraves knew Ms. Sampson from contacts with past boyfriends over the years. (RP 83) Ms. Sampson reacted unusually about being pulled over, began crying violently and told the deputy about Mr. Groves’ threat to chop her into pieces. (RP 83-84) She said she was going to hide with her children to make sure they were safe. (RP 84) She also mentioned that Groves had an outstanding felony warrant, and told him about the black Nissan. (RP 85) Deputy Vraves drove around to see if he could spot Mr. Groves and the Nissan, but could not find him. (RP 86)

At the trial, Deputy Vraves, testified that after his contact with Kathy Sampson, he was sitting at the office typing up reports about what he had just heard, when the dispatch broadcast to the Ellensburg city patrols that Mr. Groves, who had a felony warrant, was at Circle K convenience store. (RP. 87) The deputy believed City of Ellensburg officers would get to him before the deputy could, but decided to go speak to Mr. Groves under Miranda to get his side of the

story. (RP trial, p. 87) The deputy got to Canyon Road and saw Groves drive by.

(RP trial, p. 87) He decided to stop Groves. (RP trial, p. 88)

While he tried to stop him Groves passed some good spots to pull over and was leaning backward and forward as if he was trying to conceal something. (RP trial, p. 88) In light of recent attacks on officers in Lakewood, the deputy became concerned what he was doing. (RP trial, p. 88)

Deputy Vraves pulled in behind the car directly at a gas station/store. (CP 473) Deputy Vraves had two cameras in his car. One pointed to the rear. He had one pointed forward to the right corner of his car, so that if he pulled in at an angle behind a suspect's car, as he usually did, it would capture the arrest. (CP 473) Since he ended up at this station directly squared up to the car, it would have pointed only to the right rear of Mr. Groves' car and toward the convenience store, not capturing the driver's door or any of the stop. (CP 473)

As soon as Mr. Groves stopped, Deputy Vraves got him out of the car and put him in handcuffs because of the felony warrant. (RP trial 89, CP 473) He put him in his car and confirmed the warrant. (RP trial, 89) He advised him of his rights. (RP trial, 89, CP 473) He told him about the complaint of Kathy Sampson. (CP 473)

Deputy Vraves testified at trial that he initially asked for consent to search the car because he was concerned about what Mr. Groves was reaching for, but Mr. Groves refused. (RP trial, 90) Then Deputy Vraves had to decide what to do with the car. (RP trial, 90) The deputies were going to impound the car after arresting Mr. Groves, since they were unable to get hold of the registered owner. They had Macintosh towing coming to get the vehicle. (CP 474)

Mr. Groves then asked that deputies get his wallet for him out of the back seat of the car. (RP trial 91) Deputy Vraves walked up to the car and saw the wallet in the back seat. (RP trial, 91) It was a two-door car and the deputy was large. He had to flip the lever on the seat in front to slide it forward so he could reach the wallet. (RP trial, 91) As the seat moved, he saw a clear glass pipe with burned white residue in it and immediately recognized it to be a pipe for ingesting narcotics. (RP trial 92) As soon as he saw it, Deputy Vraves closed up and locked up the car and secured it for a search warrant. (RP trial 92, CP 474) He did not touch the pipe. (CP 474) Law Enforcement called off MacIntosh towing and instead took the vehicle to the sheriff's office to get a warrant. (CP 474)

He retrieved the pipe later pursuant to the search warrant. (RP trial 92-96, CP 474) Also in the search warrant, he retrieved the wallet with Mr. Groves's

identification and found a black plastic bag containing smaller baggies of methamphetamine. (RP trial 96-103, CP 474) The pipe and baggies were confirmed to contain methamphetamine. (RP trial 144-146)

Dan Littlefield testified he had been with Mr. Groves on December 4 before Groves was pulled over, and Groves had been smoking methamphetamine from a pipe. (RP 190) Groves was agitated about an altercation he had had with Ms. Sampson. (RP 189)

Mr. Groves testified at trial that he had not had possession of that Nissan for about a month before his arrest on December 4, though he was living in the Clearview area on the West Side of the mountains. (RP 173, 156) But an officer from the Seattle Police Department testified he had seen that Nissan on December 3 there on the West Side of the mountains (Seattle). (RP 205-206)

Ms. Sampson testified she was home in Ellensburg (on the East side of the mountains) December 3 and her kids were in school. Groves, in fact, had called her then. (RP 156-157, 208)

Mr. Groves was convicted at trial of Felony Harassment and Possession of Methamphetamine, among other charges, on February 4, 2010. (CP 71)

Mr. Groves appealed his conviction. After his attorney provided a brief in

accordance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel identified two potential issues, which were briefed by both parties. The appellate court made an independent examination of the record and found no issues as to the trial of arguable merit. The conviction was affirmed. (Court of Appeals Decision in case 28838-2-III) The case was sent back so that the State could provide dates for the prior convictions so the Sentencing court would be able to judge whether any of the listed priors had washed out. (RP 309-347) The State assembled certified copies of judgment and sentences from various jurisdictions, showing the dates, and also had Mr. Groves's federal probation officer testify as to the dates of Mr. Groves' incarceration for his federal bank robbery charge. (RP 329-342) The sentence was affirmed by the trial court. (RP 347) and (CP 455-466)

After that time, and also while the appeal was pending, Mr. Groves has brought various other motions before the court. One motion was a motion to dismiss because of a perceived Brady violation under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Mr. Groves had done a public records request, requesting a copy of any videotape of his stop. The Sheriff's office indicated that any videotape would have been destroyed by the time of this

request, many months after the incident. (CP 166-167)

The court held a hearing on February 4, 2011 about Mr. Groves' motion to dismiss. Mr. Groves testified at that hearing that Deputy Vraves pulled him over and arrested him for a warrant and for threats to kill. (RP Feb. 4, 2011, p. 310) The driver's door was open and various police were looking in the car. (RP Feb. 4, 2011, 311) Mr. Groves said he saw officers look in the car and talk about something. (RP Feb. 4, 2011, 311-313) The dispute is whether some officers were standing outside the car and looking in the car through the open door, or whether the door was closed and the pipe was spotted when Deputy Vraves moved the seat forward to get the wallet. (RP Fe. 4, 2011, 311) Mr. Groves could not say which direction the camera was pointing. (RP Feb. 4, 2011, p. 316)

He did say he did not see Deputy Vraves go into the car before he was retrieving the wallet; he saw officers looking in the car from the open door. (RP Feb. 4, 2011, 317-318) He believed they must have seen the pipe then because they were talking about the pipe. (RP Feb. 4, 2011, 318) There is no dispute that both the pipe and the bag of methamphetamine in the back were collected after a search warrant was obtained. (CP 474) The Superior Court concluded that whether any officers had been able to see the pipe while standing outside the car, looking

through the open doorway, since Deputy Vraves saw it when he moved the seat to retrieve the defendant's wallet (at defendant's request), it was properly viewed and legitimately the basis for a search warrant for the car. (CP 475)

The Court denied the defendant's Brady motion concerning destruction of evidence.

- This appeal followed.

ARGUMENT

A. The Trial Court's conclusions are supported by fact.

As the defendant has pointed out, the record is not complete with regard to the hearing on the Brady motion. The court heard testimony on February 4, 2011 from Deputy Vraves, Detective Higashiyama, Commander Gubser, and Mr. Groves. (CP 472) Unfortunately, the Court Reporter is missing some of the testimony from the hearing. Fortunately, the court reporter did have a transcript of Mr. Groves' testimony, which has been included in the record for this appeal. The testimony of Commander Gubser is summarized in the Finding number 13. (CP

474) The testimony of Deputy Vraves and Detective Higashiyama is summarized in other findings. (CP 472-475) Although obviously some new testimony was directed specifically toward the existence of the video camera and its placement in the car, it is also evident from reading the findings that the testimony was similar to testimony at the actual trial, for which there is in fact a transcript. (See RP trial).

As the defense notes, in such an instance, the Court will accept the trial court's findings of fact as verities. In re Parentage & Custody of A.F.J. 161 Wn. App. 803, (2011). The Court's review will be limited to determining whether the trial court's conclusions of law are supported by its findings of fact. A.F.J. at 807.

The fact that an issue was disputed does not mean a trial court cannot make a determination. In fact, testimony at hearings is quite often disputed, or no hearing would be necessary. These determinations will not be overturned except for abuse of discretion. In fact, the reviewing court will defer to the trial court and will not disturb findings of fact supported by substantial evidence (here the direct testimony of officers) even if there is conflicting evidence. Merriman v. Cokeley, 168 Wn.2d 627 (2010).

It is disputed whether the particular officers who testified saw a pipe in the car from outside the car and asked about it before they went to get Mr. Groves' wallet from the car. (CP 474) But, in the instant case, it was undisputed and found by the court that officers did not actually go into the car until Mr. Groves told them he wanted his wallet from the back seat. (CP 474) This is also clear from the argument of Mr. Groves' own counsel, who felt the video would not be materially exculpatory (RP 324) and from Mr. Groves' clarification that it was only the audio he really cared about, not video. (RP 326)

It was also a clear finding by the Court that Deputy Vraves had to move the seat forward to get the wallet, and that Deputy Vraves moved the driver's seat up and immediately recognized a meth pipe. (CP 474).

The court found that as soon as Deputy Vraves saw the pipe, he did not touch it. The officers called off the towing impound for the car and instead took the vehicle to the sheriff's office to get a warrant. (CP 474) The pipe and other methamphetamine were recovered in the execution of a search warrant. (CP 474).

It is certainly reasonable for the court to conclude from these findings that since the pipe was viewed by the officer who had a right, by way of Mr. Groves'

request to retrieve the wallet, to be at the car, moving the seat forward so he could reach the wallet, that that observation was legitimately used as information for the obtaining of a search warrant.

It was also reasonable for the court to conclude that the video was not shown to contain any materially exculpatory evidence of any kind. As the court concluded, even if the court accepted Mr. Groves' version of what happened at the scene, at best he described officers seeing the pipe in open view, where the officers had a lawful right to view into the vehicle and to see what was inside. Again, this view could certainly be used to get a search warrant for the vehicle, which is exactly what happened. The contraband was found pursuant to the search warrant the next day. (CP 475)

Defense claim, that the video taped recording of the arrest could have been used to rebut the officer's testimony and to satisfy disputed testimony, simply does not take into account the fact that 1. The testimony was not particularly disputed in any meaningful way, 2. The camera was not pointing the correct direction to resolve what disputes there may have been, and 3. The issues of the camera were not the important issues of the case.

Moreover, as the first conclusion of law implies, there was no proof from the defense that the video ever did exist. The findings indicated that back when this event transpired, Deputy Vraves had no access to the video in his car. The video was supposed to automatically upload to a server at the sheriff's office when the car drove within wireless range. Sometimes that would work and sometimes it didn't. (CP 474) If it ever existed, nobody looked at it. (CP 475)

Unlike the facts in Seattle v. Fettig, 10 Wn. App. 773 (1974), which appellant cites for this proposition, there is no likelihood that the current video would have had any value as to whether the defendant committed the crime of possession of methamphetamine. (The state sees no correlation with the pipe and the felony harassment charge, nor has one been made by anybody.)

In Fettig, the video was taken of actual field sobriety tests, which did have the potential to show evidence of the defendant's sobriety. Since the charge was DUI, the video could obviously shed light on the defendant's intoxication level. In the present case, however, Mr. Groves' relevant charge is Possession of Methamphetamine, which was not located until the sheriffs applied for, received, and executed a search warrant. The methamphetamine was located in a pipe and

in a bag in the trunk. The video of the stop could not have shown that methamphetamine. The only dispute that is evident between Mr. Groves' version and the deputy's version, was whether the pipe was spotted initially as the police were standing at the car, looking through the open door, though not breaking the door plane, as Mr. Groves testified, or whether the deputy sheriff saw it after moving the front seat forward to reach into the rear seat to grab Mr. Groves' wallet, as the deputy testified.

Under either circumstance, whether the pipe was spotted from outside the car, in open view, or from inside the car with the consent-even the request- of Mr. Groves, the view of the pipe was made lawfully and was lawfully the subject of a search warrant. There is no element of the crime to which the video itself applied. Its relevance, if there actually ever was such a video, was only to the question of the search itself. And under both versions of the arrest, the search was lawful. And with the finding of the court, based upon testimony, that the camera, having been pointed to the right, would not have captured this particular arrest anyway, its relevance to even that question becomes completely problematic. The defendant did not dispute that the car he drove had a meth pipe or methamphetamine in the trunk. His defense at trial was unwitting possession,

which was his burden to prove by preponderance of the evidence. The video could have added nothing to that. Any audio could have added nothing to that.

The defense (and the state) don't know whether the video ever did exist. If it did, though, it was erased in the normal course of business. (CP 475) From the finding about the direction the camera was pointed, which was not toward the door of the car or Mr. Graves, it is not surprising that Deputy Vraves never considered the video of any evidentiary value. (CP 473) Thus, the conclusion that there was no bad faith in any destruction of evidence, is reasonable.

Thus, it is clear that the defense has not shown that there was a video and that it could be materially exculpatory. The trial court's conclusions that the evidence is not exculpatory or material should stand. The findings are adequate to support them.

B. The evidence, if it existed, was not material to Mr. Groves' defense and was not Brady evidence.

This Court should also find that the evidence, if it existed, is not material or exculpatory. The Supreme Court in State v. Wittenbarger, 124 Wn.2d 467 (1994), has imposed a bad faith test for failure to preserve evidence claims under both the Due Process clause and the Washington Constitution, and indicates in that case that “in order to be considered “material exculpatory evidence”, the evidence must both possess an exculpatory value that was apparent before it was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.” citing California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984) at 2534.

In fact to determine if a failure to preserve exculpatory evidence amounts to a denial of due process, the Washington Supreme Court has adopted the tests set forth in Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988) and California v. Trombetta, *supra*. See Wittenbarger, 124 Wn.2d at 475.

In *Youngblood*, the Court held that a failure to preserve only “potentially useful” evidence, absent bad faith, does not constitute a denial of due process of law:

“We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant.” Youngblood at 58.

Thus, the United States Supreme Court has been unwilling to “ ‘impos[e] on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution.’ ” Wittenbarger, 124 Wn.2d at 475 (quoting Youngblood, 488 U.S. at 58).

This “bad faith” standard applies even when the defendant has a pending discovery request, or when the lost evidence represented the defendant’s only hope for exoneration. See Illinois v. Fisher, 540 U.S. 544 (2004). The applicability of the bad faith requirement depends not on the centrality of the

contested evidence to the prosecution's case or the defendant's defense, but on the distinction between "material exculpatory" evidence and "potentially useful" evidence. *Id.* at 549.

Thus, the burden was on Mr. Groves in this case to establish that the evidence was material exculpatory evidence and that the officers knew this before they destroyed it. Bad faith cannot be established where the tape was recycled in the normal course of business. In this particular case, Deputy Vraves did not look to see if the video even existed; much less see what it contained. He clearly would not know that it was exculpatory or inculpatory. He did not destroy the evidence. It was dropped off the server in an automated and routine manner. There was no bad faith.

The Washington Supreme Court has further discussed standards for Brady violations in In re Personal Restraint of Stenson, Washington Supreme Court slip op. filed May 10, 2012.

There are three factors, and the first two are purely factual questions: (1) The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) the evidence must have been suppressed by the State either willfully or inadvertently; and (3) prejudice must

have ensued. See Stenson.

It is worth noting that nobody, including any law enforcement, ever saw any video, or even knows if one ever existed. The evidence was that the deputies had no access to the video in the car. The video was supposed to automatically upload to a server when the car drove within wireless range. (CP474). The evidence was that sometimes it worked and uploaded and sometimes it didn't. (CP 474) If nobody ever requested it within 90 days, and if the items had no evidentiary value, the video would be gone, in accordance with the State Archive schedule then in effect. (CP 475). If the video had ever existed, it would be gone, but without knowing it existed, it would be wrong to dismiss the charges.

In the current case, the trial court found in a proceeding very like a PRP reference hearing, that the evidence was not favorable, nor was its routine destruction, if it existed, material or prejudicial. The first two findings are factual and will not be disturbed on appeal. (See Stenson, supra.)

The evidence in this case about the video tape was not exculpatory. The court made a finding that the video camera did not point at the traffic stop, and thus would not have shown the stop. (CP 474) The only dispute was whether

some officers could see the pipe from outside the car before Deputy Vraves saw the pipe when he was retrieving Mr. Groves' wallet, at Mr. Groves' request. (CP 473-474). In either event, the pipe was not touched until a warrant was obtained. (CP 474).

Since the court found that the video evidence was not exculpatory, (if it ever existed), the resemblance to the Stenson case ends. In Stenson, law enforcement had photographs showing that crucial evidence had been handled in such a way as to make analysis of the evidence likely to be excluded at trial. Specifically, one of the key pieces of evidence in this Capital case was the finding of gunshot residue particles in the defendant's pocket. The photographs showed deputies turning out the pockets with their ungloved hands well before the crime lab analyzed and found the particles. The pockets would quite obviously have been contaminated by the officer's ungloved hands. Any analysis was therefore contaminated, and some police officers, at the least, knew it. Without gunshot residue in the pockets, the case would have been quite different. See Stenson (2012).

In Groves, however, the video tape would not have shown the finding of the meth pipe, and in any event, the meth pipe was never touched or handled and

the trunk was never opened at the scene. (CP 472-475) Whether officers who showed up saw a pipe in the car before Deputy Vraves saw it, as Mr. Groves contends, not only would the incident not have been on the tape, since the camera pointed elsewhere, but it also would not have made any difference to the procurement of or reliability of the finding of methamphetamine later in the pipe and then the trunk.

Moreover, there would not have been any exculpatory value in the audio, even for impeachment purposes. The idea that the audio portion of the video could be used for impeachment of Deputy Vraves makes little sense, since the distinction between seeing the pipe from outside the vehicle and seeing the pipe from outside the vehicle as Vraves moved a seat forward to grab something in back, is really a distinction without a difference.

Mr. Groves did not say which officers were viewing the pipe from outside the car and talking about it. If a different officer saw it before Deputy Vraves saw it, it makes no difference to the admissibility of Deputy Vraves' observations, and only confirms Vraves' observation for the warrant. There is no reason for Deputy Vraves to have intentionally misrepresented the seeing of the pipe, since if he had seen it before moving the seat back, he could as easily have used that view to

obtain a warrant. It is undisputed that he never touched anything in the car, other than the seat back lever as he was getting ready to reach in for the wallet. It is not reasonable to think the deputy intentionally misrepresented the stop, since it wouldn't have helped him to do so. And if he mistakenly did not remember having heard there was a pipe before he got ready to reach in for the wallet, if the video existed, and if it had been downloaded to a disk before the trial, both sides would have had a copy and been able to listen to it in advance of trial. If Vraves were mistaken in his impression, it would have been corrected well before trial. There would simply be nothing exculpatory or even impeaching in the video. And even if the audio from this video camera (and there is no testimony what it could have picked up) had been available and had contained some comments about seeing a pipe from the doorway, it is hard to understand how that could have been impeaching on anything but a completely collateral and inconsequential issue. Neither video nor audio has been shown to be exculpatory at all.

Since this first Brady finding, that the evidence has not been shown to be exculpatory, should not be disturbed on appeal, the inquiry should go no farther.

The second Brady finding, that the evidence was suppressed by the State,

either willfully or inadvertently has not been shown either. It is not actually known if the tape ever did download, in which case, the State never even had it in the first place. (CP 473-475) It is possible it never even existed.

The third Brady finding, that prejudice must have ensued, is most certainly not met. Even if a video existed, the defense has not shown how its lack would have been prejudicial to the defendant. In Stenson, the court indicates that prejudice and materiality are used, essentially interchangeably, citing United States v. Price, 566 F.3d 900 (9th circuit 2009). The court indicated:

“What then, must a petitioner show to prove materiality? He or she must show “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” [citing Kyles v. Whitley, 514 U.S. 419 (1995) at 433-434 (quoting Bagley, 473 U.S. at 682). A “reasonable probability” of a different result is accordingly shown when the government’s evidentiary suppression “undermines confidence in the outcome of the trial. One does not show a Brady violation by demonstrating that some of the inculpatory evidence should have been excluded, but rather by showing that the favorable evidence could reasonably be taken to put the whole case in a different light. The suppressed evidence must be considered collectively, not item by item.” Stenson at 12.

The evidence the defense complains of missing simply doesn’t rise to the level of material, and the lack of it is simply not prejudicial, even if it hypothetically showed exactly what Mr. Groves says it would. If a video (or

audio from the video) showed some officers standing outside the car, looking in, pointing to a meth pipe or talking about a meth pipe, there is still no allegation that the deputies did anything but seal up the car and apply for a search warrant. Nothing was removed from the car, and the car was not searched until the warrant was obtained. The video would not have resulted in evidence being suppressed. The viewing of the pipe in the car from outside would *not* tend to negate any aspect of the felony harassment (not really at issue in this appeal) or of possession of the pipe and the drugs in the trunk. The credibility of the officers was not particularly crucial in this case, since there was abundant evidence that Ms. Sampson was upset about the threats, that she and Mr. Littlefield knew Mr. Groves had methamphetamine with him (Mr. Littlefield even saw him with it), and that drugs were found in the car. Unlike Kyles or Stenson, the evidence does not show “sloppiness of the investigation” to count against the probative force of the State’s evidence. Stenson at 17.

CONCLUSION

Since the Superior Court's Conclusions of Law follow easily from the Findings of Fact, and since the Court found that any video evidence which may have existed and then been routinely erased was not shown to be potentially exculpatory, and since the evidence, if it existed, was not shown to be material, then the Defendant should not have the charges dismissed.

DATED this 16th day of August, 2010

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "L. Candace Hooper".

L. CANDACE HOOPER
WSBA #16325
Deputy Prosecuting Attorney