Latent Print Card Bad Faith Arguments

Note on IAC/Pre-Trial Motions/Morris and Kadish:

Read the pre-trial motion filed Emergency Motion to Dismiss the Indictment for Violation of the Defendant's Right to Due Process Based Upon the State's Destruction of Evidence notice:

- That there is no attempt to actually claim bad faith on the part of the State (much less prove it) except through negligence which is clearly wrong. Case law is clear that negligence is not bad faith.
- The lawyers DO NOT ask for anything besides the dismissal of the indictment. **They DO NOT ask that the evidence be excluded!**

Note on IAC/Appeal:

On the appeals, I have yet to see where the lawyers asked for the missing evidence to have been excluded at trial and that this was the remedy for the bad faith. The only thing I ever see is them asking that the indictment be dismissed. We should have asked for exclusion if dismissing the indictment was denied.

In testimony, the lawyers say they asked for the evidence to be kept out of trial but I can't find these requests in the briefs.

Summary: An egregious violation of the defendant's constitutional rights was the loss of the six latent lifts cards with an unknown number of latent lifts from Coffin's burned Porsche. Bad faith is evident from both the actions of the police and the intentional SOP violations.

The latent prints, lifted onto latent print cards by GBI CAU technicians, were taken from the stolen Coffin Porsche found in Dekalb County on 12/10/1996. How these prints were handled from 1996 until 2005 is a prime example of what the U.S. Supreme Court defined as bad faith in regards to evidence that was not preserved by police and/or prosecutors in a case. Bad faith was largely defined in two U.S. Supreme Court cases, California v. Trombetta , 467 U.S. 479 (1984) and Arizona v. Youngblood, 488 U.S. 51 (1988). FILL IN CASE QUOTES HERE TO GIVE BAD FAITH FOUNDATION

The actions and conduct of the various state agencies including The GBI, Dekalb County Police, Atlanta Police and the Fulton County District Attorney all show bad faith.

On December 11th, 1996, GBI crime scene technicians Bobby Smith and Darrell Chaneyfield lifted an unknown number of latent prints onto six latent print cards from the Coffin Porsche found in Dekalb County. On about Dec 17th, GBI latent print examiner Al Pryor received the cards and analyzed the prints. Pryor determined that the prints were “of value for comparison purposes” which was technically defined by GBI Latent Print Unit SOP: Latent Print Procedures Manual (see Appendix ??) to mean that the prints had at least eight defined ridge characteristics. (HT. ??) Of note, eight defined ridge characteristics was also the standard to allow the prints to be run through AFIS or to be defined as “of AFIS quality” back in 1996/1997 as per GBI Latent Print Unit SOP: Latent Print Procedures Manual - AFIS Procedure (see Appendix ??).

The GBI and Atlanta Police Homicide detectives including Homicide Det. Rick Chambers immediately recognized the value of these prints in the case. If the Porsche prints matched the prints of suspect Davis that would be powerful forensic proof Davis was involved in the Coffin death and the other crimes against Coffin. Immediately, detectives obtained inked prints from suspect Davis and had Latent Print Examiner (LPE) Pryor compare Davis’ prints to the stolen

Porsche latent print cards with negative results on that same day of Dec 17th, 1996. (??) These negative results then became a liability to the police because the prints did not match the prints of their prime suspect Davis.

The actions and non-actions concerning the latent print cards that followed over the next nine years show the myopic vision of the State focused on doing only what would serve their interests in convicting Davis rather than in trying to find out who the prints might actually belong to. The evidence shows that the State consistently violated SOP (??) when it served their interests to try and avoid any proof that the prints belonged to someone who would be seen as an additional suspect. SOP was only followed when the State was trying to prove the prints belonged Davis or someone who would have naturally and innocently had prints on Coffin's vehicle.

Once the prints were proven not to belong to Davis, the GBI SOP concerning the use of AFIS (Automated Fingerprint Identification System) should have been followed because the prints had the eight ridge characteristics as required to be call "of value for comparison purposes" and of "AFIS quality". Pryor admitted that if the prints were not of AFIS quality, he should have noted this as per SOP. He did not. (HT. ??)

The GBI Latent Print Unit SOP: Latent Print Procedures Manual - AFIS Procedure (see Appendix ??) clearly states that the prints should have been run through AFIS to compare them to the millions of profiles in the system. Even the SOP documentation notes the importance of doing this because of serious cases having been solved by the technology. (Exhibit ??) However, the State began a pattern of ignoring SOP that would continue from 1996-2006.

Instead of using AFIS, the State chose to limit the search for the prints' owner(s) to doing a visual comparison of the prints of Megan Davis in April of 1997 and of Kenneth Criswell in June

of 1997, Coffin's Porsche mechanic. This was only done once Davis had been released on bond without being indicted in March of 1997. Each of these people's prints could have easily been explained as having had innocent access to the vehicle, and finding their prints might have removed the liability the prints represented to the State's case against suspect Davis.

However, the comparison of the latent print cards to the prints of Megan Davis and Kenneth Criswell also had negative results. Why the State did not obtain in 1996 the prints of the victim, David Coffin Jr., from his unburned Jeep or unburned areas of his house that included numerous personal documents is unexplained and sloppy. (TT. ??) Should the State have had anything but tunnel vision for proving Davis guilty, Coffin's prints would have been collected in 1996. However, the State did not do so.

Once none of the prints came back as positive matches in June of 1997, Pryor returned the cards back to the GBI Evidence Room. As per GBI SOP, the print cards should have been run through AFIS at this point as well as stated by GBI Special Agent Adrian McCravey (HT-p.181). As well, the handling of the cards and the analytical results of Pryor's work should have been reviewed in mandated Peer and Administrative reviews of the Latent Print Section as defined by the GBI: Quality Assurance Manual – Peer Review and the GBI: Latent Print Operations Manual – Case Review SOP's. These reviews should have ensured that the prints were not only run through AFIS but also backed up by photograph or by digital scanner. No documentation or evidence shows that any of these mandated actions were carried out. (HT. ??)

The SOP GBI: Latent Print Operations Manual – Case Files (Petitioner's Exhibit 59) required that a Latent Print Case File would have documented all of these actions, all analytical results, and all documentation which should have been maintained by the GBI has suspiciously disappeared along with the actual latent print cards. During the Habeas hearings, Pryor changed his prior testimony from trial concerning the documentation. Pryor now claims that he

personally kept the Latent Print Case File and destroyed it “due to age“(HT. p.470). GBI SOP and basic common sense both require that evidence in an open homicide be preserved. So not only is the physical evidence gone, but also gone is suspiciously all the documentation which could explain what SOP was or was not followed, all the work done and even how many prints there were. All of these actions by Pryor violate SOP. No evidence in an open homicide should be destroyed.

Even the general SOP documented in the GBI: Operations Manual: Purge Procedure as defined in 1997 and 1998 mandated an Administrative Review of any prints in any Open Homicide case by the Section/Lab manager. The SOP clearly states, “These cases are opened and reviewed to determine which items might later be used by DOFS to solve the case such as **identifiable latent lifts** (emphasis added), cartridge cases, bullets…” The latent print cards clearly are in this category. The SOP then goes on to state that “these (items) are compiled into a laboratory container and stored” and then placed on the GBI “HOLD” list. This did not happen. There is no evidence the GBI conducted any review as per SOP nor placed the latent print cards on the hold list.

In March of 1999, the cards were sent, against SOP, to Dekalb County Fire via UPS. In discovery for Davis’ trial, the actual chain of custody and disposition of the cards were repeatedly falsely reported to Davis and this would continue until 2010. The Fulton County District Attorney, as seen in Appendix ??, in an email from Assistant District Attorney Sheila Ross to Davis’ attorneys clearly misleads Davis into believing the prints were destroyed in the 1990’s by either Dekalb or the Atlanta Police **because the prints did not match Davis**. Any destruction **due to the prints not matching the State’s prime suspect** in no way could be justified and reeks of official animus. Is it just to allow the State to destroy evidence only after it does not advance their case? Whose prints were they? The State’s unilateral decision to destroy

such apparent exculpatory evidence for Davis because it does not fit their theory is bad faith. However, attorney Bruce Morris did nothing to investigate further.

Davis discovered Ross' untrue statement but only after being tried and convicted without the critical and correct chain of custody information. Of note is that the correct information was only provided in the MFNT hearings and when the State's files were opened by Davis' conviction was finalized. As well, a critical chain of custody document, a UPS delivery receipt signed by mailroom employee Frajan Campbell of the Dekalb County police (See Appendix ??), showing the print cards were in fact delivered to Dekalb from the GBI was not turned over in discovery by the State. **Of note, Dekalb County still denies getting the print cards despite the signed UPS delivery receipt by Campbell (HT - ??). (We might be able to use this denial of Dekalb to enforce our contention that APD or someone came and got the prints from Dekalb and the COC was hidden???)**

In Davis' MFNT hearing, it was discovered that the State had in their possession the latent print cards much later than 1999. Fulton County investigator Carter Jackson admitted that the State had the print cards as late as 2005 (MFNT ?? - ??). This revelation contradicted the State's contention the print cards essentially were destroyed in the 1990's and therefore were unavailable for anyone to run through AFIS or for any testing or comparison. Jackson admitted this only when confronted with the newly discovered fact for the defense that Jackson had in 2005 submitted to the GBI a letter written by the victim to his father, David Coffin Sr., and as well, Coffin Sr.'s prints for "elimination purposes" (See Appendix ??). Carter made it clear that he submitted these two items to try and obtain the victim's prints from the letter but eliminate Coffin Sr.'s if found.

When Carter admitted that the State still had the latent print cards in 2005, he admitted that his intention was to try and compare them to Coffin Jr.'s prints, if found on the letter. When the GBI

tested the letter, the testing did not reveal Coffin Jr.'s prints. (MFNT-??). Therefore, Jackson essentially did not have anymore prints that he could have tested against latent prints from the Porsche that if were a match would have not been considered a possible suspect in addition to Davis. The **actions and conduct** of Investigator Jackson clearly show that the State saw the Porsche prints as exculpatory for Davis and that they were a liability to Davis' prosecution. Otherwise, why try and prove the prints were Coffin's but not run the prints through AFIS? After all, these Porsche prints were the only evidence in the case that could have provided another suspect.

In Youngblood, (488 U.S. at 58, 109 S.Ct. 333), the bad faith requirement limits the extent of police's obligation to preserve evidence 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** (emphasis added).

In this instant case, the actions and non-actions (not running the prints through AFIS) of the State in late 2004 and early 2005 by Fulton Co. Investigator Carter Jackson show that the State believed that the latent print cards were both material and that they had exculpatory value for Davis because they did everything in their power to try and prove the prints were from a person who would not be another suspect. In this case, they went to extraordinary efforts to try and prove the prints were from the victim, David Coffin yet never run the prints through AFIS despite having nine years to do so. These actions show that the State believed that the evidence could form a basis for exonerating Davis should the prints not be Coffin's and that the true owner(s) of the prints be found through AFIS. Otherwise, why go through all this effort nine years later?

The disappearance of the print cards along with the Latent Print Case File sometime after January of 2005, only after none of Coffin Jr's prints were found, in the heat of a new and renewed effort to prosecute Davis by the Fulton County Cold Case Squad, and by intentionally

violating SOP is too coincidental to be viewed as anything but intentional or with deliberate indifference.

." Following a standard policy, by itself, is not evidence of bad faith. See Terrell v. State, 271 Ga 783 (6) (523 S.E.2d 294) (1999) (no bad faith where GBI agent disposed of hand-written interview notes according to standard practice).

Bad faith is reserved for "those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." (Emphasis supplied.) Youngblood, supra, 488 U.S. at 58.

In other words, the police must show, by their conduct, some intent to wrongfully withhold constitutionally material evidence from the defendant. Id.

During Davis' trial and on appeal, the State has argued that because Davis argued alibi for the Porsche burning and that the prints weren't Davis', the disappearance of the print cards is irrelevant. This is far from the truth and illogical. First, Davis does maintain alibi for the Porsche's burning but the State did not concede Davis' alibi at trial. Second, Davis not only maintains alibi but he also maintains that the prints could be those of the killer. Here the State also argues disingenuously that the prints could have been Davis' alleged, without any evidence of such, co-conspirator. If the State had really believed this claim, they would have run the prints through AFIS. They had nine years worth of chances but did not do so.

With respect to the specific evidence that the State failed to preserve in this case, "no more can be said [of this evidence] than . . . it could have been subjected to tests, the results of which might have exonerated the defendant." Youngblood, supra, 488 U.S. at 57.

To determine if a defendant's due process rights have been violated where, as here, the lost evidence could have been exculpatory, but where it is not known that the evidence would have been exculpatory, this Court considers whether the evidence was constitutionally material and whether the police acted in bad faith. Evidence is constitutionally material when its exculpatory value is apparent before it was lost or destroyed and is of such a nature that a defendant would be unable to obtain other comparable evidence by other reasonably available means.(Citations omitted.) Ballard v. State, 285 Ga 15, 15-16 (2) (673 S.E.2d 213) (2009).

The State by their own conduct show that the print cards had clear exculpatory value. Beyond this, they managed to commit hundreds of SOP violations. The exact number is unknown because Davis doesn't even know how many actual prints were lifted from the Porsche because there is no Latent Print Case File. The State apparently made no back-up or photographs of the cards as required by SOP in XXXXXX (Appendix ?). Virtually all documentation is gone. The State misled Davis if not outright lied to Davis about the disposition of the print cards and withheld crucial documentation in discovery.

Here, as the trial court correctly found, there is simply no evidence of record that the police were acting in bad faith when they followed the standard policy of releasing evidence in vehicular homicide cases that they considered to be solved. 1 The Court of Appeals had no basis in the record for disturbing this factual finding of the trial court and concluding otherwise.

Judgement reversed. All the Justices concur.

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Footnotes

1
This is not to say that following a standard policy may never amount to evidence of bad faith. However, ***the question whether bad faith would exist under such circumstances would depend on the conduct of the actors in relation to the policy***, and not whether the policy itself constituted evidence of bad faith. For example, a standard policy could be implemented in bad faith, or a standard policy could be followed in bad faith, but, again, the focus is on the conduct in relation to the policy, not simply the policy itself. A policy, by itself, is not evidence of bad faith.