

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
LAUREN MICHELLE MEYER,
Respondent.

No. 86371-COA

FILED

APR 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

The State of Nevada appeals from a district court order dismissing two counts of driving under the influence causing substantial bodily harm against respondent Lauren Michelle Meyer. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

On September 9, 2018, someone in a silver Mercedes drove through an intersection in Reno in the early morning darkness without, according to one witness's testimony, stopping for a stop sign, and crashed into a vehicle occupied by two people, who were thrown from the car and suffered injuries.¹ A witness to the crash immediately pulled over, called 9-1-1, and grabbed a flashlight to check on those involved. When approaching the Mercedes, the witness saw Meyer attempting to leave the car through the passenger-side door and did not see anyone else in the area. Meyer told the responding police officers that she was not the driver of the vehicle, so they searched the surrounding area on foot and used a thermal imaging camera that detects body heat. They did not find anyone else.

The investigating officers noted that only the front driver-side airbag had deployed, and that the airbag had red blood stains on it, so they decided to only collect the airbag as evidence. As one of the responding

¹We do not recount the facts except as necessary to our disposition.

officer's testified at the preliminary hearing, they "figured that if there was any DNA, which in this case there was, just being based on the blood, that [they] could determine who the driver was based off that." Sometime after Meyer admitted to drinking alcohol but again denied driving the car, an officer's body camera recorded him referring to Meyer as a "bitch."² Police ultimately cited Meyer with misdemeanor driving under the influence at the scene.

A DNA test confirmed that the blood on the airbag belonged to Meyer and a blood test showed that the concentration of alcohol in her blood was 0.163—double the legal limit. The vehicle's owner testified during the preliminary hearing that he gave Meyer his car keys to retrieve personal items from the car the night of the crash, but she did not have permission to drive it. Meyer did not identify anyone else who may have been driving the vehicle at the time of the collision.

The State timely charged Meyer with two felony counts of driving under the influence causing substantial bodily harm after the voluntary dismissal of the misdemeanor citation. Following the preliminary hearing, the justice court bound Meyer over to the district court, and the State filed an information alleging the same two counts.

Meyer filed a pretrial petition for writ of habeas corpus in district court arguing that the State's pre-charging delay violated her right

²The officer stated: "She like wouldn't say anything, so I'm like, 'so you sorry you were drunk driving and stuff?' And she's like, 'No, I wasn't driving! I don't drive!' Blah, blah, blah. Okay, whatever bitch."

to a speedy trial.³ The district court did not rule on the pre-charging delay, and instead sua sponte requested supplemental briefing to address the court's concern regarding spoliation of evidence.

In her supplemental brief, Meyer argued that the State failed to preserve evidence including the Mercedes, thus removing her opportunity to develop a defense based on the vehicle and related evidence, including her ability to determine whether the passenger-side airbag was defective or test any additional blood samples on the floorboards for DNA. Further, Meyer argued that the police officer's use of an expletive showed the responding officers conducted their investigation of the accident in bad faith. In its supplemental brief, the State argued that the airbag was the only evidence necessary to determine the identity of the driver and that any DNA evidence from the passenger side of the car was immaterial. As the parties filed their supplemental briefs simultaneously, the State could not respond to Meyer's bad faith argument, which Meyers had not raised in her original petition.

At the hearing to consider the issues raised in the supplemental briefs, the district court found that the disputed evidence, which was no longer available, was material as to whether Meyer was in actual physical control of the vehicle at the time of the crash. Further, the district court determined, without viewing the video, that the officer's use of an expletive indicated bad faith on behalf of all the officers who responded to the crash

³Meyer also argued that the charges were brought outside of the statute of limitations, but the district court orally rejected that argument, and that decision is not part of this appeal.

and investigated the scene. The district court entered a one-sentence order dismissing the criminal charges.⁴

The State appealed and now argues that the district court abused its discretion in finding that the disputed evidence was material because any additional evidence obtained from the passenger side of the car would not help to identify who was driving at the time of the crash. Further, the State argues that the district court abused its discretion in finding that the officer's use of an expletive demonstrated bad faith by the responding officers because the statement was made "hours after the crash and the investigation around the Mercedes was complete," and the responding officers made a good-faith attempt to find another person at the scene to corroborate Meyer's position that she was not the driver. In response, Meyer argues that the district court did not abuse its discretion because the disputed evidence was material to Meyer's ability to show Meyer was in the passenger seat, rather than the driver seat, at the time of the crash. Additionally, Meyer argues that the officer's use of an expletive showed that the responding officers acted in bad faith when conducting their investigation and failing to collect or preserve the evidence.

Dismissal of criminal charges is an "extreme sanction" that this court reviews for an abuse of discretion. *State v. Gonzalez*, 139 Nev., Adv. Op. 33, 535 P.3d 248, 251 (2023). "A district court abuses its discretion if its 'decision is arbitrary or capricious or if it exceeds the bounds of law or

⁴We note that Meyer initially filed a pretrial petition for a writ of habeas corpus to dismiss the criminal charges against her on other grounds. The district court did not grant the pretrial writ but instead dismissed the charges based on spoliation of evidence, which is the issue on appeal. At oral argument the State agreed that the issues set forth in the pretrial writ are not before us on appeal.

reason.” *Id.* (quoting *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)). “An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law” *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (citation and internal quotation marks omitted).

Nevada law distinguishes the failure to *collect* evidence from the failure to *preserve* evidence.⁵ See *Steese v. State*, 114 Nev. 479, 491, 960 P.2d 321, 329 (1998) (determining police have collected evidence when they take “possession and control of the evidence at issue”); *Daniels v. State*, 114 Nev. 261, 266-67, 956 P.2d 111, 115 (1998) (noting police have failed to preserve evidence if evidence under police control is lost). “Police officers generally have no duty to collect all potential evidence from a crime scene.” *Belcher v. State*, 136 Nev. 261, 272, 464 P.3d 1013, 1027 (2020) (alteration omitted) (quoting *Daniels*, 114 Nev. at 268, 956 P.2d at 115). If the State failed to collect evidence, the charges may be dismissed if the evidence was material and the failure to gather resulted from bad faith. *Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001).

In contrast, “[d]ue process requires the State to preserve *material* evidence.” *Steese*, 114 Nev. at 491, 960 P.2d at 329 (emphasis added). “The State’s failure to preserve material evidence can lead to

⁵Here, the State addresses the standard for failure to collect evidence; in contrast, Meyer addresses the standard for failure to preserve evidence. We note that the district court did not specify which standard it applied. On remand, the appropriate standard should be determined by the district court in the first instance. However, we note that both standards require the spoliated evidence to be material in order to warrant dismissal of the charges.

dismissal of the charges ‘if the defendant can show bad faith or connivance on the part of the government or that he was prejudiced by the loss of the evidence.’” *Higgs v. State*, 126 Nev. 1, 21, 222 P.3d 648, 660-61 (2010) (internal quotation marks omitted) (quoting *Daniels*, 114 Nev. at 267, 956 P.2d at 115). To establish prejudice, the defendant “must show that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense.” *Cook v. State*, 114 Nev. 120, 125, 953 P.2d 712, 715 (1998).

Whether the State failed to collect or preserve the evidence, to warrant the dismissal of charges, the disputed evidence must be *material* to the defendant’s case. Here, the district court surmised at the hearing that “materiality has to be seen in the context of the defendant’s constitutional rights.” While the failure to preserve implicates due process rights, the standard for determining materiality places the burden on the defendant to show “that there is a reasonable probability that the result of the proceedings would have been different if the evidence had been available.” *Gordon v. State*, 121 Nev. 504, 509-10, 117 P.3d 214, 218 (2005) (quoting *Randolph*, 117 Nev. at 987, 36 P.3d at 435); *see also Guerrina*, 134 Nev. at 347, 419 P.3d at 713 (holding that a defendant failed to establish materiality because “[h]is arguments *assume[d]* rather than *demonstrate[d]* that the” uncollected evidence was material).

Here, the district court appears to have acknowledged that the disputed evidence would not have exonerated Meyer, but nevertheless found that such evidence was material without requiring Meyer to show that there was a reasonable probability that the outcome of the proceedings would have been different had the evidence at issue been collected or preserved. The district court abuses its discretion if it fails to apply the

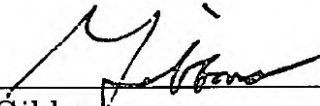
correct legal standard in determining whether the failure to collect or preserve evidence is material to the case. *State v. Rincon*, 122 Nev. 1170, 1176, 147 P.3d 233, 237 (2006) (reversing and remanding because the district court’s order incorporated the wrong legal standard); *see also United States v. Sellers*, 906 F.3d 848, 852 (9th Cir. 2018) (“The court necessarily abuses its discretion when it applies the wrong legal standard.”). Therefore, we necessarily reverse and remand the matter for the district court to determine in the first instance whether the failure to collect or failure to preserve standard applies and, thereafter, to require Meyer to demonstrate materiality of the evidence at issue on the outcome of the proceedings. *Rincon*, 122 Nev. at 1176, 147 P.3d at 237.

If the district court determines the evidence that was not collected or preserved is material and exculpatory, then it should reconsider whether the officers acted in bad faith.⁶ To the extent that the district court previously focused on the use of an expletive without considering the entirety of the circumstances surrounding law enforcement’s investigation, the court abused its discretion. We note that the use of an expletive alone, without considering the bad faith allegations as part of the “whole” investigation, may be insufficient to find bad faith conduct. *Miller v. Vasquez*, 868 F.2d 1116, 1121 (9th Cir. 1989) (determining that an officer acted in bad faith when he used “an extremely derogative expletive” to refer to the defendant, failed to collect potentially exculpatory evidence, lied about why he did not collect such evidence, and tried to dissuade a witness from testifying because, “[t]aken as a whole, these allegations and evidence

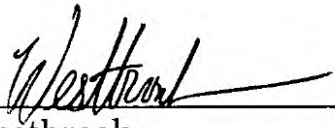
⁶On remand, if the district court has to reconsider the bad faith conduct of the officers, the court should independently review the video from the officer’s body camera.

raise[d] a colorable bad faith claim” (emphasis added)).⁷ For the foregoing reasons, we necessarily reverse and remand the order dismissing the criminal charges against Meyer for further proceedings consistent with our decision herein.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Attorney General/Carson City
Washoe County District Attorney
O'Mara Law Firm, P.C.
Washoe District Court Clerk

⁷On remand, we encourage the district court to provide written findings of fact and conclusions of law in resolving whether Meyer has adequately supported her claim for spoliation of evidence. *See Boonsong Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) (“Without an explanation of the reasons or bases for a district court’s decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation.”).