

**IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS  
FIRST DIVISION**

**STATE OF ARKANSAS**

**PLAINTIFF**

**vs.**

**43CR-24-551**

**AARON SPENCER**

**DEFENDANT**

**STATE'S BRIEF IN RESPONSE TO DEFENDANT'S MOTION FOR ADVERSE  
INFERENCE JURY INSTRUCTION AND HEARING ON  
SPOILIATION/DESTRUCTION OF EVIDENCE**

The State of Arkansas, by and through the Lonoke County Prosecuting Attorney, and for its Response to the Defendant's Motion for adverse inference jury instruction and hearing on spoliation/destruction of evidence states:

**I. INTRODUCTION**

During the homicide investigation of Aaron Spencer, the Lonoke County Sheriff's Office (LCSO) discovered a dashcam that was mounted in Michael Fosler's truck. Detective Robbie McCain with the LCSO later found that the dashcam contained a removeable microSD card. Det. McCain removed the microSD card and personally reviewed the video files it contained. He noted that all files showed a camera angle facing forward with flashing blue and red lights in the background. These flashing blue and red lights were apparently from the police cruisers and ambulance parked on the road behind the truck for several hours while the investigation was underway. Det. McCain later returned the microSD card back into the dashcam and packaged it to be sent to the Attorney General's Office along with other electronic devices. Forensic Examiner Amber Kalmer with the Attorney General's Office received the dashcam, however it did not

contain the microSD card. LCSO has make several attempts to locate the SD card but it has not been found. (See Exhibit A, *Detective McCain's Affidavit*)

The defense asserts, without proof, that the Lonoke County Sheriff's Office acted in bad faith by inadvertently losing a microSD card that contained no exculpatory evidence. The defense ignores established Arkansas law that places the burden on the defense of proving bad faith.<sup>1</sup>

## II. ARGUMENT

### *a. An Adverse-Inference Jury Instruction is Inapplicable in this Instance.*

Arkansas courts do not apply civil-style spoliation instructions in criminal cases. No Arkansas appellate court has ever approved an adverse-inference spoliation instruction in a criminal case. In fact, the court in *Autrey v. State*, (the only Arkansas criminal case cited by the defense) denied the defendant's requested jury instruction on spoliation, explicitly stating that giving the jury the ability to infer that evidence destroyed was unfavorable to the party responsible for its spoliation "is **not** the law in criminal cases." (emphasis added) 90 Ark. App. 131, 142, 204 S.W.3d 84, 89 (2005). Furthermore, the model civil spoliation instruction has

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<sup>1</sup> The defense motion goes even further suggesting that Det. McCain may have committed the criminal offense of tampering with physical evidence. The claim is wholly unsupported, as the defense offers no proof that Det. McCain altered, destroyed, suppressed, removed, or concealed the SD card within the meaning of the statute, nor that he acted with the requisite criminal intent. The defense argument would lead to the absurd result of creating criminal liability on behalf of any law enforcement officer performing their normal job duties while investigating a crime.

no counter part in the Arkansas Model Criminal Instructions. *Id.* Our supreme court affirmed the denial of such an instruction because it conflicts with controlling constitutional law. *Id.*

The court found that the proposed instruction in *Autrey* contradicted with *Arizona v. Youngblood*, 488 U.S. 51 (1988). *Id.* In *Youngblood*, a spoliation instruction was given at the trial level, but it was not adopted as the appropriate remedy by the United States Supreme Court. Instead, the Court added the requirement that the defendant show bad faith on the part of the police to prove a due-process violation based on the destruction of potentially useful evidence. *Id.* at 58.

Arkansas courts have followed *Youngblood* in their opinions. *See Wenzel, supra.* In Spencer's case, there is no proof of bad faith on the part of the Lonoke County Sheriff's Office in the inadvertent loss of the SD card. A bare contention of bad faith without supporting facts does not demonstrate that the State acted in bad faith in destroying evidence. *Lee v. State*, 327 Ark. 692, 942 S.W.2d 231 (1997). There is no support for the defense's assertion that recklessness, which was not the case here, amounts to intentional destruction of evidence. A bare assertion of bad faith without supporting facts does not demonstrate bad faith. *See Lee v. State*, 327 Ark. 692, 942 S.W.2d 231 (1997).

***b. The Inadvertent Loss of the SD Card Does not Amount to a Brady violation.***

Under *Brady*, it is a violation of due process when the State suppresses evidence that is material to guilt or punishment. 373 U.S. at 87, 83 S.Ct. 1194. To establish a due-process violation when potentially useful evidence is destroyed, the defendant must show that the evidence possessed exculpatory value that was evident before the evidence was destroyed and is of such a nature that comparable evidence could not be obtained by other reasonably available means. *Wenzel*, 306 Ark. at 532–33, 815 S.W.2d at 941. In addition, “unless a

criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” *Id.* at 533, 815 S.W.2d at 941 (quoting *Arizona*, 488 U.S. at 58, 109 S.Ct. 333).

For instance, in *Long v. State*, 2024 Ark. App. 98, the Arkansas Supreme Court held that the inadvertent deletion of body-cam footage did not amount to destruction in bad faith. The court held that the defendant failed to show that body-cam video of a search was potentially exculpatory and that it contained evidence that was unobtainable by other means, such as witness testimony. *Id.* Additionally, because the defendant could not prove bad faith, she did not prevail on appeal. *Id.*

Here, Spencer has failed to show that the video contained on the SD card was potentially exculpatory and that it contained evidence that was unobtainable by other means. The evidence in question is obtainable by witness testimony. Further there is a sworn affidavit from Det. McCain as to what was contained on the SD card. The only proof of bad faith is the defense’s bare assertion.

### **III. CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, the Defendant’s request for an adverse-inference jury instruction and a hearing on alleged spoliation should be denied. Arkansas law is clear that adverse-inference instructions are not permitted in criminal cases, and the defense has offered no evidence beyond unsupported allegations to meet its burden of showing bad faith under *Youngblood* and its Arkansas progeny. The record establishes that the SD card’s loss was inadvertent, that its contents were neither exculpatory nor unobtainable by other means, and that comparable evidence is readily available through witness testimony. Because the Defendant has failed to demonstrate either bad faith or a due-process violation under *Brady*, his motion should be denied in its entirety.

WHEREFORE, the State prays that the defendant's motion be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Maryann Byrd, Deputy Prosecuting Attorney, certify that a copy of the forgoing pleading has been e-filed and notice sent to Defendant's attorney of record this December 3, 2025.

/s/Maryann Byrd  
Maryann Byrd  
Deputy Prosecuting Attorney