

NOTICE

Decision filed 06/08/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140023-U

NOS. 5-14-0023 and 5-14-0115

(consolidated)

IN THE

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	Nos. 13-CF-1153 &
)	13-CF-1154
DANIEL PACE and SKYLAH BEACH,)	
)	Honorable Robert B. Haida,
Defendants-Appellees.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* This cause is remanded to the circuit court because the court did not make a factual finding on the date on which the evidence was destroyed, which determines whether the State was put on notice to preserve evidence and whether there was a discovery violation pursuant to Illinois Supreme Court Rule 412(e).

¶ 2 The State appeals from an order of the circuit court of St. Clair County granting the defendants' motion to suppress evidence and quash arrest. For the reasons which follow, we remand for proceedings not inconsistent with this order.

¶ 3 The facts necessary to our disposition of this appeal follow. The defendants, Skylah Beach (Beach) and Daniel Pace (Pace), were charged on July 26, 2013, with the unlawful possession of methamphetamine (meth) manufacturing materials. 720 ILCS 646/30 (West 2012). On July 21, 2013, Fairmont City officers, Therese Suarez (Suarez) and Justin Straub (Straub), arrived at the Royal Budget Motel at 11 a.m. in response to a call for domestic disturbance. Upon arrival, the officers found Beach and Pace in a heated verbal, not physical, disagreement outside their motel room. After learning the defendants' identities, the officers ran warrant checks. Although neither of the defendants had active warrants, the officers were alerted to a notification pertaining to Pace. The notification indicated that Chicago parole was to be informed if Pace was involved in a domestic disturbance. Subsequently, Suarez contacted Chicago parole and was advised that Pace was currently on parole for a meth manufacturing-related charge.

¶ 4 Thereafter, Straub testified that as he questioned the defendants, he could see in plain view, in the bed of Beach's pickup truck, numerous materials that were commonly used to manufacture meth. Straub then contacted Detective Derek Parker, who called the Illinois State Police Meth Response Team (MRT). Before the MRT arrived, the officers searched Beach's pickup truck and the defendants' motel room after obtaining written consent.

¶ 5 Once the MRT arrived, 14 items, ostensibly meth manufacturing materials, were confiscated, photographed, and logged into evidence. The 14 items that were seized included the following: coffee filters, Morton salt, a yellow funnel, a bottle of HEET, 8 packs of AA Energizer batteries, 2 pairs of side cut pliers, a white funnel, aluminum foil,

a Mr. Coffee grinder, 2 glass vials, AA Energizer lithium batteries, and rubber tubing. At no point were the items tested for residue to confirm or deny whether they had been used to cook meth. However, all officers testified that none of the seized items looked like they had been used to manufacture meth; there was no aroma which normally accompanies cooked meth; and no indication that finished product was present. Instead, the MRT officers testified that meth could not have been created solely from the items seized at the scene, but that the items were found to be of "sufficient combination" to be designated a clandestine meth lab. After the items were photographed and logged into evidence, the MRT, following standard protocol, transported all 14 items to Zone 6 meth container in Collinsville, Illinois, for pick up by a hazardous waste contractor.

¶ 6 On July 28, 2013, Pace was interrogated by Detective Parker. Pace indicated to authorities a legitimate use for each of the 14 seized items, and further denied any intention to cook meth with the seized items.

¶ 7 On July 31, 2013, the State simultaneously filed a motion for discovery and an answer to the defendant's motion for discovery. The State's answer stated "[a]ll physical evidence in this matter is available for inspection through the State's Attorney's Office." On August 12, 2013, the defendants filed a motion for discovery requesting that the State preserve "any tangible objects which the State intends to use at the hearing or trial or which were obtained from the defendant." On October 7, 2013, the defense made an oral request for discovery. In response, on October 9, 2013, the State orally informed the defense that they were no longer in possession of the evidence.

¶ 8 On October 15, 2013, defense counsel for Pace filed three pretrial motions, including a motion to compel production, a motion for supplemental discovery, and a motion to suppress evidence and quash arrest. On December 10, 2013, the trial court held a pretrial hearing regarding Pace's July 26, 2013, charge. On December 17, 2013, the trial court determined that the State's destruction of the items in question violated Illinois Supreme Court Rule 412(e) (eff. Mar. 1, 2001) and barred the State from introducing any testimony or evidence pursuant to Illinois Supreme Court Rule 415(g)(i) (eff. Oct. 1, 1971). Subsequently, the State filed a motion to reconsider, but the court denied this motion. Notice of appeal followed on January 10, 2014.

¶ 9 On January 23, 2014, defense counsel for Beach filed three pretrial motions, including a motion to compel production, a motion for supplemental discovery, and a motion to suppress evidence and quash arrest. On February 18, 2014, the trial court held a pretrial hearing regarding the above motions and allowed both parties to stipulate that the officers would testify consistently in Beach's pretrial hearing as they did in Pace's pretrial hearing. As in Pace's trial, the court determined that the State's destruction of the items in question violated Rule 412(e), and barred the State from introducing any testimony or evidence pursuant to Rule 415(g)(i). Notice of appeal followed on March 3, 2014.

¶ 10 On appeal, the State argues that a limited remand to the trial court is necessary to determine the exact date on which the seized evidence was destroyed. The State contends that this court cannot affirm the imposed discovery violation on the part of the State without a factual finding on this matter. We agree.

¶ 11 A discovery violation may be analyzed in one of two ways. It can be analyzed as a due process violation under *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988), or under Rule 415(g)(i). *People v. Kladis*, 403 Ill. App. 3d 99, 105 (2010); Ill. S. Ct. R. 412 (eff. Mar. 1, 2001). To analyze as a due process violation, courts routinely analyze whether "potentially useful evidence" violates due process where a "defendant can show bad faith on the part of the police." *Youngblood*, 488 U.S. at 58. However, where "material" or "apparent exculpatory evidence" exists, that is evidence that is apparent prior to destruction to likely excuse or exonerate the defendant from alleged fault or guilt, no showing of bad faith is required. See *Brady v. Maryland*, 373 U.S. 83, 83 (1963); *California v. Trombetta*, 467 U.S. 479, 488-89 (1984). To establish a discovery violation under Rule 415(g)(i), it is only required to show that "a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto." Ill. S. Ct. R. 415(g)(i) (eff. Oct. 1, 1971).

¶ 12 It is important to note that where evidence is requested by the defense in a discovery motion, the State is on notice that the evidence must be preserved. *People v. Newberry*, 166 Ill. 2d 310, 317 (1995) (citing *People v. Sleboda*, 166 Ill. App. 3d 42, 53 (1988)). If the State proceeds to destroy the evidence after being put on notice, no showing of bad faith is required, and appropriate sanctions for a due process violation may be imposed regardless of whether destruction was inadvertent. *Newberry*, 166 Ill. 2d at 317 (citing *People v. Koutsakis*, 255 Ill. App. 3d 306, 312 (1993)). Further, where evidence has been destroyed following a defense request under Rule 412, no showing of

bad faith by the State is required in order for the trial court to impose sanctions. *Newberry*, 166 Ill. 2d at 318.

¶ 13 Here, the record is unclear as to the date on which the destruction of the evidence occurred. Both parties and the trial court acknowledged that the date of destruction has not been clarified, but inferred. As stated above, the State must be placed on notice to preserve items prior to a determination that there has been a discovery violation. When a court learns that the State has destroyed evidence following receipt of a discovery motion filed by the defense, a discovery violation, either under due process or Rule 415(g)(i), has occurred and appropriate sanctions may be imposed. Here, a determination of when the evidence was destroyed is crucial to establish whether or not the State was put on notice and failed to comply with discovery. Because the court excluded any and all evidence without a determination of the date on which the evidence was destroyed, we remand to the trial court for the purpose of determining this date.

¶ 14 We also find it important to note that because the alleged request from October 7, 2013, was oral, it was insufficient under Rule 412, which provides for discovery upon written request. See Ill. S. Ct. R. 412 (eff. Mar. 1, 2001). Such policy considerations include the fact that an oral request which is made off the record is more easily overlooked, where proof of a written request will be far more certain. *Sleboda*, 166 Ill. App. 3d at 53. Thus, once the date of destruction is determined, the trial court must take into consideration only the written discovery requests pursuant to Rule 412.

¶ 15 For the foregoing reasons the judgment of the circuit court of St. Clair County is hereby remanded for proceedings not inconsistent with this order.

¶ 16 Remanded.