2019 IL App (1st) 163037-U

No. 1-16-3037

Order filed July 19, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 15456
	)	
ANDRE FOX,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justice Lampkin concurred in the judgment.
Justice Hall dissented.

ORDER

¶ 1 *Held*: Defendant's conviction for driving while his license was suspended or revoked is affirmed over his contentions that his right to due process was violated when the vehicle he was driving at the time of his arrest was destroyed and the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Andre Fox was found guilty of driving while his license was suspended or revoked (625 ILCS 5/6-303(a), (d-3) (West 2014)), and sentenced to 18

months in prison. On appeal, defendant contends that his right to due process was violated when the vehicle he was driving at the time of his arrest was destroyed contrary to court orders to preserve it during the pendency of the case. He further contends that he was not proven guilty beyond a reasonable doubt when the State's witnesses were impeached at trial and his testimony was believable. We affirm.

¶ 3 During an October 2, 2015, hearing, defense counsel stated that the traffic stop in this case was based upon a broken license plate light, that defendant asserted that the light was in "proper working order" at the time of the stop, and that the vehicle had been impounded. Counsel asked the court to enter an order that the vehicle be preserved. The trial court's order stated that "the vehicle impounded in the instant case shall not be destroyed;" and "the vehicle and its contents are evidence *** and all evidence shall be preserved throughout the duration of this case." At a November 2015 court date, defense counsel asked the court to sign an order permitting the defense's investigator to photograph the vehicle, and "get inside if she needs to." The court agreed and entered an order that a "Cook County Investigator *** is granted permission to photograph, enter, turn on, and investigate the vehicle involved in this case." On December 7, 2015, defense counsel informed the court that although an investigator inspected the vehicle, she could only look at, and into it, because it was locked and the impound lot did not have the keys. Counsel did not know who had the keys. The State offered to order the "tow records" to determine whether the keys were towed with the vehicle.

¶ 4 On January 8, 2016, counsel stated that defendant did not have the keys and that the keys were not at the impound lot. Counsel further stated that the vehicle had been destroyed as

> "[t]hey followed the court order which said, you know, hold the car until we're allowed to come and look at it and get in it and take pictures; but we couldn't get in it. And once we did that, they destroyed it shortly thereafter. So there's no more vehicle in question."

¶ 5 Counsel then filed a motion to quash arrest and suppress evidence alleging, in pertinent part, that the police lacked probable cause to arrest defendant. At the hearing on the motion, counsel argued that defendant, who did not have valid driver's license, only drove a vehicle after being ordered to do so by police, that is, he "simply" obeyed a police officer's order, which was not a violation of the law. Counsel made no argument regarding the destruction of the vehicle. The trial court denied the motion and the matter proceeded to a bench trial.

¶ 6 Chicago police officer "Wendalin" Fitzpatrick testified that around 9:50 p.m. on August 22, 2015, he was driving in a marked squad car with his partner, Officer Jeremy Balling, when he observed a vehicle double-parked and blocking traffic. He stopped five to six feet away. The vehicle was running, contained two people, and did not have a rear license plate light. No one was standing outside the vehicle. When the vehicle began to move, Fitzpatrick followed it. He turned off his headlights to confirm whether the vehicle's rear license plate was lit. When he could not see the vehicle's license plate, he turned his headlights back on, activated his lights and sirens, and curbed the vehicle. At trial, he identified defendant as the driver. Fitzpatrick asked defendant for a driver's license and defendant replied that "it's bad." Fitzpatrick then placed defendant in custody. A "name check" revealed that defendant's driver's license was revoked.

¶ 7 During cross-examination, Fitzpatrick testified that he believed that he was driving a "Crown Victoria" rather than a SUV on the evening of defendant's arrest. Defendant was driving

a two-door sedan. Fitzpatrick identified a photograph of a vehicle that "closely resembled" the vehicle that defendant was driving and agreed that the license plate was "low down on the vehicle." However, he was able to see whether the license plate on defendant's vehicle was illuminated. Defendant was the driver of the vehicle and at no point did Fitzpatrick order defendant to get inside the vehicle and move it. Fitzpatrick later gave the keys from defendant's vehicle to two older women who came to the police station.

¶ 8 The State then entered into evidence a certified driving abstract stating that a license revocation for defendant was in effect on August 22, 2015, and rested.

¶ 9 The defense presented Officer Balling, who testified consistently with Fitzpatrick that the officers were in a Crown Victoria on the night of defendant's arrest.

¶ 10 Defendant's sister, Dwanna Adams, testified that after learning of defendant's arrest, she and her mother went to a police station and spoke to the "arresting officer." She was not given any keys.

¶ 11 Defendant testified that he was standing at the back of a vehicle when officers "pulled up" in a SUV and hit a "warning device" twice. He turned around and began to walk toward the police, however, an officer told him over an intercom to move the vehicle. Defendant initially yelled that the driver would be back in a minute, but then complied with the order. Defendant moved the vehicle, and, as it "got *** towards the end of the block," the squad car's lights were activated. An officer then approached and asked for defendant's driver's license. Defendant responded that he did not have one and that the officer told him to move the vehicle. Defendant's personal property, including the car keys, was taken when he was arrested.

¶ 12 During cross-examination, defendant testified that he and his girlfriend were backseat passengers in the vehicle. Martez Fox was driving and another woman was the front seat passenger. Martez got packages from the trunk, left the keys, and went inside a building. Defendant did not have a valid driver's license and should not be driving, but, "in this case," he drove when ordered to do so by a police officer.

¶ 13 The State then called Officer Balling in rebuttal. He denied ordering defendant to move the vehicle and did not see anyone standing outside it. The officers pulled up behind the vehicle and turned off their lights to determine whether the rear license plate was illuminated. It was not.

¶ 14 The parties stipulated that defendant had two prior felony convictions in case number 10 CR 16775, and a conviction in case number 12 CR 20684.

¶ 15 In finding defendant guilty of driving while his license was suspended or revoked, the trial court found Fitzpatrick credible. As to defendant's version of events, the court did not "understand the logic or sense in going on the loud speaker *** telling the defendant to move the car only then to stop defendant." Rather, "[t]he most logical version of events *** [was] told by the officer."

¶ 16 The defense filed a motion for a new trial. At the hearing on the motion, the defense noted that documents obtained pursuant to the Freedom of Information Act (FOIA), established that the officers were in a Chevy Tahoe SUV on the night of defendant's arrest. Defense counsel argued that the height of the SUV relative to defendant's vehicle would have made it "difficult" for the officers to see the license plate and concluded that if they could not see it, they could not see whether it was illuminated. The trial court granted the motion for a new trial.

¶ 17 The matter proceeded to a second bench trial. There, the parties stipulated as to Officer Fitzpatrick's testimony at the first trial. The State then called Fitzpatrick, who acknowledged that when he testified at the first trial, he believed that he was driving a Crown Victoria on the date of defendant's arrest. He later spoke to an assistant state's attorney and learned that a FOIA request revealed that he was "supposedly" driving a Tahoe. Fitzpatrick then filed a request with the Office of Emergency Management Communication, and learned that he was actually driving a Tahoe. He turned this information over to the State. At the time of the first trial, he believed that he had driven a Crown Victoria, and explained that he preferred the Crown Victoria. He believed that he drove that type of vehicle more often than he drove a Tahoe.

¶ 18 During cross-examination, Fitzpatrick agreed with defense counsel's statement that the Tahoe was an SUV and "higher off the ground than a Crown Victoria." When he pulled up behind defendant's double-parked sedan, he noticed that the rear license plate was not illuminated. Fitzpatrick "confirm[ed]" that the light was not illuminated when defendant's vehicle "proceeded northbound" by turning off the squad car's lights.

¶ 19 The State then admitted defendant's driving abstract, which indicated that on August 22, 2015, his driver's license was revoked.

¶ 20 The defense next entered into evidence a photograph of defendant's vehicle and stipulated that if called to testify the testimony of Officer Balling, Adams, and defendant would be the same as at the first trial.

¶ 21 In closing, defense counsel argued that the officers' recollection of the night defendant was arrested was not reliable, as they were "incorrect" about the type of vehicle they were driving, and Fitzpatrick's testimony that he gave the keys to defendant's family members was

contradicted by Adams. The State argued that defendant's version of events was "completely contradicted" by that of the officers, who testified defendant was driving. The State concluded that the fact that Fitzpatrick "mistakenly believe[d]" he was driving a Crown Victoria rather than a Tahoe was not fatal to its case.

¶ 22 In finding defendant guilty, the trial court noted that this was a case that rested on credibility, as the court was presented with "two very different stories." The court then stated that in considering the testimony regarding the type of vehicle driven by the officers, it did not find the type of vehicle to be a "deal breaker for the observations that were testified to." In other words, it would "defy logic" for officers to drive SUVs if no one "can look down and see [a] license plate." Defendant then filed a motion for a new trial. The trial court denied the motion and sentenced defendant to 18 months in prison.

¶ 23 On appeal, defendant first contends that, pursuant to *Arizona v. Youngblood*, 488 U.S. 51 (1988), he was denied due process when the State destroyed the vehicle he was driving at the time of his arrest. He contends that the State acted in bad faith and violated the trial court's orders to preserve the vehicle. Defendant argues that this destroyed evidence formed a central part of his defense, *i.e.*, that the question of whether the rear license plate light was functioning was "determinative" of whether the police had a legal basis for the traffic stop that led to his arrest. The State responds that this issue is forfeited as defendant did not raise it before the trial court. The State further argues that regardless of forfeiture, defendant has failed to show bad faith and that the vehicle was not critical evidence. Defendant acknowledges his failure to raise this issue before the trial court, and asks this court to review it for plain error.

¶ 24 Under the plain error doctrine an unpreserved claim of error can be reviewed "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). "The first step of plain-error review is determining whether any error occurred." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). "Absent reversible error, there can be no plain error." *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

¶ 25 There is a difference between those cases where lost or destroyed evidence is materially exculpatory and where it is only potentially useful. *People v. Sutherland*, 223 Ill. 2d 187, 235-36 (2006). A denial of due process occurs if material exculpatory evidence is withheld or destroyed and in those cases, whether the State acted in good or bad faith is irrelevant. *Id.* at 236. On the other hand, if the State fails to preserve evidence that is merely potentially useful, our supreme court has applied the analysis set forth by the Supreme Court in *Arizona v. Youngblood*, 488 U.S. 51 (1988). *Sutherland*, 223 Ill. 2d at 236-37 (citing *In re C.J.*, 166 Ill. 2d 264, 273 (1995)). See also *Illinois v. Fisher*, 540 U.S. 544, 549 (2004) ("the substance destroyed here was, at best, 'potentially useful' evidence, and therefore *Youngblood*'s bad-faith requirement applies").

¶ 26 Thus, " '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.' " *Sutherland*, 223 Ill. 2d at 236 (quoting *Youngblood*, 488 U.S. at 58). Mere negligence by the police in losing evidence is insufficient. *Id.* at 237-38 (applying *Youngblood* and finding that the defendant failed to show any bad faith by the State where the police lost track of the defendant's vehicle in the years between his first and second trials); *People v. Ward*, 154 Ill. 2d 272, 298-99 (1992) (merely negligent police conduct was insufficient to give rise to a due process violation).

"[B]ad faith implies a furtive design, dishonesty or ill will." *People v. Danielly*, 274 Ill. App. 3d 358, 364 (1995). "Factors to consider when examining the State's duty to preserve evidence include whether the State acted in good faith and per its normal practice and whether the evidence was significant in defendant's defense and was such that comparable evidence could not be obtained by other reasonable and available means." *People v. Nunn*, 2014 IL App (3d) 120614, ¶ 17 (citing *California v. Trombetta*, 467 U.S. 479, 488-89 (1984)).

¶ 27 Whether a defendant has been denied due process is an issue of law reviewed *de novo*. *People v. Stapinski*, 2015 IL 118278, ¶ 35.

¶ 28 In the case at bar, the record reveals that the trial court entered two orders. First, that the vehicle not be destroyed and be preserved during the pendency of the case, and second, that a defense investigator be permitted to examine and enter the vehicle. After the vehicle was destroyed, defense counsel stated: "[t]hey followed the court order *** [to] hold the car until we're allowed to come and look at it," and that once the investigator examined the vehicle, it was destroyed. Defendant did not make a bad faith argument before the trial court; rather, counsel stated that the court's orders were complied with. We question how defendant can now take the opposite position on appeal and argue that the State acted in bad faith. Nevertheless, even if we were to address this aspect of defendant's argument, we would conclude that he has failed, as a matter of law, to establish a due process violation.

¶ 29 To the extent that defendant argues that the vehicle was "determinative" evidence, we disagree. In the case at bar, the officers testified that the rear license plate light on the vehicle defendant was driving was not illuminated on the night of his arrest. We are unpersuaded by defendant's argument that tests upon the vehicle would have "confirmed or refuted" Fitzpatrick's

testimony regarding the rear license plate light, and potentially provided "conclusive impeachment" resulting in the grant of defendant's motion to quash arrest and suppress evidence. While a test would have established whether the rear license plate light was working at the time of the test, it would not have established whether it was operable at the time of defendant's arrest. Moreover, this is not a case where the evidence at issue was destroyed before defendant had the opportunity to examine it. The record reveals that a defense investigator was able to examine the vehicle, albeit not to the extent desired. Thus, the purpose behind the court's orders was effectuated, as counsel acknowledged before the court. Based on this record, defendant cannot show bad faith. See *Sutherland*, 223 Ill. 2d 237-38.

¶ 30 We are unpersuaded by defendant's reliance on *People v. Walker*, 257 Ill. App. 3d 332, (1993). In that case, the victim testified that as she was waiting in a restaurant, the defendant took her wallet and attempted to take money that she was holding. The victim further testified that the defendant was wearing "a brown leather cap, a light colored jacket and blue jeans." *Id.* at 333. After the defendant was arrested, he was brought back to the crime scene where he was identified by the victim. At the defendant's jury trial, the victim testified that when she identified the defendant, he was wearing different clothes than when she saw him in the restaurant and was muddy, but that his face looked the same. After the victim's testimony, the State informed the court and the defense that some inventoried evidence had been destroyed six weeks after the arrest and eight months prior to trial, "including a plastic bag, a jacket, a hat, a knife, a grey suit and a pair of brown leather gloves." *Id.* at 333-34. At this point, the defense moved for a mistrial or dismissal, which the trial court denied. Ultimately, the jury told the trial court that it was " 'deadlocked' " and unable to reach a verdict and the trial court declared a mistrial. *Id.* at 335.

The defense then filed a motion to dismiss the indictment on the basis that the defendant's right to due process was violated when the police destroyed material evidence. The trial court granted the motion and the State appealed.

¶ 31 On appeal, the State argued that the defendant's motion to dismiss the indictment should not have been granted because there was no showing of bad faith on the part of the police. The court rejected the State's argument that the bag and clothing were destroyed in accordance with proper police procedure and, therefore, in good faith. *Id*. at 335. The court found that the police had acted in bad faith by destroying the evidence six weeks after the defendant's arrest because "a reasonably prudent police officer acting in good faith would not assume that material evidence would no longer be needed six weeks after the arrest." *Id.* at 335-36.

¶ 32 The facts underlying this case are markedly different. Here, the trial court's orders stated that the vehicle should be preserved during the pendency of the case and that the defense should be allowed to examine it. Although the record does not contain the date that the vehicle was destroyed, the record reveals that it was not destroyed until it was externally examined by a defense investigator. While it may be true that the defense was unable to examine the vehicle to the extent it desired, the purpose of the court's orders was satisfied, that is, the vehicle was preserved so that it could be examined by the defense. Unlike *Walker*, under the facts of this case, a "reasonably prudent police officer acting in good faith" could assume that the vehicle would no longer be needed after it was examined by the defense. *Id.*

¶ 33 Because defendant has failed to show that the State acted in bad faith in the destruction of potentially useful evidence, his claim that he was deprived of due process must fail. See *Sutherland*, 223 Ill. 2d at 236-37 (unless a defendant can show bad faith, the failure to preserve

potentially useful evidence is not denial of due process). As defendant has not established error, we must honor his procedural default. See *Naylor*, 229 Ill. 2d at 602.

¶ 34 Defendant next contends that he was not proven guilty beyond a reasonable doubt because the State's witnesses were impeached at trial and his testimony that he drove in "compliance with a police order" was credible. In the alternative, he contends that he was denied the effective assistance of counsel when counsel failed to adequately raise a necessity defense.

¶ 35 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Id*. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt. *Id.*

¶ 36 A person commits the offense of driving while his license is suspended or revoked when he "drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so * * * is revoked or suspended as provided by [the Illinois Vehicle] Code or the law of another state." 625 ILCS 5/6-303(a) (West 2014). Here, defendant does not contest that his license was revoked at the time of

his arrest or that he drove a vehicle; rather, he contends that the State's witnesses were not worthy of belief, and that he only drove to comply with a police order.

¶ 37 The evidence at trial established, through the testimony of Officers Fitzpatrick and Balling that defendant was driving a vehicle, no one was standing outside it, and defendant was not ordered to move it. Although defendant testified that he was merely a passenger and only drove after being ordered to do so by the police, the trial court found defendant's version of events incredible and the officers' testimony credible, as evidenced by its guilty finding. We will not substitute our judgment for that of the trial court on the issue of witness credibility. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 38 Defendant is correct that the officers' recollection of the type of vehicle they drove on the date of his arrest was wrong. However, the record reveals that Officer Fitzpatrick testified that he preferred to drive a Crown Victoria rather than a Tahoe and he drove that type of vehicle more often. Moreover, Fitzpatrick testified that after learning he was "supposedly" driving a Tahoe on the night of defendant's arrest, he requested certain records, determined that he was, in fact, driving a Tahoe and turned that information over to the State. The record also reveals that the trial court specifically noted that the type of vehicle driven by the police was not a "deal breaker" and that it would "defy logic" for police departments to buy SUVs if that meant that the officers inside could not "look down" to see license plates. See *People v. Gray*, 2017 IL 120958, ¶ 47 (discrepancies in testimony affect only its weight and the trier of fact is charged with deciding how such flaws impact the credibility of the whole). Although defendant is also correct that Fitzpatrick testified that he gave the keys to defendant's vehicle to two older women and Adams

denied receiving any keys, it was for the trial court, as the trier of fact, to resolve conflicts in the testimony and to weigh the evidence presented at trial. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 39 Defendant's arguments on appeal are, essentially, a request to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Collins*, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of the [reviewing] court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."). It was for the trier of fact to weigh the credibility of defendant's testimony and determine which version of events to accept. See *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001) (when presented with conflicting versions of events, the trier of fact is "entitled to choose among those versions"). The trial court was not required to disregard the inferences that flowed from the evidence or search out all possible explanations consistent with defendant's innocence. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. This court reverses a defendant's conviction only when the evidence was so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt (see *Brown*, 2013 IL 114196, ¶ 48); this is not one of those cases. We therefore affirm defendant's conviction.

¶ 40 We also reject defendant's ineffective assistance of counsel claim. Ineffective assistance of counsel claims are governed by the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant raising a *Strickland* claim "must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Id*. at 687. There is a strong presumption that counsel's challenged action or inaction was the product of trial strategy, and "matters of trial strategy are generally immune from claims of ineffective assistance of counsel." *People v. Dupree*, 2018 IL 122307, ¶ 44.

¶ 41 Here, defendant does not argue that counsel failed to raise a necessity defense at trial; rather, he contends that it was "insufficiently presented." In other words, defendant disagrees with the manner in which counsel implemented the defense's trial strategy and concludes that the outcome of trial would have been different had counsel "properly" raised the defense. However, our review of the record reveals that counsel examined defendant and cross-examined the officers as to whether defendant complied with a police order to move the vehicle. Although defendant testified that he was ordered to move the vehicle, the officers denied issuing such an order. The mere fact that the defense's trial strategy did not result in defendant's acquittal does not render counsel's performance deficient, and defendant's claim must fail.

¶ 42 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.

¶ 44 JUSTICE HALL, dissenting:

¶ 45 I respectfully disagree with the majority's holding in this case.

¶ 46 The United States Supreme Court has indicated that a usual traffic stop is analogous to a *Terry* stop (*Berkemer v. McCarty*, 466 U.S. 420, 439 (1984)), and vehicle stops are subject to the fourth amendment's reasonableness requirement (*People v. Hackett*, 2012 IL 111781, ¶ 20). Generally, a stop of a vehicle is considered reasonable if the officer has probable cause to believe that a traffic violation was committed. *Hackett*, 2012 IL 111781, ¶ 20.

¶ 47 In this case, the officers initiated a traffic stop of defendant purportedly because the rear license plate was not illuminated in violation of the City of Chicago's Municipal Code, for which defendant was cited. During the traffic stop, defendant revealed that he did not have a license and gave the officers his state identification card. He was subsequently arrested and ultimately

charged with driving while his license was suspended or revoked after the officers searched his name through the LEADS system. During the course of the trial proceedings on October 2, 2015, defense counsel moved to preserve evidence, namely the vehicle, and a court order was entered that the vehicle should be preserved for the duration of the trial proceedings. At a subsequent hearing in November 2015, defense counsel asked for an order permitting his investigator to photograph the vehicle and to "get inside if she needs to." Such order was entered; however, on December 7, 2015, defense counsel informed the court that the inspector was unable to enter the vehicle because the impound lot did not have the keys, and by the time of the next court date on January 8, 2016, the vehicle had been destroyed.

¶ 48 It is undisputed that defendant filed a timely motion to preserve the evidence. See *People v. Taylor*, 54 Ill. App. 3d 454 (1977); *People v. Dodsworth*, 50 Ill. App. 3d 207 (1978); *People v. Sleboda*, 166 Ill. App. 3d 42 (1988). The majority concludes that a reasonably prudent officer acting in good faith could assume that the vehicle would no longer be needed after it was examined by the defense (*Supra* at ¶ 32) and since defendant has not shown that the evidence was destroyed in bad faith, he cannot support his due process claim. I disagree with that conclusion, because the defense was unable to fully examine the vehicle because they were unable to get inside.

¶ 49 The very basis of defendant's traffic stop centered on a condition of the vehicle, namely whether or not the license plate was illuminated. Thus, the vehicle was significant evidence for the defense. See *People v. Newberry*, 265 Ill. App. 3d 688, 693 (1994). Unfortunately, because the keys were not at the impound lot when the investigator went prior to December 7, 2015, the investigator was unable to enter the vehicle and turn it on to determine whether or not the light

was working. The State indicated at the hearing on December 7, 2015, that it would assist in locating the keys. Nevertheless, the vehicle was destroyed by the time of the next court date on January 8, 2016. Because the evidence was destroyed before the defense was able to enter and test the vehicle, there is no way to know whether the stop was a valid *Terry* stop. Consequently, the defendant is left without a defense to the initial traffic stop.

¶ 50 Additionally, it was unreasonable for the State to destroy the vehicle within a month of knowing that there were no keys to access the vehicle and that the defense did not have an opportunity to enter and test the vehicle. I would follow the reasoning of *Newberry*, which in turn followed the standards articulated in *Taylor* and *Dodsworth*; namely that the State bears the burden of proving, by clear and convincing evidence that the reason for the destruction was justified in cases where the very evidence to support its case is destroyed. *Newberry*, 265 Ill. App. 3d at 694; *Dodsworth*, 60 Ill. App. 3d at 210; *Taylor*, 54 Ill. App. 3d at 457-58. Under such circumstances, the good or bad faith of the State does not come into question. See *Taylor*, 54 Ill. App. 3d at 456 (inherent in the most narrow view of due process [is] the right to know of adverse evidence and the opportunity to rebut it.). In this case, the State's destruction of the car is more egregious where there was a court order to preserve the evidence for the duration of the court proceedings and the State was aware, just a month or less prior to its destruction, that the defense had been unable to enter and test the evidence.

¶ 51 It is fundamentally unfair for the State to be permitted to use evidence of the non-illuminated license plate to support the traffic stop which resulted in defendant's arrest for driving with a suspended or revoked license. See Taylor, 54 Ill. App. 3d at 457-58. Based on the above facts, I would find that defendant's due process rights were violated when the State

destroyed the evidence in violation of the court's order to preserve the evidence for the duration of the trial. I would reverse.