COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP1736-CR **Cir. Ct. No. 2023CF687**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ROGER CHARLES STEARNS,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Rock County: ASHLEY J. MORSE, Judge. *Reversed*.

Before Graham, P.J., Nashold, and Ziegler, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. The State of Wisconsin appeals a judgment dismissing a criminal case on the ground that police destroyed apparently

exculpatory evidence. We conclude that the evidence was not apparently exculpatory, and therefore we reverse.

¶2 Stearns was charged with operating while intoxicated and operating with a prohibited alcohol content, as a fifth or sixth offense. Stearns moved to dismiss on the ground that the police department destroyed a squad car camera video of events related to the traffic stop that led to Stearns's arrest. The circuit court concluded that the video was apparently exculpatory and dismissed the charges.

¶3 When evidence is lost or destroyed before trial, a due process violation occurs if the evidence either: (1) had exculpatory value that was apparent when the evidence was destroyed, or (2) was potentially exculpatory and was destroyed in bad faith. ***State v. Greenwold***, 189 Wis. 2d 59, 67, 525 N.W.2d 294 (Ct. App. 1994). As to apparently exculpatory evidence, the test is whether: (1) "the evidence destroyed possessed an exculpatory value that was apparent to those who had custody of the evidence before the evidence was destroyed," and (2) "the defendant is unable to obtain comparable evidence by other reasonably available means." ***State v. Munford***, 2010 WI App 168, ¶21, 330 Wis. 2d 575, 794 N.W.2d 264 (citation omitted) (citation modified).

¶4 We accept the circuit court's findings of fact unless they are clearly erroneous, but we independently review whether the facts give rise to a due process violation. ***State v. Luedtke***, 2015 WI 42, ¶37, 362 Wis. 2d 1, 863 N.W.2d 592.

¶5 On appeal, the State argues that the video was not apparently exculpatory. It argues that, at most, the video was potentially exculpatory. We agree. Stearns argues three ways in which the squad car video would have been exculpatory at a trial on the charges.

¶6 The first way is that it would have disproved the State's claim that Stearns failed to stop properly at a stop sign. He argues that the video would have been consistent with the officer's testimony about the incident, and therefore would have shown that Stearns stopped before entering the intersection. Stearns argues that this stop would have been in compliance with WIS. STAT. § 346.46(1), which provides in relevant part that "every operator of a vehicle approaching an official stop sign at an intersection shall cause such vehicle to stop before entering the intersection."

¶7 There are multiple reasons why this argument fails. Among other reasons, Stearns does not develop the argument to take into account the remainder of that statute, which contains further details about how a stop must be made with respect to clearly marked stop lines and marked and unmarked crosswalks. WIS. STAT. § 346.46(2). As a result, even if the video were to show that Stearns stopped before entering the intersection, that fact alone would not show that Stearns made a lawful stop. To be exculpatory, the video would also need to show compliance with the requirements of subsec. (2), but Stearns does not make this argument.

¶8 Second, Stearns argues that the video would have undermined the officer's testimony that Stearns's vehicle was weaving and nearly hit a parked car. It would do so, Stearns contends, because it would show that the officer made this observation from at least half a block away, and in the middle of a 180-degree turn while facing in the opposite direction, thus casting doubt on the officer's ability to accurately perceive Stearns's driving at that moment. We do not agree that these circumstances would meaningfully impair the officer's ability to observe.

¶9 Furthermore, Stearns's description of what the video would show appears to be based entirely on the officer's own testimony. This suggests that, even

if the content of the missing video is considered to be apparently exculpatory, Stearns would be unable to satisfy the second part of the test, because he would be able to obtain comparable evidence about the officer's observations and locations by cross-examining the officer at trial.

¶10 Third, Stearns argues that the video would generally undermine the officer's credibility. Stearns argues that the officer testified inconsistently by describing two different locations that the officer turned his vehicle around, and that the video would show that one of these versions was incorrect, thus raising doubt about the officer's memory, perception, and credibility. We do not regard this as establishing any exculpatory quality of the video. The video may have shown that one version of the officer's testimony was incorrect, but then it also would likely have shown that the other version was correct. The impairment to the officer's credibility at trial, if there would be one, would come from the inconsistency of his earlier testimony, not from the video.

¶11 Separately, Stearns argues that the video would have been exculpatory, for the same reasons, for purposes of a suppression motion and for sentencing. We need not decide whether the test for exculpatory evidence extends to these situations, because we have already rejected the underlying bases for Stearns's argument.

¶12 Finally, Stearns argues that, if the video is considered to be only potentially exculpatory, rather than apparently exculpatory, the record shows bad faith by police. This is not consistent with the position taken by Stearns in the circuit court, where his attorney stated: "I don't believe I have the facts to make an argument that this was intentionally or willfully destroyed for purposes of weakening the defense case." As a result of that choice by Stearns, the facts that

potentially underlie a bad faith determination were not litigated, and the circuit court made no findings on that topic. This leaves us without a meaningful record on which to discuss the issue of bad faith, and we decline to do so.

¶13 For these reasons, we conclude that no violation of due process occurred, and therefore the circuit court erred by dismissing the complaint.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.