

"Tennessee Supreme Court Affirms Dismissal of DUI Case when Video Recording Lost"

CASE NAME: Tennessee v Merriman (No. M2011-01682-SC-R11-CD; August 16, 2013)

FACTS:

On November 18, 2010, Officer Robert Hammond observed the vehicle driven by the defendant, Angela Merriman, veer into his lane of traffic from the center turn lane. Officer Hammond then activated the video equipment in his patrol car and stopped Ms. Merriman's vehicle. Subsequently, Officer Hammond conducted a horizontal gaze nystagmus field test, along with two other field sobriety tests which the defendant did not complete due to health issues. Afterwards, Officer Hammond placed the defendant under arrest for driving under the influence (DUI), reckless endangerment with a motor vehicle, reckless driving, driving under suspension and violation of the implied consent law.

PROCEDURAL HISTORY:

On February 18, 2011, the defendant was indicated by a Warren County, Tennessee grand jury on all the charges. A trial was scheduled for July 15, 2011. While preparing the case for trial, the defendant's attorney made two requests for the "field video." The State was unable to locate the video recording. The defense filed a motion to dismiss the indictments, alleging that the State had failed to preserve potentially exculpatory evidence on her behalf.

Two days before the scheduled trial date, the trial court conducted an evidentiary hearing on the motion to dismiss. At the conclusion of the hearing, the trial court ruled that the State's failure to preserve the video recording warranted dismissal of the DUI charge, reckless driving charge and reckless endangerment charge.

The State of Tennessee appealed the trial court's ruling. The Court of Criminal Appeals affirmed the trial court, concluding that the trial court did not abuse its discretion in dismissing those three charges against the defendant for the State's failure to preserve evidence. This appeal followed.

ISSUE:

Did the trial court err in holding that it would be fundamentally unfair to require the defendant to go to trial without the video recording made at the scene?

HOLDING:

No. The trial court did not abuse its discretion in choosing dismissal as an appropriate remedy for the State's loss of the video recording. The Court specifically held, "We hold that the standard of review of a trial court's determination as to whether a defendant was deprived of a fundamentally fair trial is de novo with no presumption of correctness. Deference should be given to the trial court's findings of fact; however, unless the evidence preponderates otherwise. A trial court's determination of the appropriate remedy for the State's failure to preserve the evidence is reviewed under an abuse of discretion standard. Accordingly, we affirm the trial court's dismissal of the charges of driving under the influence (DUI), reckless endangerment and reckless driving.

The seminal opinion issued previously by the Tennessee Supreme Court in the area of evidence destruction is State v Ferguson, S.W. 3d 912, (Tenn. 1999). In Ferguson, an officer administered two field sobriety tests at the scene of a DUI arrest. Additional field sobriety tests were conducted at the police station, and a video recording of those tests was inadvertently erased before the original recording had been reviewed. In Ferguson, the court explained that the loss or destruction of potentially exculpatory

evidence may violate a defendant's right to a fair trial. The Tennessee Supreme Court determined that the due process clause of the Tennessee Constitution was more broad than the due process required under the United States Constitution, and observed that fundamental fairness, as an element of due process, required a review of the entire record to evaluate the effect of the State's failure to preserve evidence. The Ferguson opinion requires a trial court to determine "whether a trial, conducted without the lost or destroyed evidence, would be fundamentally fair?"

If the trial court then finds that the State has failed in its duty to preserve evidence, the trial court then must consider each of the following factors to determine the consequences of that failure.

1. The degree of negligence involved;
2. The significance of the destroyed evidence; and
3. The sufficiency of other evidence used at trial to support the conviction.

Ultimately, the trial court must balance these factors to determine whether a trial conducted without the missing or destroyed evidence would be fundamentally fair. If the trial court concludes that a trial would be fundamentally unfair without the missing evidence, then the trial court may then impose an appropriate remedy including dismissal of the charges.

In applying Ferguson to the case at bar; the court noted as follows: that the State had no duty to create a video recording of the defendant's traffic stop; but when it did, it became a critical part of the State's evidence against the defendant. The video recording possessed potential exculpatory value to the defendant, and no evidence comparable to this video recording could have been obtained through other means. The State had a duty to preserve the video recording and failed in its duty when it lost it.

The evidence presented to the trial court of the defendant's guilt of the DUI charge was not overwhelming. Critically, there were no test results based on breath or blood analysis. The video recording became more significant in light of the relative strength, or lack thereof, of the State's case. Full consideration of the Ferguson factors led the Court to conclude that the loss of the video recording in this case deprived the defendant of her right to a fair trial; and the trial court did not abuse its discretion in ordering dismissal of the DUI and the other two charges.

AFFIRMED.