



I.A.P.E.M. Newsletter

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President's Message:

As Turkey day and the holidays are quickly approaching, I have been reflecting on this past year and the strides we have made.

***We held our first training session in Elgin, Illinois which met with success and has lead us to complete plans for a two-day training seminar now being formalized for February of 2007.

***We now have 125 paying members and three Corporate Sponsors, reaching from Rockford to O'Fallon IL!

***The Association is continuing to grow, and property officers in our neighboring states of Wisconsin and Iowa have expressed interest in joining us!

***We held our General Membership Meeting in Schaumburg on November 8, 2006, and 33 members were in attendance. The members were introduced to the elected Board of Directors, and the Treasurer and Secretary read their reports. We opened the floor to the members for discussion of a proposed change to our current By-Laws. After amending the language a little, the proposed change was approved with 100% in favor. We then discussed the idea of expanding our membership to property officers in neighboring states who have expressed interest.



***Sgt. Jeff Prior of the Elk Grove Village Police Department gave an excellent presentation (with video of the flash flood occurring!) on what can happen when a Natural Disaster strikes *your* property room.

I am also happy to announce to all members that we now have an Editor for our Newsletter! Officer Jan Kopf of the Cary Police Department has agreed to become our Editor and I am sure we can all look forward to improvements in



the Newsletter thanks to her efforts. So now, if you have information for the Newsletter, please e-mail Jan at jkopf@caryillinois.com.

I am truly pleased with the continuous growth of our membership and the excitement we are met with in helping to create a strong voice for our members in the field of property and evidence management.

In the coming year, our members can expect more training, more networking and continued growth throughout the state of Illinois! Thank you to everyone involved who helped make this a reality.

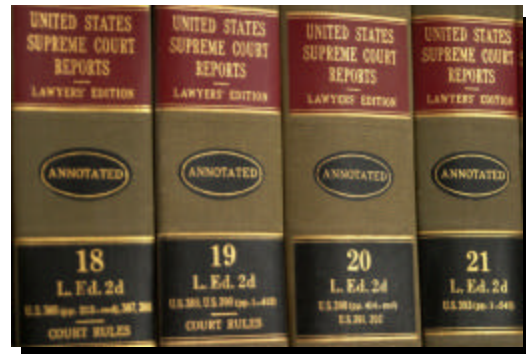
Jim Herman
President I.A.P.E.M.
Mount Prospect Police Department

Legal Update:

The following update summary is provided to our members to keep you abreast of changes that may impact you in the management of property and evidence here in Illinois.

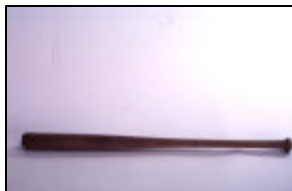
Fifth Division
July 28, 2006
No. 1-03-1147

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,
v.
SAMUEL KARIM,
Defendant-Appellant.



Motion to Dismiss: Failure to Preserve Evidence

Karim argues that the trial court erred in denying his motion to dismiss based on the alleged destruction of and/or failure to preserve evidence. Karim argues that the police found a bloody baseball bat while processing the evidence at the crime scene but failed to preserve it as evidence. Karim made a motion before the trial court to preserve the baseball bat. The State did not object to that motion. Karim filed a motion to dismiss based on the State's failure to preserve the bat, the importance of which should have been obvious to the State. Karim argues that his theory before the trial court was that the bat was used in a threatening manner and caused him to act in self-defense by shooting the gun. Karim argues that the failure to preserve the bat prevented him from proving that the bat was wielded in a threatening manner by Parker, Black or Harris. Karim further argues that the State's failure to preserve the bat should have been treated as a discovery violation.



Karim contends that the State violated its constitutional obligations under Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). Brady and its progeny obligate the State to disclose exculpatory evidence to the defense. Brady, 373 U.S. at 87, 10 L. Ed. 2d at 218, 83 S. Ct. at 1196-97 ("the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution"). "Such evidence is material if there is a reasonable probability that the result of the defendant's trial would have been different had the evidence been disclosed to the defense." People v. Thomas, 364 Ill. App. 3d 91, 101 (2006), citing People v. Harris, 206 Ill. 2d 293, 311 (2002). "A reasonable probability of a differing result is one that is sufficient to undermine confidence in the trial's actual outcome." Thomas, 364 Ill. App. 3d at 101, citing People v. Holey, 182 Ill. 2d 404, 433 (1998); People v. Coleman, 183 Ill. 2d 366, 393 (1998) (appellant must show that the favorable evidence would undermine confidence in the verdict).

In Arizona v. Youngblood, 488 U.S. 51, 102 L. Ed. 2d 281, 109 S. Ct. 333 (1988), the United States Supreme Court addressed the failure to preserve evidence that is only potentially useful. Youngblood holds:

"The Due Process Clause of the Fourteenth Amendment, as interpreted in Brady, makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant. Part of the reason for the difference in treatment is found in the observation made by the Court in [California v. Trombetta, 467 U.S. 479, 486, 81 L. Ed. 2d 413, 421, 104 S. Ct. 2528, 2532 (1984)], that '[w]henver potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.'" Youngblood, 488 U.S. at 57-58, 102 L. Ed. 2d at 289, 109 S. Ct. at 337.

Youngblood holds that "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." Youngblood, 488 U.S. at 58, 102 L. Ed. 2d at 289, 109 S. Ct. at 337. The rationale of the Youngblood court is explained in the opinion, where the court held "[w]e think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." Youngblood, 488 U.S. at 58, 102 L. Ed. 2d at 289, 109 S. Ct. at 337.

Illinois courts have adopted the Youngblood "bad faith" test. See People v. Hoover, 250 Ill. App. 3d 338, 347 (1993), citing People v. Tsombanidis, 235 Ill. App. 3d 823 (1992); People v. Hall, 235 Ill. App. 3d 418 (1992); People v. Young, 220 Ill. App. 3d 488 (1991); People v. Stallings, 211 Ill. App. 3d 1032 (1991); People v. Lampkin, 193 Ill. App. 3d 570 (1990). Despite Karim's suggestion that People v. Danielly, 274 Ill. App. 3d 358, 363 n.1 (1995), heralds a trend toward a more liberal approach than the "bad faith" test, our courts continue to support the Youngblood approach. Also see People v. Toft, 355 Ill. App. 3d 1102, 1106 (2005); People v. Camp, 352 Ill. App. 3d 257, 260-61(2004). Camp differs from Toft in one important respect. Camp holds that, if a defendant puts the State on notice with a discovery request that it wants a particular piece of evidence, the trial court may impose a discovery sanction for a failure to comply with discovery request, even absent a showing of bad faith. Camp, 352 Ill. App. 3d at 261 (the evidence must be essential or outcome determinative).

In order to consider this argument, we must review the chronology of events in this case. The police arrived on the scene shortly after the shooting. The police found Black lying in the street after having been shot 11 times. The police also found two dead men in the car. The police did not find Karim because he was in the process of leaving the jurisdiction. The police examined the car and found the

baseball bat partially tucked under the car seat. The police photographed the inside of the car, including the bat. That photograph was made part of the evidence, thereby establishing that the bat existed. The police, having no further need for the car and its contents, and being unaware of Karim's plans to raise a defense of self-defense, returned the car and its contents to Harris's family. Based upon the testimony of a forensic investigator that the bat had no evidentiary value, and the fact that the bat was returned to its owner before Karim's discovery motion was filed, we find that Karim has failed to establish bad faith. Instead, he is attempting to impute bad faith to the police based upon his theory of what the bat might show. However, according to Toft, Trombetta only requires the preservation of evidence with apparent exculpatory value. Toft, 355 Ill. App. 3d at 1106, citing Trombetta, 467 U.S. 479, 81 L. Ed. 2d 413, 104 S. Ct. 2528.

Additionally, once Karim returned to the jurisdiction and was arrested, both the custodial statement he gave and his testimony at trial contradicted his theory of innocence based upon self-defense. Karim's custodial statement admitted guilt. Additionally, Karim testified that he panicked and began shooting when Harris attempted to start the car. Karim was asked about the bat, which he acknowledged seeing. Karim testified that he called for his friend Scott, who had the gun. Karim testified that he took the gun and began shooting. On cross-examination, Karim was asked about the bat. Karim testified that he saw Parker fumbling for the bat when he was shot. As a result, Karim's own testimony fails to support not only his claim of self-defense but his claim that the bat was an important piece of evidence. We also note that the underlying motion for discovery was filed nine months after the murder and two months after Karim's arrest. The motion to dismiss the case was filed two weeks after the motion for discovery. Here, Karim failed to demonstrate the State's bad faith in failing to preserve the baseball bat; therefore, we find no error in the trial court's refusal to sanction the state by dismissing the case.

Member Voting Results: Change to By-Laws

Current Definition:

Active Membership: An active member shall be employed as a member of an Illinois law enforcement agency or forensic laboratory and whose primary duties involve the handling, storage and disposition of evidence and or in-custody property. An active member must be in good standing in order to have the right to vote on any By-Law change(s) or Board Member election(s).

Definition with Change:

Active Membership: An active member shall be employed as a member of an Illinois law enforcement agency, forensic laboratory *or instructor in the field, as recognized by the I.A.P.E.M. Board*, and whose primary duties involve the handling, storage and disposition of evidence and/or in-custody property *and/or the instruction of others in this area*. An active member must be in good standing in order to have the right to vote on any By-Law change(s) or Board Member election(s).

Votes cast: 32 Yes 0 No

The Association By-Laws will be amended to reflect the above change. Contact the Association Secretary should you need a copy.

Training:

Join your fellow members on Feb. 22 & 23, 2007, for two full days of training on today's issues. On the first day, we will hear from various current and former State's Attorneys on the laws relating to property management in Illinois. There will also be a roundtable question/answer session open to all at the end of Day One.

On the second day, we will hear from the Illinois State Crime Lab, DuPage County Lab and the Northern Illinois Regional Crime Lab.

The location of the seminar is 201 W. Jefferson St., Joliet, IL 60435. We will be sending out additional information, including pricing and hotel rates soon.

Renewal Time:



Illinois Association of Property and Evidence Managers

Yearly Membership/Renewal Form

Accounting: Please note our Tax ID Number 30-0341148

Agencies with more than 4 members should include required information on back of this form.

Agency Name _____

Member Name _____

Title _____

Agency Address _____

City _____

County _____ State _____ Zip _____

Work Phone Number (____) _____ Ext _____

Email Address _____

Check Agency Type: Police Lab Corporate

Please return Completed Form with Payment to:

I.A.P.E.M. Accounting
Attn: Chris Moore
P.O. Box 957257
Hoffman Estates, IL 60195-7257
chris.moore@hoffmanestates.org