

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF WHITESIDE, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS }
vs. } No. 2025 CF 57
KYLE M. COOPER, } Honorable James F. Heuerman,
Defendant. } Judge Presiding.
}

DEFENDANT'S NINTH MOTION IN LIMINE:
DESTRUCTION/SPOLIATION OF EVIDENCE

The Defendant, Kyle M. Cooper, by and through his attorneys, The Mertes Law Firm, P.C., moves that the Court shall find that the Government allowed crucial evidence to be destroyed and shall enter an Order *in Limine* allowing for the issuance of an adverse-inference jury instruction and/or imposing any such sanction that the Court sees fit under the circumstances. In support of this Motion *in Limine*, the Defendant states as follows:

1. On February 18, 2025, the People of the State of Illinois filed an Amended Information charging the Defendant with one count of First Degree Murder and two counts of Aggravated Battery.
2. On February 18, 2025, the Defendant filed his Motion for Disclosure to the Accused, requesting that the Government disclose, *inter alia*, any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged.
3. Through subpoena practice, investigation and discovery, the parties have acquired reports, video surveillance footage, and photographs, *inter alia*, evidencing that the alleged victim, Daniel J. Gordon, and trial witness, [REDACTED], utilized a white late model Chevrolet Blazer (Blazer) for transportation during the late-night hours of February 13, 2025, into the early morning hours of February 14, 2025.
4. Through subpoena practice, investigation and discovery, the defense has ascertained that [REDACTED] owned the Blazer.

5. Through subpoena practice, investigation and discovery, the defense has ascertained that during the late-night hours of February 13, 2025, into the early morning hours of February 14, 2025, [REDACTED] and Gordon traveled in the Blazer to various taverns throughout Sterling and Rock Falls, IL.

6. During the early morning hours of February 14, 2025, [REDACTED] and Gordon traveled in the Blazer to the Defendant's residence, and then to the residence of prosecution witness [REDACTED] at 601 W 20th Street Rock Falls, Illinois.

7. With [REDACTED] driving and Gordon in the passenger seat, [REDACTED] parked the Blazer in the driveway of the [REDACTED] residence.

8. The Government alleges that Gordon and the Defendant were involved in an altercation immediately next to the Blazer.

9. Some of the information received from the Government asserts that part of the alleged altercation between Gordon and the Defendant occurred inside the Blazer.

10. Shortly after the incident, law enforcement personnel from the City of Rock Falls Police Department cordoned off and designated an area commonly known as a "crime scene."

11. The Blazer was squarely located within the crime scene and actually cordoned off with police tape surrounding it. It was therefore under law enforcement custody and control.

12. Law enforcement failed to search the Blazer following the alleged incident. Law enforcement failed to preserve the Blazer following the incident. After securing the Blazer within the crime scene, law enforcement actually released the Blazer from the crime scene without any effort to preserve it. The condition of the Blazer at the time of the incident was therefore destroyed by both act and omission of law enforcement.

13. The Blazer was clearly involved in the incident. The presence or absence of weapons, contraband and the presence or absence of identifying substances such as fingerprints and DNA inside the Blazer were extraordinarily important to the investigation.

14. Despite the evidentiary importance of the Blazer and the fact that it was within the crime scene and directly involved in the alleged incident, law enforcement inexplicably failed to preserve it but instead allowed its evidentiary significance to be destroyed, thereby depriving the Defendant of potentially exculpatory evidence and directly resulting in the spoliation of evidence.

15. Section 116-4 of the Illinois Code of Criminal Procedure of 1963 requires that a law enforcement agency or an agent acting on behalf of the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence in their possession or control that is reasonably likely to contain forensic evidence, including, but not limited to, fingerprints or biological material secured in relation to a trial and with sufficient documentation to locate that evidence. 725 ILCS 5/116-4 (West 2024); see 720 ILCS 5/33-5 (It is unlawful for a law enforcement agency or an agent acting on behalf of the law enforcement agency to intentionally fail to comply with the provisions of subsection (a) of Section 116-4.).

16. Under Illinois law, the destruction of evidence by law enforcement can lead to sanctions even if the destruction was not done in bad faith. See *People v. Newberry*, 166 Ill 2d 310, 317 (1995).

17. The facts of the instant case are akin to those presented in landmark Illinois case *People v. Kladis*, 2011 IL 110920, ¶¶ 1-6, wherein the defendant, who was charged with DUI, requested that the Government produce the video recording of the stop, but the video recording that had once existed was destroyed due to an automatic purge within 30 days of the arrest.

18. The trial court, finding that the video recording was an important piece of evidence, imposed sanctions upon the Government due to this destruction of the evidence by barring the Government from introducing testimony relating to that which was contained on the videotape. *Id.* ¶ 9.

19. The Illinois Supreme Court in *Kladis* ultimately upheld the trial court's sanction, finding that "the authority to impose reasonable sanctions for discovery violations lies within the sound discretion of the trial court." *Id.* ¶ 45.

20. Further, pursuant to Illinois Supreme Court Rules 219(c) and 415(g), the Court may impose certain sanctions for failure to comply with discovery requests and/or rules of pretrial procedure, including,

but not limited to, the dismissal of charges, the exclusion of evidence, or any sanction the court deems appropriate. Ill. S. Ct. R. 219(c) (eff. Jul. 1, 2002); Ill. S. Ct. R. 415(g) (eff. Eff. Oct. 23, 2020).

21. One such appropriate sanction is the issuance of an adverse-inference jury instruction.

22. In *People v. Danielly*, 274 Ill. App. 3d 358 (1995), police officers in a criminal sexual assault case returned the victim's underwear to her, and the underwear was subsequently destroyed, thereby depriving the defendant of access to the evidence.

23. The *Danielly* court found that the following adverse-inference jury instruction discussed by the Supreme Court in *Youngblood* would be appropriate under the facts:

“If you find that the State has allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State’s interest.” *Id.*, at 368; (citing *Arizona v. Youngblood*, 488 U.S. 51, 59-60 (1988), Stevens, J., concurring.).

24. The *Danielly* court went on to opine as follows:

“We believe such an instruction, when combined with the defendant’s opportunity to argue the “missing evidence” issue to the jury in closing, serves as an effective protection to defendants from any uncertainty that might arise from missing evidence. The instruction also serves as an incentive for the police to exercise due care in their handling of evidence. This instruction is particularly important in those cases, as here, where the police have in their possession evidence and subsequently fail to properly preserve the evidence for trial. We therefore hold that the defendant is entitled to receive this instruction on remand, should his counsel tender it.” *Danielly*, 274 Ill. App. 3d 358, 368 (1995).

25. As in *Danielly*, the destruction of the Blazer evidence has deprived the Defendant, Kyle M. Cooper, of potentially exculpatory evidence.

26. For these reasons, curative sanctions are necessary and appropriate.

Wherefore, the Defendant moves that the Court shall find that the Government allowed crucial evidence to be destroyed and shall enter an Order *in Limine* allowing for the issuance of an adverse-inference jury instruction during the trial and at the close of the trial and/or imposing any such other sanction that the Court determines.

KYLE M. COOPER, Defendant

By: /s/ James W. Mertes
The Mertes Law Firm, P.C.
Mr. James W. Mertes, Esq.
Attorneys for Defendant

Certificate of Electronic Service

James W. Mertes, Attorney for the Defendant, certifies that he served the foregoing Defendant's Ninth Motion *in Limine*: Destruction/Spoliation of Evidence, on May 2, 2025, by transmitting through an approved Electronic Service Provider and by e-mail to the following:

Ms. Colleen M. Buckwalter, Esq. (cbuckwalter@whiteside.org)
Mr. Ryan O. Simon, Esq. (rsimon@whiteside.org)
Office of the Whiteside County State's Attorney (statesattorney@whiteside.org)
Whiteside County Courthouse
200 East Knox Street
Morrison, IL 61270

/s/ James W. Mertes
James W. Mertes
Attorney for Defendant

Mr. James W. Mertes, Esq.
ARDC No. 6216546
The Mertes Law Firm, P.C.
Attorneys for Defendant
4015 East Lincolnway, Suite D
Sterling, IL 61081
Telephone: 815.626.1500
Email: jmertes@merteslawfirm.com