

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs) **No. 101547** (Wood County 09-F-234)

**David Lee Caplinger,
Defendant Below, Petitioner**

FILED
June 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner David Lee Caplinger appeals his convictions upon conditional guilty pleas to third offense driving under the influence and battery of a police officer. He reserved the right to appeal the circuit court's order denying his motion to dismiss and/or suppress. The State filed a timely summary response.

This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on March 3, 2011. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

The State alleged that petitioner committed traffic violations and when an officer with the Parkersburg Police Department initiated a traffic stop, petitioner fled in his car and later on foot, before being caught and arrested. The arresting officer told defense counsel that the State would provide a copy of the video recording taken by the officer's patrol car camera, but the officer later learned that the camera had not been operational during these events and no recording was made. Petitioner moved to dismiss the charges arguing that a video recording would have shown that he did not commit traffic violations, thus there was no probable cause to stop him. Petitioner asserts that the Parkersburg Police Department did not have any policies and procedures in place for maintaining patrol car cameras or for training officers on the use of these cameras. Petitioner asserts that the State committed a due process violation under *Brady* and *Youngblood* because the State failed to collect and disclose exculpatory or impeachment evidence. *Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Youngblood*, 221 W.Va. 20, 650 S.E.2d 119 (2007).

“A claim of a violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), presents mixed questions of law and fact. Consequently, the circuit court’s factual findings should be reviewed under a clearly erroneous standard, and questions of law are subject to a *de novo* review.” Syl. Pt. 7, *State v. Black*, ___ W.Va. ___, 708 S.E.2d 491 (2010). ““There are three components of a constitutional due process violation under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and *State v. Hatfield*, 169 W.Va. 191, 286 S.E.2d 402 (1982): (1) the evidence at issue must be favorable to the defendant as exculpatory or impeachment evidence; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must have been material, i.e., it must have prejudiced the defense at trial.’ Syllabus point 2, *State v. Youngblood*, 221 W.Va. 20, 650 S.E.2d 119 (2007).” Syl. Pt. 8, *Black*.

Upon a review of this matter, we conclude that the circuit court did not err in denying the petitioner’s motion. The State did not suppress a video recording because no video recording ever existed. Moreover, there is no indication or allegation that the police officer intentionally failed to record the stop. Rather, the evidence is that the camera was supposed to automatically record, but it did not work. Further, petitioner does not cite any law requiring that police cars be equipped with operational video cameras.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 15, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh