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RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I strongly dissent. This dissent first outlines with bullet points all of the reasons for the dissent, and then focuses in more detail on a few specific areas of importance.

- The note is not exculpatory.
- The ruling of the majority stands in stark contrast to *Brady v. Maryland*, 373 U.S. 83 (1963).
- We have no idea who wrote the note, when it was written, where it was written, or even why it was written.
- The note, even if authentic, is hearsay—if not double hearsay—and clearly would not be admissible during a re-trial.
- There is no credible evidence that State Police Trooper Peer saw, read, touched, or even heard of this alleged exculpatory note until the evidentiary hearing three years after the note was allegedly written and found by the co-defendant's aunt.
- There is simply no credible evidence that Trooper Peer *ordered* the destruction of any note.
- I am very troubled by the fact that the majority of this Court has allowed the word of a co-defendant's aunt, more than three years after the alleged discovery of the note, to tarnish the credibility of a well-qualified State Police officer.
- This Court is setting a very dangerous precedent by attributing knowledge to a State Trooper three years after the fact based *solely* upon the testimony of a co-defendant's relative, and then attributing that alleged knowledge to the prosecution.

This case required the Court to determine whether

Mr. Youngblood's conviction should be reversed due to a potential violation of *Brady v. Maryland*, 373 U.S. 83 (1963). In considering the majority's decision in this case, as indicated earlier, it is disturbing that this Court has allowed the word of a co-defendant's relative, more than three years after the alleged discovery of the note occurred, to tarnish the credibility of a hardworking and well-qualified State Police officer.

The majority opinion states: "The testimony of Ms. Miles and her daughter inform this Court that the State was in possession of the note and *ordered* that it be destroyed. We are deeply troubled by the State's conduct in this matter." The majority opinion goes on to specifically conclude that the "State suppressed the note by failing to keep it and ordering its destruction." These strongly and unfairly worded conclusions in the majority opinion are wholly unsupported by the record before this Court. After considering all of the testimony below, it is inconceivable to me how the majority could conclude that Trooper Peer "ordered" Ms. Miles to destroy the note.

In order to fully explain the problems with the majority opinion, we must explore some of the underlying facts either glossed over or ignored completely by the majority. First, let us be clear about why the officer was at Ms. Miles' home that day. He showed up at Ms. Miles' home following a call from her stating that Katara, Kimberly, and

Wendy had vandalized many of her household items including milk, ice cream, medicines, and her family's tooth brushes. According to Ms. Miles, that was when she showed the officer the note and that he supposedly told her to throw it away with the damaged items of food. Her testimony in that regard was as follows:

- Q. Could you explain to the jury what happened?
- A. Two days after [the police collected other evidence from my home,] I found shampoo in my milk and all kinds of things happened to my food. I keep a phone book by my phone and in that phone book when I was going through it to get my bills out, I seen a note. I called Officer Peer back two days later and he came up and he looked at it. I told him about the shampoo in my milk and all he told to me was to throw everything away, throw everything out.
- Q. Now, apparently your house had been, I guess, trashed?
- A. Vandalized my food and stuff, yes.

During cross examination by the prosecution, the following exchange occurred with Ms. Miles.

- Q. Do you know who wrote that note?
- A. No, ma'am, I sure don't.
- Q. When Trooper Peer told you to throw the stuff out he was talking about your milk and shampoo?
- A. Well, I assumed that.
- Q. You were complaining about that to him?
- A. Right.
- Q. You were complaining to him about vandalism that had occurred in your home?
- A. That is correct.
- Q. Is that a fair assessment of why you had called him out there?
- A. That is why I called him out there to smell my milk, you could smell shampoo in it and all kinds of stuff. I called

him out there, I wanted him to see [for] himself and smell [for himself], that is when I found the note.

Trooper Peer, on the other hand, explained and testified under oath that he had not seen the note and did not instruct Ms. Miles to throw it away. He did, however, recall the conversation with Ms. Miles wherein she told him that some of her household items had been tampered with, upon which he instructed her to simply throw those items in the trash.

Questioning of Trooper Peer by the prosecution was as follows:

Q. Do you recall the events concerning Ms. Miles' complaint about her milk or items in her house?

A. Yes.

Q. Okay. Tell us what you recall about that?

A. I can't. I don't recall going out there. I thought she had made a phone call to the office and told me that there had been something placed in her milk or shampoo or something. I don't remember the exact conversation but I probably did tell her to just dispose of it.

Q. Okay. And why would you have told her to dispose of it?

A. If there was something in her milk, I mean, I wouldn't have wanted to drink it neither.

Q. You didn't deem it to be any criminal violation that point in time based on what was going on?

A. No, I mean, I was working a sexual assault and I didn't see where something being placed in milk had anything to do with that.

Q. Do you have any recollection of seeing a note?

A. No, I don't.

Q. I prior to this showed you a copy of Defendant's Exhibit 1 [The note], correct?

A. Yes.

Q. That was provided to me from defense counsel, do you have any recollection of having seen that?

A. No, I don't. I looked at your copy that you had prior to

this, I don't recall seeing this.

Q. And your understanding of Ms. Miles' complaint had to do with vandalism?

A. Correct.

Q. Complaint had nothing to do with sexual assault?

A. Correct.

During cross examination of Trooper Peer by Mr. Youngblood's counsel, the following exchange occurred.

Q. And you indicate that you do acknowledge or you do recall a discussion with Ms. Miles about her house being vandalized?

A. About shampoo or milk or something, yes.

Q. And you recall or do you recall her making any reference to any note or any document that explained what had occurred that her findings were consistent with the note?

A. No, I don't.

During further questioning, Trooper Peer explained that he did not specifically recollect actually going to Ms. Miles' home that day. However, he did recall discussing the alleged vandalism on the telephone with Ms. Miles. With that in mind, the following questioning of Trooper Peer by the prosecutor occurred.

Q. Even if you did go out there to the house is it your testimony today that you have no recollection of ever having seen that note?

A. Correct.

Q. Again, it was just a vandalism complaint about some milk and shampoo?

A. Yes.

During subsequent recross-examination by Mr. Youngblood's counsel, Trooper Peer remained steadfast in the fact that he did not see the note.

- Q. So within a few days after the incident, since I presume you were doing other things other than just this case, I mean, is that correct?
- A. Yes.
- Q. It is possible that you may not have realized if you had been shown the note or the note had been described to you or presented to you, you may not have realized the significance of the note or what was in the note at least at that point in time since it was the commencement of the investigation?
- A. I don't remember seeing the note.
- Q. But we know at least you recall having the conversation with Ms. Miles although you don't recall the note?
- A. Yes.
- Q. And you agree that the general gist of the conversation was consistent with her testimony?
- A. Yes.

Trooper Peer's testimony clearly shows that he did not take the note into his possession and that he was never shown the note. His testimony is unequivocal and unwavering on that fact. Nevertheless, the majority accepts Ms. Miles' story that more than three years after Trooper Peer came to her home, and after Mr. Youngblood's conviction, Ms. Miles suddenly re-discovered the note in a trash can during a discussion with an investigator for Mr. Youngblood. The majority appears to believe that Trooper Peer is a rogue cop who ordered Ms. Miles to throw away evidence that was potentially beneficial to her nephew who was in jail. The majority also appears to believe Ms. Miles over Trooper Peer despite the fact that Ms. Miles had a motive to lie, and the fact that had Trooper Peer had none, and ignores the fact that if he wanted to ensure the note's destruction, he simply could have taken the note with him and destroyed it himself rather than order Ms. Miles to

do it. The majority's convoluted analysis just does not make any sense.

I readily recognize that in *Brady v. Maryland, supra*, there was a clear case of a state violating a citizen's right to *due process*. The prosecution in *Brady* withheld a written confession that was clearly material to the defense of that defendant. *Brady*, however, is monumentally distinguishable from the instant case. With regard to Mr. Youngblood, there is insufficient credible evidence both to support the existence of alleged exculpatory evidence or that the State had any knowledge of it. If Trooper Peer did not see the note, and he said under oath that he did not, then knowledge of the note cannot be imputed to the prosecutor. Also, if Trooper Peer did not see the note, he obviously could not have withheld it, ordered it destroyed, or suppressed it in any way.

There are obvious discrepancies in Ms. Miles' evaluation of the note between the time she discussed her tainted milk and ice cream with Trooper Peer and the time she met with Mr. Youngblood's investigator three years later. Perhaps equally troubling, as discussed earlier, is the fact that this Court is siding with a co-defendant's relative with much to gain, over the testimony of an experienced public servant who had nothing to gain by lying about the note. The true fact is that we do not even know the origin of the note as far as who specifically wrote it or even when it was written. Moreover, to believe that the State withheld evidence in this case you have to believe everything that Ms. Miles has stated and nothing that Trooper Peer says. It is that simple. I believe this Court is setting a very

dangerous precedent by attributing knowledge to a State Trooper three years after the fact based *solely* upon the testimony of a co-defendant's relative, and then attributing that alleged knowledge to the prosecutor.

Therefore, for the reasons set forth above, I respectfully dissent.