

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: January 21, 2025)

STATE OF RHODE ISLAND,
Plaintiff,

v.

VICTOR COLEBUT,
Defendant.

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C.A. No. P1-2020-1991ADV

DECISION

MONTALBANO, J. Before the Court is Victor Colebut’s (Mr. Colebut) second Motion to Dismiss (12/10/24 Mot. to Dismiss) filed with the Court on December 10, 2024 alleging that his arrest violated federal and state law, as well as arguing that the State failed to preserve evidence which justifies dismissal. *See generally* 12/10/24 Mot. to Dismiss. In contrast, the State argues that it fulfilled its duties to preserve evidence, and Mr. Colebut’s arrest did not violate federal or state law. (Second Mem. in Opp’n at 2-4, 5.) Thus, the State asserts that dismissal is not warranted. *Id.* at 9.

I

Facts and Travel

Mr. Colebut is charged with: Count 1: Domestic First-Degree Murder of Kristine Ohler; Count 2: Domestic Simple Assault and/or Battery, third or more offense; and Count 3: Criminal Violation of a No-Contact Order, third or more offense. (Grand Jury Indictment at 1-2.) Kristine Ohler was allegedly murdered sometime “between the evening of February 16, 2020 and the early morning of February 17, 2020.” *Id.* at 1. Mr. Colebut called emergency services on February 17, 2020. (Mem. in Opp’n at 3.) When police officers arrived on scene, they discovered Ms. Ohler

with “bruises/trauma to her body” and Mr. Colebut “in [Ms. Ohler’s] presence.” *Id.* There was allegedly an active no-contact order prohibiting Mr. Colebut from being in Ms. Ohler’s presence. *Id.* Ms. Ohler was transported by first responders to The Miriam Hospital where she was later pronounced dead. Mr. Colebut was charged with Domestic First-Degree Murder (Count 1) for allegedly causing Ms. Ohler’s death; Domestic Simple Assault and Battery (Count 2) for allegedly causing the “bruises/trauma” to Ms. Ohler, and Criminal Violation of the No-Contact Order (Count 3) for being in Ms. Ohler’s presence allegedly in violation of an active no contact order. *Id.*

On August 14, 2024, Mr. Colebut filed his first Motion to Dismiss *pro se*. *See* Mot. to Dismiss. The State objected to Mr. Colebut’s Motion to Dismiss and filed a memorandum in support of their objection on August 23, 2024. *See* Mem. in Opp’n. This Court denied Mr. Colebut’s first Motion to Dismiss on October 29, 2024 after a hearing. On December 10, 2024, Mr. Colebut filed a second Motion to Dismiss. *See* 12/10/24 Mot. to Dismiss. On January 2, 2025, the State filed its Objection and Memorandum in Opposition to Mr. Colebut’s second Motion to Dismiss. *See* Second Mem. in Opp’n.

II

Arguments

A. Defendant’s Motion to Dismiss

Mr. Colebut argues that the criminal indictment against him should be dismissed because it is in violation of federal and state law. (12/10/24 Mot. to Dismiss at 18-48.) Specifically, Mr. Colebut argues that the indictment violates 18 U.S.C. §§ 241 and 242, two federal criminal statutes prohibiting conspiracy and deprivation of rights under color of law. *Id.* at 18-19. Further, he alleges that the indictment should be dismissed because it violates the following state laws: G.L. 1956 § 39-21.1-8(e) (requiring all 911 dispatchers to be certified to provide CPR instructions over the phone), G.L. 1956 § 11-32-2 (making the false reporting of a crime a misdemeanor), G.L. 1956

§ 11-1-3 (creating liability for aiding, abetting, counseling, hiring, or commanding offenses), § 11-1-6 (criminalizing conspiracy), and § 11-32-1 (criminalizing the obstruction of a police officer in the execution of their duties). *Id.* at 19, 26, 29, 30. Finally, Mr. Colebut also argued on January 3, 2025 during oral arguments that his due process rights were violated when the State relied on perjured testimony to obtain the criminal indictment and when the State failed to preserve evidence.

B. State's Memorandum in Opposition

In its response, the State asserts that the second Motion to Dismiss reiterates arguments made in the first Motion to Dismiss. (Second Mem. in Opp'n at 5.) As such, the State incorporates its previous arguments from its objections to the first Motion to Dismiss and the Motion to Suppress. *Id.* The State's objection to Mr. Colebut's first Motion to Dismiss only addresses the issue of whether Count Two and Count Three are void for vagueness. *See* Mem. in Opp'n. In its objection to Mr. Colebut's Motion to Suppress, the State asserts that Pawtucket Police had probable cause to arrest him and that Mr. Colebut provided consent to search his apartment. *See* Mem. in Opp'n of Mot. to Suppress.

Further, in the State's Memorandum in Opposition of Mr. Colebut's second Motion to Dismiss, the State also argues that it properly preserved evidence. (Second Mem. in Opp'n at 2-4.) Specifically, the forensic pathologist assigned to this case, Dr. Patricia Ogera (Dr. Ogera), performed an autopsy on Ms. Ohler which included taking blood and tissue samples and photographs of the autopsy. *Id.* at 3. The State asserts that documentation of the autopsy was provided to Mr. Colebut and blood and tissue samples are available for further testing by Mr. Colebut, if needed. *Id.* After the autopsy was complete, the State released Ms. Ohler's body to her family who chose to cremate her remains. *Id.*

The State also argues that medical equipment used on Ms. Ohler by paramedics and hospital staff were disposed of by medical personnel. *Id.* The State argues that this evidence was not exculpatory and was not destroyed by the State. *Id.* Further, the State asserts that when Ms. Ohler's body was transferred to the custody of the Medical Examiner's Office, she was wearing a hospital gown and underwear. *Id.* The State asserts that the other clothing Ms. Ohler was wearing when discovered at Mr. Colebut's apartment was removed by the paramedics and/or hospital staff. *Id.* However, Ms. Ohler's underwear has been preserved by the Pawtucket Police Department. *Id.* Further, the State asserts that Ms. Ohler's remaining clothing did not contain exculpatory evidence and was not destroyed in bad faith by the State. *Id.* Thus, the State asserts that the absence of Ms. Ohler's clothing, the medical equipment used by paramedics and hospital staff, and the fact that Ms. Ohler's body was cremated after the autopsy was completed does not warrant suppression of evidence or dismissal of the case against Mr. Colebut. *Id.*

III

Standard of Review

Rule 12(b)(2) of the Superior Court Rules of Criminal Procedure reads, in pertinent part:

“The defense of double jeopardy and all other defenses and objections based on defects in the institution of the prosecution or in the indictment, information, or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof[.]” Super. R. Crim. P. 12(b)(2).

Our Supreme Court has emphasized the importance of filing pretrial motions to dismiss in order to preserve issues for appeal. *See State v. Garcia*, 316 A.3d 1223, 1251 (R.I. 2024) (refusing to “assess the merits of defendant’s belated double jeopardy contention” because he did not file a pretrial motion to dismiss on the basis of double jeopardy); *see State v. Tavares*, 312 A.3d 449,

464-65 (R.I. 2024) (holding that defendant waived the issue of laches because he failed to file a pretrial motion as required by Rule 12(b)(2)).

IV

Analysis

Mr. Colebut argues that the indictment should be dismissed because it violates federal law and state law, and because the State destroyed potentially exculpatory evidence in bad faith warranting either dismissal or suppression of evidence. In contrast, the State argues that Mr. Colebut's arrest did not violate federal or state law, and the State did not destroy exculpatory evidence, and therefore, dismissal of the charged conduct is not warranted. Each alleged violation will be discussed in full.

A. Alleged Violations of Federal Law

Mr. Colebut argues that the indictment against him should be dismissed for violation of 18 U.S.C. §§ 241 and 242. (12/10/24 Mot. to Dismiss at 18-19.) Specifically, Mr. Colebut argues that the Pawtucket Police Department, the Pawtucket Fire Department, and the Office of the Attorney General conspired to falsely arrest him for the murder of Ms. Ohler in order to conceal medical malpractice. *Id.* at 47. The State argues that Mr. Colebut's arrest did not violate federal law because it was supported by probable cause.

Federal criminal statute 18 U.S.C. § 241 makes it illegal, in relevant part, for two or more people to conspire to injure, threaten, oppress, or intimidate someone in the exercise of his or her rights. 18 U.S.C. § 241. The punishment for violating this statute includes a fine and/or up to ten years imprisonment. *Id.* This statute does not serve as a basis for dismissing an ongoing criminal case in state court. Without discussing the validity of Mr. Colebut's arrest, which will be addressed

in this Court’s decision on Mr. Colebut’s Motion to Suppress, 18 U.S.C. § 241 is not a valid basis for dismissing the criminal case against Mr. Colebut.

Federal statute 18 U.S.C. § 242 makes it a federal crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. 18 U.S.C. § 242. The punishment for violating this crime includes a fine and/or imprisonment. *Id.* This statute does not serve as a basis for dismissing an ongoing criminal case in state court.

B. Alleged Violations of State Law

1. Section 39-21.1-8(e) – Requiring 911 Dispatchers be certified in providing CPR instruction over the phone

Mr. Colebut argues that the indictment should be dismissed for violating § 39-21.1-8(e), specifically, that the 911 dispatcher he spoke with on February 16, 2020 was not trained in providing CPR instructions over the phone. (12/10/24 Mot. to Dismiss at 19.) Further, Mr. Colebut alleges that the 911 dispatcher delayed emergency services by telling paramedics to wait for police. *Id.* Mr. Colebut appears to allege that this potentially exculpatory evidence warrants dismissal of the criminal indictment against him. *Id.* The State does not address this particular argument in its memoranda objecting to Mr. Colebut’s two Motions to Dismiss or Motion to Suppress.

“[T]he United States Supreme Court decided, as a matter of federal law, that a court may not dismiss an otherwise valid indictment because the government failed to disclose substantially exculpatory evidence to the grand jury.” *State v. Russell*, 950 A.2d 418, 425 (R.I. 2008) (citing *United States v. Williams*, 504 U.S. 36, 45-47 (1992)). Our Supreme Court has adopted this sentiment emphasizing that an indictment will not be dismissed if “evidence that may later be

determined by counsel for the defense to be exculpatory” is not presented to the grand jury. *Id.* (quoting *State v. Ellis*, 619 A.2d 418, 427 (R.I. 1993)).

Whether the 911 dispatcher was properly trained in providing CPR instructions over the phone has no bearing on whether the charges against Mr. Colebut should be dismissed. Further, to the extent that Mr. Colebut argues that the 911 dispatcher’s alleged delay impacted Ms. Ohler’s death, this evidence is not exculpatory. Further, even if the evidence were exculpatory, the State’s alleged failure to provide this evidence to the grand jury would not result in a dismissal of the indictment.

2. Section 11-32-2 – Making the false reporting of a crime a misdemeanor; § 11-1-3 – Creating liability for aiding, abetting, counseling, hiring, or commanding offenses; § 11-1-6 – Criminalizing conspiracy

Mr. Colebut alleges that he was falsely accused of murdering Ms. Ohler in violation of § 11-32-2, criminalizing the false reporting of a crime. (12/10/24 Mot. to Dismiss at 26.) Mr. Colebut argues that because he was falsely accused of Ms. Ohler’s murder in violation of state law, the criminal indictment against him should be dismissed. *Id.* Further, he also argues that his allegedly false arrest was conducted by multiple police officers, allegedly making them guilty of aiding and abetting and conspiracy in his supposedly false arrest, in violation of §§ 11-1-13 and 11-1-6. *Id.* at 26-27. The State argues that probable cause supports Mr. Colebut’s arrest, and thus, Mr. Colebut’s arrest was not a false arrest.

“The essential element [of a false arrest claim] is the restraint of another person without legal justification or without any color of legal authority.” *Henshaw v. Doherty*, 881 A.2d 909, 919 (R.I. 2005) (quoting *Mailey v. Estate of DePasquale*, 94 R.I. 31, 34, 177 A.2d 376, 379 (1962)). If an arrest is supported by probable cause it is legally justified and, as a result, a claim

of false arrest must fail. *Id.* “Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which he has reasonably trustworthy information are sufficient to warrant a reasonable person’s belief that a crime has been committed and that the person to be arrested has committed the crime.” *State v. Girard*, 799 A.2d 238, 249 (R.I. 2002) (quoting *State v. Kryla*, 742 A.2d 1178, 1182 (R.I. 1999)).

Mr. Colebut was arrested at the Pawtucket Police Department after it was discovered that there was an alleged active no-contact order between Mr. Colebut and Ms. Ohler for Ms. Ohler’s protection. (Hr’g Tr. 16:10-17, Oct. 28-29, 2024.) Violation of a no-contact order is a criminal offense. Police officers found Mr. Colebut in Ms. Ohler’s presence at Mr. Colebut’s apartment, which would constitute a violation of the no-contact order. Once the alleged active no-contact order was discovered, there was probable cause to arrest Mr. Colebut for its violation. Thus, Mr. Colebut’s arrest was supported by probable cause, which prevents a claim of false arrest. Accordingly, the claim of false arrest does not provide an adequate basis for dismissal of the indictment.

3. Section 11-32-1 – Criminalizing the obstruction of a police officer in the execution of their duties

Mr. Colebut also argues that the criminal indictment against him should be dismissed for violating § 11-32-1 which makes it a crime to obstruct police officers in the execution of their duties. (12/10/24 Mot. to Dismiss at 26.) Beyond citing to the state statute and stating that his arrest violated this law, Mr. Colebut does not explain why he believes that his arrest constituted obstruction. *See id.* The State does not address this argument in its Objection to Mr. Colebut’s second Motion to Dismiss.

“It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel’s work . . . Judges are not expected to be mind[]readers. Consequently, a litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its peace.” *State v. Florez*, 138 A.3d 789, 798 n.10 (R.I. 2016) (quoting *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)).

Mr. Colebut’s assertion that the criminal indictment against him should be dismissed because it violates a state statute criminalizing obstruction is insufficient. Without more, this Court cannot discern what Mr. Colebut’s argument is and it is beyond the Court’s role to guess.

C. Due Process Violations

1. Indictment based upon perjured testimony

During oral arguments, Mr. Colebut argued that since Officer Sisto and Detective Silva had inconsistencies between their police reports, grand jury testimony, and testimony during the hearing on his Motion to Suppress, the criminal indictment against him should be dismissed because the indictment is based on perjured testimony. Mr. Colebut alleges a discrepancy between how Officer Sisto testified before the grand jury about entering Mr. Colebut’s apartment building and how another witness testified before the grand jury about how Officer Sisto was let into the building. Mr. Colebut also alleges that Detective Silva testified before the grand jury that he did not tell Mr. Colebut how Ms. Ohler died, but the transcript of the interrogation shows that this statement was incorrect.

“[T]he mere presence of inconsistencies in the testimony of witnesses does not constitute the presentation of false testimony.” *Bustamante v. Wall*, 866 A.2d 516, 525 (R.I. 2005) (quoting *Dowell v. Moran*, 702 A.2d 1173, 1174 (R.I. 1997)). Further, “the dismissal of an indictment on the grounds of prosecutorial misconduct is an extraordinary sanction reserved for very limited and

extreme circumstances.” *Id.* (quoting *State v. Franco*, 750 A.2d 415, 419 (R.I. 2000)). “Such a dismissal should be limited ‘to situations in which there has been flagrant prosecutorial misconduct accompanied by severe and incurable prejudice.’” *Id.* (quoting *Franco*, 750 A.2d at 419).

The inconsistencies that Mr. Colebut identified do not rise to the level of perjured testimony. Further, there is no evidence that the State acted improperly in obtaining the indictment against Mr. Colebut and dismissal is not warranted.

2. *Youngblood/Trombetta* motion to dismiss or suppress evidence

Mr. Colebut also filed a *Trombetta-Youngblood* motion requesting this Court to dismiss the case against him because evidence was destroyed or mishandled. Specifically, Mr. Colebut argues that the State violated his due process rights by failing to preserve evidence, including Ms. Ohler’s body, the clothing Ms. Ohler wore at the time of her death, the crime scene, and equipment used by paramedics when providing medical care to Ms. Ohler. The State argues that none of the items Mr. Colebut identifies contained exculpatory evidence and that any failure to preserve evidence was not made in bad faith.

“[*California v.*] *Trombetta* and [*Arizona v.*] *Youngblood* provide the analytical framework for uncovering constitutional infirmities when the government is *no longer* in possession of the evidence.” *State v. Garcia*, 643 A.2d 180, 185 (R.I. 1994). “Together *Trombetta* and *Youngblood* established a tripartite test to determine whether a defendant’s due-process rights have been infringed by the failure of law enforcement personnel to preserve evidence.” *Id.* First, the defendant must establish that the evidence “possesses . . . ‘an exculpatory value that was apparent before the evidence was destroyed[.]’” *Id.* (quoting *California v. Trombetta*, 467 U.S. 479, 489 (1984)). Second, the defendant must establish that the evidence is “‘of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.’”

Id. (quoting *Trombetta*, 467 U.S. at 489). “Third, a defendant also must demonstrate that the failure to preserve the exculpatory evidence amounted to bad faith on the part of the state.” *Id.* (citing *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)). “Exculpatory evidence includes evidence that is favorable to an accused and is material to guilt or punishment.” *State v. Roberts*, 841 A.2d 175, 178 (R.I. 2003).

i. Preservation of Ms. Ohler’s Body

First, Mr. Colebut alleges that the State failed to preserve Ms. Ohler’s body because after the autopsy was completed, her body was released to her family who chose to cremate her remains. The State notes that Dr. Ogera performed an autopsy which included taking blood and tissue samples, taking photographs during the autopsy for documentation, and generating a toxicology and autopsy report. The blood and tissue samples are maintained by the Department of Health in case further testing is needed.

Mr. Colebut has failed to establish that Ms. Ohler’s body contained exculpatory evidence that was apparent before her remains were cremated. Further, he has not established that he cannot obtain comparable evidence because Mr. Colebut has copies of the full autopsy report, toxicology report, and photographs of the autopsy. Further, the State has maintained blood and tissue samples so that Mr. Colebut could have them tested by an independent expert. Finally, the State did not cremate Ms. Ohler’s remains, and Mr. Colebut has not established that the State acted in bad faith by releasing her remains to her next of kin.

ii. Preservation of Ms. Ohler’s Clothing

Mr. Colebut also alleges that the State failed to preserve the clothing that Ms. Ohler was wearing at Mr. Colebut’s apartment. The State argues that her clothing was removed by paramedics and/or medical personnel at the hospital while treating Ms. Ohler. When Ms. Ohler’s

body was transferred to the custody of the Medical Examiner's Office, she was wearing a hospital gown and underwear. The State asserts that the Pawtucket Police Department has preserved the underwear.

Here, Mr. Colebut has not stated any reason why he believes that the missing clothing would be exculpatory. Further, in *State v. Roberts*, our Supreme Court held that the defendant failed to show that the State acted in bad faith when the evidence was destroyed while under the care of a private entity. *Roberts*, 841 A.2d at 179. Similarly, Ms. Ohler's clothing was lost while she was receiving medical care at The Miriam Hospital, a private entity. Thus, Mr. Colebut has not shown that the State acted in bad faith.

iii. Preservation of the Crime Scene

Mr. Colebut argues that the State failed to preserve the crime scene. Mr. Colebut makes an unsubstantiated allegation that the crime scene was staged. A defendant bears the burden of establishing that exculpatory evidence was lost or destroyed. Mr. Colebut's bare assertion that the crime scene was not preserved is insufficient. Mr. Colebut does not provide any information that could corroborate this assertion.

iv. Preservation of Medical Equipment

Mr. Colebut also alleges that the State failed to preserve medical equipment, including intubation tools, used on Ms. Ohler. In response, the State asserts that there was no exculpatory value to this evidence, and it was disposed of by the hospital, which is a private entity. Mr. Colebut argued he wanted to test the equipment to see if gastric contents were present and to see whether Ms. Ohler was allergic to the intubation equipment and whether that contributed to her death. Since the medical equipment was disposed of by The Miriam Hospital, a private entity, Mr. Colebut has not sufficiently alleged bad faith on the part of the State.

V

Conclusion

Because Mr. Colebut's arrest did not violate federal or state law and because his due process rights were not violated, Defendant's motion to dismiss the indictment is **DENIED**.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Victor Colebut

CASE NO: P1-2020-1991ADV

COURT: Providence County Superior Court

DATE DECISION FILED: January 21, 2025

JUSTICE/MAGISTRATE: Montalbano, J.

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