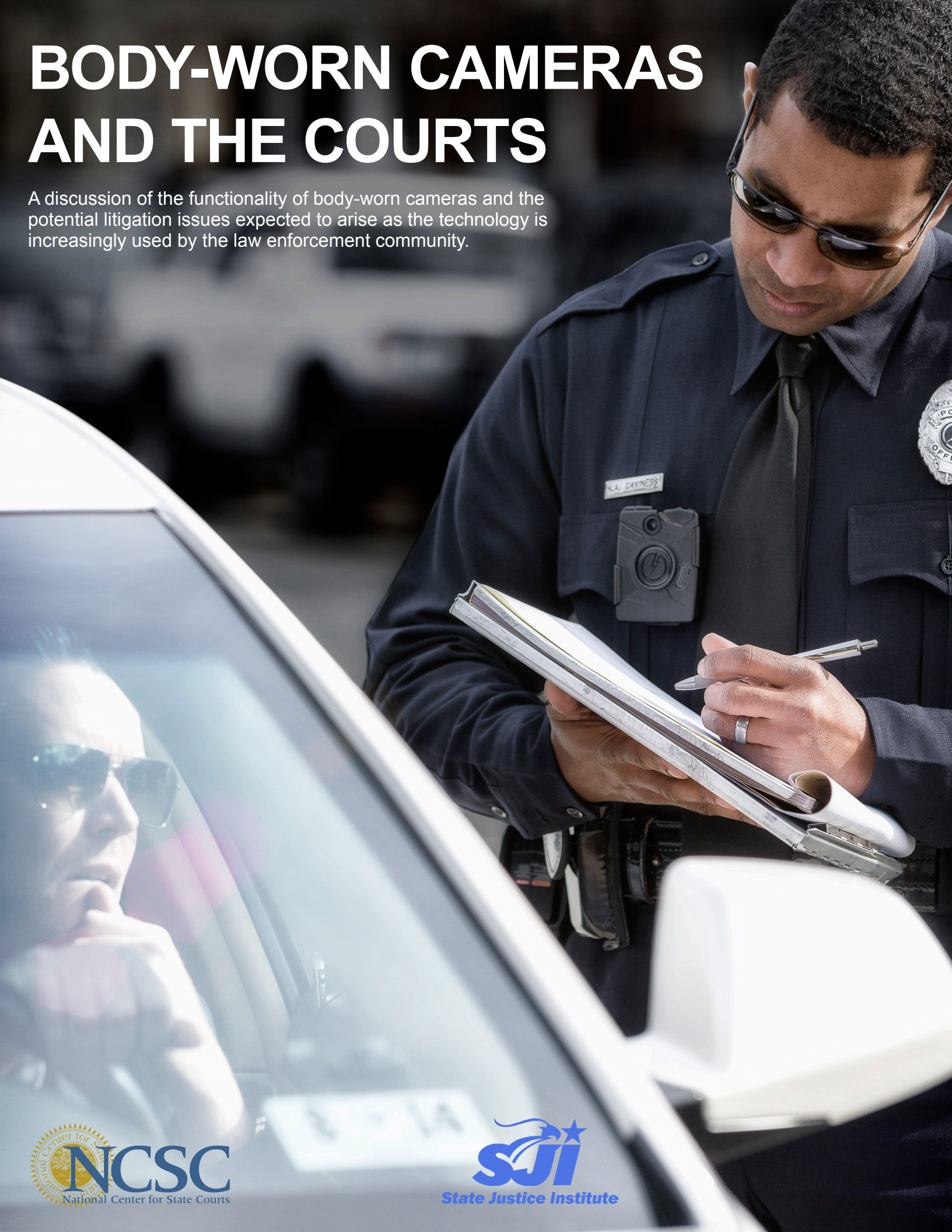


BODY-WORN CAMERAS AND THE COURTS

A discussion of the functionality of body-worn cameras and the potential litigation issues expected to arise as the technology is increasingly used by the law enforcement community.



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Body-Worn Cameras and the Courts

A discussion of the functionality of body-worn cameras and the potential litigation issues expected to arise as the technology is increasingly used by the law enforcement community.

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Introduction

In response to the August 9, 2014 shooting death of Michael Brown by Officer Darren Wilson in Ferguson, Missouri, a citizen petition was posted on the White House website, petitions.whitehouse.gov. It asked people to sign if they supported a law requiring all state, county, and local police to wear body-worn cameras, or “BWCs.” Within a few weeks, the petition collected 150,000 signatures. The response to this petition received national mainstream media attention. Roy L. Austin, Jr., deputy assistant to the president for the Office of Urban Affairs, Justice and Opportunity in the Domestic Policy Council, responded to the petition on behalf of the administration. He noted that research suggested that BWCs can have significant benefits to the community, which can include:

- evidence that both officers and civilians acted in a more positive manner when they were aware that a camera was present;
- new opportunities for effective training of law enforcement officers presented by the use of cameras; and
- useful evidence of interactions was often captured on video.

However, he also stated that the cost of this technology cannot be ignored, and there are some significant unanswered questions that need to be addressed, such as:

- What is the most effective type of camera (vehicle, body, weapon)—and if body, where is it best placed (lapel, ear, belt)?
- What are the privacy implications of having officers record interactions with the public?
- When should cameras be turned on?
- Does every officer on a force need a camera?
- How long should video data be maintained and who should have access to it?
- What is the impact on community relationships?

On December 2, 2014, Shaun Donovan, the director of the White House’s Office of Management and Budget, announced that a proposed, three-year

\$263 million Community Policing Initiative would include an investment package that would increase the use of BWCs. This was a significant statement from the Obama Administration and demonstrated the administration’s view that BWCs could be a useful tool in providing greater officer accountability and promoting more trust in law enforcement by the general public.

On September 21, 2015, the Department of Justice announced over \$23 million in federal funding to support a BWC pilot program, which will support 73 local and tribal law enforcement agencies in 32 states. In their press release, they noted that this was done as a “part of President Obama’s commitment to building trust and transparency between law enforcement and the communities they serve.” This development is not surprising as the Obama Administration had previously indicated a willingness to deploy BWC technology.

It is reasonable to assume that the cumulative effect of public support for officers using BWCs, and the federal government’s willingness to provide funding for a significant pilot program, suggests that BWCs will become an increasingly common piece of law enforcement equipment. In fact, the author is of the opinion that within the next five to ten years, the vast majority of law enforcement officers nationally will be equipped with and required to wear and use BWCs.

BWC Systems and Functionality

HOW BODY-WORN CAMERAS WORK

Currently, a number of companies offer BWC products to law enforcement. In April of 2015, the U.S. Department of Homeland Security released the *Body-Worn Cameras for Law Enforcement Assessment Report*. The report looked at the primary model offered by seven different companies and assessed the operational characteristics of each. However, it should be noted that other, smaller companies offer these products as well.

BWCs can be attached to a variety of locations on the officer's body, depending on the model being used. This may be on the head area, attaching to the officer's hat, glasses, or ear, or on the officer's body, attaching to the shirt, lapel, or badge. The placement of the camera is important for three reasons. First, it impacts the areas that will be recorded on the video. A head-mounted unit will capture the areas where the officer is looking, while a body-mounted unit will only capture video in front of the officer's body. People tend to move their heads more frequently than their bodies, which can affect the quality and evidentiary value of the video. Second, the placement can impact sound quality for the same reasons. And third, the general assumption with body-worn cameras is that law enforcement wants the public to know and be aware that they are being recorded. There is some limited but solid information that suggests that the public tends to be better behaved when they are aware they are being videoed. In fact, many of the models sold either have a steady red light or a flashing light to signify that the model is on for this reason. So, the BWC should be conspicuously placed and large enough to be noticeable.

BWCs are designed to be turned on and off by the officer with each interaction with the public. There are several practical reasons for this. First, most models do not have the battery or video capacity to run for eight hours. Additionally, from a data-retrieval point of view, it is better to have a number of smaller clips of video than one 8-to-12-hour shift. The officer also needs to be able to turn the camera off when handling personal business, or perhaps based on the request of a member of the public.

CATEGORIZATION OF THE VIDEO

The officer wearing the body camera is responsible for classifying each video clip, which will be done pursuant to departmental policy. This is a critical function and a point in the process where error or malfeasance may later get litigated. Policies vary, but generally the officer is classifying each interaction as routine public interaction (no arrest), misdemeanor arrest, or felony arrest. An actual policy will likely have many more categories. However, the categorization is important because it will be directly linked to the department's retention policy. So, the retention policy may only require video from routine interactions to be maintained for 10 days, while felony arrests may have a 5-to-10-year retention policy. An officer that either inadvertently or intentionally misclassifies a citizen encounter may cause that video to be "lost or destroyed." (This report will discuss the legal issues surrounding "lost or destroyed" evidence at length.) It is also possible that the video is appropriately classified but the case identifier that the officer attaches to the video is either completely wrong or has a sufficient error in it that makes future retrieval of the video impossible. Depending on the BWC being used and the available technology, the officer may be able to enter the classification information using an in-car computer or smart phone immediately after stopping the camera from recording. Alternatively, and most commonly, the officer may have to wait until the completion of a shift to input this information. This adds to the risk that error could creep into the process, causing videos to be unavailable in court when needed.

HOW BWCS ARE SOLD

Most BWCs come as a system. Law enforcement departments buy a number of units, which includes their docking stations and a cloud-storage package. Departments may also buy a maintenance package, an automatic-update package, and technical support. It is important to note that cloud storage is expensive. To keep the costs affordable, departments have officers classify citizen encounters as noted above and will delete that video pursuant to departmental policy. The authority to delete will be or should be limited to a few officers or civilian personnel.

When an officer completes a shift and returns to the department, with most models of BWCs the officer puts the camera unit into a docking station. The docking station both charges the battery for the next shift and uploads the video clips to cloud storage. If the clips have not been previously categorized, the officer can do it at this point in the process. It is important to note that a field officer has no ability to delete the video. If an officer had engaged in improper conduct and wanted to destroy the video, the only options are to destroy or discard the camera itself.

PROPRIETARY SOFTWARE

Most BWCs come with some form of proprietary software. Although the operational characteristics may vary slightly by company, these products generally allow for cloud storage of all video collected by a department. The original video can be retrieved by authorized personnel via streaming video. (It is a controversial topic in the law enforcement community whether or not the officer wearing the BWC should be given access to the video before giving a statement in a police-involved shooting or a case with other serious public injury.) Authorized personnel may also edit the video, but they are actually editing a copy, and they never have the ability to change or alter the original. Authorized personnel may include prosecutors and the defense bar.

Imagine that an officer talks to a drunk-and-disorderly person on a street corner for 20 minutes, and then the individual punches the officer. In a prosecution for “battery on an officer,” the prosecutor may want to just show the jury the 15 seconds before the punch and the punch itself. That prosecutor could create a video clip depicting that. The counsel for the defendant may agree that the entire video does not need to be shown to the jury but may want to show two minutes of video leading up to the punch. This might be to develop a self-defense claim. The defense attorney could create an edited version showing what the defense thinks is relevant. Those clips could both be shown to a judge or jury while the original is still available if needed.

One issue that comes up with propriety software is the necessary format the video should be in when it

is moved into evidence. That issue will be addressed further into this report.

LAW ENFORCEMENT BWC POLICIES

Law enforcement BWC policies play an important role from a legal perspective in the videos they collect, or the lack thereof. The International Association of Chiefs of Police’s (IACP) National Law Enforcement Policy Center, in an April 2014 policy paper titled “Body-Worn Cameras,” states:

The usefulness of BWCs has been clearly demonstrated; however, their utility is realized only when they are recording. Agency policy should require that officers activate their BWC whenever they make contact with a citizen in the course of conducting official police business.

The Bureau of Justice Assistance’s *Body-Worn Camera Toolkit* has a number of BWC policies from police departments around the country. All of the policies reviewed require officers outfitted with BWCs to activate them in all citizen encounters, but most of the policies have exceptions to this requirement. However, the policies also have another important function. They establish both the categories that officers need to use in cataloging video clips and the retention times based on each category, for example, routine, 10 days, misdemeanor arrest 1 year, felony arrest 5 years, etc. These retention policies can be a very important consideration for courts when determining if there was police malfeasance if video evidence is lost. The policies suggest that from a law enforcement perspective, BWCs’ value in protecting individual officers from citizen complaints, lawsuits, or both is at least as important as their value to collect videos for use as evidence. For some departments, the protection from liability is the paramount reason that they purchase BWC technology. This is an important point because it can explain the thinking behind aspects of departmental BWC policies.

LIMITATIONS TO BWC TECHNOLOGY

There are some significant limitations to BWC technology. First, by design it shows events from the officer’s perspective. Under the best of circumstances, the video will not be Hollywood quality and

may contain shaky images, muffled sound, and unrecognizable images in some lighting situations. The cumulative effect may be that value of a given piece of evidence may be minimal in some circumstances. Second, police departments have exposure to state-level FOIA requests, subject to a number of exceptions. Complying with an FOIA request can be a significant burden even under the best of circumstances. In some situations, police must edit the video before it can be released. For example, a video may contain images of a person protected by a rape-shield statute or a person that is functioning as a confidential informant. In the past, a technician needed to manually blur a face in each frame before a video could be released. As video is commonly shot at 30 frames per second, a two-minute video becomes a monumental task to redact. The BWC industry is aware of this of this issue. At least one company now has “object recognition” technology. Under optimal circumstances, the object, a person, license plate, etc., can be blurred once, and the software will blur it in the rest of the frames. However, the technology may only be marginally effective when the video was shot in low-light conditions or other objects pass in front of the object being blurred.

AUTHENTICATION AND PUBLICATION OF VIDEO EVIDENCE

Photographs have been admitted into evidence for more than a 100 years. Video recordings have been admitted into evidence since long before the existence of BWCs. The law requires that before a photograph or a video is admitted into evidence and published to the jury, the party offering the evidence must prove that the evidence in question is what they claim. This is a process that judges and lawyers refer to as “authentication.” Authentication can only be done in one of two ways: “specific identification” or “chain of custody.”

Specific identification can be used when a witness is present and saw whatever is depicted in the photograph or video. For example, a coroner might testify that he or she saw John Doe when he was brought to the morgue with a gunshot to the head. A prosecutor may hand the coroner a photo and ask if the picture accurately depicts the condition of John Doe’s head

when he arrived. Assuming the coroner answers affirmatively, the picture has been authenticated, will be admitted into evidence, and shown to a jury. The exact same process is routinely used in courtrooms across the nation for video evidence. With specific identification, it is not important to present or even know who took the photograph or video or where it was physically located from the time it was taken until the trial.

Chain of custody, by contrast, requires the party offering evidence to provide testimony of each person that handled the evidence before trial to try to show an unbroken chain. The purpose of developing a chain of custody is to demonstrate by the testimony of each individual that the item was unaltered while it was in their care and control. Although it might be possible to demonstrate a chain of custody for a piece of physical evidence such as a bag of cocaine, it is nearly impossible when cloud storage is involved. Therefore, to authenticate a BWC video, a witness to the events will testify that they saw what transpired at the scene of the alleged crime and the BWC video accurately depicts what they saw happen.

Additionally, the practice in the vast majority of jurisdictions across the country makes the party offering the video evidence responsible for appearing at the hearing or trial with it and arranging for it to be played. In some modern courtrooms, the court may have the proper equipment available. In other courts, the parties may carry the required equipment into the courtroom to show the video. Regardless, it is the party’s responsibility to ensure that the appropriate technology is available to display their evidence. Video evidence may be brought to court on a thumb drive, DVD, CD, VCR tape, etc. It might even get preloaded into the court’s system to display to the judge or jury. However, a physical item that contains the video will be moved into evidence and accepted in evidence. This is a very important point as it relates to videos from BWCs that have been stored in a cloud environment. Although it might be possible to live stream a BWC video directly from its cloud-based environment to show to the judge or jury, the current rules of admission of evidence do not allow parties to move a data stream into evidence.

There may be a time in the not so distant future when parties can upload their BWC videos (or other videos) into the court's case management system. They could then ask a court employee to play the video at the appropriate time, and once the video was admitted, it would be included in the electronic case file just like an electronic document. However, this would be a significant paradigm shift in responsibility, and it is technologically out of reach for most jurisdictions.

FORMAT AND CONVERSION

As the parties are required to download BWC videos out of proprietary software and put those videos on a physical storage device, formatting and data conversions become important issues. Most BWC software will allow authorized users to download videos into popular video formats, such as .avi or .mov. Alternatively, it can be downloaded in its native format on to a storage device, and a free player can be downloaded and saved to the storage device as well. Some states mandate the formats that videos must be in to be admissible. This standardization makes sense so others may readily access the video. However, there is a risk that the required conversion will alter the images or the speed. Arguably, a video that is slightly altered may still accurately depict the events in question. However, the court system does not want to encourage evidence to be altered, even if that alteration was very slight. The alternative is to use the player provided by the BWC company. These players come as executable files and present a myriad of compatibility and security issues.

Legal Impacts on the Courts

LOST AND DESTROYED EVIDENCE

Although BWCs may provide a partial solution to regaining the public's trust in law enforcement, the technology will have impacts on the state court system. Due to number of videos that will be collected by law enforcement departments, the labeling or classifying of each video encounter, and the need to delete video due to storage limitations, there will inevitably be cases in which video that was taken and classified by an officer will be lost or destroyed before being examined by the defendant or presented in the case. Lost-and-destroyed-evidence cases are not new or novel as they relate to all kinds of evidence. In fact, there is a substantial body of caselaw on the topic. However, the critical issue being addressed in all these case is what benefit or presumption is attributable to the defendant when evidence is lost or destroyed. States have taken varying approaches when answering this question.

ARIZONA V. YOUNGBLOOD

The U.S. Supreme Court issued an opinion that addresses lost or destroyed evidence in *Arizona v. Youngblood*, 488 U.S. 51 (1988). Although the case is more than a quarter-century old, it is a seminal case that is still followed in a number of states. Factually, a young boy was sexually assaulted. Law enforcement collected the boy's clothing for future analysis; however, the clothing was neither refrigerated nor frozen to preserve any biological samples that may have been present. After Mr. Youngblood was arrested, a state criminologist made an unsuccessful attempt to determine the blood type of samples on the clothing in an effort to develop a better case against the defendant. Expert testimony given at trial demonstrated that timely performance of tests with properly preserved semen samples could have produced results that might have completely exonerated the defendant, who claimed that the boy had mistakenly identified him. Although the state trial court instructed the jury that if they found that the state had destroyed or lost evidence, they might "infer that the true fact is against the State's interest," the jury found the defendant guilty as charged. Although finding no implication of bad faith on the part of the state, the Arizona Court of

Appeals reversed, reasoning that when identity is an issue at trial and the police permit the destruction of evidence that could eliminate the defendant as the perpetrator, such loss is material to the defense and is a denial of due process.

The United States Supreme Court reversed the Arizona Court of Appeals. They held that unless a criminal defendant can show bad faith on the part of the police, the state's failure to preserve potentially useful evidence does not constitute a violation of the due-process clause of the United States Constitution's Fourteenth Amendment. They also indicated that the failure of the law enforcement to refrigerate the boy's clothing and to perform tests on the semen samples could, at worst, be described as negligent; that none of this information was concealed from the defendant at trial; and that the evidence was made available to the defendant's expert, who declined to perform any tests on the samples.

The *Youngblood* case sets an almost impossible bar for criminal defendants seeking to establish a benefit from the loss of evidence that was in the state's custody. They either need to prove that the state acted in bad faith in losing or destroying evidence, or they would need to show that missing evidence contained something that would have been exculpatory. At a practical level, proving the latter would be almost impossible. In an ironic twist to this seminal case, which makes it very difficult for criminal defendants to get any benefit from evidence that is lost or destroyed, in 2000 the boy's clothing was retested for DNA using more modern techniques. Mr. Youngblood was exonerated when his attorneys were able to demonstrate that the bodily fluids on the boy's clothing belonged to a third party. This DNA was compared with a DNA database, which led to the arrest of Walter Cruise. Mr. Cruise was serving a sentence in Texas at the time, but he was tried and convicted of the sexual assault. He was sentenced to 24 years. In 2007, Youngblood died.

Many states follow the reasoning developed in *Youngblood* and interpret their state constitutions in ways that are consistent with the case. However, there are a number that do not follow *Youngblood* (see Appendix A, which depicts each state's lead

cases on lost and destroyed evidence and whether the state follows *Youngblood*).

OTHER TESTS FOR LOST OR DESTROYED EVIDENCE

CONNECTICUT: FOUR-PART BALANCING TEST BASED ON STATE CONSTITUTION

The Supreme Court of Connecticut addressed a missing-evidence case in *State v. Asherman*, 478 A.2d 227 (1994). Mr. Asherman was tried on the charge of murder but convicted of manslaughter. Factually, the state alleged that the defendant murdered a friend by repeatedly stabbing him. At the time of the defendant's arrest, a bloody key chain was removed from the pocket of his blue jeans and seized by the police. It would become a critical piece of evidence at the defendant's trial. The state tested the blood on the key chain and was able to determine it was human. However, all of the blood evidence was consumed in this process, and the defendant was unable to conduct any independent blood testing. The defendant's principal argument was that he should have been able to test the blood to see if the blood type was consistent with the victim's, and he averred that as a medical student, he was exposed to human blood routinely.

The Supreme Court of Connecticut announced a four-part test to determine whether the defendant's trial was fair based on due process in light of blood evidence being destroyed during the state's testing. The test involved:

- the materiality of the missing evidence;
- the likelihood of mistaken interpretation of it by witnesses or the jury;
- the reason for its nonavailability to the defense; and
- the prejudice to the defendant caused by the unavailability of the evidence.

However, the defendant offered no evidence, nor made any offer of proof, that the amounts of blood on the key ring were sufficient, if properly tested,

to establish blood type. In the absence of such evidence or offer, the defendant's claim was speculative. Furthermore, the defendant does not challenge the state's assertion that the testing of the samples necessarily consumed each sample. Based on those facts, the appeals court concluded that the destruction of evidence in this situation did not impact the defendant's right to a fair trial.

This outcome of this case does not diminish the importance of the test created by the court. The Supreme Court of Connecticut made it clear that the Asherman balancing test is based on the Connecticut Constitution in *State v. Morales*, 657 A.2d 585 (1994). Additionally, the test has been recently cited to favorably by the Appellate Court of Connecticut in *State v. Walker*, 82 A.3d 630 (2013).

TENNESSEE: BALANCING TEST BASED ON STATE CONSTITUTION'S DUE-PROCESS CLAUSE

The Supreme Court of Tennessee considered a lost-or-destroyed-evidence case in *State v. Merriman*, 410 S.W. 3d 779 (2013). Ms. Merriman was charged with driving under the influence, and an array of related charges, following a pursuit. The arresting officer's car was equipped with an in-car video-recording system. Following the arrest and while the car was back at the station, the arresting officer reviewed the video recording. However, for an unknown reason the hard drive was not removed, logged into evidence, and securely stored as per the departmental policy. Two days before the trial, the defense moved to dismiss the indictment based on the missing video. The motion was granted, and the state appealed.

The Tennessee Supreme Court based its decision on the due-process clause in the Tennessee Constitution. They found that the state's duty to preserve evidence is limited to "constitutionally material" evidence, which they described as "evidence that might be expected to play a significant role" in the suspect's defense. If a trial court finds that the state failed in its duty to preserve constitutionally material evidence, the trial court must consider the following factors to determine the consequences of that failure:

- the degree of negligence involved;
- the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and
- the sufficiency of the other evidence used at trial to support the conviction.

Based on applying the above test to the facts of Ms. Merriman's case, the Supreme Court of Tennessee determined that the trial court did not abuse its discretion by dismissing the case based on the missing video recording.

OHIO: BAD-FAITH DETERMINATION BASED ON CARELESS LAW ENFORCEMENT BEHAVIOR

The Court of Appeals of Ohio, Sixth Appellate District, rendered an opinion in a lost-or-destroyed-evidence case in *State v. Durnwald*, 837 N.E 2d 1234 (2005). Mr. Durnwald was arrested for impaired driving by a state trooper. There was a video recording of the defendant's field sobriety testing, and the trooper making the arrest had previously reviewed it. However, before the tape was placed in the evidence locker and while it was still in the car, police cadets were left unattended in the cruiser. In some unexplained way, the tape was recorded over, destroying the pertinent parts of the video.

The Court of Appeals of Ohio stated, "this court finds it incredible that such 'accidental' erasures continue to occur." They additionally stated, "the erasure occurred due to the trooper's complete and utter failure to safeguard evidence relevant to a crime and arrest." They reviewed this case based on the logic in *Arizona v. Youngblood*. They noted that pursuant to *Youngblood*, as it was unknown whether the evidence contained on the video was materially exculpatory, the defendant would have to demonstrate that the officer acted in "bad faith." They determined that the circumstances of this case, which allowed for the tape to be destroyed, amounted to bad faith. This case was reversed. However, it was a cumulative-error case, which included several other significant errors during the trial court proceeding.

Therefore, it is unclear what the outcome might have been had this been the sole issue on appeal.

LESSONS LEARNED FROM ASHERMAN, MERRIMAN, AND DURNWALD

As law enforcement agencies continue to equip more and more officers with BWCs, trial and appellate court judges should expect to hear more motions to strike evidence and motions to dismiss based on the assertion that evidence was lost or destroyed. The first step in the analysis of these cases is to determine factually whether the evidence actually existed at some point. This first step was not an issue in *Asherman*, *Merriman*, or *Durnwald*. The next step would be to know the existing law in one's own state regarding lost or destroyed evidence; the Appendix to this report should provide a starting point for that determination. Judges in states that generally follow the logic and reasoning in *Arizona v. Youngblood* should expect two kinds of arguments. First, defendants will want to persuade the court to interpret the due-process clause in their state's constitution in a way that provides broader protections. Second, judges should expect arguments addressing the "bad-faith" test as it is defined in *Youngblood*.

Trial judges should anticipate that that they will likely have to hear testimony in these cases. The key issues to determine will be:

- whether the video ever existed;
- whether it was material to the case;
- the factual circumstances leading up to the evidence being lost or destroyed; and
- whether the state acted in "bad faith" for its part in the evidence being unavailable.

Trial judges should be careful to build the appropriate record. As this issue is likely to be litigated more frequently in trial courts, it will also appear more frequently in appeals. Although every state has precedent on lost or destroyed evidence and this is not a new issue, appellate courts may nevertheless be more inclined to readdress it.

STATUTORY ISSUES

There are states that have statutory language requiring certain law enforcement activities to be video recorded. These statutes are not directed at BWCs, but the use of this technology would clearly fulfill the requirements of these statutes. It is very likely that as state legislators and the public become more familiar with and accustomed to BWCs, there will be more legislation of this nature nationwide. The states of South Carolina and Illinois have similar statutory language, which requires aspects of impaired-driving arrests to be video recorded. However, the way those statutes have been interpreted differs significantly.

South Carolina has a statute that requires that significant events associated with an impaired-driving arrest be video recorded (S.C. Code Ann. § 56-5-2953). The statute requires the video to begin no “later than the activation of the officer’s blue lights,” and there must be video of any field sobriety testing and any secondary chemical testing. The South Carolina Supreme Court has considered several cases in which the arresting officer failed to comply with the statutory requirements, such as *Town of Mount Pleasant v. Roberts*, 713 S.E. 2d 278 (2013). In *Roberts*, the arresting officer failed to video record an impaired-driving arrest because his vehicle was not equipped with the appropriate technology to do so. The state maintained that an exception in the statute permitted the introduction of the evidence without video if recording equipment was not available. However, the South Carolina Supreme Court stated, “we find the Town’s prolonged failure to equip its patrol vehicles with video cameras defeats the intent of the Legislature; therefore, the Town should not be able to avoid its statutorily-created obligation to produce a videotape by repeatedly relying on” an exception to the statute; see also, *State v. Sawyer*, 763 S.E.2d 183 (2014).

The Appellate Court of Illinois heard a case that was similar factually to *Roberts*. In *People v. Borys*, 995 N.E.2d 499 (2013), a state trooper failed to record an impaired-driving arrest because the officer’s car was not equipped with video-recording technology. Illinois has § 20 ILCS 2610/30, which states, “By June 1, 2009, the Department shall install in-car

video camera recording equipment in all patrol vehicles.” It also contains statutory language similar to the language used in South Carolina. However, the Appellate Court of Illinois concluded that the officer’s testimony was admissible. In the court’s view, the statute was a legislative directive to the Department of State Police to install recording equipment in squad cars and to preserve the recordings for a minimum time period. It did not address admissibility of evidence when video was not recorded.

To some extent, the differences in how the South Carolina Supreme Court and Appellate Court of Illinois decided cases that were factually similar may be based on differences in the way the statutes at issue were drafted. It is also possible that philosophical differences in the courts played a role. However, as the cost of video-recording equipment goes down and more officers are equipped with the technology, statutes that address video recording of specific aspects of law enforcement activities will become more common. These statutes may involve impaired-driving cases, felony confessions, etc. Appellate courts around the country will be faced with making determinations regarding the interpretation of these statutes and the appropriate remedy if they are violated.

NEGATIVE-INFERENCE INSTRUCTIONS

In some states, a defendant may request and the court may grant a negative-inference jury instruction. These instructions provide another mechanism to ensure that a defendant is afforded a fair trial when evidence has been lost or destroyed. The following language is from the Revised Arizona Jury Instructions, Criminal, 2013 Revision, which is available on the Arizona Bar’s website.

If you find that the State has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate, then you may draw an inference unfavorable to the State, which in itself may create a reasonable doubt as to the defendant’s guilt.

Trial courts should expect negative-inference-instruction requests when BWC video of an event is

lost or destroyed. Defendants may also try to extend this argument to cases wherein a department had a policy of recording all citizen interactions with police, but the arresting officer failed to turn on the BWC or it failed to work properly.

FREEDOM-OF-INFORMATION/ OPEN-RECORDS STATUTES

Every state has a freedom-of-information or open-records statute, although the scope of those statutes varies significantly. States vary as to whether their statutes are applicable to the judiciary. However, once video is admitted into evidence, it becomes part of the public record of the trial. In some circumstances, it may be appropriate for the prosecution to request that sensitive videos get sealed by the court. This might be video that shows a confidential informant, provides the identity of a victim protected by a rape-shield statute, etc. However, state courts may also see an increase in cases in which the media or the public are attempting to gain access to video in the possession of law enforcement. For example, if an officer is involved in a fatal shooting, the media may request video from every encounter that officer had with a citizen for the past month, six months, or year. Law enforcement may be unwilling or unable to comply with many requests due to the limitations on their resources. As BWCs become increasingly used by law enforcement, both trial and appellate judges will likely see an increase in actions seeking greater access to video.

Conclusion

BWCs will be increasingly deployed as a tool by law enforcement departments. Both the federal government and the public have suggested that BWCs may at least be part of the solution to the public's lack of trust in law enforcement in some geographical locations. This increased deployment will have an impact on state courts. This will likely be primarily seen in the pretrial practice in criminal cases in which the defense is seeking a remedy for missing video evidence. In preparation for this, judicial education organizations should begin to plan and schedule sessions that address the current status of the law in their states on this issue, as well as the kinds of arguments judges are likely to hear concerning good-faith modifications to existing law.

Appendix

States that follow or mostly follow the *Youngblood* standard

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Alabama	<i>Snyder v. State</i> , 893 So. 2d 488 (Ala. Crim. App. 2003)	Published	The defendant was convicted of capital murder. A police officer wrote down the defendant's statements, which were also recorded, as well as took notes before the recording started. Those notes were not found. The court emphasized that it had previously adopted the U.S Supreme Court's holding in <i>Arizona v. Youngblood</i> that a defendant's due process rights have been violated only when the state acted in bad faith or the evidence was so critical to the defense that its destruction made the trial unfair. The court held that the defendant in this case failed to establish that evidence was lost in bad faith or that it was critical to the defense.
		<i>McMillan v. State</i> , 139 So. 3d 184 (Ala. Crim. App. 2010)	Published	A surveillance video showed defendant shooting the victim in a parking lot. A search of the defendant's truck revealed a camera containing pictures of the defendant and pictures of a pistol resembling the murder weapon. The truck was later disposed of. The court stated that the Alabama Supreme Court adopted the U.S Supreme Court's position in <i>Arizona v. Youngblood</i> , and that the Alabama courts therefore evaluate a claim of lost or destroyed evidence based on whether the State acted in bad faith or whether the evidence was so critical to the defense that it denied the defendant a fair trial. The court held that the evidence was not destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Arizona	<i>State v. Youngblood</i> , 844 P.2d 1152 (Ariz. 1993)	Published	The defendant was convicted of child molestation, sexual assault and kidnapping. A defendant is not deprived of due process by the loss or destruction of evidence unless the state acted in bad faith, or the defendant is prejudiced by the loss or destruction of the evidence. The failure to preserve evidentiary material does not constitute a denial of due process under the Arizona Constitution without bad faith on the part of the state. The court held that there wasn't any evidence of bad faith.
		<i>State v. Berge</i> , No. 1 CA-CR 10-0553, 2011 Ariz. App. Unpub. LEXIS 1064, at *1 (Ariz. Ct. App. Aug. 4, 2011)	Unpublished	The police failed to make a copy of a video that captured an incident outside of a bar. The court held that when making a determination as to whether the state's failure to preserve evidence violates the defendant's constitutional rights, the key distinction is between materially exculpatory evidence and potentially useful evidence. The state denies a defendant his due process rights when it destroys exculpatory evidence and the defendant is unable to obtain comparable evidence. The failure of an officer or the state to preserve potentially useful evidence is not a denial of due process of law absent a showing of bad faith. The court held that the defendant's due process rights were not violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Arkansas	<i>Mayweather v. State</i> , No. 1 CA-CR 10-0553, 2006 Ark. App. LEXIS 409 at *1 (Ark. Ct. App. Mar. 8, 2006)	Unpublished	The defendant was pulled over, and a police officer searched his car. The officer's patrol car was equipped with a videotape recorder, as was the patrol car of another officer who arrived on the scene. The recordings were destroyed after thirty days. The court stated that "Arkansas case law has relied on the <i>Youngblood</i> holding . . .," and went on to hold that the defendant had failed to prove that the state acted in bad faith in destroying the videotape and that it was doubtful that the videotape would have been potentially exculpatory.
		<i>Lewis v. State</i> , 396 S.W.3d 775 (Ark. Ct. App. 2012)	Published	The defendant was convicted of aggravated assault and theft. The surveillance system automatically recorded over itself every 30 days and the police did not make a copy of the tape. As the defendant did not request a copy of the video within 30 days, the video was automatically erased. The state is only required to preserve evidence that plays a significant role in the defense if it presents an exculpatory value that the defendant would be unable to prove through other evidence. In order to prove a due process violation, the defendant must show bad faith on the part of the state. Here, the court was not persuaded by the defendant's argument.
Follows/mostly follows <i>Youngblood</i> standard	California	<i>City of Los Angeles v. Superior Court</i> , 124 Cal. Rptr. 2d 202 (Cal. 2002)	Published	The defendant was charged with sexual molestation. He sought discovery of the officers' personnel records, but those records had been destroyed. The prosecution has a duty to retain evidence, however, when the prosecution fails to retain evidence, there is a due process violation only if the evidence might be expected to play a significant role in the suspect's defense and has exculpatory value that is apparent before it is destroyed. If the prosecution fails to retain evidence that is potentially useful to the defense, there is a due process violation if the accused can prove bad faith. The court held that the routine destruction of the records did not violate the defendant's due process rights.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	California	<i>People v. Alvarez</i> , 176 Cal. Rptr. 3d 890 (Cal. App. 4th Dist. 2014)	Published	Three defendants were charged with robbery. Police officers failed to obtain a copy of surveillance videos before they were deleted, even though one of the defendant's had requested that the officers review the videos and defense counsel had requested the preservation of any videos in this case. The court held that two different tests were applicable. The first test was the <i>California v. Trombetta</i> test which looked to see if the evidence had an "exculpatory value" that was apparent. The second test was the <i>Arizona v. Youngblood</i> test which looked to see if the evidence was "potentially useful." The court noted that the <i>Trombetta</i> test was a higher standard to meet than the <i>Youngblood</i> test. The court further noted that failure to retain evidence violates due process when the evidence has exculpatory value that is apparent before it is destroyed. The court dismissed the charges for two of the defendants, finding that the officers failed to preserve the video which was potentially useful for the defendants and that they did so in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Colorado	<i>People v. Braunthal</i> , 31 P.3d 167 (Colo. 2001)	Published	The VCR at the police station destroyed a video tape which showed the defendant stealing. The court stated that the defendant had to meet each of the following three elements: (1) the defendant had to prove that the evidence was destroyed by state action and that the evidence which was destroyed was material evidence; (2) the evidence possessed an exculpatory value that was apparent before the evidence was destroyed; (3) and the evidence had to be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. The court held that the video was not exculpatory evidence.
		<i>People v. Abdu</i> , 215 P.3d 1265 (Colo. App. 2009)	Published	The defendant was convicted of second degree assault. The videotape, which showed the defendant spitting on a nurse in jail, was erased. The court stated that although other states have construed their constitutions broadly, the court was going to follow the Supreme Court's decision in <i>Arizona v. Youngblood</i> . The court held that because the defendant could not prove that the video had exculpatory value, he would have to show bad faith in order to establish that there was a due process violation.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	District of Columbia	<i>Koonce v. District of Columbia</i> , No. 13-CT-0494, 2015 D.C. App. LEXIS 97, at 1011 (D.C. March 19, 2015)	Unpublished	The defendant was arrested for a DUI after causing severe accidents, and the video from the night of his arrest was subsequently destroyed. The court emphasized that the government had a general duty to preserve discoverable evidence and stated that the failure to preserve potentially useful evidence violates due process if the defendant can prove bad faith. Bad faith of a “constitutional magnitude” is shown if the evidence is of exculpatory value that was apparent before the evidence was destroyed and the defendant is unable to obtain comparable evidence. The court established that for sanctions for a due-process violation the trial must weigh the following: “ (1) the degree of government negligence or bad faith involved; (2) the importance of the evidence lost; and (3) the evidence of guilt adduced at trial in order to come to a determination that will serve the ends of justice.”
Follows/mostly follows <i>Youngblood</i> standard	Georgia	<i>State v. McNeil</i> , 708 S.E.2d 590 (Ga. Ct. App. 2011)	Published	A police officer found two bags of cocaine in the defendant’s purse. The defendant was a passenger in a car that the officer pulled over. The master copy of a video containing footage of the stop was destroyed when the police officer attempted to play the video for opposing counsel. The court held that in order to prove a due process violation, the defendant needed to meet the <i>Youngblood</i> requirements. The court found that the video evidence was, at best, potentially exculpatory; it did not believe that the defendant was unable to obtain comparable evidence; and finally, it found that the defendant failed to show that the State destroyed the video in bad faith.
		<i>Spaulding v. State</i> , 195 Ga. App. 420 (Ga. Ct. App. 1990)	Published	The state failed to preserve a video of defendant’s arrest. The court held that a criminal defendant has to show bad faith on the part of the police in accordance with <i>Arizona v. Youngblood</i> . In this case, the evidence did not show that the police acted in bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Illinois	<i>People v. Holmes</i> , 552 N.E.2d 763 (Ill. 1990)	Published	The defendant was indicted on two counts of unlawful delivery of cannabis. Defendant argued that the state had to produce their informant for trial. The court provided a thorough analysis of <i>Arizona v. Youngblood</i> . The court adopted the bad-faith standard for destruction or loss of evidence but did not adopt it in regards to the situation in which the prosecutor did not produce his informant.
		<i>People v. Borys</i> , 995 N.E.2d 499 (2013)	Published	Defendant was arrested for impaired driving; the state trooper failed to record the impaired-driving arrest because the officer's car was not equipped with video-recording technology. Illinois has a statute, § 20 ILCS 2610/30, which states, "By June 1, 2009, the Department shall install in-car video camera recording equipment in all patrol vehicles." It also contains statutory language similar to the language used in South Carolina (S.C. Code Ann. § 56-5-2953). However, the Appellate Court of Illinois concluded that the officer's testimony was admissible. In the court's view, the statute was a legislative directive to the Department of State Police to install recording equipment in squad cars and to preserve the recordings for a minimum time period. It did not address admissibility of evidence when video was not recorded.
		<i>People v. Nunn</i> , 24 N.E.3d 11 (Ill. App. Ct. 3d Dist. 2014)	Published	Police officers told witnesses to delete the recordings on their phones of the defendant's arrest. The court held that in determining whether there was a due-process violation the proper considerations include the degree of bad faith or negligence by the state in failing to preserve the evidence and the importance of the lost evidence. Failure to preserve "potentially useful evidence" is not a due-process violation if the defendant can't show bad faith on the part of the police officers. Applying these considerations to this case, the court found that the defendant's due-process rights had been violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Indiana	<i>Chissell v. State</i> , 705 N.E.2d 501 (Ind. Ct. App. 1999)	Published	The video of the defendant's sobriety test was destroyed. The court started its analysis by distinguishing between "potentially useful" evidence and "materially exculpatory" evidence. The court held that <i>Arizona v. Youngblood</i> provided the appropriate standard in regards to "potentially useful" evidence, and that the appropriate standard for "materially exculpatory" evidence was the standard established in <i>California v. Trombetta</i> . Applying those standards to the facts of this case, the court held that the defendant's due-process rights had not been violated.
		<i>Samek v. State</i> , 688 N.E.2d 1286 (Ind. Ct. App. 1997)	Published	The defendant's wife provided police officers with a tape recording of a man admitting to committing the crime of which her husband was accused. The tape got lost and was not available for trial. The court made a distinction between "potentially useful" evidence and "materially exculpatory" evidence, and chose to adopt the exact same terms and definitions as those used and defined in <i>Youngblood</i> to avoid any confusion. The court emphasized that bad faith only needs to be proven when evidence is "potentially useful," but held that as the evidence was only potentially useful in this case, and as the defendant did not prove that it was lost in bad faith, there was no due-process violation.
Follows/mostly follows <i>Youngblood</i> standard	Iowa	<i>State v. Hulbert</i> , 481 N.W.2d 329 (Iowa 1992)	Published	A police officer accidentally erased a video of an interview between the defendant's daughter and an investigator. The court held that to prove a due-process violation based on the destruction of evidence, a defendant is required to show (1) a proper defense request for the evidence; (2) that the evidence was material; and (3) that the evidence would have been significantly favorable to the defendant. Additionally, the destruction has to be intentional. The court held that the officer did not erase the video in bad faith.
		<i>State v. Dulaney</i> , 493 N.W.2d 787 (Iowa 1992)	Published	Defendant caused a car accident, which resulted in the death of three people. Defendant did not request that his blood sample be preserved so the police department destroyed it after a 120-day period. The court, implementing a <i>Trombetta</i> and <i>Youngblood</i> analysis, held that there wasn't any evidence that the state intentionally destroyed the blood sample or that the sample was exculpatory and that, therefore, there wasn't enough to find a violation of due process.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Kansas	<i>State v. Beltz</i> , 184 P.3d 286 (Kan. Ct. App. 2008)	Unpublished	The defendant was stopped for a DUI but the video of the stop was destroyed. The court stated that Kansas has adopted the ruling and reasoning in <i>Arizona v. Youngblood</i> . The court indicated that when the State fails to preserve potentially useful evidence, there is no due-process violation unless the defendant shows bad faith on the part of the State. Whether the State acted in bad faith is a question of fact.; the presence or absence of bad faith by the State when the evidence is destroyed depends on the State's knowledge of the exculpatory value of the evidence at the time that the evidence was lost or destroyed. The court held that the defendant failed to prove that the evidence was exculpatory and that it was destroyed in bad faith.
		<i>State v. Finley</i> , 42 P.3d 723 (Kan. 2002)	Published	Defendant had a meth lab in his home. A fire started in the house while the defendant and a few others were cooking meth, and resulted in one death. The evidence from the scene was destroyed. The defendant, citing cases from other states which granted greater protection in their state constitutions than the U.S. Constitution, urged the court to follow that authority. However, the court chose to follow <i>Arizona v. Youngblood</i> and stated that the court had consistently rejected the argument to provide more protection under the state constitution; the rights granted an accused under the state constitution are coextensive with the rights granted by the U.S. Constitution. Applying <i>Youngblood</i> to the facts of this case, the court held that the defendant failed to establish bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Kentucky	<i>Collins v. Commonwealth</i> , 951 S.W.2d 569 (Ky. 1997)	Published	The appellant was convicted of rape, sodomy, incest, and wanton endangerment of his stepdaughter. His wife found a soiled towel, which she bagged and put away for safekeeping pursuant to a deputy sheriff's instructions, but the towel was never collected for testing and was subsequently lost. The appellant urged the court to reject the bad-faith approach of <i>Arizona v. Youngblood</i> and to adopt a balancing test. The appellant relied on the fact that the wording in Kentucky's Constitution differs from the federal Due Process Clause, and claimed that the state constitution provides more expansive rights. The court reaffirmed that the state has adopted <i>Youngblood</i> , and held that "[t]he Commonwealth's failure to collect and preserve the towel clearly constituted negligence. However, Appellant has failed to demonstrate that such amounted to bad faith under the standard recognized in this Commonwealth."

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Kentucky	<i>Meadows v. Commonwealth</i> , NO. 2010-CA-001155-DG, 2012 Ky. App. Unpub. LEXIS 123, at *1 (Ky. Ct. App. Feb. 10, 2012)	Unpublished	Defendant was arrested for a DUI. The video containing footage of her stop was not preserved. Defendant relied on <i>Sanborn v. Commonwealth</i> ; however, the court noted that <i>Sanborn</i> has been overruled. The court relied on the U.S. Supreme Court's holding in <i>Arizona v. Youngblood</i> and after applying the <i>Youngblood</i> standard to this case, held that the defendant did not prove bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Louisiana	<i>State v. Shoupe</i> , 71 So. 3d 508, (La. Ct. App. 2011)	Published	Defendant crashed his car and fled the scene, but was later arrested. The video containing footage of the investigation in the selective enforcement room on the night of his arrest was lost. The court stated that due process requires that the state provide the defendant with any exculpatory evidence that it has in its possession. The court also stated that when a defendant claims that the state failed to preserve potentially useful evidence, the defendant has the burden of showing that the state acted in bad faith. The court held that the defendant did not allege or prove bad faith on the part of the state. Furthermore, he did not demonstrate that the video had an exculpatory value.
		<i>State v. Sereal</i> , 11-326, 2011 La. App. Unpub. LEXIS 715, at *1 (La. Ct. App. Nov. 16, 2011)	Published	The physical evidence in this case was lost. The court focused its analysis on the difference between "potentially useful" and "material exculpatory" evidence. The court applied the analyses of <i>Arizona v. Youngblood</i> and <i>Illinois v. Fisher</i> . The court held that the evidence at issue was only "potentially useful" and not exculpatory and that, therefore, the defendant had to prove bad faith on the part of the police officers. The defendant failed to do so.
Follows/mostly follows <i>Youngblood</i> standard	Maine	<i>State v. Bilynsky</i> , 932 A.2d 1169 (Me. 2007)	Published	The defendant was indicted on charges of aggravated trafficking of scheduled drugs, criminal conspiracy, and unlawful possession of scheduled drugs. The state lost items that the defendant used in the manufacturing process of drugs. The court held that the appropriate remedy when evidence is lost or destroyed is suppression of that evidence; it is not the dismissal of the case. The court stated that it has adopted the U.S. Supreme Court's analysis to determine when the destruction of evidence violates a defendant's due-process rights. The court focused closely on <i>California v. Trombetta</i> . It applied the Trombetta two-part test: (1) the evidence must possess an exculpatory value that was apparent before the evidence was destroyed, and (2) the evidence must be of such a nature that the defendant would be unable to reasonably obtain comparable evidence. The court held that the defendant's due-process rights were not violated.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Maine	<i>State v. Derosa</i> , No. CR-93-675, CR-93-692, 1994 Me. Super. LEXIS 416, at *1 (Me. Super. Ct. Nov. 16, 1994)	Unpublished	The defendants assert that the State wrongfully failed to take steps to preserve the fire scene to allow inspection by their expert. The court held that when the lost evidence is not exculpatory, the defendant has the burden to show bad faith on the part of the police agency. The court held that the record did not include a showing of bad faith on the part of the police agency.
Follows/mostly follows <i>Youngblood</i> standard	Maryland	<i>Patterson v. State</i> , 741 A.2d 1119 (Md. 1999)	Published	After observing petitioner run a stop sign, officers pulled him over, and upon discovering that he had a revoked Maryland license, they placed him under arrest. A search of the vehicle produced 4.93 grams of cocaine inside of a jacket pocket. The state did not produce the jacket for trial. The court held that the same standards apply whether a claim alleges a due-process violation of a state or federal constitutional right. Moreover, requiring a defendant to show bad faith limits the extent of the police's obligation to preserve evidence to reasonable bounds. The court further held 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." The <i>Arizona v. Youngblood</i> standard extends to the refusal to instruct on the government's failure to preserve evidence. Furthermore, non-production does not automatically equate with destruction of evidence, and negligence alone is not enough to meet the requirements of <i>Youngblood's</i> bad-faith standard.
		<i>Cost v. State</i> , 10 A.3d 184 (Md. 2010)	Published	Defendant was an inmate who was accused of stabbing another inmate. The evidence from the victim's cell was disposed of. Though it acknowledged that other states provide defendants with greater protection, the court stated that Maryland does not afford a defendant greater protection than the protection afforded in <i>Arizona v. Youngblood</i> . While acknowledging that the court set a missing-evidence-instruction standard in <i>Patterson v. State</i> , the court performed an analysis of <i>Patterson</i> and held that the <i>Patterson</i> rule was not absolute. The court further held that the trial courts have discretion in choosing when to give or deny a missing-evidence instruction to the jury. In this case, the court found that the State had destroyed highly relevant information and, therefore, the defendant was entitled to jury instruction on the missing evidence.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Michigan	<i>People v. Hardy</i> , No. 287181, 2010 Mich. App. LEXIS 311, at *1 (Mich. Ct. App. Feb. 11, 2010)	Unpublished	The defendant was arrested for driving with a suspended license. A video recording of the defendant in custody was not preserved. The court agreed with the prosecutor that the defendant's due-process claim failed because he could not establish that the police acted in bad faith. The court held that the proper test to determine if a defendant's right to due process had been violated was stated in <i>Arizona v. Youngblood</i> . Furthermore, the routine destruction of taped material did not mandate reversal. Routine destruction does not establish bad faith.
		<i>People v. Salamey</i> , No. 275102, 2008 Mich. App. LEXIS 1689, at *1 (Mich. Ct. App. Aug. 21, 2008)	Unpublished	Defendant was convicted of armed robbery. The investigator only copied one minute of the surveillance video. The defendant alleged that the remaining surveillance footage was erased from the hard drive while in police custody. The court stated that the prosecution is required to automatically disclose exculpatory evidence in its possession. Evidence is material only if there is a probability that the trial result would have differed if the evidence had been disclosed. Moreover, failure of the police to preserve "potentially exculpatory evidence" in its possession violates the defendant's right to due process when the police acted in bad faith. The court held that the defendant failed to establish bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Minnesota	<i>State v. Hawkinson</i> , 829 N.W.2d 367 (Minn. 2013)	Published	The defendant was charged with several misdemeanor offenses. He pled guilty and moved to suppress the results of his blood-alcohol test because the state had destroyed a blood sample in accordance with its retention policy, but after the defendant had filed a request to preserve the blood tests. The State petitioned the court for review and asked the court to determine the applicable standard. The court provided an analysis of <i>Brady v. Maryland</i> and <i>Arizona v. Youngblood</i> . The court held that there are two categories of evidence that can give rise to a due-process violation: evidence that has apparent and material exculpatory value and "potentially useful evidence." The court focused its analysis of this case on the following two questions: (1) "is the rule from <i>Brady</i> applicable because the destroyed evidence had apparent and material exculpatory value?" and (2) "if not, was the evidence potentially useful and destroyed by the state in bad faith?" The court held that the evidence was only potentially useful, and it was not destroyed in bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Minnesota	<i>State v. Bragg</i> , CX-02-1407, 2003 Minn. App. LEXIS 1124, at *1 (Minn. Ct. App. Sept. 9, 2003)	Unpublished	The defendant was taken to the police station where he refused to submit to an Intoxilyzer test. He was videotaped while he was at the police station, but the video was only retained for 30 days and then recorded over. There was evidence that the defendant attempted to obtain a copy of the video by calling the police department but was unsuccessful. The court held that the State's constitutional duty to preserve evidence on behalf of criminal defendants is subject to a standard of materiality, and to meet this standard the evidence must possess an exculpatory value that was apparent before the evidence was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence. Unless a defendant can demonstrate bad faith on the part of the State, failure to preserve potentially exculpatory evidence does not amount to a denial of due process. Moreover, the court held that the court is to consider "(1) whether the destruction was intentional, (2) the possible exculpatory value of the destroyed evidence, and (3) the strength of the state's case if the evidence had been available." The court held that the defendant failed to prove that the evidence was exculpatory or that it was destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Mississippi	<i>Freeman v. State</i> , 121 So. 3d 888 (Miss. 2013)	Published	The defendant was arrested for a DUI. The police officer recorded the entire stop on video, and though the defendant subpoenaed the video, the police never provided a copy of it. The trial was continued, and the court ordered that all evidence in the case be preserved, including the video. The video, however, was destroyed due to technical problems. The court noted that the state has a duty to preserve evidence that might play a significant role in the defendant's defense. The court also noted that the court normally applies a three-part test to determine whether a loss of evidence violates the defendant's due-process rights: (1) the evidence in question must possess an exculpatory value that was apparent before the evidence was destroyed; (2) the evidence must be of such a nature that the defendant would be unable to obtain comparable evidence; and (3) the prosecution's destruction of the evidence was in bad faith. The court held that the defendant's due-process rights had been violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Mississippi	<i>Ellis v. State</i> , 77 So. 3d 1119 (Miss. Ct. App. 2011)	Published	The defendant was pulled over for a DUI. The stop was videotaped; however, the video recording was erased. The trooper routinely erased the memory card to record future stops, unless the stop was extraordinary. Relying on <i>Trombetta</i> and <i>Youngblood</i> , the court determined that the appropriate test to use was a three-part test: the evidence must be exculpatory evidence that was apparent before it was erased; the defendant is unable to obtain comparable evidence; and the defendant must show that the state acted in bad faith. The court held that the trooper did not act in bad faith when erasing the memory card because it was erased through the normal process used by the trooper, and there wasn't any rule or regulation that required him to preserve every recording of his traffic stops.
Follows/mostly follows <i>Youngblood</i> standard	Missouri	<i>State v. Ferguson</i> , 20 S.W.3d 485 (Mo. 2000)	Published	Defendant kidnapped a girl from a gas station and murdered her. The video footage from a surveillance camera was destroyed. The court analyzed the defendant's Bradyclaim and held that the allegation did not contain a sufficient amount of factual information and was entirely speculative. The court further held that even if the defendant had properly pled a Bradyclaim he had not established that the evidence was exculpatory or that he was prejudiced by the result. Absent a showing of bad faith on the part of the police, the failure to preserve potentially useful evidence does not constitute a denial of due process. The defendant did not prove that there was bad faith.
		<i>State v. Richard</i> , 798 S.W.2d 468 (Mo. Ct. App. 1990)	Published	The defendant was a drug dealer. Tape recordings of exchanges between the defendant and an undercover officer were deleted. Relying on <i>Arizona v. Youngblood</i> , <i>State v. Petterson</i> , and <i>State v. Hamilton</i> , the court stated that none of those cases defined "bad faith." "If 'bad faith' only occurs when police officers destroy evidence knowing it has 'exculpatory value,' then a defendant faces an almost impossible burden to show bad faith." Relying on <i>State v. Little</i> , the court held that there is no constitutional duty to preserve evidence unless it was evident that it would aid the defendant. The court held that the evidence in this case did not support the conclusion that the tape possessed an exculpatory value that would have been apparent to the deputies.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Montana	<i>State v. Giddings</i> , 349 Mont. 347 (Mont. 2009)	Published	The defendant was arrested for homicide, and he was taken to the police station where he was interviewed by an officer. The officer did not tape record the first interview. The officer recorded the second interview, but the tape recorder stopped recording before the interview was complete. The last interview was also recorded, but the recording was of poor quality. The officer took detailed notes during each interview and then typed up a report. After he typed up all of his reports, he threw away his notes. The court stated that while the intentional suppression of exculpatory evidence by the prosecution constitutes a due-process violation in Montana, if the evidence lost is only potentially exculpatory then the defendant must show bad faith by the state. The court held that the defendant failed to provide any evidence showing that the notes contained information favorable to the defense and that he failed to show the officer acted in bad faith when he destroyed the notes.
		<i>Taylor v. State</i> , 335 P.3d 1218 (Mont. 2014)	Published	The defendant was convicted of rape and sexual assault. He claimed that because fingernail scrapings weren't taken from him and because the victim did not undergo a rape exam, important evidence was negligently destroyed. When lost evidence is potentially exculpatory, a defendant must show bad faith to prove a due-process violation. The state's negligent suppression of evidence can be a denial of due-process rights; however, when evidence is negligently suppressed the evidence must be material, vital to the defense, and exculpatory. The court held that there wasn't a due-process violation because the officers did not have a duty to gather exculpatory evidence.
Follows/mostly follows <i>Youngblood</i> standard	Nebraska	<i>State v. Davlin</i> , 639 N.W.2d 631 (Neb. 2002)	Published	The defendant was convicted of second-degree murder and first-degree arson. The victim's larynx and trachea were lost, and the rest of the victim's organs were destroyed after three years as was routine procedure. The court stated that because the due-process requirements of Nebraska's constitution are similar to those of the federal Constitution, it would apply the same analysis to both the defendant's state and federal constitutional claims. While the State may be required to preserve potentially exculpatory evidence under certain circumstances, "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." The court held that the defendant failed to show that this due-process rights had been violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Nebraska	<i>State v. Nelson</i> , 807 N.W.2d 769 (Neb. 2011)	Published	The defendant was arrested for possession of cocaine. Two Styrofoam cups and cigarette butts, which were found inside of his car, were thrown away, which was routine police procedure. The defendant claimed that the evidence was exculpatory because it didn't belong to him, and it would prove that he gave two other men a ride during his trip. The district court concluded that the defendant had not demonstrated that the officers acted in bad faith by throwing the evidence away, that he had not shown that the items were exculpatory, and that there was insufficient evidence presented to find that he was unable to obtain comparable evidence. This Nebraska Supreme Court affirmed the district court's findings.
Follows/mostly follows <i>Youngblood</i> standard	Nevada	<i>State v. Hall</i> , 768 P.2d 349 (Nev. 1989)	Published	The defendant was charged with driving under the influence. The chemist who had tested the defendant's blood sample to determine blood-alcohol level threw the blood sample away after a year to make room for new samples. The chemist routinely threw samples away after a year. The court held that to establish a due-process violation resulting from the state's loss or destruction of evidence, the defendant must demonstrate (1) that the state lost or destroyed the evidence in bad faith, or (2) that the loss prejudiced the defendant's case and the it possessed an exculpatory value that was obvious before the evidence was destroyed. There was nothing on the record to show that the chemist acted in bad faith.
		<i>Williams v. State</i> , 50 P.3d 1116 (Nev. 2002)	Published	The defendant struck and killed six teenagers with her car. The defendant admitted to having stayed up all night, to smoking marijuana two hours before driving, and to taking ecstasy the night before. The State did not preserve the defendant's blood sample. Relying on <i>Youngblood</i> and <i>State v. Hall</i> , the court held that a state's failure to preserve evidence does not warrant dismissal of the case unless the defendant can show bad faith by the government and prejudice from the loss of the evidence. The Nevada Supreme Court concluded that the district court properly determined that the defendant failed to show that the state's failure to preserve the blood sample constituted a due-process violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	New Jersey	<i>State v. Mustaro</i> , 984 A.2d 450 (App.Div. 2009)	Published	The defendant pleaded guilty to driving under the influence, but claimed that he would not have pleaded guilty if he had been provided with the videotape recorded by the officer's patrol car. By the time the defendant filed his motion seeking leave to vacate the guilty plea, the videotape had been destroyed according to policy. To show that the defendant was entitled to relief because of the state's failure to disclose or preserve exculpatory evidence, the defendant was required to show that "(1) the prosecutor failed to disclose the evidence, (2) the evidence was of a favorable character to the defendant, and (3) the evidence was material." When the evidence is no longer available, the defendant has to show that the evidence had an exculpatory value that was apparent before it was destroyed and the defendant would be unable to obtain comparable evidence by other means. Alternatively, the defendant can establish that the evidence was destroyed in bad faith. The court held that "[h]e did not establish that the videotape had exculpatory value that was apparent to the State when it was erased or that the State erased it in bad faith."
		<i>State v. Ayala</i> , No. A-6325-11T1, 2014 N.J. Super. Unpub. LEXIS 813 (App.Div. Apr. 10, 2014)	Unpublished	The defendant was arrested after speeding and then attempting to evade the officer trying to pull him over. He was taken to the police station where his confession was videotaped. The tape, however, was not subsequently available for trial because the computer system was not functioning. Relying on the <i>Trombetta</i> standard, the court stated that the defendant may not have been able to prove that he made no admission by showing the video, but that he could still testify and deny the officers' claims. The court held that if the evidence presented permitted an inference of bad faith then an instruction should be given to the jury that it could draw an adverse inference if it determined that the state acted in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	North Carolina	<i>State v. Hunt</i> , 483 S.E.2d 417 (N.C. 1997)	Published	The defendant was convicted of first-degree murder. During a consent-based search of the defendant's home, officers seized several items; however, these items were lost before commencement of the trial. A failure to preserve potentially useful evidence does not constitute a denial of due process unless the defendant can show bad faith on the part of the police. The North Carolina Supreme Court upheld the trial court's finding that there was no showing of bad faith or willful intent on the part of any police officer. Moreover, the defendant did not demonstrate that the missing evidence possessed an exculpatory value that was apparent before it was lost. Therefore, the State's failure to preserve the evidence did not violate the defendant's due-process rights.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	North Carolina	<i>State v. Burnette</i> , 582 S.E.2d 339 (N.C. Ct. App. 2003)	Published	The defendant was convicted of possession of cocaine. A police dog found the baggie containing the drugs but destroyed it, and the remaining pieces of the baggie were ultimately thrown away by one of the officers. The court noted that a North Carolina statute requires police officers to “keep property seized pursuant to lawful authority under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial.” The court further noted that North Carolina had adopted the reasoning and bad-faith requirement of <i>Youngblood</i> . The court found that the baggie was intentionally destroyed but that there wasn’t any evidence of bad faith on the part of law enforcement.
		<i>State v. LaSalle</i> , No. COA11-27, 2011 N.C. App. LEXIS 1596 (N.C. Ct. App. July 19, 2011)	Unpublished	The defendant was indicted on charges of possession with intent to manufacture, sell, and deliver cocaine and the sale and delivery of cocaine. A detective used a confidential informant to set up a controlled drug buy with the defendant. The informant was accompanied by an undercover officer who wore audio- and video-recording equipment. Before trial, the video was lost and deemed unrecoverable. The court relied on <i>Hunt v. State</i> as precedent and determined that there wasn’t a due-process violation in this case. The court noted that the defendant did not contend bad faith on the part of the officer and did not argue that the missing evidence had any exculpatory value.
Follows/mostly follows <i>Youngblood</i> standard	North Dakota	<i>State v. Steffes</i> , 500 N.W.2d 608 (N.D. 1993)	Published	The defendant was convicted of driving under the influence. The police officer had taped the defendant’s performance on the verbal sobriety tests using the patrol car’s audio tape recorder, but he later recorded over the tape. The court stated that the cases in which the conduct of the State results in the loss of evidence can be grouped into three general categories: “(1) the state’s failure to collect evidence in the first instance, (2) the state’s failure to preserve evidence once it has been collected, and (3) the state’s suppression of evidence which has been collected and preserved.” The <i>Brady v. Maryland</i> analysis applies to the third category and the <i>Arizona v. Youngblood</i> analysis applies to the second category. This case falls under the second category, and applying the <i>Youngblood</i> standard, the court held that there wasn’t any evidence that the tape was destroyed in bad faith.
		<i>State v. Schmidt</i> , 817 N.W.2d 332 (N.D. 2012)	Published	The defendant was found guilty of theft of property. Surveillance video was available, but the police officers never obtained a copy of it. Applying the three categories identified in <i>Steffes</i> , the court concluded that this case fell under the first category.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Ohio	<i>State v. Durnwald</i> , 837 N.E.2d 1234 (2005)	Published	Defendant was arrested for impaired driving by a state trooper. There was a video recording of the defendant's field sobriety testing, which the arresting trooper reviewed; however, before the tape being placed in evidence, it was inexplicably recorded over destroying the pertinent parts of the video. The Court of Appeals of Ohio found it incredible that "such 'accidental' erasures continue to occur," and stated that, "the erasure occurred due to the trooper's complete and utter failure to safeguard evidence relevant to a crime and arrest." The court relied on <i>Youngblood</i> in its analysis, and noted that pursuant to <i>Youngblood</i> , as it was unknown whether the evidence contained on the video was materially exculpatory, the defendant would have to demonstrate that the officer acted in "bad faith." The court determined that the circumstances that occurred in this case that allowed for the tape to be destroyed amounted to bad faith.
		<i>State v. Geeslin</i> , 878 N.E.2d 1 (Ohio 2007)	Published	The defendant was arrested for driving under the influence. The officer videotaped the defendant's driving prior to the stop, as well as the defendant's performance on his sobriety tests after the stop; however, the first part of the tape was accidentally recorded over. The court acknowledged that the U.S Supreme Court addressed the issue of lost or destroyed evidence in <i>Youngblood</i> , and that <i>Youngblood</i> drew a distinction between materially exculpatory evidence and potentially useful evidence. The court held that the evidence in this case was only potentially useful and that the defendant did not prove bad faith on the officer's part.
		<i>State v. Frasure</i> , 2008-Ohio-1504 (Ohio Ct. App., Ashtabula County Mar. 28, 2008)	Published	The defendant was driving a van and collided with another vehicle; as a result, her van caught on fire and a passenger in the other car died. Both vehicles were impounded and then released, and when no one claimed the vehicles, they were both destroyed. The court noted that several states, including Ohio, adhere to the holding in <i>Youngblood</i> and that, therefore, it was required to apply the <i>Youngblood</i> bad-faith standard. The court did, however, emphasize that other states have turned to using a balancing approach due to concerns over the unfairness that may result in situations in which the defendant is unable to prove that the State acted in bad faith. The court stated that a balancing test would be more equitable, and it voiced its concern over the potential effect of the bad-faith standard. Nevertheless, the court held that there wasn't any evidence of bad faith.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Oklahoma	<i>Hogan v. State</i> , 877 P.2d 1157 (Okla. Crim. App. 1994)	Published	The defendant was charged with murder. All but one vial of the victim's blood was destroyed. Relying on <i>Youngblood</i> , the court held that the defendant had not shown that the state acted in bad faith. The destruction of the vials of blood occurred through inadvertence and not bad faith.
		<i>Gilson v. State</i> , 8 P.3d 883 (Okla. Crim. App. 2000)	Published	The appellant was sentenced for murder and injury to a minor child. The appellant claimed that he was denied a fair trial because the interviews with the victim's brothers and sisters were not recorded. The court relied on <i>Youngblood</i> , noting that the court in that case distinguished between evidence that was exculpatory and evidence that was potentially exculpatory, and stated that Oklahoma adopted the <i>Youngblood</i> standard in <i>Hogan v. State</i> . The court held that the failure to video or audio tape the interviews did not indicate a failure to preserve potentially useful evidence. Additionally, the court found that the appellant failed to show that the state acted in bad faith by failing to tape all of the children's interviews.
Follows/mostly follows <i>Youngblood</i> standard	Oregon	<i>State v. Faunce</i> , 282 P.3d 960 (Or. Ct. App. 2012)	Published	The defendant was convicted of murder with a firearm and of being a felon in possession of a firearm. An additional suspect, Green, was arrested and questioned. A pistol was taken from and then returned to Green; the defendant contended that should not have been done as it was potentially exculpatory evidence. The defendant further contended that the state acted in bad faith in its investigation of Green. The court held that because the Oregon Constitution does not have a due-process provision, the court must turn to the due-process clause in the U.S Constitution to determine whether the state violated the defendant's due-process rights. The court relied on <i>Youngblood</i> for its analysis of "potentially useful" evidence, and held that the evidence alone was not exculpatory and that admission of the pistol itself into evidence would have added little to his defense. Moreover, the court upheld the trial court's finding that the police officer was negligent in not preserving the evidence, but that the negligence did not amount to bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Oregon	<i>State v. Zinsli</i> , 966 P.2d 1200 (Or. Ct. App. 1998)	Published	<p>The defendant was arrested for driving under the influence. The officer videotaped the defendant's sobriety tests; however, the video was later lost. The court noted that the defendant had to show that either the state acted in bad faith to preserve the evidence or that the evidence would be favorable to the defendant's defense and that he could not obtain comparable evidence through other reasonable means. The court found that even though the officer wrote his report based on the video and even wrote down direct quotes from the defendant, the defendant's due-process rights were violated because the video was lost. The video would have provided evidence that the defendant performed satisfactorily on some of the field sobriety tests, and it would have allowed the jurors to form their own opinions as to the defendant's intoxication level. However, the court decided that dismissal was too harsh of a sanction.</p>
Follows/mostly follows <i>Youngblood</i> standard	Pennsylvania	<i>Commonwealth v. Snyder</i> , 963 A.2d 396 (Pa. 2009)	Published	<p>The appellee was illegally dumping solid waste, and the attorney general's office executed a search warrant on the property and removed 199 drums. The samples that were taken from the drums for testing were later destroyed. Because of this destruction and the fact that identical samples could not be obtained, the trial court suppressed the test results. The Supreme Court reversed. After analyzing its holding in a previous case, <i>Deans v. State</i>, as well as analyzing how <i>Youngblood</i>, <i>Trombetta</i>, and <i>Fisher</i> affected their holding in that case, the court held that <i>Fisher</i> was the appropriate governing standard. The court further held that the evidence was "potentially useful" and not "materially exculpatory." Under <i>Fisher</i>, the test results may not be suppressed unless the Commonwealth acted in bad faith in destroying the soil samples; the court concluded that the samples in this case were not destroyed in bad faith.</p>

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Pennsylvania	<i>Commonwealth v. Lamana</i> , 7 Pa. D. & C.5th 225 (Pa. C.P. 2009)	Published	The defendant, a school teacher, was convicted of possession of child pornography. While looking into a virus attack on the school's network, the school's IT manager discovered child pornography on the defendant's personal computer, which was hooked up to the school's network. When she opened the pornographic files on the defendant's personal computer, the data about last use changed to reflect her most recent viewing. Because of the altering of potentially exculpatory material, the defendant sought to have the charges dismissed. The trial court denied the motion, and on appeal the court noted that in order "[t]o justify corrective sanctions for lost or destroyed evidence, such as the suppression sought by the defendant here, the defendant must demonstrate that the police acted in bad faith in losing or destroying the evidence." The court held the police did not commit the alleged destruction of the evidence, and that the evidence was not destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Rhode Island	<i>State v. Garcia</i> , 643 A.2d 180 (R.I. 1994)	Published	The defendant was convicted of arson. The investigator wrote his report based off of his notes, and then, according to his normal procedure, he threw his notes away after he finished writing his report. The notes included his tentative conclusion that the fire started in an apartment to which the defendant did not have access. Upon further investigation, however, he concluded that the fire started elsewhere. The court held that together <i>Trombetta</i> and <i>Youngblood</i> 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. The test requires that the defendant (1) establish that the proposed evidence possesses an exculpatory value that was apparent before the evidence was destroyed; (2) the defendant would be unable to obtain comparable evidence; and (3) demonstrate bad faith on the part of the state. The court concluded that the notes were not destroyed in bad faith.
		<i>State v. Werner</i> , 851 A.2d 1093 (R.I. 2004)	Published	The defendant was convicted of robbery. The police did not keep the original surveillance video, and the copy they had was of very poor quality. Applying the tripartite test adopted in <i>Garcia</i> , the court held that the defendant failed to demonstrate that the alleged exculpatory value of the evidence was known to the police before the original tape was destroyed and that the police acted in bad faith. Furthermore, the defendant failed to show that the video was exculpatory. The court also held that the evidence was destroyed because of "sloppy police work."

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	South Carolina	<i>Town of Mount Pleasant v. Roberts</i> , 713 S.E. 2d 278 (2013)	Published	Defendant was arrested for impaired driving; the arresting officer failed to video record the impaired-driving arrest because his vehicle was not equipped with the appropriate technology to do so. South Carolina has a statute that requires that the significant events associated with an impaired-driving arrest be video recorded, S.C. Code Ann. § 56-5-2953. The state maintained that an exception in the statute permitted the introduction of the evidence without video if recording equipment was not available. However, the court found that “the Town’s prolonged failure to equip its patrol vehicles with video cameras defeats the intent of the Legislature; therefore, the Town should not be able to avoid its statutorily-created obligation to produce a videotape by repeatedly relying on an exception to the statute.”
		<i>State v. Moses</i> , 702 S.E.2d 395 (S.C. Ct. App. 2010)	Published	The defendant got into an altercation with a police officer at school. The surveillance video of the event was not preserved. The court noted that South Carolina has adopted the analysis in <i>Youngblood</i> in its jurisprudence, but also recognized that the state does not possess an absolute duty to preserve potentially useful evidence. The court stated that the South Carolina Supreme Court has held that a defendant must show that either the state destroyed evidence in bad faith or that the state destroyed evidence that possessed an exculpatory value that was apparent before the evidence was destroyed, and the defendant cannot obtain comparable evidence. The court held that the defendant failed to establish a due-process violation resulting from the intentional destruction of evidence.
		<i>State v. Jackson</i> , 396 S.E.2d 101 (S.C. 1990)	Published	The defendant was arrested for a DUI. He was taken to the police department where he was given a breathalyzer test and was videotaped while performing field sobriety tests. When the assistant solicitor dismissed the charges, the video was erased and the test results were lost. The defendant was later convicted. The court held that the solicitor made a conscious decision to dismiss the charges, which was the reason why the video was erased, and that the value of the tape could not be replaced. The videotape was exculpatory and the defendant could not obtain evidence of comparable value. The court used the <i>Youngblood</i> standard, but commented that it thought “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.”

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	South Dakota	<i>State v. Bousum</i> , 663 N.W.2d 257 (S.D. 2003)	Published	The defendant was convicted of first-degree intentional damage to property and resisting arrest. When he was arrested, he knocked out the passenger window of the police car. The police department had the window replaced before the defendant had an opportunity to have his expert examine the window. The court used the bad-faith standard. It noted that the court had previously recognized that mere negligence in the loss or destruction of evidence does not result in a constitutional violation. Furthermore, the North Dakota Supreme Court has defined “bad faith” in the context of destroying evidence as meaning that “the state deliberately destroyed the evidence with the intent to deprive the defense of information.” The court held that the police did not destroy evidence in bad faith; the loss or destruction of any evidence as a result of the window repair was negligent but it was not an act of bad faith.
		<i>State v. Pinela</i> , 458 N.W.2d 795 (S.D. 1990)	Published	The defendant was convicted of vehicular homicide. During the autopsy of one of the passengers, a blood sample was taken but subsequently lost. The defendant claimed that the blood sample was exculpatory evidence because it would match the blood found on the driver’s side of the car, thus proving that he was not driving the vehicle. The court held that under the facts of this case, <i>Youngblood</i> was controlling. Moreover, the record did not contain evidence of bad faith on the part of the officers; the loss of the blood sample was simply negligent. The blood sample also had little or no exculpatory value.
Follows/mostly follows <i>Youngblood</i> standard	Texas	<i>Castilla v. State</i> , 374 S.W.3d 537 (Tex. App. San Antonio 2012)	Published	The defendant was convicted of evading arrest. The police officer’s patrol car was equipped with a dashboard camera and recorded the entire event; however, the video was unexplainably missing audio. The defendant claimed that the state failed to preserve evidence that would have been favorable to his case and requested a spoliation instruction. The court, noting that the Court of Criminal Appeals has routinely applied the <i>Youngblood</i> standard, rejected the defendant’s argument that the court should not rely on the “bad-faith” standard. The court noted that only one appellate court has altered the “bad-faith” requirement and that case, <i>Penna v. State</i> (Pena III), has been reversed.
		<i>Ex parte Napper</i> , 322 S.W.3d 202 (Tex. Crim. App. 2010)	Published	The applicant was convicted of aggravated sexual assault and aggravated kidnapping. The swab samples taken from the victim were destroyed. The court provided a thorough analysis of the <i>Youngblood</i> standard, noting that what constitutes bad faith is unclear. The court ultimately rejected the applicant’s <i>Youngblood</i> claim, holding that the test results from the swab samples were not exculpatory and tended to incriminate the applicant.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Virginia	<i>Gagelonia v. Commonwealth</i> , 661 S.E.2d 502 (Va. Ct. App. 2008)	Published	The defendant was convicted of possession with intent to distribute, transporting controlled substances into the Commonwealth, and possession of a firearm while in possession of a controlled substance with the intent to distribute. The police officer lost the video of the incident, as well as the defendant's cell phone. The court analyzed <i>Trombetta</i> and <i>Youngblood</i> , and stated that when a defendant is seeking a new trial on the basis of missing evidence, the defendant must show that "(1) the evidence possessed an apparent exculpatory value, (2) the defendant could not obtain comparable evidence from other sources, and (3) the Commonwealth, in failing to preserve the evidence, acted in bad faith." Furthermore, the presence or absence of bad faith is specific to the police officer's knowledge of the exculpatory value at the time the evidence was lost or destroyed. Applying this standard to the facts of the case, the court held that the defendant did not meet his burden of showing that there was bad faith.
		<i>Hayden v. Commonwealth</i> , No. 1042-05-2, 2006 Va. App. LEXIS 275 (Va. Ct. App. June 27, 2006)	Unpublished	The appellant was convicted of forcible sodomy. The DNA samples collected from the victim were thrown away prematurely. The court held that the appellant's due-process claim was unsupported by the record., as the record did not contain evidence of bad faith on the part of the police--the evidence was destroyed as the result of a mistake. At worst, the police officer's actions were negligent.
Follows/mostly follows <i>Youngblood</i> standard	Washington	<i>State v. Hamilton</i> , No. 46439-6-I , 2001 Wash. App. LEXIS 2614 (Wash. Ct. App. Nov. 26, 2001)	Unpublished	The defendant was convicted of rape. A surveillance video, which captured the incident, was requested but never retrieved; the video was eventually lost. Relying on <i>Youngblood</i> , the court found that the tape was potentially useful at best, and emphasized that the police's failure to realize that the evidence was potentially useful was insufficient to show bad faith. Additionally, a showing that the government failed to follow established procedures does not establish bad faith; in this case, the procedures for collecting videotapes were unclear and ambiguous.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Washington	<i>State v. Groth</i> , 261 P.3d 183 (Wash. Ct. App. 2011)	Published	The defendant was convicted of murder. All of the physical evidence in the case was destroyed. The court denied the defendant's argument that Washington's due-process clause provides more protection than the federal due-process clause when the government destroys material evidence in a case, and stated that the determination of whether the state due-process clause provides more protection is a determination that would have to be left up to the state supreme court. Focusing its analysis on <i>Youngblood</i> and <i>State v. Wittenbarger</i> , the court emphasized that there is no due-process violation unless the defendant can show the evidence was destroyed in bad faith. Moreover, the Washington Supreme Court found that there is no bad faith when the government follows its own protocols in destroying evidence.
Follows/mostly follows <i>Youngblood</i> standard	Wisconsin	<i>State v. Greenwold</i> , 525 N.W.2d 294 (Wis. Ct. App. 1994)	Published	The defendant was charged with homicide by the intoxicated use of a motor vehicle. The defendant moved to have the charged dismissed on the ground that the State failed to preserve relevant and exculpatory evidence and that this constituted a violation of his constitutional right to due process. Though the trial court granted the defendant's motion, the Court of Appeals reversed. The court applied <i>Trombetta</i> and <i>Youngblood</i> , and stated that the due-process analysis is two-pronged: "A defendant's due process rights are violated if the police: (1) failed to preserve the evidence that is apparently exculpatory; or (2) acted in bad faith by failing to preserve evidence which is potentially exculpatory." The second prong requiring bad faith can only be shown if "(1) the officers were aware of the potentially exculpatory value or usefulness of the evidence they failed to preserve; and (2) the officers acted with official animus or made a conscious effort to suppress exculpatory evidence." Applying the above tests to the facts of the case, the court concluded that the defendant failed to meet his burden of proving bad faith, and therefore, according to the <i>Youngblood</i> standard, the defendant's due-process rights were not violated. The court also rejected the defendant's argument that the due-process clause of the Wisconsin Constitution affords greater protection than the federal due-process clause.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Wisconsin	<i>State v. McEssey</i> , No. 2011AP2668-CR, 2012 Wisc. App. LEXIS 744 (Wis. Ct. App. Sept. 20, 2012)	Unpublished	The defendant was charged with sexual assault. He moved to have the charges dismissed on the grounds that a deleted audio recording of a conversation between the defendant and the victim contained potentially exculpatory material. The appeals court reversed the lower court's dismissal of the charges, holding that the lower court applied an incorrect legal test. Relying on <i>Greenwald II</i> (see case above), which in turn relies on <i>Youngblood</i> , the court held that the defendant had not been deprived of due process because the audio recording was not apparently exculpatory, and he had not shown that the failure to preserve the audio recording was in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Wyoming	<i>Willoughby v. State</i> , 253 P.3d 157 (Wyo. 2011)	Published	The defendant was convicted of murder. He moved for a new trial arguing, among other things, that the destruction of two sketches (done by witnesses during police interviews) violated his due-process rights. The court agreed with the parties that their review of the issue should be guided by <i>Youngblood</i> and <i>Trombetta</i> . In assessing whether the State acted in bad faith in this case, the court stated that five factors should be considered: "(1) whether the State was on notice by the appellant that he believed the evidence was potentially exculpatory; (2) whether the appellant's assertion that the evidence had exculpatory value was merely conclusory or whether his assertion was supported by objective, independent evidence; (3) whether the State was in possession of or had the ability to control the evidence at the time it received notice from the appellant; (4) whether the evidence was central to the State's case; and (5) whether there was an innocent explanation for the State's failure to preserve the evidence." After applying the above factors to the current case, the court determined that "the exculpatory value of the two sketches [was] indeterminate at best," that there was no evidence that the State acted in bad faith, and that the appellant failed to show a violation of his right to due process.
		<i>Drury v. State</i> , 194 P.3d 1017 (Wyo. 2008)	Published	The appellant was convicted of felony larceny. On appeal, she contends that her due-process rights were violated when a police officer destroyed the recordings of her and other witnesses' interviews. The court held that the appropriate standard to apply was <i>Youngblood</i> . The court found that there was no evidence that the tapes had any possible exculpatory value, let alone that the officer was aware of any exculpatory value before he destroyed the recordings as part of his routine procedure; therefore, there was no violation of appellant's right to the due process of law.

Appendix

States that do not accept or reject the *Youngblood* standard

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Florida	<i>State v. Muro</i> , 909 So. 2d 448 (Fla. Dist. Ct. App. 4th Dist. 2005)	Published	The defendant was charged with child abuse. Only a portion of the video evidence from a “nanny cam” was preserved. Though the State and the defendant relied on different precedent, the court found that both sets of cases generally applied the same standard as they both compared the deliberateness of the act with the degree of prejudice resulting from the act. The court held that the recording in this case was not constitutionally material and that it was no more than potentially useful to the defendant.
		<i>State v. Davis</i> , 14 So. 3d 1130 (Fla. Dist. Ct. App. 4th Dist. 2009)	Published	Video evidence of the defendant’s sobriety test was lost. Relying on <i>State v. Muro</i> and <i>Kelly v. State</i> , the court held that loss of materially exculpatory evidence is a violation of the defendant’s due-process rights and that the good or bad faith of the state is irrelevant. The court did not provide an analysis of <i>Arizona v. Youngblood</i> .
		<i>Bennett v. State</i> , 23 So. 3d 782 (Fla. Dist. Ct. App. 2d Dist. 2009)	Published	The court provided a thorough analysis of the case law in Florida with regard to lost or destroyed evidence, though it acknowledged that its analysis was only dicta. The court stated that the Florida Supreme Court has never expressly recognized the effects of <i>Youngblood</i> .
Does not accept or reject <i>Youngblood</i> standard	Idaho	<i>State v. Greenwold</i> , 525 N.W.2d 294 (Wis. Ct. App. 1994)	Published	The defendant was convicted of first-degree murder, lewd and lascivious conduct with a minor, and kidnapping. The state failed to preserve swabs of bodily fluid from the victim’s autopsy. The court provided a lengthy analysis in which it analyzed several different cases in an effort to determine whether the state deprived the defendant of due process by failing to preserve the semen samples. The court relied on a “balancing approach” to determine that the state did not deprive the defendant of due process. Using the “balancing approach,” the court focused on the balance between the quality of the government’s conduct and the degree of prejudice to the defendant. The court held that there wasn’t a due-process violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	New Mexico	<i>State v. Bartlett</i> , 789 P.2d 627 (N.M. Ct. App. 1990)	Published	<p>The defendant was charged with criminal sexual penetration. The victim was interviewed on two separate occasions, and both interviews were taped; however, the State was later unable to produce the tape of the first interview. The court stated that sanctions for violations of discovery orders are discretionary and that a defendant is not entitled to a dismissal or other sanctions simply by showing a violation of a discovery order. A three-prong test must be used in cases where the violation results from lost or destroyed evidence. The court emphasized that the analysis applied in this case is somewhat different from that employed in <i>Arizona v. Youngblood</i> because this case focuses on discovery sanction, though it acknowledged that due-process considerations are intertwined with the issue of discovery sanctions. The court held that the sanction of dismissal was not appropriate in this case.</p>
Does not accept or reject <i>Youngblood</i> standard	New York	<i>People v Handy</i> , 988 N.E.2d 879 (N.Y. 2013)	Published	<p>The defendant was charged with three counts of assault while he was in jail. A video recording of the event was destroyed in accordance with jail policy. The court, noting that a number of state courts have rejected the <i>Arizona v. Youngblood</i> holding when interpreting their state constitutions, whereas others have followed it, stated that New York had not addressed the <i>Youngblood</i> issue directly, but had considered related issues. The defendant requested that the court depart from <i>Youngblood</i> and adopt an interpretation more favorable to defendants. The court stated that it did not see a need to agree or disagree with <i>Youngblood</i>, and it held that under the New York law of evidence, "a permissible adverse inference charge should be given where a defendant, using reasonable diligence, has requested evidence reasonably likely to be material, and where that evidence has been destroyed by agents of the State." The court held that the defendant was entitled to have the adverse-inference charge applied to all of his charges.</p>

Appendix

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Alaska	<i>Thorne v. Department of Pub. Safety</i> , 774 P.2d 1326 (Alaska 1989)	Published	The defendant was arrested after he performed poorly on sobriety tests following a car accident. The police did not receive a request to preserve a video tape that contained footage of defendant's sobriety test. The police deleted the footage and recycled the tape. The court held that failure to preserve the tape violated the defendant's due-process rights. Evidence that may be relevant to an issue of importance at a proceeding should be preserved. The issue is whether the evidence that was destroyed would have been favorable to the defendant. If the court is unable to make that determination, "the court must evaluate whether the evidence might have led the jury to entertain a reasonable doubt about the defendant's guilt." The court noted that, contrary to the decision in <i>Arizona v. Youngblood</i> , the Alaska Constitution's due-process clause does not require a showing of bad faith. The court found that the defendant's due-process rights had been violated.
Does not accept or reject <i>Youngblood</i> standard	Connecticut	<i>State v. Asherman</i> , 478 A. 2d 227 (1994)	Published	Defendant was charged with murdering a friend by repeatedly stabbing him; he was convicted of manslaughter. At the time of the defendant's arrest, a bloody key chain was removed from the pocket of his blue jeans and seized by the police. The state tested the blood on the key chain and determined that it was human; however, all of the blood evidence was consumed in this process, and the defendant was unable to conduct any independent blood testing. Defendant argued that he should have been able to test the blood to see if the blood type was consistent with the victims and he averred that as a medical student, he was exposed to human blood routinely. The Supreme Court of Connecticut announced a four part test to determine whether the defendant's trial was fair in light of the blood evidence being destroyed during the state's testing: (1) the materiality of the missing evidence, (2) the likelihood of mistaken interpretation of it by witnesses or the jury, (3) the reason for its nonavailability to the defense, and (4) the prejudice to the defendant caused by the unavailability of the evidence. Applying the test to the facts of the case, the court found that the defendant offered no evidence nor made any offer of proof that the amount of blood on the key ring was sufficient, if properly tested, to establish blood type, and that in the absence of such evidence or offer the defendant's claim was speculative. Furthermore, the defendant did not challenge the state's assertion that the testing of the samples necessarily consumed each sample. Based on those facts, the court concluded that the destruction of evidence in this situation did not impact the defendant's right to a fair trial.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Connecticut	<i>State v. Schmidt</i> , MV13429920S, 2014 Conn. Super. LEXIS 2916 at *1 (Conn. Super. Ct. Nov. 25, 2014)	Unpublished	Defendant was arrested for a DUI. The video containing footage of her booking was not preserved. The court held that <i>Arizona v. Youngblood</i> was more appropriately applied in federal cases. The court used the <i>Asherman</i> test in its analysis, and focused on the following elements: (1) the materiality of the missing evidence; (2) the likelihood of mistaken interpretation of the evidence by the witness or the jury; (3) the reason for its non-availability to the defense; (4) and the prejudice to the defendant caused by the unavailability of the evidence. The court held that there wasn't a due-process violation.
Does not accept or reject <i>Youngblood</i> standard	Delaware	<i>Hammond v. State</i> , 569 A.2d 81 (Del. 1989)	Published	The defendant was convicted of two counts of vehicular homicide after a car accident in which he was the driver and in which both of his passengers died. The defendant challenged his conviction arguing, among other things, that the police's failure to preserve the crash vehicle violated his constitutionally guaranteed right of access to evidence. The court, opting not to follow the <i>Youngblood</i> test, held that the appropriate tests to apply to a case involving lost or destroyed evidence were the <i>Deberry</i> and <i>Bailey</i> tests. The <i>Deberry</i> test involves the following analysis: "(1) would the requested material, if extant in the possession of the State at the time of the defense request, have been subject to disclosure under Criminal Rule 16 or Brady; (2) if so, did the government have a duty to preserve the material?; (3) and if there was a duty to preserve, was the duty breached, and what consequences should flow from a breach?" The <i>Bailey</i> test helps determine the consequences of a breach of duty by analyzing: "(1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; (3) and the sufficiency of the other evidence produced at the trial to sustain the conviction." The court held that although the evidence should have been preserved, it was not destroyed in bad faith. The court further held that the defendant's trial was not fundamentally unfair.

Appendix

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Delaware	<i>State v. Shugard</i> , No. 0302017363, 2004 Del. C.P. LEXIS 24, *1 (Del. C.P. June 21, 2004)	Unpublished	The defendant was arrested for DUI, and the video recording of his sobriety test was subsequently destroyed. After applying the <i>Deberry</i> and <i>Bailey</i> tests (see above), the court held that "(1) the defendant was entitled to a copy of the tape; (2) the test which the Supreme Court of Delaware established for determining appropriate relief in cases where the State lost or destroyed evidence that a defendant was entitled to discover did not contemplate suppression of the arresting officer's testimony; and (3) the proper remedy was to grant defendant an inference that the tape would be exculpatory, and to require the State to stipulate to that fact." The court held that there was a due-process violation and the proper remedy was "to grant an inference that the lost evidence was exculpatory in nature."
Does not accept or reject <i>Youngblood</i> standard	Hawaii	<i>State v. Matafeo</i> , 787 P.2d 671 (Haw. 1990)	Published	The appellant, charged with sexual assault and kidnapping, moved to dismiss the complaint after the police accidentally destroyed all of the physical evidence in the case. The court did not agree that it needn't go beyond an <i>Arizona v. Youngblood</i> analysis, believing that a strict reading of <i>Youngblood</i> would preclude the court from looking into the favorableness of the evidence that was lost or destroyed when no bad faith is shown. The court agreed with the <i>Youngblood</i> concurrence that there are situations when the evidence is "so critical to the defense [that the loss or destruction of the evidence makes] a criminal trial fundamentally unfair." However, as there was no showing that the evidence was destroyed in bad faith or that it was exculpatory, and as the clothing was not "evidence so crucial to the defense that its destruction will necessarily result in a fundamentally unfair trial," the supreme court affirmed the trial court's order denying appellant's motion to dismiss the complaint.
		<i>State v. Steger</i> , 158 P.3d 280 (Haw. Ct. App. 2006)	Published	A police officer took pictures of drugs that were found in the defendant's apartment, but the pictures were subsequently lost. The court rejected the defendant's contention that criminal charges should automatically be dismissed whenever potentially exculpatory evidence is lost or destroyed because a rule of automatic dismissal would require dismissal of virtually every case involving lost or destroyed evidence. The court applied the Hawaii Supreme Court's analysis in <i>Matafeo</i> , explaining that further inquiry into cases where there wasn't any bad faith would not be precluded, but that an automatic dismissal was not required.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Massachusetts	<i>Commonwealth v. Henderson</i> , 582 N.E.2d 496 (Mass. 1991)	Published	The defendant was charged with unarmed robbery. A police officer wrote down a victim's description of the suspect; however, the officer's notes were then lost. The court held that the rule under the Massachusetts Constitution's due-process provisions is stricter than that stated in <i>Youngblood</i> . The lower-court judge determined that the degree of police fault in losing the notes was not great, but that some mechanism should be in place to preserve this type of information. The lower court dismissed the indictment, and the Massachusetts Supreme Court affirmed, noting that other states have also held the government to higher due-process-law standards under their state constitutions.
		<i>Commonwealth v. McLean</i> , 13-P-138, 2015 Mass. App. Unpub. LEXIS 298, at *1 (Mass. App. Ct. April 13, 2015)	Unpublished	The defendant was convicted of open and gross lewdness. The video from a surveillance camera, which contained footage of the act, was not preserved in time and it was overwritten. The court held that a dismissal was not appropriate. The court indicated that when evidence is destroyed the following must be weighed: (1) the culpability of the government, (2) the materiality of the evidence, and (3) the potential for prejudice. Charges will not be dismissed unless there has been "irremediable harm" preventing the possibility of a fair trial. The defendant has the burden of establishing that access to the evidence would have produced evidence favorable to his case. The court held that the defendant's claim that the evidence was exculpatory was insufficient.
Does not accept or reject <i>Youngblood</i> standard	New Hampshire	<i>State v. Smagula</i> , 578 A.2d 1215 (N.H. 1990)	Published	The defendant was found guilty of armed robbery. The police officers did not write down or preserve the photo lineup in which the victim failed to identify the defendant. Under the state constitution, when a defendant demonstrates that the State failed to preserve relevant evidence, the State has the burden of showing that it acted in good faith. This means that the State has to show that it did not intend to prejudice the defendant and that it acted without culpable negligence (culpable negligence being less than gross negligence but more than ordinary negligence). The defendant must show that the lost evidence was material, and that if the evidence had been introduced, there would have probably been a verdict in his favor. Under the U.S. Constitution, the court applied the <i>Arizona v. Youngblood</i> standard. The court held that the police officer's actions were mere negligence.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	New Hampshire	<i>State v. Shugard</i> , No. 0302017363, 2004 Del. C.P. LEXIS 24, *1 (Del. C.P. June 21, 2004)	Published	<p>The defendant was convicted of first-degree murder. The police officers failed to preserve the victim's body because the body was burned, and the officers thought that it was an animal carcass. The court held that the defendant's due-process claim under the U.S. Constitution was without merit because there wasn't any proof that the police acted in bad faith in failing to preserve the body. Due process is violated only if the police acted in bad faith. Furthermore, the police must have had the knowledge of the exculpatory value of the evidence at the time it was lost or destroyed. The court held that the defendant failed to show bad faith on the part of the police or that they could have been expected to know the potential evidentiary value of the body at the time they disposed of it.</p>
Does not accept or reject <i>Youngblood</i> standard	Tennessee	<i>State v. Ferguson</i> , 2 S.W.3d 912 (Tenn. 1999)	Published	<p>The defendant was arrested for driving under the influence. He was taken to the police station, where he was video taped while performing his sobriety tests. The video was erased before anyone had an opportunity to view it. The court declined to follow the <i>Youngblood</i> standard and instead adopted a standard similar to the standard adopted in Delaware. The standard includes the following: "(1) the degree of negligence involved; (2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence used at trial to support the conviction." The court stated that the central objective was to protect the defendant's right to a fundamentally fair trial. The court further stated that if the trial without the missing evidence would be fundamentally unfair then it was within the trial court's discretion to dismiss the charges or issue a sanction. The court held that, in this case, the defendant had a fair trial and was not disadvantaged by the missing evidence.</p>

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Tennessee	<i>State v. Merriman</i> , 410 S.W.3d 779 (Tenn. 2013)	Published	<p>The defendant was arrested for driving under the influence and a number of other charges following a pursuit. The arresting officer's car was equipped with a video-recording system, which recorded the pursuit and stop; however, the hard drive was not subsequently removed, logged into evidence, or stored as was department policy. Two days before the trial, the defense moved to dismiss the indictment based on the missing video; the motion was granted and the state appealed. The Tennessee Supreme Court based its decision on the due-process clause as contained in the Tennessee Constitution. It found that the state's duty to preserve evidence is limited to "constitutionally material" evidence, which they described as "evidence that might be expected to play a significant role in the suspect's defense." If a trial court finds that the State failed in its duty to preserve constitutionally material evidence, the trial court must consider the following factors to determine the consequences of that failure: the degree of negligence involved; the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and the sufficiency of the other evidence used at trial to support the conviction. Applying the above test to the facts of defendant's case, the Supreme Court of Tennessee determined that the trial court did not abuse its discretion by dismissing the case based on the missing video recording.</p>
Does not accept or reject <i>Youngblood</i> standard	Utah	<i>State v. Tiedemann</i> , 162 P.3d 1106 (Utah 2007)	Published	<p>The defendant was charged with murder; however, he was declared incompetent to stand trial and the charges were dismissed. Approximately 14 years later, he was declared competent but all of the evidence for the case had been destroyed. The court rejected the <i>Arizona v. Youngblood</i> standard because it was both too broad and too narrow. Instead, the court held that the standard focuses on a balance of different factors on a case-by-case basis. In a case where the defendant has shown that lost or destroyed evidence may be exculpatory, the following needs to be considered: "(1) the reason for the destruction or loss of the evidence, including the degree of negligence or culpability on the part of the state; and (2) the degree of prejudice to the defendant in light of the materiality and importance of the missing evidence in the context of the case as a whole, including strength of the remaining evidence." The importance of the balancing test is fundamental fairness. The court held that the defendant did not show culpability or bad faith on the part of the state. Furthermore, the reason the evidence was destroyed was for a completely routine reason.</p>

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Utah	<i>State v. Otkovic</i> , 322 P.3d 746 (Utah Ct. App. 2014)	Published	The defendant was convicted of aggravated kidnapping and aggravated robbery. A video from the ATM captured the event; however, it was later destroyed. The court relied on <i>State v. Tiedemann</i> for its analysis. The court stated that a defendant must first demonstrate that there was a reasonable probability that lost or destroyed evidence would be exculpatory. The court held that the defendant failed to make such a threshold showing. For this reason, the court concluded that the trial court correctly declined to analyze the evidence any further.
Does not accept or reject <i>Youngblood</i> standard	Vermont	<i>State v. Delisle</i> , 648 A.2d 632 (Vt. 1994)	Published	The defendant was convicted of second-degree murder. Only a small portion of the tarp in which the victim's body was wrapped was preserved--the rest was destroyed--and the victim's hyoid bone was lost. The court held that <i>Arizona v. Youngblood</i> did not apply to the defendant's state due-process claim. The court stated that <i>Youngblood</i> is the controlling federal standard. However, it is both too broad and too narrow. The court chose to apply the standard that it established in <i>State v. Bailey</i> , a case that was decided before <i>Youngblood</i> . This standard requires the balancing of the following: "(1) the degree of negligence or bad faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial." After applying the <i>Bailey</i> test, the court held that the loss of the evidence did not result in a denial of the defendant's rights.
		<i>State v. Porter</i> , No. 12-344, 2014 Vt. LEXIS 88 (Vt. Aug. 1, 2014)	Unpublished	The defendant was convicted for attempted kidnapping. He argued that the case should have been dismissed because the state failed to collect, preserve, or test items of potentially exculpatory evidence. The court stated that for the defendant to be entitled to sanctions under the Vermont Constitution, he needed to show only a reasonable possibility that the evidence would have been favorable. If the defendant is able to make such a showing, then the court has to determine whether sanctions are warranted based on an analysis of the three <i>Bailey</i> factors. The court upheld the trial court's determination that failure to preserve the evidence did not result in any kind of violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	West Virginia	<i>State v. Osakalumi</i> , 461 S.E.2d 504 (W. Va. 1995)	Published	<p>The defendant was convicted of murder. Evidence in the case was destroyed. The court held that the <i>Arizona v. Youngblood</i> analysis was the appropriate standard to use when analyzing the defendant's federal due-process claim. However, the court did not adopt the <i>Youngblood</i> standard for the defendant's state due-process claim. Instead, the court held that fundamental fairness requires the court to evaluate the state's failure to preserve potentially exculpatory evidence in the context of the entire record. A trial court must determine "(1) whether the requested material, if in the possession of the State at the time of the defendant's request for it, would have been subject to disclosure under either West Virginia Rule of Criminal Procedure 16 or case law; (2) whether the state had a duty to preserve the material; and (3) if the State did have a duty to preserve the material, whether the duty was breached and what consequences should flow from the breach." The court held that the defendant's trial was fundamentally unfair.</p>
Does not accept or reject <i>Youngblood</i> standard	Utah	<i>State v. Paynter</i> , 526 S.E.2d 43 (W. Va. 1999)	Published	<p>The defendant was convicted of second-degree murder. Samples taken from the victim were destroyed. The court provided an analysis of <i>Arizona v. Youngblood</i> but applied the standard set forth in <i>State v. Osakalumi</i>.</p>

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