

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-KM-01250-SCT

WILLIAM BILBO

APPELLANT

V.

CITY OF RIDGELAND

APPELLEE

BRIEF OF APPELLANT

**APPEAL FROM THE DECISION OF THE CIRCUIT COURT
OF MADISON COUNTY, MISSISSIPPI**

WILLIAM P. FEATHERSTON, JR. (MSB [REDACTED])
Attorney at Law
350 Arbor Drive, Suite D
Ridgeland, Mississippi 39157
Telephone: (601) 206-5557
Facsimile: (601) 206-1612
Email: bfeather@bellsouth.net
Attorney for Appellant

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-KM-01250-SCT

WILLIAM BILBO

APPELLANT

V.

CITY OF RIDGELAND

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. William Bilbo, Appellant
2. William P. Featherston, Jr., Attorney for Appellant
3. Honorable Boty McDonald, Ridgeland Municipal Prosecutor
321 Highway 51, Suite G
Ridgeland, MS 39157
4. Honorable William E. Chapman, Madison County Circuit Court Judge
P. O. Box 1626
Canton, MS 39046


WILLIAM P. FEATHERSTON, JR.
Attorney for Appellant

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS I

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUES 1

THE TRIAL COURT ERRED IN FAILING TO GRANT THE
MOTION TO DISMISS THE CHARGES AGAINST APPELLANT FOR
THE FAILURE OF THE PROSECUTION TO PRESERVE AND PRESENT
EVIDENCE WHICH COULD BE EXCULPATORY TO APPELLANT 1

STATEMENT OF THE CASE 2

1. NATURE OF THE CASE 2

2. COURSE OF PROCEEDINGS AND DISPOSITION
IN THE COURT BELOW 2

STATEMENT OF THE FACTS 4

SUMMARY OF THE ARGUMENT 5

ARGUMENT AND AUTHORITIES 6

CONCLUSION 7

CERTIFICATE OF SERVICE 8

TABLE OF AUTHORITIES

CASES:	PAGE
<i>California v. Trombetta</i> , 467 U.S. 479 (1984)	6
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	7
<i>Cox v. State</i> , 849 So. 2d 1257 (Miss. 2003)	7
 <u>STATUTES:</u>	
Mississippi Code Annotated §63-11-30(2)(a)	2
Mississippi Code Annotated §63-3-501	2
Mississippi Code Annotated §63-11-30(1)(a) and (c)	2

STATEMENT OF THE ISSUES

THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION TO DISMISS THE CHARGES AGAINST APPELLANT FOR THE FAILURE OF THE PROSECUTION TO PRESERVE AND PRESENT EVIDENCE WHICH COULD BE EXCULPATORY TO APPELLANT.

STATEMENT OF THE CASE

1. NATURE OF THE CASE

William Bilbo, Appellant herein, appeals from the decision of the Madison County Circuit Court affirming his conviction in the County Court of Madison County of driving under the influence, first offense and speeding for the reason that the City of Ridgeland failed to preserve and produce potentially exculpatory evidence in violation of his due process rights under the Fourteenth Amendment to the United States Constitution.

2. COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

Appellant was charged on November 15, 2008, with the offense of driving under the influence, first offense in violation of Mississippi Code Annotated §63-11-30(2)(a) and speeding in violation of Mississippi Code Annotated §63-3-501.

All references to documents in the Court file will be referred to as “Trial Record” or “TR” followed by page number. References to testimony in the trial court will be referred to as “Trial Testimony” or “TT” followed by a page number.

The affidavit filed against Appellant by Daniel Soto, a police officer with the Ridgeland Police Department, alleging violation of Mississippi Code Annotated §63-11-30(1)(a) and (c) is contained in the Trial Record at page 10. The affidavit for speeding filed against Appellant by Officer Brad Sullivan of the Ridgeland Police Department alleging violation of Mississippi Code Annotated §63-3-501 is found in the Trial Record at page 9.

Appellant entered no contest pleas to both charges in the Municipal Court of the City of Ridgeland on September 1, 2009, and appealed the charges to the County Court of Madison County, Mississippi, by Notice of Appeal filed September 30, 2009, which is found in the Trial Record at page 2.

Following a bench trial in the County Court of Madison County, Mississippi, Appellant was convicted of speeding and driving under the influence, first offense, and a Final Judgment of Conviction was entered on November 13, 2009, sentencing Appellant to pay a fine and serve forty-eight hours in jail on the DUI charge and a fine on the speeding charge, plus court costs. (TR 30)

Appellant filed a Motion to Reconsider Sentence requesting that the Court reconsider the sentence imposing forty-eight hours to serve in jail on November 17, 2009 (TR 32) and the Court entered its Amended Final Judgment of Conviction and Order of Sentence on December 30, 2009, on the charge of speeding (TR 35) and no order from the Court on Appellant's Motion to Reconsider the Sentence is contained in the Trial Record.

Appellant perfected his appeal to the Circuit Court of Madison County, Mississippi by Notice of Appeal filed November 17, 2009, (TR 37).

The Circuit Court of Madison County, Mississippi affirmed the decision of the County Court of Madison County, Mississippi on July 1, 2010, (TR 47). Appellant perfected his appeal to this Court by filing his Notice of Appeal on July 30, 2010, (TR 49).

STATEMENT OF THE FACTS

Officer Brad Sullivan of the Ridgeland Police Department testified that on November 15, 2008, he was on duty and was running stationary radar on Lake Harbour Drive in the City of Ridgeland, Mississippi, and that at approximately 9:00 o'clock p.m., he observed a vehicle, a white Mercury Marquis, driven by Appellant come over the top of the hill on Lake Harbour and that he clocked Appellant driving 57 miles per hour in a 40 mile per hour speed zone. Officer Sullivan testified that when Appellant topped the hill he was the only car in the vicinity and that there were no other cars directly behind him or in the other lane of the two lane eastbound portion of the roadway. (TT 5-10)

Officer Sullivan further testified that when he observed Appellant's vehicle exceeding the speed limit, he initiated his emergency equipment and turned around to get in behind the vehicle, and that by initiating his emergency equipment that activated his camera located in his patrol car. Officer Sullivan testified that he believed that his camera was working and that he saves all of the videos made in his patrol car. (TT 10-11)

Following Officer Sullivan's testimony, Appellant moved to dismiss the speeding charge which was the basis of the stop of Appellant on the ground that Appellant had requested a copy of the video made by Officer Sullivan in his patrol car of his stop and the video was not produced. Appellant introduced Defendant's Exhibit 1 which was a letter to the Municipal Court clerk of the City of Ridgeland requesting a copy of any video recordings made either in the patrol car or in the station during the administration of the intoxilyzer test concerning Appellant's arrest. Appellant further filed a Discovery Request and the video of the traffic stop was not produced in response to the Discovery Request. (TT 12-18)

William Bilbo, Appellant, testified at trial that on the date he was arrested on November 15, 2008, he had been to dinner and was on his way home when he came into contact with Officer Sullivan on Lake Harbour Drive in Ridgeland, Mississippi. Mr. Bilbo testified that he was coming from Gluckstadt going to Flowood and when he first saw Officer Sullivan, he saw his blue lights and then he pulled over on his shoulder. Mr. Bilbo testified that when he first saw the blue lights, Officer Sullivan was approaching him and turning. Mr. Bilbo testified that what alerted him to the presence of Officer Sullivan was Mr. Bilbo's radar detector. When his radar detector beeped, Mr. Bilbo looked at his speedometer which indicated that he was driving the speed limit. Mr. Bilbo also testified that his girlfriend was following him and that she told him she was not speeding. Most importantly, Mr. Bilbo testified that there was quite a bit of traffic around him on Lake Harbour Drive at the time he came into contact with Officer Sullivan going in both directions. (TT 47-49)

After all parties had finally rested, Appellant renewed his objection to the failure of the State to produce the requested video recording of the traffic stop which was the basis for the probable cause for the arrest of Appellant. The Court overruled Appellant's objection. (TT 52-59)

SUMMARY OF THE ARGUMENT

Appellant contends that the failure of the City of Ridgeland to preserve and produce a copy of the video made by Officer Sullivan in his patrol car of the traffic stop of Appellant, which evidence was material and potentially exculpatory, constitutes a denial of Appellant's due process rights under the Fourteenth Amendment to the United States Constitution.

ARGUMENT AND AUTHORITIES

THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION TO DISMISS THE CHARGES AGAINST APPELLANT FOR THE FAILURE OF THE PROSECUTION TO PRESERVE AND PRESENT EVIDENCE WHICH COULD BE EXCULPATORY TO APPELLANT.

Appellant contends that the failure of the City of Ridgeland to preserve and produce the video of the traffic stop of Appellant was a denial of his due process rights under the Fourteenth Amendment to the United States Constitution. In the case of *California v. Trombetta*, 467 U.S. 479 (1984) the United States Supreme Court held that if the evidence was exculpatory and has been lost or destroyed, its destruction constitutes a denial of due process.

It is undisputed in this case that Officer Sullivan testified that he had a video camera in his car at the time he made the traffic stop of Appellant and that his camera was working. Officer Sullivan testified that he always saves his videos of traffic stops. Therefore, Appellant submits that there was a video of the traffic stop which would have shown whether any other cars were in the vicinity of Appellant's car at the time Officer Sullivan first observed Appellant's car which would have affected the radar reading of Officer Sullivan and caused reasonable doubt as to whether the vehicle Officer Sullivan observed speeding was Appellant's vehicle or some other vehicle.

It is undisputed that Appellant made a request that the video be preserved and made a discovery request that the video be produced to Appellant. The City of Ridgeland has offered no explanation as to the absence of the video or the reason for its destruction or non-production. Therefore, Appellant has been denied his due process rights to evidence which could have been exculpatory to the charge of speeding which was the basis of the stop and the probable cause for the arrest of Appellant which resulted in his charge of driving under the influence. See also, *Brady v. Maryland*, 373 U.S. 83 (1963) and *Cox v. State*, 849 So. 2d 1257 (Miss. 2003). In *Cox, supra*, the

Mississippi Supreme Court held that the State is charged with a duty to preserve evidence "which might be expected to play a significant role in the suspect's defense."

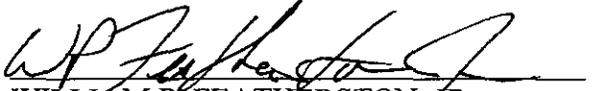
CONCLUSION

For the foregoing reasons, Appellant submits that the Court below erred in affirming the County Court's failure to strike the testimony of Officer Sullivan and dismiss the charges of speeding and driving under the influence filed against Appellant in this case and requests that this Court reverse and render this case to find Defendant not guilty of said charges.

Respectfully submitted,

WILLIAM BILBO

BY:


WILLIAM P. FEATHERSTON, JR.
Attorney for Appellant

WILLIAM P. FEATHERSTON, JR. - MSB [REDACTED]
350 ARBOR DRIVE, SUITE D
POST OFFICE BOX 1105
RIDGELAND, MISSISSIPPI 39158-1105
TELEPHONE: (601) 206-5557
FACSIMILE: (601) 206-1612
EMAIL: bfeather@bellsouth.net

CERTIFICATE OF SERVICE

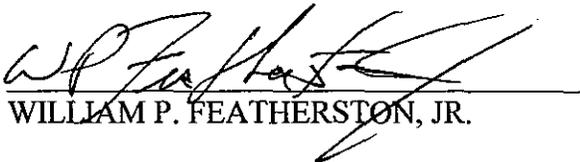
I, William P. Featherston, Jr., do hereby certify that I have this date caused to be mailed via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Honorable Boty McDonald
Ridgeland Municipal Prosecutor
321 Highway 51, Suite G
Ridgeland, MS 39157

Honorable Jim Hood
Attorney General
P. O. Box 220
Jackson, MS 39205-0220

Honorable William E. Chapman
Madison County Circuit Court Judge
P. O. Box 1626
Canton, MS 39046

DATED this the 25th day of October, 2010.


WILLIAM P. FEATHERSTON, JR.

WILLIAM P. FEATHERSTON, JR. - MSB [REDACTED]
350 ARBOR DRIVE, SUITE D
POST OFFICE BOX 1105
RIDGELAND, MISSISSIPPI 39158-1105
TELEPHONE: (601) 206-5557
FACSIMILE: (601) 206-1612
EMAIL: bfeather@bellsouth.net