

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONICA ANN SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 90249

**FILED**

**DEC 11 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of driving under the influence with one or more prior felony DUI convictions. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

*Preservation of evidence*

Appellant Ronica Smith argues that the State's failure to preserve dash cam footage of the arrest was a due process violation and that the district court abused its discretion in failing to dismiss the charges, suppress evidence, or issue adverse jury instructions on this basis. See *Morgan v. State*, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018) ("This court will not disturb a district court's decision on whether to dismiss a charging document absent an abuse of discretion."); *Ouanbengboune v. State*, 125 Nev. 763, 774, 220 P.3d 1122, 1129 (2009) ("This court reviews a district court's decision to issue or not to issue a particular jury instruction for an abuse of discretion."). Although the State frames the issue as a failure to collect evidence, the issue concerns preservation because law enforcement collected the dash cam footage on a memory card and "then allowed it to be lost" by failing to copy it to a secondary location. *Daniels v. State*, 114 Nev. 261, 266, 956 P.2d 111, 115 (1998).

“The State’s loss or destruction of evidence constitutes a due process violation only if the defendant shows either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed.” *Leonard v. State*, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001). A prejudicial mishandling of evidence may merit adverse jury instructions in the absence of dismissal. *Sanborn v. State*, 107 Nev. 399, 408, 812 P.2d 1279, 1286 (1991); see *Leonard v. State*, 117 Nev. 53, 69, 17 P.3d 397, 407 (2001) (concluding “that [an adverse jury] instruction was not warranted” after the defendant failed to demonstrate bad faith or undue prejudice in the State’s failure to preserve evidence).

Smith argues that law enforcement’s failure to retain dash cam footage of the traffic stop in contravention of department policy was in bad faith. We evaluate bad faith on a case-by-case basis. See *Sheriff, Clark Cnty. v. Warner*, 112 Nev. 1234, 1240, 926 P.2d 775, 778 (1996) (concluding that even though the defendant obtained a court order to preserve the evidence, there was no evidence that the police destroyed the evidence to make it unavailable to the defendant). Although Smith correctly observes that we have found the destruction of evidence in accordance with routine policy to be in good faith, see *State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350 (1989), the inverse, the destruction of evidence in contravention of routine policy, does not necessarily evince bad faith. See *Warner*, 112 Nev. at 1240, 926 P.2d at 778. And the circumstances here do not suggest bad faith. The arresting officer testified that it was his understanding that the missing dash cam footage only depicted events after he activated the overhead lights such that the footage did not include Smith’s driving before the officer activated the lights. The officer then testified he failed to preserve the

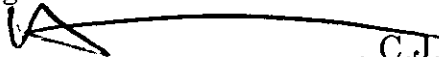
footage because he thought the footage would be of little evidentiary value given what his body cam captured of the traffic stop. Although the arresting officer failed to follow department policy in preserving the footage, the officer's testimony indicates this failure was the result of negligence rather than bad faith. Beyond the officer's negligent failure to follow department policy, Smith points to no evidence demonstrating police officers either acted with any animus towards Smith or that they failed to retain the footage in order to make the footage unavailable to Smith. *See California v. Trombetta*, 467 U.S. 479, 488 (1984) (stating that bad faith is evinced by "official animus towards respondents or . . . conscious effort to suppress exculpatory evidence"). Therefore, Smith has not demonstrated bad faith in the destruction of the dash cam footage.

Furthermore, Smith has not demonstrated that the loss of the dash cam footage caused undue prejudice. *See Leonard*, 117 Nev. at 68, 17 P.3d at 407 ("Where there is no bad faith, the defendant has the burden of showing prejudice."). Undue prejudice requires a showing by the defendant that "it could be reasonably anticipated that the evidence sought would be exculpatory and material to the defense." *Warner*, 112 Nev. at 1240, 926 P.2d at 778. Smith asserts the footage *might* be exculpatory because the footage *could* demonstrate a lack of probable cause for the traffic stop or help to impeach the arresting officer. Because "[m]ere assertions by the defense counsel that an examination of the evidence will potentially reveal exculpatory evidence does not constitute a sufficient showing of prejudice," Smith has not demonstrated that the district court abused its discretion in denying the motion to dismiss or by rejecting Smith's proffered instruction. *Id.* at 1242, 926 P.2d at 779; *Sanborn*, 107 Nev. at 408, 812 P.2d at 1286. Therefore, we conclude no relief is warranted.


*Expert testimony*

Smith also argues that the district court abused its discretion in allowing the State's expert witness to testify despite the State's failure to provide an updated CV under NRS 174.234(2) until the day of trial. A district court shall not permit an expert witness to testify "if the court determines that the party acted in bad faith by not timely disclosing that information." NRS 174.234(3)(b). The State filed its expert witness notice and an incomplete CV two years before trial. Upon the State's disclosure of the updated CV at trial, Smith moved to preclude the expert witness from testifying, which the district court denied. The expert witness's testimony, accurately described in the State's notice, pertained to the calibration work she did on the Intoxilyzer device used to test Smith's blood alcohol concentration in 2017, and the incomplete CV described her work experience through 2017. Although the State failed to comply with its continuing duty to disclose under NRS 174.234(3), the record lacks any indication that the State acted in bad faith in failing to provide the expert witness's employment history since 2017 or that Smith suffered any prejudice because of this failure. Smith has therefore not shown the district court abused its discretion in admitting the expert witness testimony. *Mitchell v. State*, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008) ("This court reviews a district court's decision whether to allow an unendorsed witness to testify for abuse of discretion."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Mason E. Simons, District Judge  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Public Defender  
Elko County Clerk