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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0832**

State of Minnesota,
Respondent,

vs.

Jeffrey Bond Troyer,
Appellant.

**Filed May 10, 2021
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19WS-CR-18-6093

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant seeks to reverse the final judgment of conviction for fourth-degree driving
while impaired (DWI) and argues the district court erred by denying his motion to suppress

the breath-test results. Appellant contends that, even though he timely requested that respondent preserve the video recording of the breath-test procedure (“booking-room video”), it was destroyed by an automated process, which violated his due-process rights under the Minnesota Constitution. We first conclude that the district court’s decision followed existing caselaw under the federal Due Process Clause because appellant does not claim that the destroyed evidence was exculpatory, nor does he claim that respondent acted in bad faith. We also conclude that the Minnesota Constitution’s Due Process Clause does not require a different result. Thus, we affirm.

FACTS

Respondent State of Minnesota charged appellant Jeffrey Bond Troyer with fourth-degree DWI under Minn. Stat. § 169A.20, subd. 1(5) (2018) (alcohol concentration of 0.08 or more), along with three other impaired-driving offenses. The following summarizes the facts found by the district court based on the evidence and testimony received at the omnibus hearing.

On February 22, 2018, at about 2:00 a.m., a police officer stopped Troyer for speeding in Inver Grove Heights. The officer observed that Troyer had bloodshot, watery eyes. Troyer told the officer he was returning from a tavern where he had consumed “two tall beers.” Troyer failed field sobriety tests and a preliminary breath test. The officer arrested Troyer and brought him to the police station.

At the station, the officer read Troyer the breath-test advisory and gave him time to speak with an attorney. Troyer agreed to submit to the breath test. The arresting officer observed a second officer administer the DataMaster breath test to Troyer and follow

required procedures. Troyer's breath samples showed an alcohol concentration of at least 0.16.

After the state served its complaint, Troyer filed a timely discovery request for, among other things, the "video recordings made regarding this case," including the video of his booking and breath-test procedure. The state could not produce the requested booking-room video because it had been automatically destroyed. Troyer moved to suppress "all evidence that would have been contained" on the booking-room video "had the video been preserved as requested" by Troyer. The state opposed the motion to suppress.

At the omnibus hearing, the arresting officer testified that Troyer's breath test was captured on the video-recording system installed in the station. The officer agreed that while he does not "remember exactly what happened," Troyer's entire breath-testing process would have been preserved on the booking-room video.

After the omnibus hearing, the district court issued written findings of fact, conclusions of law, and a memorandum. Together with the facts summarized above, the district court found the police station "has working cameras in its booking spaces," and explained that "[t]hese cameras record at all times and would have recorded [Troyer's] breath test and other interactions" with police. The recordings are retained on the police department's server for 90 days. After 90 days, the recordings are "automatically deleted by the system." The department will "save the footage or override the scheduled destruction, with proper notice."

The district court found that, on “April 12, 2018—within the 90-day retention timeframe—[Troyer’s] counsel submitted a discovery request to the Inver Grove Heights City Attorney’s Office.” The discovery request sought “[c]opies of any audio or video recordings made regarding this case including any recordings made by the officers, dispatchers or jailers.” But the “City Attorney’s Office did not immediately request the booking footage.” Rather, on “December 19, 2018—beyond the 90-day retention timeframe, the City Attorney’s Office requested the booking footage” from the police department. Despite the department’s efforts to retrieve the booking-room video, it “was already deleted by the server.”

In its written memorandum following the omnibus hearing, the district court determined that, in response to Troyer’s discovery request, the state produced: “1) audio recordings of [the officer] giving [Troyer] the breath advisory and Miranda warning during booking; 2) the printed breath test advisory form for this case; 3) the DataMaster test results printout; and 4) [the officer’s] squad vehicle footage of the incident.”

The district court next determined that the booking-room video “was potentially useful evidence,” and the state’s “failure to request its preservation immediately after receipt of [Troyer’s] discovery request was likely inadvertent.” The district court emphasized its earlier finding that the booking-room video “was destroyed by the server’s automatic process,” which followed the record-retention schedule. The district court finally determined that the booking-room video “was not material, and was not destroyed intentionally or in bad faith.” Based on these determinations, the district court concluded

that “[Troyer’s] due process rights were not violated” and denied his motion to suppress evidence.

The parties agreed to a stipulated-evidence court trial under Minn. R. Crim. P. 26.01, subd. 4, to obtain an appellate ruling on the pretrial order denying Troyer’s motion to suppress. After a court trial, the district court convicted Troyer of fourth-degree DWI, and stayed the imposition of sentence on the condition that Troyer complete one year of probation.

Troyer appeals. After filing his notice of appeal, Troyer petitioned the supreme court for accelerated review, which the supreme court denied.

DECISION

Troyer argues that the district court erred by denying his motion to suppress the evidence of his breath test, including the test results, because the state violated his due-process rights by destroying the booking-room video. Troyer contends, first, that the Minnesota Constitution’s Due Process Clause provides greater protection than the U.S. Constitution. Troyer contends, second, that under the Minnesota Constitution, this court should suppress all related evidence when the state destroys evidence in its possession after a defendant makes a timely request to preserve the evidence, even with no claim that the destroyed evidence is exculpatory or that the state acted in bad faith. The state argues that the district court properly denied Troyer’s motion under existing law and that this court should reject Troyer’s proposed rule under the Minnesota Constitution.

On appeal of a district court’s pretrial order on a motion to suppress evidence, this court reviews “the district court’s factual findings under a clearly erroneous standard and

the district court's legal determinations de novo." *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). Troyer does not contend that the district court's findings of fact were clearly erroneous. Troyer's sole argument for reversal rests on whether the state's destruction of evidence violated his due-process rights. Whether a due-process violation has occurred poses a question of constitutional law, which we review de novo. *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). "The interpretation and application of the Minnesota Constitution is a legal question that we review de novo." *State v. Castillo-Alvarez*, 836 N.W.2d 527, 534 (Minn. 2013).

Relevant precedent

We begin by summarizing the applicable law on the state's duty to preserve evidence under the federal Due Process Clause. In *Brady v. Maryland*, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963). In *Arizona v. Youngblood*, the Supreme Court refined its holding from *Brady* by adding a bad-faith requirement where the destroyed evidence is not exculpatory. 488 U.S. 51, 57-58, 109 S. Ct. 333, 337 (1988). The Court differentiated between "potentially useful evidence" and "material exculpatory evidence." *Id.* The Court ruled 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." *Id.* at 58, 109 S. Ct. at 337.

In *Illinois v. Fisher*, the Supreme Court analyzed whether a timely discovery request by a defendant alters the due-process analysis for the state's destruction of potentially useful evidence. 540 U.S. 544, 545, 124 S. Ct. 1200, 1200 (2004). The Court held that a defendant's discovery request does not negate the bad-faith requirement adopted in *Youngblood*:

We have never held or suggested that the existence of a pending discovery request eliminates the necessity of showing bad faith on the part of police. Indeed, the result reached in this case demonstrates why such a *per se* rule would negate the very reason we adopted the bad-faith requirement in the first place: to limit the extent of the police's obligation to preserve evidence to reasonable grounds and confine it to that class of cases where the interests of justice most clearly require it.

Id. at 548, 124 S. Ct. at 1202 (quotation omitted).

In *State v. Hawkinson*, the Minnesota Supreme Court considered facts very similar to those in Troyer's case. 829 N.W.2d 367 (Minn. 2013). The supreme court reversed a district court's decision to suppress evidence in a DWI prosecution after the state had destroyed the appellant's blood sample while following its retention policy but after the appellant had made a timely request to preserve the evidence. *Id.* at 369. After summarizing *Brady* and noting that it had previously followed *Youngblood*, the supreme court determined that the appellant's blood sample was not exculpatory evidence and was only "potentially useful evidence," so the bad-faith requirement from *Youngblood* applied. *Id.* at 371-73.¹ After examining the record under existing case law, the supreme court

¹ The supreme court next identified two "indices of bad faith": "(1) whether the State purposefully destroyed evidence favorable to a defendant so as to hide it"; and "(2) whether the State failed to follow standard procedures when it destroyed the evidence." *Id.* at 374.

determined that the state had “no motive” to destroy the blood sample, which was inculpatory, and “followed its normal procedure” when it destroyed the sample, and that these determinations “undermine[d]” appellant’s bad-faith claim. *Id.* at 374.

The supreme court next considered the effect of appellant’s request to preserve the blood sample, which it described as “a matter of first impression.” *Id.* The supreme court rejected a “per se rule,” which it described as: “once a request for preservation has been made, the evidence must be preserved and if it is not preserved, then it will be suppressed.” *Id.* at 375. In rejecting this rule, the supreme court relied on *Fisher*. *Id.* The court concluded that, while a request to preserve evidence “can be considered when assessing whether bad faith played a role in the State’s destruction of the evidence,” it does not, alone, “negate the requirement that a defendant show bad faith.” *Id.* After analyzing the record evidence on the appellant’s request, the supreme court held that the state’s destruction of the blood sample did not violate appellant’s due-process rights. *Id.* at 377.

We are troubled that Troyer’s brief to this court does not cite *Hawkinson* or *Fisher*. Minnesota appellate courts may decline to reach an issue in the absence of adequate briefing. *In re Civil Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017), review denied (Minn. June 20, 2017). When a party “does not cite to applicable law, nor . . . engage in an analysis of the law to substantiate her claims that errors of law actually occurred,” these arguments may be deemed inadequate. *In re Conduct of Karasov*, 805 N.W.2d 255, 271 (Minn. 2011). Troyer does not analyze the most applicable Minnesota precedent on a defendant’s due-process rights in the context of evidence destruction: *Hawkinson*.

Still, we recognize that the supreme court in *Hawkinson* did not decide whether the Minnesota Constitution's Due Process Clause provides greater protection than the federal Constitution, as Troyer argues here. Troyer's brief describes the district court's ruling on his motion to suppress, which cited *Hawkinson*, as "a relatively accurate statement of the law." Troyer argues that "it is that very standard this appeal seeks to change." In district court, Troyer also argued for a change in the law. Because we conclude that Troyer's brief to this court cites some relevant legal authority for his position, even if he overlooks the most applicable caselaw, we address the issue on appeal.

Authority of the court of appeals

Troyer contends that the issue is "beyond the purview of the Minnesota Court of Appeals" in his petition for accelerated review to the supreme court. We disagree. It is true that we are "bound by supreme court precedent." *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018); *State v. Final Exit Network, Inc.*, 889 N.W.2d 296, 303 (Minn. App. 2016). This court, however, may decide issues of first impression. *In re Trusteeship of Tr. of Williams*, 631 N.W.2d 398, 410 (Minn. App. 2001) ("Only when there are no statutory or judicial precedents to follow will the Court of Appeals make new law."), *review denied* (Minn. Sept. 25, 2001); *see also State v. McCormick*, 835 N.W.2d 498, 510 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). "We acknowledge that we are primarily an error-correcting court. Where our appellate courts have not clearly addressed the central issue in a case, however, it is our duty to note the direction of developments and to anticipate changes in the law." *Anderson v. Federated Mut. Ins. Co.*, 465 N.W.2d 68, 72 (Minn. App. 1991) (citation omitted), *aff'd*, 481 N.W.2d 48 (Minn. 1992). *See also Sam*

Hanson, “The Minnesota Court of Appeals: Arguing to, and Limitations of, an Error-correcting Court,” 35 *William Mitchell L. Rev.* 1261, 1264 (2009) (noting that this court, “just as the district court, must decide the case before it” and sometimes must “decide issues of first impression, some of which require it to resolve competing public-policy interests”).

Thus, to resolve this appeal, we first consider whether the district court’s decision followed existing law and then decide whether the Minnesota Due Process Clause requires reversal. The state argues, without opposition from Troyer, that the district court followed existing precedent under the federal Due Process Clause. We agree with the state.

The supreme court in *Hawkinson* held that “when a defendant seeks to suppress test results from evidence that was: (1) merely potentially useful; (2) subject to a request to preserve; and (3) was destroyed by the State; the defendant must show that the State destroyed the evidence in bad faith” before there is a due-process violation. 829 N.W.2d at 376. The district court found that the booking-room video “was potentially useful evidence and the State’s failure to request its preservation immediately after receipt of [Troyer’s] discovery request was likely inadvertent.” The district court concluded, “Since the booking video footage was not material, and was not destroyed intentionally or in bad faith, [Troyer’s] due process rights were not violated.” The district court correctly applied *Hawkinson* to the facts in this case.

Minnesota due-process analysis

Turning to Troyer’s claim under the Minnesota Due Process Clause, we recognize that Minnesota courts “can and will interpret our state constitution to afford greater

protections of individual civil and political rights than does the federal constitution.” *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005). An appellate court approaches “this task with restraint and some delicacy” and “will not, on some slight implication and vague conjecture, depart from federal precedent or the general principle that favors uniformity with the federal constitution.” *Id.*

When considering whether to expand state constitutional rights beyond those of the federal constitution, “the issue is whether we have a clear and strong conviction that there is a principled basis” for the court to interpret the Minnesota Constitution to provide greater protections than the U.S. Constitution. *State v. McMurray*, 860 N.W.2d 686, 691 (Minn. 2015) (quotation omitted). The supreme court has held that it will not interpret the Minnesota Constitution to reject the interpretation of a similar provision in the U.S. Constitution “merely because one prefers the opposite result.” *State v. Wicklund*, 589 N.W.2d 793, 799 (Minn. 1999) (quotation omitted).

We see no principled basis for Troyer’s view of the Minnesota Due Process Clause based on its text. The Minnesota Constitution provides, “No person shall be held to answer for a criminal offense without due process of law . . . nor be deprived of life, liberty or property without due process of law.” Minn. Const. art. I, § 7. The Fourteenth Amendment of the United States Constitution similarly provides, “No state shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The state and federal Due Process Clauses are textually similar, and the supreme court has described the scope of their protections as “identical.” *Turner v. Comm’r of Revenue*,

840 N.W.2d 205, 209 (Minn. 2013); *see also State v. LeDoux*, 770 N.W.2d 504, 512 (Minn. 2009).

Troyer cites no caselaw in which the supreme court has previously interpreted the state Due Process Clause differently from the federal Due Process Clause, and we can find none.² Despite the lack of precedent for doing so, Troyer argues that this court should interpret the state Due Process Clause differently from the federal Due Process Clause. He contends that “Minnesota should adopt a bright line rule under our state constitutional due process and fair trial clauses that if evidence in the exclusive possession or control of the state is lost or destroyed, any evidence that would have been preserved cannot be offered against the accused.”

Troyer offers two rationales, which we discuss in turn. First, Troyer contends that the proposed bright-line rule is akin to the standard Minnesota applies to destroyed evidence in civil cases. But Troyer mischaracterizes Minnesota civil law on the spoliation of evidence. It is true that, in civil cases, a party need not establish bad faith in the destruction of evidence before seeking sanctions. *See, e.g., Himes v. Woodings-Verona Tool Works, Inc.* 565 N.W.2d 469, 471 (Minn. App. 1997) (upholding sanctions for

² As the state points out, the supreme court has interpreted the state constitution to provide greater protections than the federal constitution almost exclusively for Fourth Amendment searches and seizures. *See, e.g., State v. Leonard*, 943 N.W.2d 149, 156 (Minn. 2020) (holding search of hotel guest registry violated Minn. Const. art I, § 10 because it “provides greater protection against suspicionless law enforcement conduct” than the U.S. Constitution); *State v. Carter*, 697 N.W.2d 199, 210 (Minn. 2005) (holding random use of drug-detection dog violated Minn. Const. art I, § 10); *Ascher v. Comm’r of Pub. Safety*, 519 N.W.2d 183, 187 (Minn. 1994) (holding suspicionless seizures using DWI roadblocks violated Minn. Const. art I, § 10).

negligent loss of evidence), *review denied* (Minn. Aug. 26, 1997). Civil law does not, however, embrace a per se rule, as is proposed by Troyer. A district court may impose sanctions against a party for the loss or destruction of evidence only when it finds prejudice to the moving party. *See Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (holding district court “has the inherent power to impose sanctions” for evidence spoliation and in doing so must determine “the impact of the spoliation—the prejudice to the opposing party”). “Implicit in that standard is the need to examine the nature of the item lost in the context of the claims asserted and the potential for remediation of the prejudice.” *Id.*

Contrary to Troyer’s argument, the civil analysis for evidence spoliation is analogous to *Hawkinson*’s analysis for a due-process violation. A district court deciding whether to sanction a party for evidence spoliation considers the prejudice occasioned by the destroyed evidence. *Patton*, 538 N.W.2d at 119. *Hawkinson* similarly analyzed whether the destroyed evidence was material and exculpatory or only “potentially useful.” 829 N.W.2d at 372-73.³ We thus reject Troyer’s claim that his proposed rule is necessary to put criminal defendants on equal footing with civil litigants.

Even more to the point, the supreme court in *Hawkinson* rejected a per se rule like the one proposed by Troyer. *Id.* at 375. The supreme court relied on *Fisher* and reasoned that the bad-faith requirement is necessary to “limit the extent of the police’s obligation to

³ We also note that Troyer’s proposed rule raises unanswered questions: (1) does the proposed rule apply to the destruction of *any* evidence by the state or only to material evidence or evidence for which the defendant can articulate prejudice? And (2) how does the court decide when and what evidence to suppress or whether dismissal is the more appropriate sanction?

preserve evidence to reasonable grounds and confine it to that class of cases where the interests of justice most clearly require it.” *Id.* at 376 (quoting *Fisher*, 540 U.S. at 547-48, 124 S. Ct. at 1202). Thus, *Hawkinson* recognized that there are public policy reasons unique to the criminal process that support preserving the bad-faith requirement. Troyer never discusses the public policy analysis in *Hawkinson*, which obviously carries great weight when applied to the Minnesota Due Process Clause.

Second, Troyer argues that a bright-line rule is necessary to avoid the outcome in *Youngblood*. According to Troyer, the Supreme Court’s ruling in *Youngblood*, which adopted the bad-faith requirement, “did not protect Youngblood’s due process rights” because “he was later exonerated” when the evidence that was damaged by police during storage “was tested using new, sophisticated DNA technology.” Even if we assume, without deciding, that Troyer’s description of Youngblood’s case is accurate, his argument is unpersuasive.

Troyer does not argue that the booking-room video is exculpatory, as was argued in *Youngblood*. Just as the supreme court determined that the destroyed blood sample in *Hawkinson* was potentially useful evidence and not exculpatory, the district court determined that the destroyed booking-room video was potentially useful because it was “not material and was not the only source of the evidence.” Troyer does not contest this determination on appeal. And, unlike *Youngblood*, Troyer obtained other evidence from the state regarding his breath test—audio recordings, the printed breath-test advisory, the DataMaster test results, and the squad vehicle footage. Other evidence, therefore, mitigated

any prejudice to Troyer from the state's inadvertent destruction of the booking-room video. Thus, we reject Troyer's reliance on the outcome in Youngblood's case.

In sum, Troyer fails to discuss the relevant caselaw about the federal Due Process Clause and has articulated no principled basis for this court to interpret the Minnesota Due Process Clause to provide greater protection than the federal Due Process Clause. The two clauses are textually similar and supreme court precedent in other contexts has held their protections are "identical." *Turner*, 840 N.W.2d at 209. We conclude that the Minnesota Constitution's Due Process Clause does not require the suppression of evidence related to the destroyed booking-room video because the evidence was merely potentially useful and not exculpatory, and the state did not act in bad faith.

Affirmed.