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ARIZONA V. YOUNGBLOOD: DOES THE CRIMINAL DEFENDANT LOSE HIS RIGHT TO DUE PROCESS WHEN THE STATE LOSES EXCULPATORY EVIDENCE?

INTRODUCTION

The due process clauses of the fifth¹ and fourteenth amendments² guarantee criminal defendants the right to fair trials.³ Historically, the United States Supreme Court has been vigilant in protecting the defendant's right to a trial by jury,⁴ his right to legal counsel,⁵ and his right to be free of illegal searches and seizures,⁶ among others.⁷ Acknowledging that "our system of . . . justice suffers when any accused is treated unfairly,"⁸ the Supreme Court has added to the list of due process protections the defendant's right of access to exculpatory evidence.⁹

Generally, the Court requires criminal prosecutors to advance the state's interest in "justice" by handing over to defense counsel any evidence that might exonerate the accused.¹⁰ Recently, however, the Court took a bold, unprecedented step in the opposite direction by refusing to find a due process violation when the state loses or inadvertently destroys evidence that could be valuable to the defendant's case.¹¹ In *Arizona v. Youngblood*,¹² the Supreme Court held that a

1. U.S. CONST. amend. V (provides in pertinent part that "[n]o person shall . . . be deprived of life, liberty, or property without due process of law.").

2. U.S. CONST. amend. XIV, § 1 (provides in pertinent part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.").

3. See generally *Benton v. Maryland*, 395 U.S. 784, 794 (1969) (held that double jeopardy prohibition of the fifth amendment is a fundamental maxim and is applicable to states via the fourteenth amendment).

4. *Duncan v. Louisiana*, 391 U.S. 145 (1968).

5. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

6. *Mapp v. Ohio*, 367 U.S. 643 (1961).

7. See generally *Duncan*, 391 U.S. at 147-48 (recites a litany of protections guaranteed by the first eight amendments which, in turn, derives protection against state action from the due process clause of the fourteenth amendment).

8. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

9. *Id.* at 83; see also *United States v. Agurs*, 427 U.S. 97 (1976).

10. *Agurs*, 427 U.S. at 110-11 (the state must provide the defense with exculpatory evidence despite defense counsel's failure to request such evidence).

11. *Arizona v. Youngblood*, 109 S. Ct. 333 (1988).

12. *Id.*

law enforcement officer's failure to maintain evidence that could have bolstered the defendant's case did not constitute a due process violation unless the defendant could prove that the police acted in bad faith.¹³

This note will focus on the weaknesses in the majority's position. First, it will address the Court's unworkable "bad faith" standard. Second, it will discuss the Court's departure from the facts of this case in order to reach its broad holding. Finally, this article will conclude that the Court misapplied precedent in deciding the merits of this case.

I. BACKGROUND

ARIZONA V. YOUNGBLOOD

On October 29, 1983, David, a ten-year-old boy, was abducted by a man driving a white sedan. The man took David to a sparsely furnished house where he sodomized the boy four times. The man then tied David to a chair while he went out to start the sedan. When he returned, he sodomized David once more, then instructed the boy to wash up, threatening to kill him if he ever told of the incident. The assailant then returned David to the spot where the abduction occurred. The entire event lasted one and one-half hours.¹⁴

David was taken to a hospital where he was examined by a physician who confirmed that the boy had been sexually molested. Using a sexual assault kit, the emergency room personnel gathered physical evidence from David's body, including rectal and throat smears for semen samples, as well as samples of the victim's blood and saliva.¹⁵ Additionally, David's clothes were taken to be tested for the presence of more semen samples. In order to preserve its contents, the sexual assault kit was refrigerated. The clothes, however, were not refrigerated.¹⁶

13. *Id.* at 337.

14. *Id.* at 334; *see also* State v. Youngblood, 153 Ariz. 50, 50-51, 734 P.2d 592, 592-93 (Ct. App. 1986), *rev'd*, Arizona v. Youngblood, 109 S. Ct. 333 (1988).

15. *Youngblood*, 109 S. Ct. at 334; *see also* State v. Youngblood, 153 Ariz. at 51, 734 P.2d at 593. A sexual assault kit is an investigative tool used by emergency room personnel to gather evidence from a victim's body following a sexual assault. The local police department provided the kits to all area hospitals. The kit used by the hospital personnel treating David "included a tube for collecting a blood sample, a paper to collect a saliva sample, microscopic slides used to make smears (for female victims) and a set of swabs used to collect evidence." *Id.*

16. *Youngblood*, 109 S. Ct. at 335; *see also* State v. Youngblood, 153 Ariz. at 51, 734 P.2d at 593. Generally, freezing or refrigerating semen samples or fabrics containing semen samples

At trial, David testified that he was abducted by a man with greasy grey hair who drove a white two-door sedan.¹⁷ Additionally, he described his attacker as a man with some facial hair, no visible scars on his face, and a deformed right eye.¹⁸ Youngblood, on the other hand, has dry black hair, no facial hair, a noticeable scar on his forehead, and a bad left eye.¹⁹ Furthermore, David testified that the assailant drove a white two-door sedan with a loud muffler and a radio that played country music.²⁰ Youngblood owned a white four-door sedan, which he stated had a quiet muffler and a broken radio. Youngblood and other witnesses testified that the car was inoperable at the time of the attack and was being stored in Youngblood's girlfriend's backyard.²¹

Prior to trial, the police secretly removed Youngblood's automobile from his girlfriend's backyard, dusted it for fingerprints, searched for hair samples, and disposed of the car before defense counsel could mount its own investigation.²² Furthermore, David was never given an opportunity to identify the vehicle as the one in which he was abducted.²³ In addition, the police tested the evidence in the sexual assault kit only to discover that the samples gathered from David's body were inadequate to determine the blood type of the assailant.²⁴ Police laboratory technicians noted the presence of substantial semen samples on David's shirt and underwear. However,

is recommended in order to insure an accurate test culture. The reduced temperature slows down enzyme activities that could destroy the sample. Boyce & McCloskey, *Legal Applications of Standard Laboratory Tests for the Identification of Seminal Fluid*, 7 J. CONTEMP. L. 1, 28 (1982).

17. *State v. Youngblood*, 153 Ariz. at 50-51, 734 P.2d at 592-93.

18. *Id.* at 50, 734 P.2d at 592. David testified that the man's name was Damian or Carl. *Id.*, 734 P.2d at 592.

19. *Id.* at 51, 734 P.2d at 593. Additionally, the evidence established that Youngblood always wears glasses in public, and that he walks with a noticeable limp. *Id.*, 734 P.2d at 593.

20. *Id.*, 734 P.2d at 593. David also testified that there were sheets or blankets covering the car seat, but, because it was dark inside the car, he could not see them. Later, however, when the police showed David two blankets that they claimed came from the assailant's car, David identified them on sight without ever touching them. *Id.*, 734 P.2d at 593.

21. *Id.* at 51-52, 734 P.2d at 593-94. Furthermore, Ms. Whigham, Youngblood's girlfriend, and others testified that the car was locked in Whigham's backyard on the day of the assault, and that Youngblood had previously removed the battery and placed it in Whigham's car. *Id.*, 734 P.2d at 593-94.

22. *Id.*, 734 P.2d at 593. The police seized the car from Ms. Whigham's locked backyard, towed it to the police station, and photographed it. Then, because Youngblood had not changed the title to his name since buying the car, the police disposed of the car without notice to Youngblood. No samples of David's fingerprints or hair were discovered in Youngblood's car. *Id.*, 734 P.2d at 593-94.

23. *Arizona v. Youngblood*, 109 S. Ct. 333, 345 (1988) (Blackmun, J., dissenting).

24. *Id.* at 335.

because the samples had spoiled from lack of refrigeration, laboratory tests could not identify the blood type of the assailant.²⁵ Despite the inconsistencies in David's testimony regarding the description of his assailant and the vehicle, and the police officers' mishandling of key evidence, Youngblood was convicted of kidnapping, child molestation, and sexual assault by an Arizona superior court, based solely on David's identification, and sentenced to prison.²⁶

Following his conviction, Youngblood appealed the superior court decision alleging that by failing to refrigerate the victim's clothing and by disposing of the defendant's car before the defense could analyze it for evidence, the police had denied him his right to due process.²⁷ He claimed that, had the semen samples in David's clothes been preserved, evidence would have existed that totally could have exonerated him.²⁸ Furthermore, he argued that by disposing of his automobile before the defense had a chance to send its own investigators to determine its contents, the police had denied the defense an opportunity to refute the prosecution's evidence.²⁹

The Arizona Court of Appeals reversed Youngblood's conviction and ordered dismissal of the counts against him.³⁰ The court ruled that "law enforcement officers have a duty to preserve semen samples in sexual assault case[s], including a duty to refrigerate them."³¹ Drawing from the testimony at trial, the court concluded that, without the benefit of the destroyed evidence, Youngblood had no alternative means of proving his innocence.³² Furthermore, the court acknowledged that the lost evidence could have totally "eliminated the defendant as the perpetrator."³³ In holding that the destruction of the evidence had violated due process, the Arizona court stressed that its decision did not imply bad faith on the part of the state, but rather acknowledged society's interest in maintaining the

25. *Id.*

26. *Id.*; see also *State v. Youngblood*, 153 Ariz. at 50, 734 P.2d at 592. Youngblood's conviction was based, in significant part, on David's identification of him as the assailant. It is important to remember that David selected Youngblood's photograph out of a group of police photographs. Later, David identified a photograph of a different suspect as his attacker. *State v. Youngblood*, 153 Ariz. at 52, 734 P.2d at 594.

27. 153 Ariz. at 50, 734 P.2d at 592.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 55, 734 P.2d at 597.

32. *Id.* at 53, 734 P.2d at 595 (citing *California v. Trombetta*, 467 U.S. 479 (1984)).

33. *Id.* at 55, 734 P.2d at 597.

“integrity of the judicial system” by insuring defendants the right to a fair trial.³⁴

The United States Supreme Court reversed the Arizona Court of Appeals’ ruling,³⁵ holding that the law enforcement officers’ failure to preserve exculpatory evidence did not violate due process unless the defendant could prove that the police officers had acted in bad faith.³⁶ Chief Justice Rehnquist, writing for the majority,³⁷ compared this case to *California v. Trombetta*,³⁸ a case in which the Supreme Court had held that police officers did not have a duty to preserve breath samples in drunk driving cases.³⁹

Applying *Trombetta*’s three-pronged test for due process, the Court concluded that there was no due process violation in the law enforcement officers’ handling of the evidence in *Youngblood*.⁴⁰ First, the Court held that, like the police in *Trombetta*, the officers in *Youngblood* had acted in good faith. Even though the Court acknowledged that the officers’ failure to refrigerate the evidence may have been negligent, it was not done with malice. By limiting due process protection to evidence destroyed in bad faith, the Court hoped to mitigate the number of dismissals that would occur if the police were burdened with a duty to maintain all significant evidence.⁴¹ Second, the Court reasoned that, like the missing evidence in *Trombetta*, it was not “apparent” that the missing evidence in this case would have definitely exonerated *Youngblood*.⁴² While Rehnquist acknowledged that the likelihood of exoneration in this

34. *Id.* at 54-55, 734 P.2d at 596-97 (citing *People v. Nation*, 26 Cal. 3d 169, 176, 604 P.2d 1051, 1055 (1980)).

35. *Arizona v. Youngblood*, 109 S. Ct. 333, 338 (1988). The Arizona Court of Appeals had held that the state had breached its constitutional duty to provide a fair trial by failing to preserve the semen samples from the victim’s body and clothing. *State v. Youngblood*, 153 Ariz. at 54, 734 P.2d at 596-97.

36. *Youngblood*, 109 S. Ct. at 337.

37. *Id.* at 334. Justices White, O’Connor, Scalia, and Kennedy joined Chief Justice Rehnquist in the majority opinion.

38. 467 U.S. 479 (1984).

39. *Youngblood*, 109 S. Ct. at 336. In *Trombetta*, the Supreme Court held that police officers did not violate the defendant’s right to due process when they destroyed samples of the defendant’s breath gathered for breathalyzer tests. 467 U.S. at 492. See generally Edwards & Johnson, *Breathalyzers: Should the State be Required to Preserve the Ampoules?*, 15 LAND & WATER L. REV. 299 (1980).

40. *Youngblood*, 109 S. Ct. at 337. Essentially, the *Trombetta* test for determining whether destroyed evidence violates due process is as follows: (1) the destruction must have been in bad faith, (2) the evidence’s exculpatory value must be apparent at the time of the destruction or loss of the evidence, and (3) the defendant must have no alternative means of proving his innocence. *Id.* at 336.

41. *Id.* at 337.

42. *Id.* at 336.

case "appears to be greater than it was in *Trombetta*," it was not absolutely apparent that an analysis of the semen stains in David's clothing would have eliminated Youngblood as a possible perpetrator.⁴³ Finally, it may be inferred that the Court believed that Youngblood, like *Trombetta*, had alternative means of proving his innocence.⁴⁴ Chief Justice Rehnquist, however, never indicated in the opinion what those alternative means may have been.

Justice Stevens concurred in the judgment.⁴⁵ He stressed, however, that he did not "join the Court's opinion because it announce[d] a proposition of law that is much broader than necessary to decide this case."⁴⁶ He acknowledged that "there may well be cases in which the defendant is unable to prove bad faith, but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair."⁴⁷ The *Youngblood* facts, however, did not present such a case. Justice Stevens explained that Youngblood received due process because the trial judge charged the jury: "If you find that the State has . . . allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State's interest."⁴⁸ Stevens concluded that, because no juror chose to construe the missing evidence in favor of the defendant, the evidence at trial must have been so overwhelming that introduction of the missing evidence would not have exculpated Youngblood in any event.⁴⁹

Justice Blackmun, writing for the dissenters, delivered a scathing rebuttal of the majority's conclusions.⁵⁰ The dissent concluded that, "[r]egardless of intent or lack thereof, police action that results in a

43. *Id.* In *California v. Trombetta*, the missing evidence had already been evaluated for its significance to Trombetta's defense. 467 U.S. at 489. Furthermore, in drunk driving cases, the state may obtain a conviction based upon the officer's observation alone, without using the breathalyzer results. *Youngblood*, 109 S. Ct. at 338. Therefore, even if the officers had preserved the samples, the odds that the defendant would have been exonerated were extremely slim. 467 U.S. at 489. See also *Edwards & Johnson*, *supra* note 39, at 302-05.

44. *Youngblood*, 109 S. Ct. at 336; *Trombetta*, 467 U.S. at 490. "Even if the samples might have shown inaccuracy in the tests, the defendants had 'alternative means of demonstrating their innocence.'" *Youngblood*, 109 S. Ct. at 336 (quoting *Trombetta*, 467 U.S. at 490).

45. *Youngblood*, 109 S. Ct. at 338-39 (Stevens, J., concurring).

46. *Id.* at 339 (Stevens, J., concurring).

47. *Id.* (Stevens, J., concurring).

48. *Id.* at 338 (Stevens, J., concurring) (quoting the trial judge at 10 Tr. 90).

49. *Id.* (Stevens, J., concurring).

50. *Id.* at 338-45 (Blackmun, J., dissenting). Justices Brennan and Marshall joined with Justice Blackmun in the dissent. *Id.* at 339.

defendant's receiving less than a fair trial constitutes a deprivation of due process."⁵¹

First, Justice Blackmun attacked the majority's bad faith requirement, noting that, in the bulk of Supreme Court precedent on similar issues, the prosecution's good or bad faith was never at issue.⁵² This was particularly true in *Trombetta*, where the disposal of breath samples was the usual procedure, rather than a good faith error on the part of police.⁵³ Furthermore, the dissent declared that, in many situations, it is difficult to determine exactly what constitutes bad faith.⁵⁴ To impose the burden upon the defendant to prove that law enforcement officials had, indeed, acted in bad faith might very well be impossible in the vast number of cases.

Second, Justice Blackmun attacked the majority's incorporation of *Trombetta*'s requirement that the exculpatory value of the missing evidence must be "apparent."⁵⁵ He stressed that the crucial difference between *Youngblood* and *Trombetta* was that, in *Trombetta*, diagnostic tests had already been performed on the evidence before it was destroyed. In *Youngblood*, the missing evidence had not yet been tested.⁵⁶ Furthermore, unlike *Trombetta*, a proper test of the evidence could have exonerated the defendant completely.⁵⁷

Third, Justice Blackmun acknowledged that the missing evidence took on greater significance in *Youngblood* precisely because the defendant had no alternative means of proving his innocence. Essentially, once the evidence became unavailable, the *Youngblood* case turned only on David's positive identification of the defendant.⁵⁸ Finally, Justice Blackmun stressed the importance of maintaining the

51. *Id.* at 339 (Blackmun, J., dissenting).

52. *Id.* at 340-41 (Blackmun, J., dissenting). The dissent focused on the Court's holding in *Brady* "that suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution." *Id.* at 340 (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)).

53. *California v. Trombetta*, 467 U.S. 479, 482-83 (1984).

54. *Youngblood*, 109 S. Ct. at 342 (Blackmun, J., dissenting).

55. *Id.* at 342-43 (Blackmun, J., dissenting). Justice Blackmun asserted that "a semen sample in a rape case where identity is questioned is always significant." *Id.* (Blackmun, J., dissenting).

56. *Id.* at 342 (Blackmun, J., dissenting).

57. *Id.* (Blackmun, J., dissenting).

58. *Id.* at 343 (Blackmun, J., dissenting). Justice Blackmun stated:

To put it succinctly, where no comparable evidence is likely to be available to the defendant, police must preserve physical evidence of a type that they reasonably should know has the potential, if tested, to reveal immutable characteristics of the criminal, and hence to exculpate a defendant charged with a crime.

Id.

integrity of the judicial system by guarding vigilantly the criminal defendant's right to a fundamentally fair trial.⁵⁹

II. ANALYSIS

As the dissent points out, the majority opinion is alarming particularly because it limits substantially the individual's right to due process. Rather than providing the defendant with a fair trial, the Court is giving him merely "a 'good faith' try at a fair trial."⁶⁰ The majority's holding is troublesome for three primary reasons. First, the Court's requirement that the defendant prove that police destroyed evidence in bad faith⁶¹ places an unrealistic burden on the defendant that does not advance the cause of due process. Second, the Court's holding is not carefully tailored to the facts of this case, but rather provides a broad standard for any case involving the "failure to preserve potentially useful evidence."⁶² Finally, the Court's application of *Trombetta's* exculpatory value standard⁶³ to determine whether loss of evidence violates due process was an inappropriate application of case precedent.

Essentially, the Court was faced with two distinct bodies of case law when considering the proper analysis in *Youngblood*. One line of cases, represented by *Brady v. Maryland*⁶⁴ and *United States v. Agurs*,⁶⁵ illustrates the Court's approach to cases where exculpatory evidence was intentionally withheld from the defense.⁶⁶ The *Brady* line of cases advanced the proposition that the State has a constitutional duty to turn over evidence that could raise a "reasonable doubt about the defendant's guilt."⁶⁷ Under a *Brady* analysis, the issue is not whether the state acted in good or bad faith. Rather, the emphasis focuses on fundamental fairness to the accused.⁶⁸ It is reversible error if the defendant is denied a fair trial due to the unavailability of favorable evidence, regardless of whether that evi-

59. *Id.* at 345 (Blackmun, J., dissenting).

60. *Id.* at 339 (Blackmun, J., dissenting).

61. *Id.* at 337.

62. *Id.*

63. *Id.*

64. 373 U.S. 83 (1963).

65. 427 U.S. 97 (1976).

66. See Project, *Sixteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1985-1986*, II. *Preliminary Proceedings*, 75 GEO. L.J. 859, 939-43 (1987).

67. *Id.* at 941-42 n.1580.

68. *Brady*, 373 U.S. at 87.

dence is withheld in bad faith or inadvertently.⁶⁹ Furthermore, if the Court finds that the evidence was suppressed unconstitutionally, the remedy may be a new trial for the accused where the previously withheld evidence would be introduced.⁷⁰

The second line of cases, represented by *Killian v. United States*⁷¹ and *California v. Trombetta*⁷² dealt with the State's failure to preserve evidence that the defendants alleged would have been beneficial to their defense.⁷³ Both *Killian* and *Trombetta*, however, dealt with evidence that the state had already reviewed and evaluated.⁷⁴ For example, in *Killian*, the defendant alleged that the FBI had destroyed potentially exculpatory evidence when an officer transcribed his own notes from a pad to an investigation report and then discarded the notes.⁷⁵ The Court held that the officer had merely transferred the evidence from one form to another, and that *Killian* had not been denied the evidentiary benefit of the notes.⁷⁶ In each of the above cases, the Court concluded that the police officers were acting "in good faith and in accord with their normal practice."⁷⁷ If the Court had found that the disposal of the evidence had violated the defendants' rights to due process, dismissal of the counts against them would have been the appropriate remedy.⁷⁸

Although the *Youngblood* majority acknowledged the *Brady* Court's holding that the issue was not the mental state of the police, but, rather, fairness to the accused,⁷⁹ the Court rejected that line of cases, and decided *Youngblood* by adopting a strict *Trombetta* analysis.⁸⁰ This choice seemed to be the obvious one because both *Youngblood* and *Trombetta* dealt with lost evidence. It was, however, inappropriate. It is illogical to conclude that criminal defendants are entitled to a remedy when a party intentionally withholds exculpatory evidence, but, if the same evidence is destroyed intentionally or inadvertently by that party, the defendant is entitled to nothing.

69. See Project, *supra* note 66, at 940-41.

70. See Comment, *Duty to Preserve Evidence Before Trial*, 72 CALIF. L. REV. 1019, 1022-23 (1984). The courts "have an incentive to grant new trials in this situation." *Id.* at 1022.

71. 368 U.S. 231 (1961).

72. 467 U.S. 479 (1984).

73. See Comment, *supra* note 70 at 1033-35.

74. *Id.*

75. *Killian*, 368 U.S. at 234-40.

76. *Id.* at 244.

77. *California v. Trombetta*, 467 U.S. 479, 488 (1984); see *Killian*, 368 U.S. at 308.

78. See Comment, *supra* note 70, at 1035-37.

79. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

80. *Arizona v. Youngblood*, 109 S. Ct. 333, 337 (1988).

However, this is essentially the result that the majority has advanced by following an exclusive *Trombetta* analysis.

A. *Bad Faith*

Chief Justice Rehnquist stated in the majority opinion 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."⁸¹ The bad faith requirement is a distinct departure from prior Supreme Court precedent.⁸² Although the Court had never considered a case where the State had lost or destroyed evidence negligently, it had considered cases involving the State's intentional nondisclosure of exculpatory evidence.⁸³

For example, in *Brady v. Maryland*,⁸⁴ the Supreme Court affirmed the Maryland Court of Appeals' holding that, by suppressing evidence that could have affected the jury's verdict, the prosecution violated the defendant's right to due process.⁸⁵ The Court declared "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process . . . irrespective of the good faith or bad faith of the prosecution."⁸⁶ In *Brady*, the Court acknowledged that imposing a bad faith requirement on suppression cases would unnecessarily focus on the competence of the state.⁸⁷ Drawing from *Mooney v. Holohan*,⁸⁸ a similar suppression case, the *Brady* Court explained that correcting due process violations like those presented in intentional suppression cases was "not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused."⁸⁹ Thus, the Court plainly recognized that the important issue is not whether counsel for the state withheld evidence intentionally or merely did not understand the significance of the evidence, but, rather, whether the fact that the evidence was not

81. *Id.*

82. See *Brady*, 373 U.S. at 88; *United States v. Agurs*, 427 U.S. 97, 110 n.17 (1986); see also Capra, *Access to Exculpatory Evidence: Avoiding the Agurs Problems of Prosecutorial Discretion and Retrospective Review*, 53 *FORDHAM L. REV.* 391, 393 (1984).

83. *Brady*, 373 U.S. at 84.

84. *Id.* at 83.

85. *Id.*

86. *Id.* at 87.

87. *Id.*

88. 294 U.S. 103 (1935).

89. *Brady*, 373 U.S. at 87.

presented at trial led to a conviction that was fundamentally unfair to the defendant.⁹⁰

In *Youngblood*, the Court supported its bad faith requirement with language from *Trombetta*.⁹¹ There, the Court had held that police officers did not have a constitutional duty to preserve breath samples collected during breathalyzer tests of persons charged with drunk driving.⁹² In *Trombetta*, the defendant claimed that he had been denied due process because the state had failed to preserve his breath samples for review by defense counsel.⁹³ The Court concluded that destruction of the breath samples did not constitute a deprivation of due process because (1) the evidence had been tested completely before its destruction and (2) the officers, in destroying the breath samples, "were acting in good faith and *in accord with their normal procedure*."⁹⁴ The majority in *Youngblood*, however, failed to distinguish that, while the police officers in *Trombetta* acted in good faith and in accordance with their usual police procedures, "the same standard cannot be claimed" in *Youngblood*.⁹⁵

In *Trombetta*, the police officers complied with accepted police practice when they discarded the breath samples. Complete tests on the evidence already had been conducted.⁹⁶ Conversely, as the *Youngblood* majority concedes, the police officers in this case negligently destroyed the semen samples before any test had been conducted by failing to refrigerate the victim's clothing.⁹⁷ In addition, the *Trombetta* holding, read in its entirety, requires that the officers act in good faith within the customary parameters of accepted police procedure.⁹⁸ Given the fact that the police in *Youngblood* not only negligently destroyed the semen samples but also discarded the defendant's vehicle without notice, it would be disingenuous to suggest that the officers in *Youngblood* were operating within standard police practice.

90. See *Arizona v. Youngblood*, 109 S. Ct. 333, 340-41 (1988) (Blackmun, J., dissenting); see also Comment, *supra* note 70, at 1020-21.

91. *Youngblood*, 109 S. Ct. at 337.

92. *California v. Trombetta*, 467 U.S. 479, 485-91 (1984).

93. *Id.* at 482-84.

94. *Id.* at 488 (quoting *Killian v. United States*, 368 U.S. 231, 242 (1961)) (emphasis added).

95. *Youngblood*, 109 S. Ct. at 341 (Blackmun, J., dissenting).

96. *Trombetta*, 467 U.S. at 483-84.

97. *Youngblood*, 109 S. Ct. at 337. It is well established that refrigeration is the best means of storing samples of seminal fluid. See Boyce & McCloskey, *supra* note 16, at 28-29.

98. *Trombetta*, 467 U.S. at 488.

In addition to being a distinct departure from Supreme Court precedent, requiring defendants to prove that law enforcement officials acted in bad faith in losing or disposing of evidence imposes an unrealistic burden on the accused.⁹⁹ The majority asserted 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."¹⁰⁰ As an example of such a case, Chief Justice Rehnquist offered the situation in which the police, by their unacceptable conduct, indicate that the defendant may have been denied the benefit of due process.¹⁰¹ The Court, however, failed to acknowledge that it might be impossible for the defendant to prove that police had acted in bad faith.¹⁰²

Because the evidence is in the unencumbered possession of the state, it is difficult to understand how the defendant possibly could be in a position to monitor the law enforcement officers' handling of evidence.¹⁰³ If the defendant is unable to document specific acts of bad faith, he may be in the unenviable position of depending upon the testimony of other police officers to determine the state of mind of the particular officer or officers who failed to preserve key pieces of evidence.¹⁰⁴ In *Youngblood*, all of the potentially favorable evidence was in the exclusive control of the police. Even if the defendant suspected that the officers were acting in bad faith, it would have been virtually impossible for him to prove it. First, the semen samples were destroyed before *Youngblood* had even been implicated in the case.¹⁰⁵ Second, *Youngblood's* automobile was removed from his girlfriend's backyard, searched, sold, and scrapped before he had been given any opportunity to challenge the state's discoveries.¹⁰⁶ Because the potentially valuable evidence was destroyed before *Youngblood* was involved in the case, he was incapable of preventing its destruction or proving that the police destroyed it in bad faith.

Additionally, the majority never defined what type of behavior would constitute bad faith for the purpose of enforcing the Court's

99. *Youngblood*, 109 S. Ct. at 341-42 (Blackmun, J., dissenting).

100. *Id.* at 337.

101. *Id.*

102. *See Youngblood*, 109 S. Ct. at 342 (Blackmun, J., dissenting).

103. *See Capra, supra* note 82, at 391.

104. Comment, *supra* note 70, at 1024-25.

105. *Youngblood*, 109 S. Ct. at 334-35.

106. *State v. Youngblood*, 153 Ariz. 50, 51, 734 P.2d 592, 593 (Ct. App. 1986), *rev'd*, *Arizona v. Youngblood*, 109 S. Ct. 333 (1988).

holding.¹⁰⁷ It is alarming that the *Youngblood* facts do not satisfy the Court's new bad faith requirements. What further proof would the Court require beyond the inferences reasonably drawn from the facts of this case? While it is true that there is no explicit showing of bad faith, there is a great deal of evidence suggesting that the police officers in *Youngblood* strayed drastically from the norms of competent police work. Here, the police "inadvertently" destroyed two very important pieces of evidence, both of which were important to the defense and ultimately might have exculpated the defendant. By requiring a greater showing than this, the judiciary is bound to convict defendants who are not criminals, but rather those who are the victims of shabby police work.

Finally, the bad faith requirement is inappropriate because the Court is focusing on relieving the police of responsibility at the expense of invaluable individual due process rights.¹⁰⁸ The majority explained that, by requiring defendants to show that the police had acted in bad faith, it was limiting the police's obligation to preserve evidence.¹⁰⁹ Reducing the burden on the nation's already overextended police forces is a noble gesture. But to do so by sacrificing an individual's right to due process is a monstrous abuse of judicial power. Due process guarantees fairness at trial, no more, no less. It is the duty of the Supreme Court to guard and protect that doctrine.¹¹⁰ After *Youngblood*, innocent defendants will be going to prison because the Supreme Court has declared it acceptable for the police to lose or destroy exculpatory evidence, so long as they do it in good faith. Thanks to the Bill of Rights, Americans have come to expect fair dealings in the nation's court systems. *Youngblood* undercuts the faith that the public has in the judicial system.

B. Majority's Departure from the *Youngblood* Facts

It is important to note that the majority went far beyond the facts of this case to reach its holding. In fact, the Court's interpretation of the *Youngblood* facts directly contradicts the Arizona appellate court's version of what occurred during the initial investigation.¹¹¹

107. *Youngblood*, 109 S. Ct. at 342 (Blackmun, J., dissenting).

108. *Id.* at 336.

109. *Id.*

110. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

111. See *Youngblood*, 109 S. Ct. at 334-35; *State v. Youngblood*, 153 Ariz. 50, 50-55, 734 P.2d 592, 592-97 (Ct. App. 1986). Compare the Supreme Court's conclusions of fact with the Arizona appellate court's conclusions of fact. The two approaches are diametrically opposed. The Arizona Court of Appeals took the position that, under the circumstances, the spoiled

For example, the Supreme Court majority determined that, based on the facts, Youngblood had some alternate means of proving his innocence.¹¹² This conclusion is erroneous in light of the testimony elicited at trial.

First, Youngblood was convicted solely on a description by a ten-year-old boy who selected the defendant's picture from a group of police mug shots.¹¹³ Second, both the defense and the prosecution presented cases containing totally conflicting evidence.¹¹⁴ Third, because the police had disposed of the defendant's car prior to the defense's investigation, presenting evidence from the automobile was not a viable alternative source of exculpatory evidence.¹¹⁵ Fourth, Youngblood already had exhausted every available witness to corroborate his alibi. Therefore, short of the lost evidence, Youngblood had absolutely no alternative means of proving his innocence. Nevertheless, the majority concluded that, like the defendant in *Trombetta*, Youngblood had other sources of evidence to exculpate himself, so the destruction of the semen samples did not constitute a denial of due process.¹¹⁶ The Court never specified, however, what additional sources of evidence it had in mind.

Additionally, the majority in *Youngblood* concluded that the negative semen samples would not have exonerated the defendant.¹¹⁷ Although the semen samples might not have been totally conclusive as to Youngblood's guilt or innocence,¹¹⁸ it is unrealistic for the Court to declare that the samples would, in no event, have exonerated him.¹¹⁹ It is quite possible that a forensic test of the sample might have revealed that the assailant's blood-type was "O," thus exonerating Youngblood, whose blood type is "A."¹²⁰ It is even more likely that the blood-grouping tests, along with the existing evidence, may have led the jury to a different verdict.¹²¹ Although the majority con-

semen samples could have exonerated the defendant. The Rehnquist majority, on the other hand, doubted that the semen samples would have had any impact on the trial court's verdict.

112. *Youngblood*, 109 S. Ct. at 336.

113. *State v. Youngblood*, 153 Ariz. at 52, 734 P.2d at 594.

114. *Id.* at 50-52, 734 P.2d at 592-94.

115. *Id.* at 51, 734 P.2d at 593.

116. *Youngblood*, 109 S. Ct. at 336.

117. *Id.*

118. *See Boyce & McCloskey*, *supra* note 16, at 31-32 (stresses the duty to preserve evidence from sexual offense victims presumably to attest to the guilt or innocence of the defendant).

119. *See id.*

120. *See State v. Youngblood*, 153 Ariz. 50, 54, 743 P.2d 592, 596 (Ct. App. 1986). *See also Boyce & McCloskey*, *supra* note 16, at 31-32.

121. *See Youngblood*, 109 S. Ct. at 342-43 (Blackmun, J., dissenting).

ceded that there might be a slightly better chance at exoneration here than in *Trombetta*, obviously it did not consider it enough of a chance to find a violation of due process.¹²²

The Court's ruling in *Youngblood* clearly indicates that the Court was looking for an opportunity to speak on this issue, and, despite the inappropriateness of these facts, it chose *Youngblood* as the platform from which to deliver its new precedent. As Justice Stevens noted in his concurrence,¹²³ the propositions of law set down in *Youngblood* are "much broader than necessary to decide this case."¹²⁴ Rather than limiting its decision to the merits of this particular case, the majority issued a blanket holding that, in the words of the dissent, "unduly restricts the protections of the Due Process Clause."¹²⁵ The result is that this recent Supreme Court pronouncement may have drawn the line between due process violations and acceptable deprivation of material evidence much more in the State's favor than the majority ever intended.

C. *Exculpatory Value Standard is not Applicable to Youngblood.*

The majority's opinion in *Youngblood* is also questionable when compared closely to *California v. Trombetta*,¹²⁶ the case upon which the Court patterned much of its reasoning. Essentially, *Trombetta* requires that, in order for the withholding of evidence to be a violation of due process, the "evidence must possess an exculpatory value that was apparent before the evidence was destroyed."¹²⁷ The *Youngblood* majority construed this exculpatory value requirement to mean that the police must have known that the semen samples on David's clothing would have exculpated the defendant before they decided not to refrigerate them.¹²⁸ To obtain such knowledge would have required a preliminary test of the semen samples before the evidence was destroyed. If the semen samples had been tested, and the blood type of the assailant discerned, then *Youngblood* may have been a case that falls within the *Trombetta* line. Once the results of the tests on the evidence were documented, as in *Trombetta*, the actual evidence would have been unnecessary. In *Youngblood*, however, the potential evidentiary value of the semen stains was never

122. *Id.* at 336.

123. *Id.* at 338-39 (Stevens, J., concurring).

124. *Id.* at 339 (Stevens, J., concurring).

125. *Id.* (Blackmun, J., dissenting).

126. 467 U.S. 479 (1988).

127. *Id.* at 489-90. See *Youngblood*, 109 S. Ct. at 342-43 (Blackmun, J., dissenting).

128. *Youngblood*, 109 S. Ct. at 336-37.

determined. Because the Court could not know precisely what the evidence would demonstrate, it presumed that the evidence did not deserve constitutional protection.¹²⁹

However, it is most likely that quite the contrary is true. If tests documented beyond a reasonable doubt what the evidence would show, then the accused no longer would need the actual evidence. The lower court simply could take judicial notice of the test results and either dismiss the case or convict the defendant. In *Trombetta*, the Court adopted precisely this standard. Because the missing evidence had been tested, the Court knew beyond a reasonable doubt that the evidence would not exonerate the defendant.¹³⁰ These facts were not present in *Youngblood*. Appropriate tests on the semen samples from David's clothing were never conducted. Had they been, they may or may not have exonerated Youngblood.¹³¹ It is the existence of that doubt, as to what the evidence might have shown, that makes application of the *Trombetta* test so unfair to the accused when evidence becomes unavailable prior to testing. If reasonable doubt exists because potentially helpful evidence cannot be produced at trial, a court should be wary of convicting defendants like Youngblood.¹³²

CONCLUSION

In *Arizona v. Youngblood*, the Supreme Court set a broad precedent that diminishes substantially the criminal defendant's right to a fair trial by allowing conviction despite the state's inability to produce evidence that was in its exclusive control. This decision gives law enforcement officers a license to lose or destroy evidence, so long as they do so with a smile. It would be somewhat less foreboding if the loss of evidence was a rare event. If that were the case, the Court's holding in *Youngblood* would have only limited impact. In this era of increased crime, with its concomitant strain on police officers and procedures, the reality is that the loss of evidence is not an infrequent occurrence. Hence, the inadvertent loss or destruction of evidence probably occurs daily, especially in busy urban centers. *Youngblood* will certainly have a resounding impact on the due process rights of those criminal defendants.

129. See *id.* at 343 (Blackmun, J., dissenting).

130. *Trombetta*, 467 U.S. 479, 490-91.

131. See *Youngblood*, 109 S. Ct. at 343.

132. See *id.* at 345.

The real loss, however, occurs whether the Court's holding affects one person or one million people. In *Youngblood*, the majority specifically chose to encroach upon the individual's due process rights in return for a lesser burden on police. Ultimately, the Court may be allowing defendants to be convicted without evidence that could exculpate them from guilt. In a small yet significant way, it may be indicative of a trend in the Court away from its prior vigilant protection of individual constitutionally protected rights. Before this trend progresses too far, one must hope that the Court acts speedily and prudently in defining explicitly the parameters of its *Youngblood* decision.

Willis C. Moore

