

SUPREME COURT OF NORTH DAKOTA

State of North Dakota v. Alex Kenny Eggleston

2026 ND 30 · No. No. 20250292 · Decided February 12, 2026

SUMMARY

The North Dakota Supreme Court affirmed Alex Kenny Eggleston’s convictions for knowingly causing bodily fluids to contact correctional facility employees. The court held that Eggleston failed to establish actual prejudice from pre-indictment delay or the State’s failure to preserve surveillance video, and failed to show bad faith in the loss of the video. The court also summarily affirmed the district court’s admission of the slang term “shit bomb” to describe the liquid mixture.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Justice; Lisa Fair McEvers, C.J.; Jerod E. Tufte; Jon J. Jensen; Douglas A. Bahr; Gail Hagerty, S.J.
JURISDICTION	Supreme Court of North Dakota
DECIDED	February 12, 2026
DOCKET	No. 20250292
DISPOSITION	affirmed
PROCEDURAL POSTURE	Eggleston appealed from a criminal judgment convicting him on two counts of knowingly causing bodily fluids to contact an employee of a correctional facility. He challenged the denial of motions to dismiss based on pre-indictment delay and failure to preserve evidence, and challenged the admission of the slang term "shit bomb" at trial.
STANDARD OF REVIEW	Denial of a motion to dismiss is reviewed under the standard applicable to a motion to suppress. Factual findings are upheld when, after resolving conflicting testimony in favor of affirmance, sufficient competent evidence supports them and the decision is not contrary to the manifest weight of the evidence; legal questions and whether factual findings satisfy a legal standard are reviewed fully. The evidentiary ruling permitting use of the term "shit bomb" was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Alex Kenny Eggleston v. State of North Dakota

TOPICS

criminal procedure

suppression of evidence

appellate procedure

standard of review

evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether pre-indictment delay violated Eggleston's due process rights when he claimed the delay impaired his recollection.
2. Whether the State's failure to preserve the surveillance video violated due process.
3. Whether the district court abused its discretion by permitting the State to use the slang term "shit bomb" to describe the liquid mixture.

HOLDINGS

1. A defendant alleging a due process violation based on pre-indictment delay must prove actual prejudice; Eggleston failed to do so because his assertion that he no longer independently recalled the incident did not establish actual prejudice.
2. A defendant challenging the State's failure to preserve evidence must show actual prejudice, and when the evidence was within the State's possession, must also present evidence of bad faith. Eggleston showed neither because he merely speculated that the video might have been exculpatory and offered no evidence that it was destroyed with intent to deprive the defense of information.
3. The district court did not abuse its discretion by permitting the State to use the term "shit bomb" to describe the liquid mixture, and the issue was summarily affirmed.

KEY QUOTATIONS

"To establish a due process violation based on pre-indictment delay, a defendant must show proof of actual prejudice." (¶ 7)

"In addition, when the State fails to preserve evidence that was at one point within the State's possession, a defendant must present evidence of bad faith, meaning the State "deliberately destroyed the evidence with the intent to deprive the defense of information[.]"" (¶ 8)

"Eggleston did not present any proof that the video recording would have been exculpatory; he merely speculates that it might have been. That is not enough to show actual prejudice." (¶ 9)

FACTUAL BACKGROUND

On October 10, 2021, while incarcerated at the North Dakota State Penitentiary, Eggleston sprayed a mixture of feces and urine from a shampoo bottle through his cell-door tray slot, striking a correctional sergeant and a second officer. The State photographed the contact locations and a surveillance camera recorded the incident, but the recording was automatically overwritten after 60 days. Eggleston was not charged until September 20, 2023,

and at trial the State relied on officer testimony, photographs, testimony about the video, and Eggleston's apology and admission of intent.

PROCEDURAL HISTORY

Eggleston was charged nearly two years after the underlying incident. The district court denied his initial and renewed motions to dismiss, concluding he failed to establish actual prejudice from the pre-indictment delay or the State's failure to preserve the surveillance video. After a jury convicted him on both counts and the court imposed consecutive five-year terms, consecutive to his existing life sentence, Eggleston appealed. The North Dakota Supreme Court affirmed the judgment and summarily affirmed the evidentiary issue.

DISPOSITION

affirmed

CASES CITED

- State v. Eggleston, 2020 ND 68, 940 N.W.2d 645
- State v. Reiswig, 2024 ND 153, ¶ 7, 10 N.W.3d 587
- State v. Kukert, 2021 ND 192, ¶ 10, 965 N.W.2d 849
- State v. Nice, 2019 ND 73, ¶ 5, 924 N.W.2d 102
- State v. Kraft, 539 N.W.2d 56, 58 (N.D. 1995)
- City of Fargo v. Thompson, 520 N.W.2d 578, 580 (N.D. 1994)
- State v. Steffes, 500 N.W.2d 608, 613 (N.D. 1993)
- State v. Ritter, 2024 ND 142, ¶ 11, 10 N.W.3d 119

OPINION

State v. Eggleston 2026 ND 30

JENSEN, JON J.

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2026 ND 30 State of North Dakota, Plaintiff and Appellee v. Alex Kenny Eggleston, Defendant and Appellant No. 20250292 Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable David E. Reich, Judge. AFFIRMED. Opinion of the Court by Jensen, Justice. Shaun H. Peterson (argued) and Gabrielle J. Goter (appeared), Assistant State's Attorneys, Bismarck, ND, for plaintiff and appellee. Kiara C. Kraus-Parr, Grand Forks, ND, for defendant and appellant. State v. Eggleston No. 20250292 Jensen, Justice. [¶1] Alex Kenny Eggleston appeals from a criminal judgment convicting him of two counts of knowingly causing bodily fluids to come in contact with an employee of a correctional facility in violation of N.D.C.C. § 12.1-17-11(1)(b). He challenges the district court's refusal to dismiss the charges against him, arguing he was prejudiced by pre-indictment delay and the State's failure to preserve

evidence. We affirm. I [¶2] Eggleston is an inmate serving a life sentence at the North Dakota State Penitentiary. See *State v. Eggleston*, 2020 ND 68, 940 N.W.2d 645. On October 10, 2021, Eggleston sprayed a Sergeant employed by the Department of Corrections and Rehabilitation with a liquid mixture of feces and urine from a small shampoo bottle through the tray slot in his cell door. The liquid mixture also came into contact with a second officer when he tried to intervene. A couple days after the incident, Eggleston apologized to the second officer, admitting he intended to hit the Sergeant with the spray of liquid. [¶3] As part of the investigation, the State took photos of where the spray came into contact with the two officers. The camera monitoring Eggleston's cell block also captured a video recording of the incident, which was reviewed by a third officer before the video system automatically overwrote the recording after 60 days had passed. [¶4] The State did not bring charges against Eggleston until almost two years later on September 20, 2023, but still within the statute of limitation for such charges. See N.D.C.C. § 29-04-02. Eggleston filed a motion to dismiss the charges arguing the pre-indictment delay prejudiced him, claiming he no longer had an independent recollection of the incident, and the State failed to preserve the video recording of the incident. After his first attorney withdrew, his second counsel renewed the motion to dismiss, admitting "we honestly don't know if the video was inculpatory or exculpatory" but arguing "the possibility of it being 1 exculpatory" should be enough to show Eggleston was prejudiced. The district court denied both motions, explaining that Eggleston failed to show actual prejudice due to the pre-indictment delay and failure to preserve evidence. [¶5] At trial, the State introduced testimony from the Sergeant and the second officer describing the incident, the photos showing where the liquid mixture of feces and urine contacted both officers, and testimony from the third officer describing what was depicted in the video recording he had reviewed (which was consistent with the testimony of the other two officers). The second officer's testimony included Eggleston's apology and the admission that he intended to spray the Sergeant. The jury convicted Eggleston on both counts of knowingly causing bodily fluids to come in contact with an employee of a correctional facility in violation of N.D.C.C. § 12.1-17-11(1)(b). The district court sentenced Eggleston to two terms of five years to be served consecutively to each other as well as consecutive to the life sentence he was currently serving. II [¶6] We review the denial of a motion to dismiss under the same standard we use to review a motion to suppress evidence. *State v. Reiswig*, 2024 ND 153, ¶ 7, 10 N.W.3d 587. Questions of law are fully reviewable under that standard. *State v. Kukert*, 2021 ND 192, ¶ 10, 965 N.W.2d 849. "Our review is limited to only those issues raised in the district court." *Reiswig*, ¶ 7 (quoting *State v. Nice*, 2019 ND 73, ¶ 5, 924 N.W.2d 102). In *Reiswig*, we noted the following: On appeal, a district court's decision on a motion to suppress will not be reversed if, after conflicting testimony is resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the court's findings, and the decision is not contrary to the manifest weight of the evidence. We recognize the importance of the district court's opportunity to observe the witnesses and assess their credibility, and we accord great deference to its decision in suppression matters. Questions of law are fully

reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law. Id. (quoting Kukert, ¶ 10). 2 [¶7] To establish a due process violation based on pre-indictment delay, a defendant must show proof of actual prejudice. State v. Kraft, 539 N.W.2d 56, 58 (N.D. 1995). Similarly, actual prejudice must be shown to establish a claim based upon the State's failure to preserve evidence, which requires a defendant to show in part "that lost evidence or testimony would have been helpful to his defense" City of Fargo v. Thompson, 520 N.W.2d 578, 580 (N.D. 1994) (cleaned up). Mere speculation about whether unpreserved evidence might have been exculpatory, or might have been inculpatory, is not enough to show actual prejudice. State v. Steffes, 500 N.W.2d 608, 613 (N.D. 1993). [¶8] In addition, when the State fails to preserve evidence that was at one point within the State's possession, a defendant must present evidence of bad faith, meaning the State "deliberately destroyed the evidence with the intent to deprive the defense of information[.]" Steffes, 500 N.W.2d at 613. [¶9] Eggleston did not present any proof that the video recording would have been exculpatory; he merely speculates that it might have been. That is not enough to show actual prejudice. In addition, he did not present any evidence that the video recording was destroyed in bad faith. The district court did not err when it denied Eggleston's motions to dismiss.

III

[¶10] Eggleston also argues the district court abused its discretion when it permitted the State to use the slang term "shit bomb" at trial to describe the liquid mixture of feces and urine. Reviewing for abuse of discretion, see, e.g., State v. Ritter, 2024 ND 142, ¶ 11, 10 N.W.3d 119, we find no abuse of discretion and summarily affirm this issue under N.D.R.App.P. 35.1(a)(4). IV [¶11] We affirm the judgment of conviction. [¶12] Lisa Fair McEvers, C.J. Jerod E. Tufte Jon J. Jensen 3 Douglas A. Bahr Gail Hagerty, S.J. [¶13] The Honorable Gail Hagerty, Surrogate Judge, sitting in place of Crothers, J., disqualified. 4