

Destroyed Investigator Notes Results In Reversal Of Conviction

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Cases like the one I am about to describe highlight the need for good legal representation.

In [State v. Samander S. Dabas](#) , a case decided by the New Jersey Supreme Court on July 30, 2013, the Court held that a prosecutor's office violated its post-indictment discovery obligations under Rule 3:13-3, when its investigator destroyed his notes of a two-hour pre-interview of defendant. The State's error resulted in a reversal of the Defendant's (Mr. Dabas) conviction.

Some background is necessary to understand the decision. In this case, the Defendant was charged with murdering his wife. Shortly after the arrest of Mr. Dabas, an investigator from the prosecutor's office conducted (the now defunct practice of) a pre-interview of Mr. Dabas. During that pre-interview, Dabas was asked open-ended questions and the investigator took notes of the answers – this interview was not recorded, so, only the notes from the investigator memorialized the answers. Once

the investigator obtained the information he needed (sufficient to support the charge of murder), the investigator then conducted a second, recorded interview. During this interview, the investigator used the answers Dabas had previously given and asked Dabas “leading” questions, which incriminated Dabas (essentially giving Dabas the choice to answer “yes” or “no” to the questions). The investigator subsequently destroyed the notes such that only the second, recorded “leading” interview remained.

At trial, the attorney for Dabas contended that the trial court should instruct the jury that it could draw an adverse inference from the investigator’s destruction of his pre-interview notes. The trial court disagreed and did not charge the jury in that regard. This charge would allow the judge to tell the jury that they may draw a negative inference from the fact that the investigator destroyed the notes, i.e., that they contained something unfavorable to the prosecution. The charge is a remedy to balance the scales of justice, even outside of the realm of a discovery violation.

Ultimately, Dabas was convicted of murdering his wife and he appealed, with the case reaching the New Jersey Supreme Court. There, the Court held that once an indictment has been issued, a defendant has a right to automatic and broad discovery of the evidence the State has gathered in support of its charges and by not providing the notes to defense counsel, the prosecutor violated the clear rule governing post-indictment discovery. It added that an adverse-inference charge is one permissible remedy for a discovery violation, such as the destruction of interrogation notes that should have been turned over to the defense. Accordingly, when the investigator destroyed his notes, preventing the State from turning over the evidence, a serious violation was committed by the State – one which required a remedy. Therefore, the Supreme Court reversed the Dabas’s conviction and held that the trial court abused its discretion in not giving the adverse-inference charge because the failure to give the charge was “clearly capable of producing an unjust result.”

This is a case where the attention to details by the defense, i.e., realizing that a pre- interview had been conducted and that notes had been destroyed, resulted in a reversal of the conviction and a remand for a new trial.