

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted November 20, 2024*

Decided November 21, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 24-1124

TYRENCE D. DOWNEY,
*Petitioner-Appellant,**v.*FERNANDO GARZA,
*Respondent-Appellee.*Appeal from the United States District
Court for the Northern District of
Illinois, Western Division.

No. 21 C 50196

Iain D. Johnston,
*Judge.***ORDER**

* Since filing his petition in the district court, Downey has been transferred to USP Canaan (located in Pennsylvania). Thus, we substitute Downey's current warden, Fernando Garza, for Brian Lammer, the previously named warden. *See* FED. R. APP. P. 43(c); *Bridges v. Chambers*, 425 F.3d 1048, 1050 (7th Cir. 2005) (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004)). We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Tyrence Downey, a federal prisoner, appeals the denial of his petition under 28 U.S.C. § 2241 challenging the revocation of his good-conduct credit arising out of a disciplinary incident at his prison. The district court denied his petition because Downey failed to show that his due process rights were violated. We affirm.

In 2019, while Downey was housed at USP Victorville in California,¹ a female correctional officer accused him of breaking prison disciplinary rules by leering at her in a sexual manner. Downey responded that the officer was mistaken about who leered at her, as he was in a different part of the prison at the time. Three weeks later, the investigating correctional officer filed an incident report and scheduled Downey for a disciplinary hearing about the episode.

Downey sought evidence to support his defense at the upcoming hearing. Believing that the incident had been captured by a security camera, he requested that the prison provide him with the video so he could prove that the officer had confused him with another prisoner. The investigating officer responded that in accordance with the Bureau of Prisons's standard policy, the video was deleted 14 days after the incident.

An annotation that Downey made to the incident report reflects two other ways that he apparently intended to support his mistaken-identity defense: (1) doorway-scan records, which would verify whether he had used his identification card to access the area at the time the incident occurred; and (2) alibi testimony from two other prisoners, who, he believed, could place him in a different part of the prison at the time of the incident. But Downey never requested the doorway access records, and he later waived his right to present witness testimony at the disciplinary hearing.

At his disciplinary hearing, Downey only testified from a prepared statement. The hearing administrator credited the officer's story over Downey's because of her familiarity with the prisoners. Downey was sanctioned with the loss of 27 days of good-conduct time.

¹ Downey was later transferred to FCI Thomson (a prison in this circuit), where he filed his § 2241 petition. The district court had jurisdiction over the petition, despite the incident taking place in California, because only the district in which a petitioner is detained has jurisdiction to consider a § 2241 petition. *E.g., Gamboa v. Daniels*, 26 F.4th 410, 414 (7th Cir. 2022) (citing *Rumsfeld*, 542 U.S. at 435). Although Downey was later transferred to USP Canaan, the district court retained jurisdiction to enter judgment on the petition, and we have jurisdiction over the appeal. *Id.*

Downey then petitioned for a writ of habeas corpus under § 2241, alleging that the prison violated his due process rights by deleting the video of the incident. The district court denied the petition. The court expressed “deep[] concern[]” that the officers may have acted in bad faith by delaying issuance of the incident report beyond the standard videorecording retention period, *see Arizona v. Youngblood*, 488 U.S. 51, 58 (1988), but concluded that Downey’s rights were not violated because he could have obtained comparable evidence to the videorecording from the doorway-access records or alibi witness testimony, as he had proposed, *see California v. Trombetta*, 467 U.S. 479, 489–90 (1984).

On appeal, Downey challenges the district court’s conclusion that the alternative evidence was comparable to the video. He argues that the video evidence was “indisputable” and the only evidence of significance, given the inherent bias of a disciplinary hearing officer in favor of the accusing correctional officer. He also contends that requiring him to present comparable evidence unjustly invites the bad-faith destruction of evidence without consequence.

Due process in a disciplinary hearing, among other protections, requires that the prisoner be allowed to present evidence in his or her defense, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and that the prison disclose material exculpatory evidence to the prisoner, *Piggie v. Cotton*, 344 F.3d 674, 678 (7th Cir. 2003) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). A prison’s failure to preserve exculpatory evidence does not deprive a prisoner of due process unless (1) the evidence was lost because of bad faith, (2) the exculpatory nature of the evidence was apparent before its loss, and (3) the prisoner could not have obtained comparable evidence anywhere else. *Youngblood*, 488 U.S. at 58; *Trombetta*, 467 U.S. at 489.

Downey’s claim fails on the third element. As the district court pointed out, both the doorway records and the alibi witnesses would have achieved the same goal as the video. His alibi witnesses would have testified that he was in a different part of the prison, and the doorway-access records would have shown that he had not entered the area where the encounter took place. Although the video might have allowed Downey to make his argument “more force[fully],” the other evidence available to him was sufficiently comparable under *Youngblood* because it provided “a basis for arguing” that this was a case of mistaken identity. *United States v. Kimoto*, 588 F.3d 464, 490–91 (7th Cir. 2009).

Downey further argues that the district court should have excused his failure to provide alternative evidence because allowing the correctional officers to act (he

No. 24-1124

Page 4

alleges) in bad faith without consequence encourages officers to tilt the scales in their favor at disciplinary hearings. But even if we assume that the officers acted in bad faith and delayed issuing the incident report until the video was deleted, *Trombetta* instructs that there is no due process violation so long as comparable evidence may be obtained by reasonably available means, 467 U.S. at 489, as was the case here.

AFFIRMED