

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LEE MOORE,

Defendant-Appellant.

UNPUBLISHED

January 17, 1997

No. 186110

Washtenaw County

LC No. 92-026513-FC

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his motion for a new trial on remand. The trial court found that defendant was not prejudiced by the prosecution's failure to produce a police report in accordance with a previous discovery order. We affirm.

Defendant was charged with assault with the intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), after he admitted to police that he shot Jerome Cleaves. At trial, defendant argued that he acted in self-defense. In support of that position, defendant introduced evidence that he had been receiving death threats from Cleaves, which he honestly and reasonably believed were not idle because he had witnessed Cleaves shoot another person, Troy Chapman, approximately ten months earlier. Defendant called Chapman as a witness at trial and Chapman confirmed that defendant was present when Cleaves shot Chapman. During cross-examination, the prosecution referred to a police report that Chapman filed in 1990. The defense had requested the police report during pretrial discovery, but it was not produced by the prosecution.

In a previous appeal, this Court determined that the prosecution's failure to produce the police report violated a pretrial discovery order and remanded the case to the trial court to determine whether defendant suffered any prejudice. On remand, the trial court found no prejudice and denied defendant's motion for a new trial. We affirm that decision.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Where material evidence favorable to an accused is requested, but not produced, the test for reversal is whether the withheld evidence may have affected the outcome of the trial. *People v Canter*, 197 Mich App 550, 568-569; 496 NW2d 336 (1992), citing *United States v Agurs*, 427 US 97, 104; 96 S Ct 2392; 49 L Ed 2d 342 (1976). When the trial court is faced with a discovery violation, the question in any given case is first, whether the party's interest in preparing his own case has been prejudiced by the noncompliance. *People v Taylor*; 159 Mich App 468, 486-687; 406 NW2d 859 (1987); MCR 6.201(I). Prejudice has been found not to exist where the objecting party has independent knowledge of the information apart from discovery, *Taylor, supra* at 486, n 27, 488, or where the suppressed evidence is not outcome determinative, *Canter, supra* at 568-569. A trial court's decision regarding a motion for a new trial will not be reversed absent an abuse of discretion. *People v Miller (After Remand)*, 211 Mich App 30, 47; 535 NW2d 518 (1995).

In the present case, defendant had independent knowledge of the shooting incident documented in the police report and testified extensively concerning the incident at trial. The police report lacked any detail that would have helped defendant's self-defense argument. We further find that, although the report was mentioned during the cross-examination of Chapman, a key witness for the defense, at no time did the prosecution question Chapman's assertion that it was Cleaves who shot him, nor did the prosecution mention the fact that Chapman neglected to positively identify the shooter in the police report. Instead, the facts essential to defendant's self-defense argument remained unchallenged by the use of the police report. We also note that, implicit in the jury's verdict finding defendant guilty of assault with the intent to commit murder, is a rejection of defendant's self-defense argument, as well as the possibility that defendant acted under a provoked or emotionally excited state.

In sum, we conclude that the police report neither provided further facts beyond those presented at trial, nor worked to discredit them. We are also satisfied that the outcome of the trial was not affected by the failure to produce the police report, especially considering that defendant had personal knowledge of the information contained within the report. Defendant did not suffer any prejudice as a result of the discovery violation. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial on those grounds.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof