

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND RUSSELL FIFAREK,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 195063
Grand Traverse Circuit
LC No. 95-006934-FH

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from a conditional plea of guilty to uttering a check without having an account, MCL 750.131a(1); MSA 28.326(1)(1), and to committing an illegal act in filing a state income tax return, MCL 205.27(4); MSA 7.657(27)(4). Defendant was sentenced to concurrent three month terms for the two convictions, followed by twenty-four months' probation. In addition, the court ordered defendant to pay \$3,125 in fines, costs and restitution. Defendant's plea was conditioned on his reservation of the right to appeal the circuit court's decisions on his discovery motions and motions to dismiss. We affirm.

Prior to the preliminary examination, defendant made two requests for discovery of evidence relating to the charges against him. In response, the prosecution contended it had already provided defendant with much of the information he requested and offered defendant the opportunity to inspect other documents and records in the prosecution's possession. At the preliminary examination, defendant objected to the introduction of much of the prosecution's evidence, claiming, contrary to the prosecution's assertions, the prosecution had not provided the evidence to defendant. The district court overruled each of defendant's objections. After his case was bound over to circuit court, defendant brought a motion to dismiss and a motion to quash the information, contending the prosecutor committed misconduct in refusing to provide defendant the information he sought. The circuit court denied these motions.

Defendant argues the circuit court erred in refusing to find the prosecution violated its duty under MCR 6.201 and the due process clause of the Fourteenth Amendment by intentionally suppressing

discoverable materials requested by defendant. MCR 6.201 “describes information that *must* be provided by each party upon request and certain information that must, upon

defendant's request, be provided by the prosecution." *People v Laws*, 218 Mich App 447, 454-455; 554 NW2d 586 (1996). Contrary to the trial court's holding, *Laws, supra*, indicates this rule and the due process clause give a defendant the right to obtain on request before or during the preliminary examination any exculpatory evidence that is material to guilt or innocence and in the prosecution's possession. *Id.* at 452, 454-455. However, here, there is no indication in the record the prosecution intentionally suppressed the material defendant requested. The prosecution indicated in its response to defendant's motion for production that it had provided defendant with most of the information defendant requested. In addition, the prosecution offered defendant the opportunity to review all of the evidence in its possession relating to the case. Accordingly, the circuit court did not err in concluding the prosecution had not violated its duty to produce discoverable material. Moreover, prior to defendant's guilty plea, the trial court ordered the prosecution to afford defendant full discovery. Defendant demonstrates no prejudice or grounds for dismissal of the charges.

Because we find the prosecution did not suppress discoverable material, we decline to review defendant's contentions the prosecution's error caused defense counsel to be ineffective or violated the prosecutor's duty under MRPC 3.3(d) to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense."

Affirmed.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald