STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LEE WALKER,

Defendant-Appellant.

UNPUBLISHED
October 27, 1998

No. 198893
Otsego Circuit Court
LC No. 95-002043 FH

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of resisting and obstructing a police officer, MCL 750.479; MSA 28.747, assault and battery, MCL 750.81; MSA 28.276, and disturbance of lawful meetings (disorderly person), MCL 750.170; MSA 28.367. Defendant was sentenced to four months in jail for resisting and obstruction and to ninety days in jail for each of the remaining offenses, all to run concurrently. Defendant appeals by right. We affirm.

I

Defendant first argues that the trial court erred when it denied defendant's motion to dismiss on grounds that the police deliberately destroyed a videotape that may have recorded his arrest. We disagree.

It is well settled that, "[a]bsent intentional suppression or a showing of bad faith, the loss of evidence which occurs before a defense request for it does not mandate reversal." *People v Amison*, 70 Mich App 70, 77; 245 NW2d 405(1976). Similarly, the routine erasure of police radio broadcast tapes every thirty days pursuant to policy does not mandate reversal so long as the purpose is not to destroy evidence for a forthcoming trial. *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). "Defendant bears the burden of showing that the evidence was exculpatory or that the police acted in bad faith." *Id*.

Here, defendant had forty-five days after his arrest to obtain a copy of the tape, but neglected to do so. The trial court found that the suppression of the videotape was not the result of intentional

conduct or bad faith because it was recycled by the police in accordance with an established recycling process. Our review of the record reveals that this finding was not clearly erroneous. MCR 2.613(C). Moreover, defendant failed to show that the videotape was exculpatory; in fact, one of the arresting officers testified that he did not know if the video recorder in his patrol unit was even activated when defendant was placed under arrest. Accordingly, we find no error in the trial court's denial of defendant's motion to dismiss.

II

Defendant next argues that the prosecutor's pretrial preparation denied defendant a fair trial because the prosecution witnesses had discussed their observations in front of other witnesses, essentially vitiating the effect of the sequestration order issued on the first day of trial. Defendant did not object on this basis at trial, but merely chose to argue in front of the jury that the pretrial assemblage of witnesses enabled them to conform their testimony to each other. Because the pretrial preparation of witnesses is not prohibited by law, and it does not appear that the prosecution violated the sequestration order that was later issued, we conclude that defendant has failed to demonstrate that he is entitled to review of this unpreserved issue. See generally *People v Grant*, 445 Mich 535, 546-547; 520 NW2d 123 (1994).

III

Finally, defendant maintains that the prosecutor's questioning of him on cross-examination denied him a fair trial because the questions insinuated that defendant was intoxicated, a fact that defendant argues the prosecutor knew was untrue. We note that this issue has also not been preserved, and absent manifest injustice need not be reviewed. *Id.* Our review of the record indicates that defendant opened the door to questions regarding his state of intoxication when he testified on direct examination that he had not had anything to drink earlier that day, and had only a few sips of a mixed drink before the incident occurred. See *People v Figgures*, 451 Mich 390, 400; 547 NW2d 673 (1996). Consequently, we find that defendant was not denied a fair trial as the result of prosecutorial misconduct, and the failure to review this issue further will not result in manifest injustice.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff