

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ERIC PAPENHAGEN,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2001

No. 225654

Oakland Circuit Court

LC No. 99-165813-FH

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of third-degree fleeing or eluding a police officer, MCL 750.479a(3), and operating a motor vehicle with a suspended license, MCL 257.904(1). Defendant was sentenced as a third habitual offender, MCL 769.11, to 1-1/2 to 10 years' imprisonment for the fleeing or eluding conviction and one year for driving with a suspended license, second offense. Defendant appeals as of right. We affirm.

Defendant was operating a motorcycle when he was stopped by a police officer for speeding. As the officer approached, defendant started to get off the motorcycle, but then got back on and sped away. The officer followed defendant, who was driving at least fifty miles an hour in a thirty-five mile-an-hour speed zone. When defendant turned onto a curved road, the officer lost site of him. Some bystanders subsequently pointed in the direction of a home, where the officer found the motorcycle "dumped" next to a shed. She did not locate defendant. The officer testified that when she had first approached defendant, they looked directly at one another, and she recognized him, having had prior contact with him on at least ten occasions.

Defendant argues that the admission of the officer's testimony that she had prior contacts with defendant was an abuse of discretion. We disagree.

The trial court has the discretion to admit evidence, and its decision regarding the admissibility of evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Defendant argues that the testimony should have been excluded as prejudicial under MRE 403. The trial court did not allow testimony regarding the nature of the officer's contacts. The officer testified only that she had prior contacts with defendant and, therefore, was able to identify him when she stopped him. In light of the fact that the driver of the motorcycle was not apprehended, the identity of the driver was an important issue.

Therefore, the admission of limited evidence regarding the officer's contacts with defendant to demonstrate a basis for her recognition of him as the driver was not an abuse of discretion.

Next, defendant challenges the admission of his driving record. We find no error. Defendant argues that, pursuant to MRE 609(a), his driving record should not have been admitted into evidence. MRE 609(a) limits the admission of evidence that a witness has been convicted of a crime for purposes of attacking the witness' credibility. Defendant was not a witness in this case, and the evidence was not admitted to attack his credibility. The purpose of the evidence was to establish that defendant's driver's license was suspended at the time of the accident. The document was not published to the jury and the record indicates that it was not provided to the jury during deliberations. Therefore, we find no abuse of discretion.

Defendant raises an issue challenging his sentences. However, the sentences he is challenging are not the sentences he received in this particular case; they are the sentences he received after pleading guilty to violating his probation in other cases. This Court does not have jurisdiction to address this issue because defendant has not properly appealed the sentences in the other cases. MCR 7.203(A)(1)(b); MCR 7.205.

Defendant argues that the trial court erred in addressing the prosecution's discovery violation. We disagree.

The trial court's decision regarding the remedy for a discovery violation is reviewed by this Court for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). The court must balance the interests of the courts, the public and the parties in exercising its discretion in fashioning a discovery violation remedy. *Id.* "It requires inquiry into all the relevant circumstances, including 'the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice.'" *Id.*, quoting *People v Taylor*, 159 Mich App 468, 482; 406 NW2d 859 (1987).

The prosecutor remarked during opening statements that a witness would testify that, while being led away from court at his preliminary examination, defendant blurted out to the escorting officer that the officer pursuing him was out of shape and there was "no way she could have caught me." Defense counsel objected, noting that the prosecution had not supplied this statement before trial. The court conducted a hearing pursuant to *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965), and determined that defendant's statement was voluntary and admissible. It also found, however, that the prosecution had violated discovery.

The court noted that there were two alternative solutions. It could preclude the admission of the testimony referred to by the prosecution and instruct the jury to disregard the prosecution's statement. Alternatively, it could declare a mistrial, but it noted that, on retrial, the statement would be admissible and would likely be quite damaging to defendant. The court chose the former solution. We find no abuse of discretion in the court's remedy for the prosecution's discovery violation.

Finally, defendant argues that he was denied the effective assistance of counsel. We disagree. Because defendant failed to raise this issue in a motion for a new trial or an evidentiary hearing on the basis of ineffective assistance of counsel, our review is limited to errors that are

apparent on the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000).

To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant that he was denied his right to a fair trial. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). That is, defendant must demonstrate that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 302-303.

In view of the foregoing, we conclude that defendant has failed to demonstrate any error by trial counsel. Therefore, he was not denied the effective assistance of counsel at trial.

Affirmed.

/s/ William B. Murphy  
/s/ Janet T. Neff  
/s/ Joel P. Hoekstra