STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYCE D. BELL,

Defendant-Appellant.

UNPUBLISHED
February 1, 2002

No. 222680
Wayne Circuit Court
Criminal Division
LC No. 98-006906

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a term of eighteen to forty years' imprisonment for the murder conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

I

On appeal, defendant first argues that the trial court erred when it "reversed" its previous ruling that it would allow the preliminary examination testimony of Danny Shannon, a jailhouse informant, who was unavailable for trial. The decision whether to admit evidence is within the trial court's discretion and is reviewed on appeal for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Here, during a preliminary examination, Shannon testified that he and defendant were briefly jailed together, during which time defendant stated to him that he had robbed and killed the decedent. At trial, the prosecutor moved to admit Shannon's preliminary examination testimony on the basis that he was unavailable for trial. The court admitted Shannon's prior testimony into evidence. During closing argument, defense counsel urged the court to find Shannon's testimony incredible, citing his prior convictions and dishonesty, the consideration he received for providing information to the police, and his escape status at the time of trial. In its findings of fact, the court stated that it had "looked at" Shannon's testimony, but could not judge his credibility from the transcript alone and thus would not consider his testimony in making its decision. Defendant now argues that, although Shannon's testimony was damaging, he was

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

denied a fair trial because he relied on the trial court's evidentiary ruling in fashioning his closing argument.

We find this claim wholly without merit. Contrary to defendant's claim, the trial court did admit Shannon's preliminary examination testimony. During closing argument, defendant argued that the court should not believe Shannon's testimony because it was inconsistent and contradictory. Indeed, in choosing not to consider Shannon's testimony in making its decision, the court did precisely what defendant asked during closing argument. Moreover, because questions of credibility are left to the trier of fact, the judge could choose to believe or disbelieve any evidence presented at trial. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). Finally, given the fact that Shannon's testimony unequivocally implicated defendant, it is unclear how the court's decision not to consider the injurious testimony was prejudicial. Accordingly, this issue does not warrant reversal.

II

Next, defendant argues that he is entitled to a new trial because the prosecutor withheld exculpatory information. Specifically, defendant relies on a domestic violence police report made by a codefendant's girlfriend, in which she reported that the codefendant stated that he killed the decedent.

Whether defendant was denied his due process right to information is a question of law, which is reviewed de novo on appeal. See *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998). A criminal defendant has a due process right of access to information possessed by the prosecution. *People v Lester*, 232 Mich App 262, 281; 591 NW2d 267 (1998), citing *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). In order to establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. *Lester*, *supra* at 281 (citation omitted). A "reasonable probability" is "a probability sufficient to undermine confidence in the outcome." *Id*. at 281-282 (citation omitted).

After carefully reviewing the record, we find no *Brady* violation. In the present case, defendant has not demonstrated that the police report in question is favorable. Indeed, the police report contains very little, if any, evidence that is even arguably exculpatory to defendant. As previously indicated, defendant relies on the codefendant's girlfriend's statement to the police that the codefendant stated that he killed the decedent. However, the codefendant's girlfriend also reported that the codefendant said that he "and [his] boys" committed the crimes, and that he and his friends were sorting through property taken from the decedent's house and dividing it among themselves. There was evidence that more than one individual committed the crimes, and that the codefendant and defendant are friends.

Further, although defendant speculates and makes general observations concerning how the delayed disclosure of the police report may have affected his overall defense strategy and the outcome of his case, he makes no specific claims regarding the *actual* effect of the late production of the police report. We also note that defendant was able to question the

codefendant's girlfriend and the reporting police officer regarding the information contained in the police report. Moreover, defendant did not request a continuance because of his belated receipt of the police report. See *People v Fox*, 232 Mich App 541, 549-550; 591 NW2d 384 (1998). Accordingly, we find that defendant has failed to establish a *Brady* violation and thus defendant is not entitled to a new trial on this ground.

III

Defendant also argues that the evidence was insufficient to convict him of second-degree murder or felony-firearm because the convictions were based on the testimony of a jailhouse informant. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

The offense of second-degree murder consists of the following elements: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). The element of malice is defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id*. at 464. In order to prove the elements of felony-firearm, the prosecution must prove that defendant (1) possessed a firearm and (2) that he possessed the firearm during the time he was committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000); MCL 750.227b. Possession may be proved by circumstantial evidence. *Burgenmeyer*, *supra* at 437-438.

Here, John Marantic testified that he was jailed with defendant, during which time defendant told him that he and two of his friends went to the decedent's home, kicked in the door to gain entrance, and robbed and killed the decedent. Defendant told the informant that he shot the decedent in the head, stole a Pelle leather jacket, guns, money, alligator shoes, and a Rolex watch, and that he was concerned about the police finding a particular leather jacket and the bracelet, which had been pawned. This testimony, if believed, was sufficient for a rational trier of fact to find that the necessary elements of the crimes were proved beyond a reasonable doubt. The fact that a jailhouse informant provided this evidence is a matter of credibility, which is left to the trier of fact. *Givans, supra.* Further, there was independent evidence corroborating the informant's testimony. There was evidence that more than one individual was involved in the crimes, that the codefendant's girlfriend had in fact pawned the decedent's bracelet, and that a Pelle leather jacket was found in the home where defendant was arrested. Also, a footprint was found on the decedent's door, and the evidence showed that the decedent sustained a gunshot in his forehead. Viewed in a light most favorable to the prosecution, sufficient evidence was presented to allow a rational trier of fact to conclude that the essential elements of second-degree murder and felony-firearm were proved beyond a reasonable doubt.

IV

Finally, we reject defendant's claim that the trial court improperly reached a compromise guilty verdict. Our Supreme Court has recognized that the possibility of a compromise verdict is significantly reduced or eliminated in a bench trial because the judge's verdict is presumed to be the result of a correct application of the law to the evidence presented. *People v Cazal*, 412 Mich 680, 689; 316 NW2d 705 (1982). Here, there is no indication that the court failed to correctly apply the law to the evidence presented. The trial court carefully explained its decision and set forth its findings of fact on the record. The record supports the trial court's findings. Accordingly, this claim does not warrant reversal.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie