

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER JERMAINE TAYLOR,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 262669

Wayne Circuit Court

LC No. 04-012410-01

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

A jury convicted defendant of assault with a dangerous weapon (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The court sentenced defendant to a prison term of 32 to 48 months for the felonious assault conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues the trial court violated his Sixth Amendment rights when it departed from the sentencing guideline range based on facts not proved beyond a reasonable doubt, in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). Defendant's reliance on *Blakely* is misplaced. A majority of the Michigan Supreme Court has found that "the Michigan System is unaffected by the holding in *Blakely*." *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004) (Justices Cavanagh, Weaver, and Young concurred with Justices Taylor and Markman writing for the Court). Moreover, Michigan does not offend the Sixth Amendment on the basis that its sentences are based on facts not determined by a jury beyond a reasonable doubt and that *Blakely* does not apply to Michigan's indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 143; 715 NW2d 778 (2006). Accordingly, defendant's argument is without merit.

Defendant next argues that a *Brady*<sup>1</sup> violation occurred and that the prosecution committed misconduct when it failed to disclose before trial the existence of a photograph of defendant that was found at the scene of the offense. Defendant asserts that "police" may have

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<sup>1</sup> *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

used the photograph to encourage the victim to identify defendant as the person who shot him when they interviewed the victim following the shooting. Alternatively, defendant argues that the trial court erred in failing to admit the photograph into evidence or allow defendant to examine the victim and the investigating officers regarding its existence. We disagree with both contentions.

This Court reviews preserved issues of prosecutorial misconduct de novo to determine if the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004). The trial court's rulings concerning discovery are reviewed for an abuse of discretion. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998). The trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v Washington*, 468 Mich 667, 670; 664 NW2d 203 (2003).

Initially, we note that a *Brady* violation did not occur. Although a defendant does not have a constitutional right to discovery, a criminal defendant does have a due process right to obtain evidence if it is favorable to him and material to guilt or punishment. *People v Stanaway*, 446 Mich 643, 664-666; 521 NW2d 557 (1994). “[S]uppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady, supra* at 87. “In order to establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence nor could the defendant have obtained it 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.” *People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005).

Here, defendant has failed to show that the photograph of defendant was favorable to his case. *Cox, supra* at 448. The record reveals that the photograph was a picture of defendant that was taken sometime before May 16, 2004. Defendant has failed to show how the photograph would tend to negate the elements of felonious assault or felony-firearm in light of the other evidence presented by the prosecution. Further, defendant has failed to show that a reasonable probability existed that the outcome of the proceedings would have been different had he known of the photograph. *Id.* at 448. Defendant was independently identified as the shooter by the victim's testimony at trial. Defendant was also independently identified as the shooter through Officer Andrew Jackson's testimony regarding defendant's mother's statement in which she identified defendant as the person who shot the victim. Further, Eugene Brown's statement indicated that he saw defendant at 18187 Stout immediately after the shooting holding a “black object.”

Despite this evidence, defendant argues that if the photograph was disclosed before trial he would have been able to cross-examine the victim to determine whether the police officers used the photograph to encourage him to identify defendant. Defendant's argument is entirely speculative. The record reveals that the victim was initially unconscious when an investigator went to the hospital to interview the victim following the shooting. When the victim later gave a statement identifying defendant as the person who shot him, the interview was conducted over the telephone. Defendant has presented no evidence that the victim was ever shown the photograph.

Defendant has also failed to show that the prosecutor committed misconduct. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial because of the actions of the prosecutor. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). This Court considers issues of prosecutorial misconduct “on a case-by-case basis by examining the record.” *Thomas, supra* at 454.

MCR 6.201 governs matters related to criminal discovery. *People v Gilmore*, 222 Mich App 442, 448; 564 NW2d 158 (1997). MCR 6.201(A)(6) provides for mandatory disclosure, upon request, of “a description of and an opportunity to inspect any tangible evidence that the party may introduce at trial, including any document, photograph, or other paper.” The prosecutor has a continuing duty to promptly notify the other party if at any time the prosecutor discovers additional information. MCR 6.201(H). If the prosecution fails to comply, the trial court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy. MCR 6.201(J); *People v Banks*, 249 Mich App 247, 252; 642 NW2d 351 (2002).

In the present case, there is no evidence that the prosecutor withheld the photograph from defendant. A review of the lower court record does not indicate that defendant requested that the prosecution provide him a description of and an opportunity to inspect the photograph pursuant to MCR 6.201(A)(6). Defendant testified that he became aware of the photograph during the trial. Defense counsel noted that the prosecution found the photograph in the police file on the second day of trial and informed defendant of its existence pursuant to MCR 6.201(H). Furthermore, there is no indication that the prosecution intended to produce the photograph at trial. Accordingly, defendant has failed to show that he was denied a fair and impartial trial because of the actions of the prosecutor. *Watson, supra* at 586.

Finally, the trial court did not abuse its discretion in refusing defendant’s request to admit the photograph into evidence or allow defendant to examine the victim and the police officers regarding the existence of the photograph. In light of the identification testimony the trial court may have concluded that the photograph was merely cumulative. Furthermore, the trial court has broad discretion to limit cross-examination about matters that were of marginal relevance to the charges. See *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). As discussed, *supra*, defendant’s claims that the photograph would have shown that he was not the person who committed the instant offenses were entirely speculative. The trial court’s refusal to admit the photograph or allow defendant to examine the victim or the police officers was not an abuse of discretion.

Affirmed.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot