

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS EDWARD JAMISON-LAWS,

Defendant-Appellant.

UNPUBLISHED
November 21, 2019

No. 345285
Oakland Circuit Court
LC No. 2018-266772-FH

Before: RONAYNE KRAUSE, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of first-degree retail fraud. MCL 750.356c. We affirm.

I. BACKGROUND

Defendant’s conviction results from his participation in a retail fraud that occurred at a Kohl’s Department Store. About 2:30 p.m., on March 21, 2018, four individuals—defendant, Dequan Jamison-Laws (defendant’s brother), and two unidentified persons—separately entered the store carrying large purses that appeared to be empty. The four individuals were each dressed as women, despite varying gender identities. Valerie Tossey, a Kohl’s loss-prevention officer, was monitoring security cameras when she noticed the two unidentified individuals quickly and indiscriminately selecting merchandise in the men’s athletic department.

Approximately 10 minutes later, Dequan¹ joined the two unidentified individuals and was pushing a cart filled with merchandise. After shopping briefly, Dequan pushed his cart along the back wall of the men’s athletic department, stopped behind a low clothing rack and began pulling several items of clothing. Dequan then moved from behind the clothing rack and pushed his cart

¹ Because defendant and his brother share a surname, we will use defendant’s brother’s first name in this opinion to avoid any confusion.

behind a large fixture. The fixture blocked the majority of the security camera's view of Dequan and his cart.

Defendant and the two unidentified persons joined Dequan behind the fixture. Tossey then observed the individuals moving merchandise around and Dequan making pulling movements. Tossey believed that the movements were Dequan pulling the "electronic article surveillance tags" off of the clothing. Indeed, several "electronic article surveillance tags" were later found on the ground at the base of the fixture behind which defendant and Dequan were hiding. The two unidentified individuals walked out from behind the fixture, separated from defendant and Dequan, and exited the store.

Defendant and Dequan remained behind the fixture for approximately three more minutes fumbling with merchandise. Defendant then walked from behind the fixture, no longer carrying a purse, and briefly appeared to be talking on his cell phone. Defendant then walked back behind the fixture before walking off alone with a cart. The apparently previously full cart now only had a purse in it.

Defendant pushed the cart through Kohl's, avoiding the main aisle ways, to the juniors department. Defendant did not reunite with the unidentified individuals or Jamison-Laws. Once in the juniors department, defendant stopped and removed a purse, which appeared to be full, from the cart and exited the store. Defendant did not stop at any cash registers and did not attempt to purchase any clothing on his way out.

Once defendant exited the store, Tossey left the loss-prevention office to apprehend defendant. When Tossey approached defendant in the parking lot, defendant ran and jumped into the backseat of a gray Dodge Magnum. Tossey was on her cell phone with the Troy Police and read the license plate of the vehicle to the police, at which time defendant got out of the vehicle and ripped off the license plate. Tossey recognized the two individuals in the front seat as the two unidentified persons she noticed shopping in the men's athletic department with Dequan. The vehicle eventually exited the parking lot after quickly picking up Dequan, who came running out of the store with a large purse. After the vehicle left the parking lot, Tossey returned to the loss-prevention office, reviewed the security-camera footage, and wrote an incident report. Tossey copied what she determined to be the relevant security-camera footage onto a disk for the police.

Defendant and Dequan were arrested soon after fleeing from the store. The two unidentified persons were never arrested in connection with this incident. Troy Police Officer Alejandro Parra conducted an inventory search of the Magnum. Parra found new clothing, purses stuffed with clothing, and a license plate scattered throughout the interior compartment of the vehicle.

Defendant was charged with first-degree retail fraud. During discovery, defendant filed a motion for discovery requesting that the prosecution provide all of the store's security-camera footage, including all angles showing the defendants "behind the fixture in which Kohl's loss-prevention officer alleged these defendants stole the merchandise." Defendant argued that he had a right to view all exculpatory evidence or information known to the prosecution. If the

prosecution failed to provide this footage, defendant moved alternatively for dismissal of the case.

Defendant contended that the requested security-camera footage would have been exculpatory because it would have demonstrated that he and Dequan had separate carts. Moreover, the footage would have shown that, when Dequan walked out from behind the fixture, he had a cart full of clothing that he pushed to another department in the store before abandoning the cart and exiting the store without any merchandise. In other words, defendant asserted that there were two carts involved and that the cart Tossey testified was empty was not previously full of clothing. Rather, the cart full of clothing remained in the store. Defendant also argued that the requested security-camera footage would have demonstrated that Tossey intentionally provided false testimony at the preliminary examination and edited the available security-camera footage. Defendant asserted that the prosecution coerced Tossey to provide false testimony “because of their knowledge of the fact that those were not the clothes the defendants allegedly stole and they still wanted a case against them.” Defendant argued that, absent the requested security-camera footage, his due-process rights would be violated as he could not otherwise obtain comparable evidence.

The prosecution responded that defendant failed to demonstrate that the security-camera footage was exculpatory or even existed. The prosecution asserted that, even if two carts were involved, that fact alone was not exculpatory because the evidence showed defendant acting in concert with the two unidentified individuals and Dequan. The prosecution argued that defendant’s claim that Tossey manipulated the footage was meritless, that the requested security-camera footage was not under the prosecution’s control, and that the prosecution was not required to conduct discovery for defendant.

The trial court denied defendant’s motion, reasoning that there was no evidence that any other relevant videos existed, that the prosecution acted in bad faith, or that the alleged evidence, if it did exist, would be exculpatory. Defendant was subsequently convicted of one count of retail fraud, for which the trial court sentenced defendant to a prison term of 2 to 7½ years. This appeal followed.

II. ANALYSIS

Defendant argues that the prosecution’s failure to provide the requested discovery violated his due-process right to present a complete defense and that the trial court erred by declining to dismiss the case. We review de novo constitutional due-process claims, *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534 (2007), and review a trial court’s discovery decisions for an abuse of discretion, *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003).

A defendant seeking reversal of a conviction on the basis of a violation of the right to present a complete defense bears the burden to show that the missing evidence was potentially exculpatory or that law enforcement acted in bad faith by failing to preserve the evidence. *People v Heft*, 299 Mich App 69, 79; 829 NW2d 266 (2012); *People v Hanks*, 276 Mich App 91, 95; 740 NW2d 530 (2007). “If the defendant cannot show bad faith or that the evidence was

potentially exculpatory, the state's failure to preserve evidence does not deny the defendant due process." *Heft*, 299 Mich App at 79.

As an initial matter, contrary to defendant's assertion, there is no evidence that the requested security-camera footage existed. Tossey testified that the store had approximately 50 individual surveillance cameras in operation. Each camera was sedentary unless a loss-prevention officer specifically controlled it. The surveillance system only allowed the loss-prevention officer to control one camera at a time. Thus, if a loss-prevention officer was manipulating one camera, then the other 49 cameras continued to record the angle where they were last aimed. Tossey testified that, when defendant walked out from behind the fixture, her attention was focused on tracking defendant's location. Therefore, Dequan's movements were not recorded because Tossey could only control one camera at a time.

Further, the available security-camera footage that Tossey copied to a disk for the police included an extra minute on either side of the relevant footage. Tossey explained that she intentionally included this extra footage to ensure that no relevant security-camera footage was accidentally cut off. Additionally, Tossey explained that she copied the relevant security-camera footage to a disk because the security cameras record over old footage. On this record, there is no evidence to support defendant's claim that Tossey intentionally edited the available security-camera footage to cut out any beneficial camera angles. Rather, the evidence supports the conclusion that footage from the additional requested angles did not exist and that the only existing footage was that provided to the prosecution on the disk. Defendant's argument that he was denied due process hinges on his assertion that the requested footage actually existed. Because there is no evidence from which we may so conclude, we must reject defendant's claim.

Moreover, even assuming that the requested footage did exist at some point, defendant cannot show bad faith on the part of the prosecution in failing to disclose it nor can he show that the evidence was potentially exculpatory. *Heft*, 299 Mich App at 79. Regarding bad faith, defendant's due-process right to obtain exculpatory information or evidence only extends to evidence within the prosecution's control. *Schumacher*, 276 Mich App at 176. "For due process purposes, there is a crucial distinction between failing to disclose evidence that has been developed and failing to develop evidence in the first place." *People v Anstey*, 476 Mich 436, 461; 719 NW2d 579 (2006). The prosecution is "not required to seek and find exculpatory evidence or assist in building the defendant's case, and a prosecutor is not required to negate every theory consistent with defendant's innocence." *People v Dickinson*, 321 Mich App 1, 16; 909 NW2d 24 (2017) (internal citation and quotation marks omitted). Again, Tossey testified that she copied the relevant portions of the surveillance footage and provided the prosecution with that footage. There is no evidence, outside from defendant's unsupported assertions, that Tossey provided investigators with any additional relevant footage or that the prosecution instructed her to omit or destroy relevant evidence. Accordingly, defendant has presented no evidence from which this Court may conclude that the prosecution acted in bad faith.

Concerning the potential for the evidence to exculpate defendant, evidence is exculpatory if it would raise a reasonable doubt about the defendant's guilt. *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994). "[W]hen the exculpatory nature of the evidence is speculative, due-process is not violated in the absence of bad faith where the state fails to preserve such evidence." *People v Huttenga*, 196 Mich App 633, 642; 493 NW2d 486 (1992). Defendant

argues that the requested security-camera footage would have been exculpatory because it would have shown that neither defendant nor Dequan committed retail fraud. We disagree.

Dequan pleaded guilty to retail fraud in this case. The available security-camera footage depicted defendant acting in concert with Dequan. Defendant hid behind a fixture while Dequan appeared to remove security tags from several items of clothing. Later, defendant was observed walking out of the store with a full purse without paying for any items. Defendant then absconded in a getaway vehicle after removing the vehicle's license plate. In the vehicle, officers located merchandise stolen from the store. Particularly corroborating with the prosecution's version of events is that some of these items were damaged in a manner that would suggest that a security tag had been improperly removed. Indeed, security tags were found at the base of the fixture that defendant and Dequan were hiding behind. Therefore, there is nothing, aside from defendant's unsupported assertion, from which we may conclude that any other security footage would have been exculpatory.

In short, because defendant failed to show (a) that the requested discovery material existed and (b) that the material was exculpatory or that the prosecution acted in bad faith by failing to disclose it, the trial court properly denied defendant's motion to dismiss the case.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Patrick M. Meter

/s/ Elizabeth L. Gleicher