

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050162-CA
v.)	
)	F I L E D
Jeffrey Giles,)	(July 7, 2006)
)	
Defendant and Appellant.)	2006 UT App 284

Fourth District, Provo Department, 041402786
The Honorable Steven L. Hansen

Attorneys: Margaret P. Lindsay, Orem, for Appellant
Mark L. Shurtleff and Erin Riley, Salt Lake City, for
Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Jeffrey Giles appeals his conviction for failure to respond to an officer's signal to stop. Specifically, Giles argues that the district court erred in denying his motion for a mistrial.

"A trial court's denial of a motion for mistrial will not be reversed absent an abuse of discretion." State v. Widdison, 2001 UT 60, ¶54, 28 P.3d 1278. "This is because the trial court is in the best position to determine whether the incident prejudiced the jury." State v. Martinez, 2002 UT App 126, ¶36, 47 P.3d 115.

Giles argues that the district court should have granted his motion for a mistrial because the prosecutor questioned Giles about a prior conviction for a similar crime without previously disclosing that information to the defense.¹ After the district

¹The prosecutor informed the district court that it did not have knowledge of the conviction until the day before trial.

court determined that the prosecutor should have disclosed the information to the defense, it admonished the jury to "disregard anything at all that might come to your attention regarding the last question or any of the responses that you may have heard or overheard here at the bench." The trial proceeded with no further mention of the prior conviction.

Even if the district court properly determined that the prosecutor should have disclosed the information to the defendant, the district court did not abuse its discretion in denying the motion for a mistrial.² Specifically, "a breach of the discovery rules does not warrant reversal absent a showing of prejudice to the defendant." State v. Blair, 868 P.2d 802, 807 (Utah 1993); see also State v. Harmon, 956 P.2d 262, 274-75 (Utah 1998) ("Unless a review of the record shows that the court's decision is plainly wrong in that the incident so likely influenced the jury that the defendant cannot be said to have had a fair trial, we will not find that the court's decision was an abuse of discretion." (quotations and citations omitted)). Giles fails to demonstrate that he was prejudiced by the denial of the motion.

First, Giles was not surprised by any new evidence. Giles was fully aware of his prior criminal history and interactions with the police. Further, Giles's attorney implicitly admitted to having knowledge of the conviction when he argued to the district court that Giles's conviction had been reduced to a class A misdemeanor. Second, after the district court determined that the information should have been disclosed under rule 16 of the Utah Rules of Criminal Procedure, it issued an admonishment to the jury to disregard any such information. Further, the court did not allow reference to the prior conviction for the remainder of the trial. Third, the record reveals that if the jury did not believe Giles's testimony concerning his defense of intoxication, there was overwhelming evidence of guilt. Thus, under the totality of the circumstances, Giles cannot demonstrate that he was prejudiced by the district court's denial of his

²There is some question as to whether Giles's previous conviction was a felony or misdemeanor, which may have had an impact on the admissibility of the evidence. Accordingly, there were issues regarding the admissibility of the conviction even outside of the discovery issue.

motion for a mistrial. Accordingly, the district court acted within its discretion in denying Giles's motion.

Affirmed.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge