STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLIE MITCHELL,

Defendant-Appellant.

UNPUBLISHED
July 5, 1996

No. 159551
LC No. 91-004888

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court sentenced him to imprisonment for 6 ½to 10 years. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in denying his motion to dismiss the case because the prosecutor failed to bring defendant to trial within 180 days as required by MCL 780.131; MSA 28.969(1). We disagree. The 180-day rule does not require that the trial be commenced within 180 days, but obligates the prosecutor to make good-faith action during the 180-day period and thereafter to proceed to ready the case against the prison inmate for trial. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). After reviewing the record, we conclude that the prosecutor acted in good faith to ready the case against defendant for trial and that the delay beyond the 180-day period was not accompanied by an evident intent not to bring the case to trial promptly. *Id*., 278-279. Accordingly, we reject defendant's argument that the 180 day rule was violated.

Defendant also argues that the evidence was insufficient to establish defendant's identity as the perpetrator of the offense. We disagree. At trial, Trooper Gerald Alexander, a fingerprint expert, testified that fingerprints found on two brown grocery bags that were removed from the victim's car at the time of the shooting matched defendant's fingerprints. Defendant is correct that the general rule is that fingerprint evidence alone is sufficient to establish identity only if the fingerprints are found at the

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

scene of the crime under such circumstances that they could have only been made at the time of the commission of the crime. *People v Himmelein*, 177 Mich App 365, 374-375; 442 NW2d 667 (1989). However, in this case, the fingerprint evidence is not the sole evidence regarding defendant's identity as the perpetrator. In addition to the fingerprint evidence, an eyewitness to the crime testified that he identified defendant from a group of photographs as the perpetrator of the offense. According to the eyewitness, he was reasonably certain that defendant was the perpetrator. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could conclude, beyond a reasonable doubt, that defendant committed the offense. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201-1202 (1992). Accordingly, there was sufficient evidence establishing defendant's identity as the perpetrator.

Defendant further argues that his conviction must be reversed because of Officer Hubert Yopp's testimony at trial regarding what a confidential informant told him. The incident that resulted in defendant's conviction occurred in 1981 in the parking lot of a Bank of the Commonwealth near Woodward and Waverly in Detroit. According to Officer Yopp's testimony, he first became involved in the case in 1991, when a confidential informant told him that defendant committed a murder in 1981 at the same location. Officer Yopp learned that a person had been shot at that location in 1981 but that the victim did not die. According to defendant, admission of Officer Yopp's testimony that a confidential informant said defendant committed a murder in the parking lot of a Bank of the Commonwealth at Woodward and Waverly in 1981 violated his constitutional right to confrontation. US Const, Am VI; Const 1963, art I, § 20. Defendant also argues that admission of the testimony was improper because the testimony was hearsay and was more prejudicial than probative.

We reject defendant's argument that the testimony was hearsay because the testimony was not offered to prove the truth of the matter asserted. MRE 801(c). The testimony was offered not as proof that defendant committed a murder in 1981, but to explain what triggered the police investigation of the case in 1991.

Defendant relies, in part, on the Supreme Court's decision in *People v Wilkins*, 408 Mich 69; 288 NW2d 583 (1980), in support of his argument that the testimony should have been excluded because it was more prejudicial than probative. In *Wilkins*, the Supreme Court reversed the defendant's carrying a concealed weapon conviction after, over the defendant's objection, the trial court permitted a police officer to testify regarding what a confidential informant had told him. This case is distinguishable from *Wilkins*, however, because here, defendant failed to object to Officer Yopp's testimony. Because defendant did not object to the admission of the police officer's testimony, this issue is reviewed only to the extent that a substantial right of the defendant's was affected. MRE 103(a)(1); *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). Because, as noted above, there was sufficient evidence to sustain defendant's conviction without Officer Yopp's testimony, we conclude that defendant's substantial rights were not affected by the admission of the evidence.

Furthermore, even if Officer Yopp's testimony violated defendant's right to confront the confidential informant, we find the violation to be harmless. "[A] violation of the Confrontation Clause .

. . may be harmless if the appellate court can 'confidently conclude, beyond any reasonable doubt, that the error did not affect the jury's verdict.'" *People v Spinks*, 206 Mich App 488, 493; 522 NW2d 875 (1994), quoting *People v Watkins*, 438 Mich 627, 667; 475 NW2d 727 (1991) (opinion by Cavanagh, C.J.). The admission of evidence which violates a defendant's right to confrontation is not harmless if "the 'minds of an average jury' would have found the prosecution's case 'significantly less persuasive'" without the evidence. *People v Banks*, 438 Mich 408, 430; 475 NW2d 769 (1991), quoting *Schneble v Florida*, 405 US 427, 432; 92 S Ct 1056; 31 L Ed 2d 340 (1972). Here, in light of the fingerprint evidence and the eyewitness' identification of defendant's photograph, as well as the context in which the testimony was elicited, we cannot conclude that the jury would have found the prosecution's case significantly less persuasive without Officer Yopp's testimony. Accordingly, any violation of defendant's right to confrontation was harmless.

Defendant finally argues that the trial court abused its discretion in refusing the jury's request to reread a witness' testimony without finding the request unreasonable or allowing the jury the option of renewing its request. When a jury requests that testimony be reread to it, the rereading and extent of rereading are within the trial court's discretion. *People v Davis* 216 Mich App 47, 56; ___ NW2d ___ (1996). This Court reviews decisions regarding the rereading of testimony for an abuse of discretion. *Id*. The trial court responded to the jury's request for testimony by instructing, "Ladies and gentlemen, please rely on your individual and collective memories to recollect and determine the testimony of the witness." While the trial court could have made it clearer to the jury that it would have the opportunity to reread the testimony if it was unable to recollect the witness' testimony, we conclude that the trial court's failure to do so was not an abuse of discretion under the circumstances because the trial court's response to the jury's request did not completely foreclose the opportunity for the jury to have the testimony reread. *People v Johnson*, 124 Mich App 80, 90; 333 NW2d 585 (1983). Accordingly, the trial court's response to the jury's request to have testimony reread was not an abuse of discretion.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr