

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMIAH STREET,

Defendant-Appellant.

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UNPUBLISHED

October 4, 1996

No. 185110

LC No. 91-005357

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

PER CURIAM.

Following a joint jury trial with codefendant Michael Cefus Street, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of life imprisonment for the murder and assault convictions, plus two years' consecutive imprisonment for the felony-firearm conviction. Defendant appeals by leave granted. We reverse and remand for a new trial.

Viewed most favorably to the prosecution, the evidence was sufficient to sustain the convictions. Because it is impermissible for a trial court to determine credibility issues when deciding a motion for a directed verdict of acquittal, the court properly denied defendant's motion. *People v Herbert*, 444 Mich 466, 473-474; 511 NW2d 654 (1993).

Further, the trial court did not abuse its discretion in refusing to order sanctions for the violation of the discovery order. See *People v Williams*, 188 Mich App 54, 58-59; 469 NW2d 4 (1991).

However, we agree with the decision reached in the codefendant's appeal that the trial court completely foreclosed any possibility of having testimony reread to the jury during deliberations. See *People v Michael Cefus Street*, unpublished opinion memorandum of the Court of Appeals, issued 9/30/94 (Docket No. 163234). Although defendant failed to preserve this issue by objecting to the instruction given by the trial court in response to the jury's request for testimony, we reverse defendant's

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

convictions and remand for a new trial to prevent manifest injustice to defendant. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We cannot speculate on the reasons why the jury requested testimony. *People v Henry Smith*, 396 Mich 109; 240 NW2d 202 (1976). Based on the record in this case, prejudice must be presumed. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

Because we are remanding for a new trial, we find it unnecessary to address the other issues raised by defendant in this appeal.

Reversed and remanded for a new trial. No further jurisdiction.

/s/ Mark J. Cavanagh

/s/ William B. Murphy

/s/ Charles W. Simon, Jr.