

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN M. HAGERMAN,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 182375

Oakland Circuit Court

LC No. 94-132919 FC

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

After his conviction by jury of assault with intent to murder, defendant appeals by right. The sole issue presented is whether the trial court abused its discretion in denying defendant's motion for new trial on the basis of the ostensibly recanting affidavit of Earl Davis, the victim. This case is being decided without oral argument pursuant to MCR 7.214(E).

The affidavit of Earl Davis does not suggest that he in fact did not tell the truth at trial. Davis indicates that the only specific threats or harassment to which he was subjected by the police involved a warning that if he failed to appear for trial, presumably pursuant to a subpoena duly issued and served, he would get into trouble, a neutral proposition. There is no indication that any agent of the government attempted or succeeded in causing Davis to color his testimony, or that the prosecutor had reason to believe that Davis' trial testimony was in any way untrue. Moreover, independent evidence established all the elements of the crime. *People v Canter*, 197 Mich App 550; 496 NW2d 336 (1992). Where Davis' affidavit suggests only that "Jesse" was armed, but not that defendant had reason to know or suspect this, or that Jesse engaged in anything other than verbal harassment of defendant, Davis' affidavit adds nothing to the case which would establish a reasonable basis for defendant to believe that he was in such danger that use of deadly force was warranted. *People v Green*, 113 Mich App 699; 318 NW2d 547 (1982). The trial court did not abuse its discretion in denying defendant's motion for new trial on this basis. *People v Sharbnaw*, 174 Mich App 94; 435 NW2d 772 (1989).

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

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot