

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTIN HUGH BROWN,

Defendant-Appellant.

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UNPUBLISHED

November 22, 2005

No. 255015

Wayne Circuit Court

LC No. 03-000178

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The arresting officer testified that he observed defendant loitering near a house. Defendant tossed a plastic bag onto the ground. The bag contained smaller baggies of crack cocaine, totaling 1.33 grams. The officer detained defendant, entered the vacant house, and found Herman Daniels and Archie Williams. Defendant denied possessing the cocaine, and maintained that the officer found it when he searched the house. The trial court found the officer's testimony credible, and discounted defendant's version of the events.

Defendant's sole issue on appeal concerns his inability to present the testimony of two alleged res gestae witnesses. Before the start of trial, the prosecutor informed the trial court that defense counsel intended to seek to introduce the testimony of two witnesses. The prosecutor moved to disallow this testimony on the ground that defendant had failed to file a witness list. The trial court noted that defendant had failed to comply with a pretrial discovery order, and granted the motion.

The question of discovery in a criminal case is committed to the discretion of the trial court. *People v Lemcool*, 445 Mich 491, 498; 518 NW2d 437 (1994). We review a trial court's decision regarding the appropriate sanction for noncompliance with a discovery order for an abuse of discretion. *People v Davie*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). "The exercise of that discretion involves a balancing of the interests of the courts, the public, and the parties." *Id.* at 598, quoting *People v Loy-Rafuls*, 198 Mich App 594, 597; 500 NW2d 480, rev'd in part on other grounds 442 Mich 915 (1993); see also *People v Taylor*, 159 Mich App 468, 487; 406 NW2d 859 (1987). "It requires inquiry into all the relevant circumstances,

including ‘the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice.’” *Davie, supra*, quoting *Taylor, supra* at 482.

Discovery in criminal cases is governed by MCR 6.201, which provides in pertinent part:

(A) Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:

(1) the names and addresses of all lay and expert witnesses whom the party intends to call at trial;

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(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order that testimony or evidence be excluded, or may order another remedy.

A trial court may refuse to allow an undisclosed witness to testify, although this sanction should be reserved for the most egregious circumstances, such as where the defendant engages in “willful misconduct . . . designed to gain a tactical advantage.” *Michigan v Lucas*, 500 US 145, 152; 111 S Ct 1743; 114 L Ed 2d 205 (1991); see also *Taylor v Illinois*, 484 US 400, 410-414; 108 S Ct 646; 98 L Ed 2d 798 (1988).

We affirm. Defendant has not shown that the trial court abused its discretion by excluding his witnesses. Defendant claims that the other men arrested in the home, Daniels and Williams, could have presented testimony to contradict the testimony of the arresting officer. This claim does not match defendant’s earlier arguments. At the time of trial, defendant did not name the witnesses he sought to present, and did not present an offer of proof regarding the substance of their proposed testimony. In his motion for a new trial, defendant identified these witnesses as Katiesh Croft and Richard Johnson. However, he did not present affidavits or other evidence to show that Croft and Johnson were, in fact, *res gestae* witnesses. An offer of proof is generally necessary to preserve error in excluding evidence, unless the substance of the evidence excluded is sufficiently apparent from the context. MRE 103(a)(2); *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994). Given the late presentation of the alleged witnesses, the lack of any explanation for the delay, and the continually changing nature of his claim, defendant has not shown that the trial court abused its discretion.

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray