

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 20 1984

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

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Filed March 20, 1984

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vs.

)

JEFF ALLEN JENSEN,

)

4-05
69380

Defendant-Appellant.

)

Appeal from the Iowa District Court for Wright County - Newt Draheim,
Judge.

Defendant appeals his conviction for murder in the second degree in
violation of Iowa Code section 707.3 (1981). AFFIRMED.

Charles Harrington, Appellate Defender, and Raymond E. Rogers, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant
Attorney General, for plaintiff-appellee.

Heard by Schlegel, P.J., and Sackett and Hayden, JJ.

Defendant, Jeff Allen Jenison, appeals his conviction for murder in the second degree in violation of Iowa Code section 707.3 (1981). The issue in this case is whether the trial court abused its discretion in failing to grant defendant's motion for a mistrial or impose another suitable sanction for the State's alleged violation of a pretrial discovery order. We affirm.

Jenison was charged with first degree murder following the shooting death of a friend, Todd McLaughlin. Prior to the trial the court sustained Jenison's motion to produce, among other things, the following:

f. All reports and statements made by law enforcement personnel, including reports on the pistol, fingerprints, blood spatters, etc.

g. All reports of scientific tests, and experiments, including reports regarding the Defendant's pistol, fingerprints, blood spatters, etc.

h. All statements and reports made by non-medical, non-law enforcement, and non-scientific persons.

Jenison attempted to show at trial that the shooting was accidental and presented a weapon's expert who gave an opinion that the shooting could have been accidental. This opinion was based in part on the fact that Jenison's gun had a "light" trigger pull. Jenison's expert witness was asked during his testimony to test fire two allegedly similar guns which had a heavier trigger pull. The State questioned Jenison's expert witness during a voir dire examination to determine whether or not the witness knew that the manufacturer of all three guns had changed the trigger pull on its guns in 1976, and whether or not the witness knew that Jenison's gun was manufactured prior to 1976 and the weapons used in his tests were manufactured after 1976. The State offered in support of these assertions an exhibit that had not previously been disclosed to the defense. The exhibit contained a report of the state criminalistics laboratory which stated that the factory had changed the trigger pull on its weapons in 1976 and gave the

results of the test firing of two other weapons to determine trigger pull. Jenison's attorney moved for a mistrial on the basis of misconduct by the prosecutor and violation of the pretrial discovery order. The court overruled the motion for a mistrial. The State did not reoffer the exhibit after its initial offer before the jury and it was not admitted into evidence. There was no other sanction imposed by the court.

Iowa Rule of Criminal Procedure 13(6)(c) provides as follows:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may upon timely application order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

Discovery matters are committed to the sound discretion of the trial court, and are reviewable only upon an abuse of discretion. State v. Froning, 328 N.W.2d 333, 335 (Iowa 1982). "In exercising its discretion, the court should take into account the reasons why disclosure was not made, the extent of prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances." State v. Thompkins, 318 N.W.2d 194, 198 (Iowa 1982) (citations omitted). Ordinarily an abuse of discretion will not be found unless the party whose rights have been violated suffers prejudice that is not cured by a suitable sanction. Id.

Jenison asserts that the prejudice suffered by him was the use of the undisclosed report to impeach his expert witness. Jenison relied upon his expert to establish that the trigger pull on his gun was unusually "light" and that he could have accidentally shot his friend. Jenison sought only a mistrial and did not specifically seek a continuance.

The State offered several reasons for not providing the defendant with a copy of the report prior to trial pursuant to the trial court's discovery order. It

asserted that 1) the tests contained in the report were not done on any weapon introduced at trial, 2) the information was provided to the county attorney for trial preparation purposes only, 3) the exhibit contained only exculpatory evidence, and 4) the exhibit was offered for purposes of voire dire and not as evidence. We believe that the discovery order was broad enough to cover the evidence contained in the report and we do not believe that the exceptions urged by the State excuse it from complying with a pretrial discovery order. The record shows that the State violated the trial court's pretrial discovery order.

However, we do not believe that the trial court abused its discretion in failing to impose additional sanctions for violation of its pretrial order. Jenison's expert testified at length concerning the "light" trigger pull of Jenison's gun. Assuming his lack of knowledge as to changes made in manufacturing the type of weapon involved here damaged his credibility, he was able to demonstrate in a presentation before the jury that the trigger pull on the defendant's gun was "light" and was more likely to be pulled accidentally than the trigger of other weapons. Moreover, the testimony of the State's weapons expert, Andrew Newquist, corroborated the fact that the trigger pull of Jenison's gun, which was missing the safety button, was "light." While we do not approve a violation of the discovery order, we believe that Jenison's rights were not prejudiced.

We hold trial court did not abuse its discretion in overruling defendant's request for a mistrial and in not imposing other discovery sanctions.

AFFIRMED.