

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-585

ANTONIO WRIGHT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. CR 2009-100-5]

HONORABLE LARRY W.
CHANDLER, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Antonio Wright brings this appeal from his conviction for second-degree murder and felon in possession of a firearm, contending that the circuit court erred in denying a new trial based upon an alleged discovery violation. The case is before us for the second time. In *Wright v. State*, 2011 Ark. App. 729, we remanded for the parties to settle the record; ordered Wright to file a substituted abstract, addendum, and brief; and allowed the State to file a supplemental abstract in proper form. Each party has now complied with the requirements of Arkansas Supreme Court Rules 4-1 and 4-2, enabling us to reach the merits of the case. We affirm.

The prosecution's suppression of evidence favorable to an accused upon request violates due process when the evidence is material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been



different.” *Strickler v. Greene*, 527 U.S. 263, 280 (1999). There are three elements of a true *Brady* violation: the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. *Strickler*, 527 U.S. at 281; *Barker v. State*, 2010 Ark. 354, at 9, 373 S.W.3d 865, 870.

Arkansas Rule of Criminal Procedure 17.1(a)(ii), an extension of *Brady*, requires the prosecuting attorney to disclose to defense counsel, upon timely request, any written or recorded statements and the substance of any oral statements made by the defendant or a codefendant that are within the prosecutor’s possession, control, or knowledge. *Newberry v. State*, 262 Ark. 334, 557 S.W.2d 864 (1977). Rule 17.1(d) requires the prosecutor, promptly upon discovering the matter, to disclose any material or information within the prosecutor’s knowledge, possession, or control, which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the punishment therefor. While the State is obliged to disclose to the defendant any exculpatory evidence, the prosecution is not required to disclose information already in the defendant’s possession. *Johninson v. State*, 317 Ark. 431, 878 S.W.2d 727 (1994).

On September 29 and 30, 2010, Wright was tried by a jury for the first-degree murder of Roderick Parker and for possession of a firearm by a felon. The State’s evidence included testimony by Tomeca Snell, Barbara Bell, Leroy Harris, and Detective Todd Dew. Snell testified that she was in a park when Wright and two other men walked up to Parker, that there was a conversation and Wright shot Parker, and that Snell heard only one shot. Bell



testified that she saw Wright shoot Parker. Harris testified that he observed no act by Parker that would have provoked Wright, and Wright shot again. Detective Dew testified that he did not interview Wright while investigating the case because he thought it would not be productive in light of what officers on the scene had said about Wright's demeanor.

Wright testified in his own defense, explaining what had occurred when he and the victim encountered one another in a park:

I saw Rod Parker, he was mouthing some words. . . . I went over to him. Before I could finish what I was saying he pushed me. Then Mario Blake jumped up and tried to get him to calm down. I shoved Rod back and then he hit me. Then we started fighting. I was hit twice in the back of my head. So I pulled out the gun. I fired one single shot. I did that because I feared for my life. I was being jumped on. . . . He was coming at me until I fired.

He stated that he stopped shooting after the first shot, and he reiterated on cross-examination that he was the one who fired the gun.

The jury, after receiving instructions on lesser-included offenses, found Wright guilty of second-degree murder and firearm possession. He was sentenced to thirty years' imprisonment for the murder with an enhancement of fifteen additional years for use of a firearm and to twenty years on the possession-of-a-firearm charge, the sentences to run consecutively for a total of sixty-five years.

On October 9, 2010, during discovery in a separate case against Roland Jamerson, Wright's counsel was provided with a jailhouse informant's videotaped statement containing information relevant to Jamerson's case and mentioning both Wright and Jamerson. Wright's counsel filed a motion for new trial, asserting that the State had violated discovery by failing to provide Wright with the informant's statement.



At the hearing on the motion for a new trial, Detective Dew testified that he had been the investigator for Wright's case but in February 2010 had interviewed a jailhouse informant who wanted to speak with him regarding Jamerson's prosecution. The informant's videotaped statement was admitted into evidence at the hearing, and a portion of it was played in open court. The informant said in the statement that he overheard Wright telling other inmates that the victim slapped Wright during an argument in a park; that Wright then shot the victim in the stomach, using a 9 mm gun; that Wright stood over the guy, got ready to shoot him again, but saw witnesses; and that Wright went to someone else's home afterward. According to the informant, Wright said that he was doped up, really didn't know what was going on, and shot the victim only once.

Detective Dew testified that he told Wright's attorney about taking the informant's statement and also relayed who was talked about and what was said. Dew testified that he did no investigating of Wright's case based upon the interview and he did not give Wright's counsel a copy of the interview, but he gave the tape to the prosecutor's office before Jamerson's trial. He explained that he did not provide the informant's statement in discovery because Wright's counsel did not request it, the informant was not considered as a witness during trial preparation, and Dew believed that what the informant said about Wright's statements would have been inadmissible hearsay. Dew recounted that at trial during cross-examination, Wright's counsel "asked me who I'd interviewed. . . . I was trying to remember everyone but we changed topic and I didn't get to finish answering."

The circuit court issued a written order denying the motion for new trial, finding that



a *Brady* violation had occurred and that the State did not seriously contend otherwise. However, the court found that Wright could have and should have communicated to his attorney all the information in the statement by the informant. The court concluded that Wright failed to show he was prejudiced by the State's failure to provide the contents of the informant's statement, and it did not find a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

Wright argues on appeal, as he did below, that the informant discussed statements allegedly made by Wright containing exculpatory and mitigating information germane to his case, and that the informant indicated other persons had knowledge about the shooting. He complains that he was given no opportunity to investigate evidence provided by the informant or to interview individuals named by the informant, nor did he have opportunity to call the informant as a witness. He argues that had he been provided the informant's statement, he could have asked Dew in cross-examination about his failure to thoroughly investigate leads in the statement and could have explored his testimony that speaking with Wright would have been unproductive. Wright asserts that the jury likely would have found him guilty of an even lesser charge, or at least have recommended a lighter sentence, had it received more evidence concerning his theory of self-defense.

The decision to grant or deny a motion for new trial lies within the sound discretion of the circuit court, whose action will be reversed only upon a clear showing of abuse of that discretion or manifest prejudice to the defendant. *Harrison v. State*, 371 Ark. 652, 269 S.W.3d 321 (2007); *Newberry v. State*, 262 Ark. 334, 557 S.W.2d 864 (1977). The burden is on the



appellant to establish that a violation of pretrial discovery was sufficient to undermine confidence in the outcome of the trial. *Rychtarik v. State*, 334 Ark. 492, 976 S.W.2d 374 (1998). Absent a showing of prejudice by the violation, we will not reverse. *Esmeyer v. State*, 325 Ark. 491, 930 S.W.2d 302 (1996).

Here, Wright has failed to show that he was so prejudiced by the alleged discovery violation that there is a reasonable probability the outcome of the trial would have been different. The information, Wright's own statements, was not exculpatory in light of the fact that Wright admitted to the shooting. Moreover, Wright already had knowledge of the information because it was a statement he had made. He suffered no prejudice by the State's failure to disclose the informant's statement in discovery, and we find no abuse of the trial court's discretion in the refusal to grant a new trial.

Affirmed.

HART and GLOVER, JJ., agree.

Wallace, Martin, Duke & Russell, PLLC, by: *Sherri L. Latimer*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Ashley Argo Priest*, Ass't Att'y Gen., for appellee.