COURT OF APPEALS
DECISION
DATED AND FILED

April 10, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2021-CR **Cir. Ct. No. 00-CF-566**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALEXANDER GRUBOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed*.

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Alexander Grubor appeals from a judgment of conviction of possession of THC with intent to deliver and a related tax stamp violation. He argues that the jury was tainted because the venire panel viewed weapons during voir dire. He also claims that evidence should have been

excluded because the prosecution failed to produce it until the morning of trial. We conclude there was no reversible error and affirm the judgment.

¶2 As jury voir dire commenced, defense counsel made a motion for mistrial outside the presence of the venire panel. Counsel objected to the placement of evidence on a table in front of the jury, which included three firearms. The trial court denied the motion and later remarked that the production of evidence in the courtroom should not have been a surprise since the court had previously ruled the evidence admissible.

¶3 Our review is explained as follows:

> The decision whether to grant a motion for a mistrial lies within the sound discretion of the trial court. The trial court must determine, in light of the whole proceeding, whether the basis for the mistrial request is sufficiently prejudicial to warrant a new trial. We will reverse the trial court's mistrial ruling only on a clear showing of an erroneous exercise of discretion.

State v. Bunch, 191 Wis. 2d 501, 506-07, 529 N.W.2d 923 (Ct. App. 1995) (citations omitted).

¶4 Grubor argues that juror bias was a natural consequence of permitting potential jurors to view incriminating evidence at the same time they were viewing him and prior to the taking of any testimony. Grubor is arguing that objective bias existed. The inquiry into objective bias is whether a reasonable person in the prospective juror's position could be impartial. ***State v. Faucher***, 227 Wis. 2d 700, 718, 596 N.W.2d 770 (1999). Grubor believes the juror bias can be inferred solely from the display of firearms during voir dire.

¶5 We disagree. Although it is not good practice to permit the display of evidence, particularly weapons, during voir dire, there is nothing in the record

to suggest bias. Potential jurors were asked by defense counsel whether anyone believed that a person's possession of a rifle made it more likely that the person was a drug dealer. No potential juror responded affirmatively. Moreover, jurors were not left to speculate on the significance of the guns. The prosecutor's opening statement informed the jury that the guns were found in Grubor's bedroom. The guns were ultimately admitted into evidence. Thus, because jurors viewed evidence used at trial, no objective bias can be inferred. The trial court recognized that no bias was created. We affirm the trial court's denial of Grubor's motion for mistrial as a proper exercise of discretion.

¶6 On the morning of trial, the prosecutor gave defense counsel handwritten notes which had been seized from Grubor's home and marked as trial exhibits. Grubor made a motion to exclude the evidence on the ground that the prosecution violated his discovery demand which requested an inventory and copies of all documents in the prosecutor's possession. The prosecutor had responded to the discovery demand with an explanation of its "open file" policy. A copy of the file was made and produced upon defense counsel's request. The notes were not included as they remained in possession of the police department. The trial court denied the motion to exclude the evidence concluding that Grubor was not surprised by the evidence because it had been inventoried in the police report.

¶7 We acknowledge that because of the inculpatory nature of the evidence, the prosecution could not merely claim that it lacked possession of the evidence until the day of trial. However, the trial court's finding that the prosecution had not violated its obligation to provide discovery is not clearly erroneous. The existence of Grubor's handwritten notes was mentioned in the police report. Moreover, the prosecutor had twice mentioned to defense counsel

that if he wanted to view any of the inventoried evidence prior to trial, appropriate arrangements would be made. Defense counsel never made a request to view the notes referenced by the police report. We conclude there was no basis to exclude the evidence.

¶8 Grubor suggests that the trial court should have granted a continuance to permit defense counsel an opportunity to review the voluminous notes. Defense counsel did not seek this remedy. We decline to review an issue on appeal when the appellant has failed to give the trial court fair notice that he or she seeks a particular ruling. *See* ***State v. Salter***, 118 Wis. 2d 67, 79, 346 N.W.2d 318 (Ct. App. 1984). The claim that a continuance was appropriate is waived. We will not speculate that there was prejudice to Grubor on the lost opportunity to enter a guilty plea after review of the notes.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.