# Court of Appeals, State of Michigan

## ORDER

PEOPLE OF MI V ANDRE NEAL HARDAWAY

Docket No. 380414

LC No. 23-002772-01-FC

Allie Greenleaf Maldonado
Presiding Judge

Christopher M. Trebilcock

Mariam S. Bazzi
Judges

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The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, the trial court's April 6, 2026 order is REVERSED, and the matter REMANDED for further proceedings consistent with this order. The prosecutor twice disclosed body-worn camera footage to defendant shortly before anticipated trial dates in this case. The trial court, however, has specifically concluded that this was not due to a lack of good faith by the prosecutor; rather, the trial court has attributed the late disclosure the police. To remedy the late disclosure, the trial court has twice adjourned trial to allow the defense the opportunity to review and investigate the video footage. Granting a continuance for such purposes is an appropriate remedy. *People v Burwick*, 450 Mich 281, 297-298; 537 NW2d 813 (1995). But the trial court's additional sanction, in the form of an unarticulated "adverse inference" instruction, is an abuse of discretion. The adjournments granted by the trial court are sufficient to cure any prejudice to the defense and thus are the appropriate remedy. *Id*. There is no basis for giving an adverse-inference instruction in this case. See *People v Cress*, 250 Mich App 110, 158; 645 NW2d 669 (2002), rev'd on other grounds 468 Mich 678 (2003) (explaining the findings necessary for giving an adverse-inference instruction). At present, defendant has not shown that any evidence has been lost or destroyed, let alone in bad faith and when the exculpatory nature of the evidence was apparent. An adverse-inference instruction would also risk interfering with the jury's exclusive role of determining the credibility of witnesses and what weight to give evidence. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Accordingly, the trial court's order is reversed and the matter is remanded for further proceedings consistent with this order.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 20, 2026
Date

Chief Clerk