

Robert Foy was convicted of murder in Randolph Circuit Court. Foy appeals and presents four issues, which we consolidate and restate as:

- I. Whether the trial court erred in admitting evidence obtained pursuant to a search warrant, which Foy claims was insufficiently specific and issued without probable cause;
- II. Whether the testimony of a police officer constituted an improper use of Foy's right to remain silent; and
- III. Whether discovery violations by the police constitute reversible error.

We affirm.

Facts and Procedural History

Robert Foy ("Foy") and Diana Foy ("Diana") were married in 2001, and the couple lived in a house in Randolph County, Indiana. In the spring of 2004, Foy began to suspect that Diana was having an affair with another man. Foy also believed that Diana was using methamphetamine and taking money from him in order to fund her drug use. Foy became angry and upset with Diana, and by April 2004, the couple had separated.

Sometime thereafter, Foy spoke with his lifelong friend Ricky Stephens ("Stephens"). Foy told Stephens that Diana was romantically involved with a member of a motorcycle gang, that she was using methamphetamine, and that she was taking Foy's money. Foy, a truck driver, told Stephens that when he returned home from his trucking duties, he would "g[e]t his hands on that bitch [and] was going to beat the hell out of her." Tr. p. 422. He further told Stephens that he "was going to whoop her ass and get his money back." Tr. p. 423. Stephens further stated that Foy had told him that he was going to "take care of that f***ing bitch for taking his money" and that he was "going to

stomp the bitch to death.” Tr. p. 427. Stephens explained that Foy had been attempting to reconcile with Diana, but that “it started getting really, really crazy” when Foy learned that both his money and his mother’s car were missing. Id. at 425.

Despite their separation, on April 21, 2004, Diana spent the night with Foy. On the morning of April 22, 2004, Carol Jones (“Jones”), who was both Diana’s aunt and Foy’s former mother-in-law, took Foy’s children to school. When Jones returned to Foy’s house that afternoon, she met Foy coming out of the house. Foy told her to come inside the house with him.

When Jones followed Foy back inside, she saw Diana lying unconscious on the couch. Jones then telephoned 911 while Foy performed CPR on Diana. Jones noticed that there were blood stains in the kitchen. The 911 operator initially reported the call as regarding a “possible dead female,” but based upon what Jones said, later changed the nature of the call as being a “possible homicide.”¹ Tr. p. 596.

Eventually, numerous “first responders,” including police, emergency medical technicians, and firefighters arrived on the scene. Some of the first responders testified that they were responding to a report of a motorcycle accident, while others thought there had been a drowning. Officer Jeff Willen (“Officer Willen”) spoke with Foy, and Foy claimed to have found Diana face down in a nearby pond. Foy further claimed to have removed Diana from the pond, carried her to the house, and placed her on the couch.

¹ According to the probable cause affidavit supporting the search warrant, Jones told the 911 operator, “Oh God, I think he killed her,” and “Oh my God, what did he do to her.” Appellant’s App. p. 24.

At some point, Detective Doug Fritz (“Detective Fritz”) took over the investigation. Foy told Detective Fritz that he had pulled Diana from the pond and taken her to the house, dropping her and injuring his hand in the process. However, Officer Willen and Detective Fritz both testified that Diana was dry when they first arrived at the scene.² Further police investigation revealed no sign of a motorcycle accident.

Detective Fritz testified that when he first saw Diana, she had contusions on her face, head, and arms, and her jeans were bloody. Fritz also saw what appeared to be blood stains leading from the kitchen to the dining room. Fritz further noted that Foy had what appeared to be bloodstains on his forearm and his shirt, that his knuckles were swollen, and that his hand was scraped.

Diana was taken by ambulance to a hospital in Muncie, where she died later that night. Medical personnel at the hospital found no water in Diana’s lungs. A subsequent autopsy revealed that the cause of Diana’s death was blunt force trauma that caused internal bleeding.

Based upon information gathered at the scene and at the hospital, Deputy Steven McCord prepared a probable cause affidavit and obtained a search warrant authorizing the police to search for “any and all trace evidence” on Foy’s person and in Foy’s residence and any outbuildings and vehicles thereon. Appellant’s App. p. 22. The police then executed the search warrant and obtained several specimens from Foy and Diana’s body.

² Foy notes that some of the first responders did report “seeing wet clothes on Diana and/or in the home,” and that there was evidence that “[t]here was a large wet spot on [the] couch that had soaked through blankets where [Foy] reported placing his wife when he brought her inside.” Appellant’s App. p. 4.

On April 29, 2004, the State charged Foy with murder. On April 25, 2005, Foy filed a motion to suppress the evidence gathered as a result of the execution of the search warrant. The trial court held a hearing on the motion to suppress on June 21, 2005, and on January 27, 2006, issued an order granting Foy's motion to suppress. Specifically, the trial court concluded that although the search warrant was supported by probable cause, the warrant lacked the requisite particularity and was therefore an improper general warrant.

The State filed an interlocutory appeal, and Foy cross-appealed. On March 19, 2007, a panel of this court issued an opinion reversing the trial court's suppression of the evidence. See State v. Foy, 862 N.E.2d 1219 (Ind. Ct. App. 2007). Specifically, we concluded that, based upon the totality of the evidence, there was a substantial basis for concluding that probable cause existed to support the search warrant, and that the term "trace evidence," as used in the warrant, was a term of art that did not render the warrant unconstitutionally general. Id. at 1226, 1228. Foy then sought transfer to our supreme court, but the court denied transfer on July 19, 2007.

On remand, a jury trial was held on February 9 through February 13, 2009. At the conclusion of the trial, the jury found Foy guilty of murder. The trial court subsequently sentenced Foy to the advisory sentence of fifty-five years. Foy now appeals. Additional facts will be provided as necessary.

I. Search Warrant

Foy argues that the trial court erred when it admitted evidence obtained as a result of the execution of the search warrant. Specifically, Foy claims that there was no

probable cause to support the issuance of the search warrant, and that the warrant itself was an improper general warrant. As discussed above, Foy presented, and we rejected, these exact claims in his interlocutory appeal. The State therefore claims that the law of the case doctrine prevents Foy from re-litigating these issues.

A. Law of the Case

The doctrine of the law of the case is a discretionary tool by which appellate courts decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts. Cutter v. State, 725 N.E.2d 401, 405 (Ind. 2000). The purpose of this doctrine is to promote finality and judicial economy. Id. The doctrine of the law of the case is applied only to those issues actually considered and decided on appeal. Id. “[T]he parties have the right to introduce new evidence and establish a new state of facts; and when this is done, the decision of the [court] ceases to be the law of the case[.]” Id. (quoting Egbert v. Egbert, 235 Ind. 405, 415, 132 N.E.2d 910, 916 (1956)).

Here, much of Foy’s current attack on the validity of the search warrant is precisely the same as the arguments he made during his interlocutory appeal. To the extent he relies upon the same arguments he did in his interlocutory appeal, we decline to reconsider our earlier holding.

However, Foy argues now that evidence admitted at his trial shows that the police failed to present certain relevant evidence to the judicial officer who issued the warrant and that but for this failure the warrant would and should not have been issued. To succeed in such a claim, a defendant must make a substantial showing that the officer included or omitted facts in a probable cause affidavit in “reckless disregard for the truth”

and must further demonstrate that the affidavit would have been insufficient if it did not contain the alleged omissions or misstatements. Rotz v. State, 894 N.E.2d 989, 992 (Ind. Ct. App. 2008). Under this standard of review, Foy's claims fall into two categories: basic insufficient probable cause and whether the warrant was insufficiently specific. We consider each claim in order.

B. Probable Cause to Support the Search Warrant

First among the evidence Foy now claims was withheld from the issuing court is evidence that Diana and the couch she was placed on were wet when the first responders arrived. The probable cause affidavit stated that Foy claimed to have found his wife floating face-down in a pond but that certain first responders reported that Diana was not wet when they arrived. Foy notes that one police officer testified at trial that Diana's clothes were wet when she was taken to the hospital and that there was other testimony that the couch and blanket where Foy placed Diana were wet.

At most, this indicates that there was conflicting evidence regarding whether Diana was wet. In fact, Foy admits that some of the first responders testified that Diana was not wet when they arrived. This discrepancy does not necessarily mean that the police omitted such information from the probable cause affidavit with a reckless disregard for the truth. See Rotz, 894 N.E.2d at 992.

More importantly, the discrepancy between Foy's claim that he found Diana in a pond and the fact that her clothes may have been dry was not the sole basis for suspecting Foy's version of events. In particular, the affidavit mentioned that hospital personnel stated that Diana's injuries were not consistent with "the reported motion [sic] of death"

in that there was no water found in her lungs. Appellant's App. p. 27. Moreover, the affidavit noted that Foy appeared to have blood on his clothes and that his hands appeared to be injured. Thus, independent of the issue of whether Diana was wet when the first responders arrived, there were other reasons to suspect Foy's version of events.

Foy also claims that new evidence was presented at trial to the effect that he did not claim that Diana had drowned. Indeed, several witnesses testified at trial that Foy claimed he found Diana floating in the water.³ But this is not inconsistent with the probable cause affidavit, which indicated that Foy had told Carole Jones that "he seen [sic] the woman [i.e. Diana] leave on a motor bike and twenty minutes later found the woman floating face down in a pond." Appellant's App. p. 23.

Foy also takes issue with the probable cause affidavit's mention of a missing bloody cloth that the first responders reported seeing near Diana's body, but that disappeared about the time that Foy left the room. Foy now claims that new evidence was presented at trial to the effect that "no less than 14 people were milling around the residence who could have moved the 'bloody cloth' referred to in the affidavit." Appellant's Reply Br. p. 3. We fail to see how this proves that the police withheld anything or otherwise misled the issuing court, as it is clear from the affidavit that there were other people, i.e., the first responders, at the house other than Foy at the time the cloth disappeared.

³ Some of these witnesses also testified that Foy's version of events was not entirely consistent, with Foy initially claiming to have found Diana floating face down in the pond but later claiming that he found her with her face above the water.

Foy also claims that new evidence presented at trial suggested that “the ‘he’ referred to by Carol Jones in the 911 call could have been the ‘biker’ Jones believed was having an affair with the victim and who Foy identified to officers as a possible suspect.” Appellant’s Reply Br. p. 4. We fail to see how this undermines the validity of the search warrant. The probable cause affidavit did not actually claim that the “he” referred to by Jones was anyone in particular. Foy also makes a related argument that the police failed to interview Jones in order to clarify to whom she was referring. We disagree with Foy that this somehow shows that the officer omitted facts with a reckless disregard for the truth. Instead, it simply reflects the incomplete state of the investigation at the time of the probable cause affidavit.

Foy next claims that the police failed to inform the issuing court of Foy’s claims that he injured his hands when he removed Diana from the pond and carried her to the house. The probable cause affidavit stated that Foy “reported . . . that he removed [Diana] from the pond and carried her into the residence and placed her onto the couch.” Appellant’s App. p. 23. With regard to the injuries to Foy’s hands, the affidavit simply stated, “[Foy] appeared to have abrasions on or about his hands.” *Id.* at 26. The affidavit does not directly claim that Foy injured his hands while attacking Diana. Instead, it simply reports the facts then known by the police. These statements do not amount to a substantial showing that the officer misled the issuing court.

Lastly, Foy claims that the police misled the issuing court regarding the inconsistencies in his story, which he claims were the result of the police failing to fully question him at first. However, Foy does not explain which inconsistencies he is

referring to. Moreover, the fact that the police may not have fully questioned Foy at the time they sought the warrant does not rise to the required level of a reckless disregard for the truth. See Rotz, 894 N.E.2d at 992. Instead, it again reflects the early and incomplete state of the investigation at the time of the probable cause affidavit.

In short, to the extent that Foy's claims are simply a duplication of the claims he made in his interlocutory appeal, we decline to reconsider our earlier holding. To the extent that Foy's claims are based on new evidence admitted at trial, he has failed to show that the police acted with a reckless disregard for the truth. Instead, it appears that the facts contained in the affidavit simply reflect the confusion surrounding the initial investigation. Moreover, even if the affidavit had included the allegedly omitted facts, we cannot say that the affidavit would have been insufficient. See id.

C. General Warrant

The second prong of Foy's claims surrounding the warrant is that it was constitutionally impermissible general warrant. As explained in our opinion on Foy's interlocutory appeal:

A warrant must describe both the place to be searched and the items to be seized. A warrant conferring upon the executing officer unbridled discretion regarding the items to be searched is invalid. While the items to be searched for and seized must be described with some specificity, an exact description is not required. In practice, courts have therefore demanded that the executing officers be able to identify the things to be seized with reasonable certainty and that the warrant description be as particular as circumstances permit.

Foy, 862 N.E.2d at 1227 (citations and internal quotations omitted). In that opinion, we held that the warrant was not an improper general warrant because “[c]ontrary to Foy’s

assertion . . . the warrant was not without limitation as to the type of offense being investigated.” Id.

To the extent that Foy’s argument is the same as that presented in his interlocutory appeal, we again decline to reconsider our earlier holding. But, once again, Foy now claims that new evidence admitted at trial should cause us to reconsider our earlier holding.

Our earlier holding was based in part⁴ upon the fact that “although the search warrant did not specifically state it was being issued as part of a murder investigation, a true and correct copy of [the probable cause] affidavit [was] attached [t]hereto, and was clearly incorporated into the warrant.” Id. at 1227 (citations and internal quotations omitted). We further noted that “in his affidavit, McCord stated he ‘believe[d] and [wa]s presuming this to be a homicide investigation.’ Indeed, McCord could state the matter with no more certainty than he did because Diane had not yet been pronounced dead.” Id. at 1227 (citations omitted).

Foy now claims that the probable cause affidavit was *not* attached to the warrant. In support of his assertion, Foy refers us to the copy of the search warrant that was admitted as evidence at the trial. This copy of the search warrant does not contain an attached copy of the probable cause affidavit. Foy also cites to those portions of the transcript where the search warrant was mentioned. This, Foy claims, proves that the affidavit was not attached to the warrant as indicated in our earlier opinion. However,

⁴ We also held that the search warrant was not a general warrant because it permitted the State to search for “trace evidence.” See id. at 1226, 1228. Foy does not currently attack this portion of our earlier opinion.

those portions of the record cited by Foy do not affirmatively show that the affidavit was not attached to the executed search warrant, only that the affidavit was not attached to the copy of the warrant admitted into evidence at trial. This does not prove that the affidavit was not attached to the warrant as claimed in the body of the warrant itself. We therefore decline to reconsider our earlier holding that the search warrant was not an improper general warrant.⁵ See Foy, 862 N.E.2d at 1227-30.

II. Use of Post-Arrest Silence

Foy next claims that the trial court erred when it denied his motion for a mistrial based upon an alleged Doyle violation. In general, a criminal defendant may not be penalized at trial for invoking the right to remain silent. Morgan v. State, 755 N.E.2d 1070, 1074 (Ind. 2001) (citing Doyle v. Ohio, 426 U.S. 610, 620 (1976)). In Doyle, the Court held that using a defendant's post-Miranda silence to impeach a defendant at trial violates the Due Process Clause of the Fourteenth Amendment. See 426 U.S. at 619. “The point of the Doyle holding is that it is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony.” Morgan, 755 N.E.2d at 1074, n.4 (quoting Lynch v. State, 632 N.E.2d 341, 342 (1994)). A mistrial is an extreme remedy

⁵ Foy also claims that one of the police officers executing the warrant agreed with his question upon cross-examination that the warrant gave him authority to “take[] the evidence that you wanted.” Tr. p. 508. Even if we agreed with Foy that this testimony proves that one of the officers believed the warrant to authorize the seizure of anything he desired to seize, a police officer's subjective beliefs are not relevant in evaluating an alleged Fourth Amendment violation. See Cudworth v. State, 818 N.E.2d 133, 137 (Ind. Ct. App. 2004) (noting that Fourth Amendment inquiries use an objective test), trans. denied; United States v. Srivastava, 540 F.3d 277, 293-94 (4th Cir. 2008) (holding objective conduct of officers executing search warrant governed suppression inquiry rather than one officer's subjective belief that terms of search warrant were “meaningless.”); see also Whren v. United States, 517 U.S. 806, 813 (1996).

warranted only when no other curative measure will rectify the situation. Evans v. State, 855 N.E.2d 378, 385 (Ind. Ct. App. 2006), trans. denied. Because the trial court is in the best position to gauge the circumstances surrounding an event and their impact on the jury, we review its decision to deny a mistrial for an abuse of discretion. Morgan v. State, 903 N.E.2d 1010, 1019 (Ind. Ct. App. 2009), trans. denied. A mistrial is appropriate only where the questioned conduct is so prejudicial and inflammatory that it places the defendant in a position of grave peril to which he should not have been subjected. Id. The gravity of the peril is measured by the conduct's probable persuasive effect on the jury, not the impropriety of the conduct. Id.; Mickens v. State, 742 N.E.2d 927, 929 (Ind. 2001). A Doyle violation may be harmless if it is clear beyond a reasonable doubt that the error did not contribute to a defendant's conviction. Sobolewski v. State, 889 N.E.2d 849, 857 (Ind. Ct. App. 2008), trans. denied.

At trial, Detective Fritz was being questioned upon direct examination regarding his conversations with Foy:

[State]: After you obtained the Search Warrant did you have any other conversation with Mr. Foy?
[Fritz]: I did not. Detective Steve McCord spoke briefly with him in the interview room.
[State]: Was that in your presence?
[Fritz]: Yes it was.
[State]: Okay. Do you remember from your memory only, any statements that Robert Foy said?
[Fritz]: No I don't really remember Steve's conversation with [Foy].
[State]: Okay.
[Fritz]: I know that he talked to him for about twenty minutes, ten to twenty minutes *when [Foy] asked for his attorney*.

Tr. p. 373 (emphasis added).

Foy's counsel did not object, but instead asked the trial court if he could approach the bench. After the jury was excused, Foy moved for a mistrial. After hearing arguments from counsel, the trial court denied Foy's motion for a mistrial, but did offer to make a statement, i.e. an admonishment, to the jury. Foy declined this request. Foy now claims that Detective Fritz's "interjection of Robert Foy's exercise of his Constitutionally protected right to remain silent was no doubt deliberate. He hoped to draw the prohibited inference that Mr. Foy must be guilty otherwise he would not have quit talking with officers and requested an attorney." Appellant's Br. p. 35.

We first note that Foy did not immediately object. As a general rule, a party must make a contemporaneous objection to evidence offered into the record. Brown v. State, 783 N.E.2d 1121, 1125 (Ind. 2003). However, the State concedes, and we agree, that Foy's almost immediate request to approach the bench and his subsequent request for a mistrial did preserve the issue for purposes of appeal.

Assuming *arguendo* that Detective Fritz's testimony was a Doyle violation, it was harmless. See Sobolewski, 889 N.E.2d at 857 (noting that Doyle violations are subject to harmless error analysis). In analyzing whether a Doyle violation is harmless error, we examine five factors: (1) the use to which the prosecution put the post-arrest silence; (2) who elected to pursue the line of questioning; (3) the amount of other evidence indicative of guilt; (4) the intensity and frequency of the reference; and (5) the availability to the trial court of an opportunity to give a curative instruction or grant a motion for mistrial. Id.

Here, the prosecuting attorney did not comment on Detective Fritz's mention of Foy's request for an attorney. Although Detective Fritz's comment was made during direct examination by the State, the prosecuting attorney did not ask Detective Fritz a question that was designed to elicit any response regarding Foy's request for an attorney. Indeed, Foy admits that "[t]he prosecuting attorney did not solicit the prohibited testimony from Detective Fritz." Appellant's Br. p. 38. Further, the comment was heard by the jury only once, and only in passing. In addition, there was substantial evidence of Foy's guilt. Lastly, Foy declined the trial court's offer to admonish the jury. Under these facts and circumstances, we conclude that any Doyle violation was harmless. See Sobolewski, 889 N.E.2d at 858 (concluding that the State's reference to defendant's post-arrest silence was harmless beyond a reasonable doubt). We therefore cannot say that the trial court erred in denying Foy's motion for a mistrial.

III. Discovery Violations

Lastly, Foy claims that numerous discovery violations require reversal of his conviction. Trial courts are given wide discretion in discovery matters because they have the duty to promote the discovery of truth and to guide and control the proceedings. State v. Fridy, 842 N.E.2d 835, 841 (Ind. Ct. App. 2006). When remedial measures are warranted, a continuance is usually the proper remedy, but exclusion of evidence may be appropriate where the violation has been flagrant and deliberate, or so misleading or in such bad faith as to impair the right of fair trial. Id. We will affirm a trial court's determination as to a violation of a discovery order and the resultant imposition of sanctions absent clear error and resulting prejudice. Id. Dismissal of a case is an extreme

remedy that is warranted only when less severe remedies will not satisfactorily correct the error. Id.

Although Foy claims that discovery violations require reversal of his conviction, he does not claim that the prosecuting attorney committed any misconduct. In fact, he admits that the prosecutor was “very forthcoming with discovery and the disclosure of evidence.” Appellant’s Br. p. 42. Instead, Foy directs his claim towards the “police agencies involved in this case.” Id. Specifically, Foy argues that the police failed to turn over important materials to the prosecutor until shortly before, or even during, the trial. Foy specifically refers to notes taken by Detective Fritz, a tape recording of Fritz’s interview with Foy, a report written by Indiana State Police Trooper John Kelly, photographs of the Foy residence, and the DNA analysis report.

With respect to Detective Fritz’s notes, Foy moved to prohibit Detective Fritz from testifying from or using the notes, but he did not request a continuance. As such, the issue is waived. See Warren v. State, 725 N.E.2d 828, 832 (Ind. 2000) (noting that the proper remedy for a discovery violation is usually a continuance and that the failure to alternatively request a continuance when seeking to exclude evidence constitutes a waiver of any alleged error).

Waiver notwithstanding, the State notes that when Foy moved to prohibit the use of the notes by Detective Fritz, the State agreed that Fritz should be required to testify from his memory only and not refresh his recollection with the notes. After permitting both parties to review the notes, the trial court then *granted* Foy’s motion and instructed Detective Fritz that he was to “not testify regarding memories that you only have because

they were refreshed due to . . . your notes.” Tr. p. 370. We fail to see how the trial court erred by granting the very relief that Foy requested.

With regard to the tape recording of Detective Fritz’s interview with Foy, the tape was unusable because the sheriff’s office had apparently disposed of the equipment that was required to play the tape. Although Foy now complains that he was unable to determine the contents of the tape, the same is true of the prosecution.⁶ Foy even admits that the prosecutor “made a determined effort to come up with usable copies of the tape but was unsuccessful.” Appellant’s Br. p. 43. More importantly, there is no indication that the tape was admitted at trial, and Detective Fritz was instructed by the court not to base his testimony on the tape. We therefore cannot say any reversible error occurred with regard to the tape.

Foy complains that Trooper Kelly did not give his written report regarding blood-spatter evidence to the prosecutor until the Tuesday before the trial began. Again, Foy admits that the prosecutor immediately informed his counsel and provided a copy of the report to him. Foy also admits that he was able to depose Trooper Kelly. Foy did move for a continuance to have more time to depose Kelly, but there is no indication that Foy made any contemporaneous objection to Kelly’s testimony based on the delay in receiving the report. Moreover, Foy does not specifically explain how he was prejudiced

⁶ Indeed, the trial court noted that Foy, as a participant in the interview that was recorded on the tape, should not be surprised by what transpired during the interview.

by the delay in receiving the report.⁷ To the extent that Foy preserved his claim, we cannot say that he was harmed by this.

Foy briefly mentions that Trooper Kelly did not give the prosecutor photographs taken of the interior of the Foy residence until “a month or two before trial.” Appellant’s Br. p. 43. Our review of the record does not indicate that Foy objected to the admission of these photographs based on any discovery violation, nor is there any indication that he requested a continuance to better prepare. More importantly, he does not explain how he was harmed by any delay in receiving the photographs.

The same is true for his claim that “the parties and the [trial] court discussed the filing of a Motion to Compel so that both sides could obtain DNA analysis from the State Police lab almost two years after it was submitted.” Appellant’s Br. p. 43. Foy does not claim that he objected to the admission of the DNA analysis or that he requested a continuance to compensate for any delay in receiving the analysis, and he does not explain how he was prejudiced by any delay. As such, we cannot say that he was harmed by this alleged discovery violation. In sum, Foy has not demonstrated that any of the discovery violations about which he now complains constituted reversible error.

Conclusion

To the extent that Foy’s claims regarding the validity of the search warrant are the same as presented in his interlocutory appeal, we decline to reconsider our earlier

⁷ In complaining about the delay in receiving Kelly’s report, Foy’s counsel argued that the report was the first notice the defense had received indicating that Kelly would testify regarding the blood-splatter evidence. However, as noted by the trial court, the contents of the supplemental probable cause affidavit should have made the defense aware that Kelly did more than merely gather evidence and had formed conclusions based upon the blood-splatter evidence.

holding. To the extent Foy's claims are based upon new evidence admitted at trial, such evidence does not persuade us that we must reverse our earlier holding. Even if we presume that a Doyle violation occurred, any resulting error was harmless beyond a reasonable doubt. Lastly, the discovery violations of which Foy now complains do not require reversal of his conviction.

Affirmed.

BARNES, J., and BROWN, J., concur.