

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DEON MEREDITH,

Defendant-Appellant.

UNPUBLISHED

November 20, 2001

No. 224545

Oakland Circuit Court

LC No. 96-146088-FC

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted after a jury trial on one count of conspiracy to deliver cocaine [225 to 649 grams], MCL 333.7401(2)(a)(ii). Defendant appeals as of right from the December 8, 1999, judgment of sentence, in which defendant was sentenced to twenty to thirty years' imprisonment. We affirm.

In 1991, a Michigan grand jury indicted five persons, including defendant, for conspiracy to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i). The conspirators were alleged to be Saginaw drug merchants who purchased cocaine in Detroit for resale in Saginaw. The downfall of the conspiracy began when a courier for the enterprise was arrested for speeding, and she was found to be carrying drugs. The courier entered a guilty plea in return for her promise to testify against the conspirators. At the preliminary examination, the courier testified against defendant, but the courier decided not to testify at trial, invoking her Fifth Amendment rights. The prosecutor sought to introduce her preliminary examination testimony at trial; however, the request was denied by the trial court, which decision was ultimately reversed by our Supreme Court in *People v Meredith*, 459 Mich 62; 586 NW2d 538 (1998).

The case was remanded, and a ten-day jury trial took place resulting in the present conviction. Before the trial, a motion was filed by defendant requesting an order allowing him to impeach the courier's preliminary exam testimony, which was going to be presented to the jury, through introduction of the courier's earlier grand jury testimony. The trial court denied the motion.

The evidence against defendant consisted of his incriminating statements made to the police, testimony of another individual involved in the drug trade,¹ evidence of defendant's presence at the residence where the courier brought drugs, and where there were large amounts of drugs and drug paraphernalia, and the testimony of the courier through introduction of her preliminary exam testimony. The courier's testimony indicated that she made numerous false statements to the police, that her testimony came as part of a plea-bargain, that she saw defendant engaged in various drug-related activities, and that she did not recall defendant giving her money to buy drugs, nor did she ever deliver cocaine to him, though she initially told police that she had. The grand jury testimony also indicated that the courier made false statements.

Defendant first argues that the trial court erred in not allowing him to impeach the courier's preliminary exam testimony through introduction of her grand jury statements.² This Court reviews decisions regarding the admission of evidence for an abuse of discretion; however, where those decisions involve preliminary questions of law, e.g., application of a rule of evidence, review is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Moreover, the issue implicates a constitutional question, under the Confrontation Clause, thereby requiring de novo review. *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000). Where a defendant's right to confrontation is denied, reversal is not required where the error was harmless beyond a reasonable doubt. *People v Watson*, 245 Mich App 572, 585; 629 NW2d 411 (2001).

We agree with defendant that MRE 806 allows the introduction of the evidence.³ Grand jury testimony can be used for impeachment, *People v McCrea*, 303 Mich 213, 244; 6 NW2d 489 (1942), and MRE 806 allows for any statement to be introduced regardless of the declarant's opportunity to explain or deny the statement.⁴

¹ This witness' testimony was presented through introduction of his preliminary examination testimony because he also, like the courier, testified at the preliminary examination, but then invoked the Fifth Amendment at trial.

² The trial court denied introduction of the grand jury testimony because the courier would not have the chance to explain any inconsistencies, and because the grand jury proceedings didn't have the evidentiary safeguards to make the testimony a reliable source for impeachment.

³ MRE 806 provides:

When a hearsay statement . . . has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

⁴ We note that MCR 6.107 provides a defendant with the right to access grand jury transcripts and have them used at trial where the testimony touches on the guilt or innocence of the defendant.

However, MRE 806 did not require that the trial court allow the evidence, and we do not believe that a court is required to allow introduction of a limitless amount of impeachment evidence. The right to confront witnesses does not allow questioning in whatever way, and to whatever extent, defendant wishes. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). The Confrontation Clause protects a defendant's right for a reasonable opportunity to test the truthfulness of a witness' testimony. *Id* After a review of the preliminary examination testimony, we believe that any additional evidence from the grand jury proceedings regarding the courier's credibility would have involved the "needless presentation of cumulative evidence." MRE 403. Additionally, the preliminary exam testimony touched on grand jury misstatements made by the courier, which statements are relied on by defendant in support of his appeal. We dismiss as insignificant, the claimed inconsistent statement, if it can be deemed such, in the courier's testimony as asserted by defendant. There was no error in denying defendant's request to introduce the courier's grand jury testimony.⁵ Moreover, any error was harmless beyond a reasonable doubt, since the courier was impeached extensively in the preliminary examination testimony.

Defendant next argues that he was entitled to credit for time served while he was in jail awaiting sentencing. It appears that defendant was originally jailed in August 1991. He was subsequently sentenced to seven- to twenty-year consecutive terms for federal drug offenses in February 1992, and he is requesting credit for time served between 1991 and 1992. Below, defendant requested credit for time served for the entire period between 1991 and the present sentencing. Although, the current argument on appeal is different, it still involves a request for time served commencing from his original incarceration in 1991, just for a considerably shorter period of time. We believe that the argument is sufficiently preserved. Regardless, there was no error. The question is whether the 1991 incarceration was for the present crime as defendant claims, or for other crimes. The Michigan grand jury warrant regarding the present crime is dated March 24, 1992. Defendant has failed to establish that he is entitled to credit. Therefore, defendant is not entitled to credit for time in which he was apparently jailed for another crime. MCL 769.11b.

Affirmed.

/s/ Brian K. Zahra

/s/ Harold Hood

/s/ William B. Murphy

⁵ Although the trial court denied the motion to introduce the grand jury evidence for improper reasons, this Court will affirm where the lower court reaches the right result, although for the wrong reason. *People v Gould*, 241 Mich App 333, 342 n 3; 615 NW2d 794 (2000).