STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 14, 2009
v	No. 282356 Osceola Circuit Court
LANCE QUINTEN CENTERS, Defendant-Appellant.	LC Nos. 07-004053-FH; 07-004054-FH

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

In lower court no. 07-004053-FH, a jury convicted defendant of conspiracy to deliver less than 50 grams of cocaine within 1,000 feet of school property, MCL 333.7410(2); MCL 750.157a. In lower court no. 07-004054-FH, the same jury convicted defendant of two counts of delivery of less than 50 grams of cocaine within 1,000 feet of school property, MCL 333.7410(2), and maintaining a drug house, MCL 333.7405(d). Defendant appeals as of right. Because defendant was not denied his right of confrontation and because the trial court did not err in denying defendant's motion for a mistrial, in granting the prosecution's motion to consolidate for the two cases for trial, or in denying defendant's motion for a directed verdict, we affirm.

I. Right of Confrontation

Defendant claims that the trial court violated his constitutional right of confrontation when it refused to allow him to question Lieutenant Daniel King about inducements that the confidential informant, Wes Butler, had received for his cooperation in previous investigations. We disagree. We review this unpreserved issue for plain error affecting defendant's substantial rights. *People v Walker (On Remand)*, 273 Mich App 56, 65-66; 728 NW2d 902 (2006).

A defendant has the right to be confronted with the witnesses against him. US Const, Am VI; Const 1963, art 1, § 20; *People v Chambers*, 277 Mich App 1, 10; 742 NW2d 610 (2007). "A primary interest secured by the Confrontation Clause is the right of cross-examination." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). "A limitation on cross-examination that prevents a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation." *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). "A defendant is entitled to have the jury consider any fact that may have influenced

the witness' testimony." *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005) (quotation and alternation omitted). However, "neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject." *Adamski*, *supra* at 138. A defendant does not have a right to cross-examine on irrelevant matters, and trial courts have wide discretion to impose reasonable limits on cross-examination based on concerns such as harassment, prejudice, and marginally relevant or repetitive questioning. *Id*.

Here, the trial court did not limit defendant in cross-examining the witnesses about the benefits Butler received for his cooperation in the present case. Rather, the trial court prohibited defendant from cross-examining King about inducements that Butler had received for his cooperation in previous investigations. The excluded testimony, as it did not relate to the benefits Butler received for his cooperation in the present case, was of limited relevance. Because a trial court has wide discretion in imposing limits on cross-examination of marginally relevant issues, *id.*, the trial court did not commit plain error, *Walker, supra*.

II. Mistrial

Defendant next argues that the trial court erred when it denied his motion for a mistrial after Butler, in a nonresponsive answer, testified that defendant had previously been in prison for ten years. We disagree. We review a trial court's decision denying a motion for a mistrial for an abuse of discretion. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (internal citation omitted).

A volunteered, nonresponsive answer is generally not proper grounds for a mistrial, especially where the answer was not elicited by the prosecutor's questioning. *Id.* Here, Butler, in response to defense counsel's question regarding whether he and defendant were "tight," testified that defendant had been incarcerated for ten years. There is no evidence that the prosecutor encouraged Butler to give this testimony or knew that Butler would provide this information. Moreover, a cautionary instruction was given to the jurors. The trial court admonished the jurors to confine their inquiry to the three dates in question and to disregard Butler's testimony. Jurors are presumed to follow their instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), and instructions are presumed to cure most errors, *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). The trial court did not abuse its discretion in denying defendant's motion for a mistrial.

III. Joinder

Defendant argues that the trial court erred in granting the prosecution's motion to consolidate the two cases for trial. Defendant contends that joinder was improper under *People v Tobey*, 401 Mich 141, 153; 257 NW2d 537 (1977), in which our Supreme Court held that two heroin sales which occurred on two separate days but involved the same seller and buyer were not part of a single scheme or plan. We disagree. The trial court's ultimate ruling on a motion for joinder is reviewed for an abuse of discretion. *People v Girard*, 269 Mich App 15, 17; 709 NW2d 229 (2005). However, the question regarding whether charges are related is a question of law that we review do novo. *Id*.

On the motion of a party, a trial court may join two informations against a single defendant for trial. MCR 6.120(B). Joinder is appropriate if the offenses charged in the informations are related. MCR 6.120(B)(1). Offenses are related if they are based on "the same conduct or transaction," "a series of connected acts," or "a series of acts constituting parts of a single scheme or plan." MCR 6.120(B)(1)(a)-(c). A common scheme or plan exists when an individual defendant commits two or more offenses to achieve a single goal. *People v McCune*, 125 Mich App 100, 103; 336 NW2d 11 (1983).

In lower court no. 07-004054-FH, defendant was charged with maintaining a drug house, as well as two counts of delivery of cocaine less than 50 grams. These two deliveries, as well as the delivery of cocaine that resulted in the conspiracy charge in lower court no. 07-004053-FH, occurred after Butler arrived at defendant's residence seeking to buy cocaine. The three deliveries were made at defendant's residence. Defendant made the first two deliveries, and defendant, while in jail, conspired with others to make the third delivery. All the charged offenses were related to a common scheme or plan by defendant of maintaining a drug house and selling cocaine from the house. Thus, the charged offenses were related, MCR 6.120(B), and the trial court did not abuse its discretion in granting the prosecution's motion to consolidate the two cases for trial, *Girard, supra*.[1]

IV. Directed Verdict

Finally, defendant argues that the trial court erred in denying his motion for a directed verdict on the conspiracy to deliver less than 50 grams of cocaine within 1,000 feet of school property charge because the evidence was insufficient to establish that he had the specific intent to deliver cocaine within 1,000 feet of school property. We disagree. We review de novo a trial court's decision to deny a motion for a directed verdict. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *Id.*

MCL 333.7410(2) provides:

> An individual 18 years of age or over who violates section 7401(2)(a)(iv) by delivering a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) to another person on or within 1,000 feet of school property or a library shall be punished, subject to subsection (5), by a term of imprisonment of not less than 2 years or more than 3 times that authorized by section 7401(2)(a)(iv) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7401(2)(a)(iv).

[1] In deciding whether to consolidate for trial charged offenses that are related, a trial court may consider "the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence." MCR 6.120(B)(2). Here, neither the number of charges nor the nature of the evidence created the potential for confusion or prejudice.

This Court has stated that "[t]he statute does not require as an element of the offense that the defendant knew that he was on school property. Nor is any other state of mind set forth. Such an omission by the Legislature is certainly understandable in light of the statute's principal objective of protecting children."[2] *People v McCrady*, 213 Mich App 474, 485; 540 NW2d 718 (1995).

Defendant, however, claims that because conspiracy is a specific intent offense, *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001), the specific intent to deliver cocaine within 1,000 feet of school property is an essential element of the crime of conspiracy to deliver less than 50 grams of cocaine within 1,000 feet of school property. Defendant's argument is analogous to the law of this state that knowledge of the amount of a controlled substance is not an element of the offense of possession with intent to deliver a controlled substance, *People v Northrop*, 213 Mich App 494, 498; 541 NW2d 275 (1995), but such knowledge is an element of the offense of conspiracy to possess with intent to deliver a controlled substance, *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997); see also *Mass*, *supra* at 633-634.

Assuming, but without deciding, that defendant is correct, i.e., that the specific intent to deliver a controlled substance within 1,000 feet of school property is an essential element of the crime of conspiracy to deliver a controlled substance within 1,000 feet of school property, the evidence, when viewed in the light most favorable to the prosecution, would allow a rational trier of fact to find beyond a reasonable doubt that defendant had the specific intent to deliver cocaine within 1,000 feet of school property. *Mayhew, supra*. Here, evidence was introduced at trial which showed that defendant resided in a house that was across the street from a school. The house was approximately 40 to 60 feet from the school. Further, relative to the conspiracy charge, on December 21, 2006, Butler went to this residence to purchase cocaine. Defendant was not there when Butler arrived because he was in jail, but nevertheless Butler had a three-way telephone conversation with defendant and Nick Metcalf. The purpose of the telephone call was to have cocaine delivered to the house for Butler. Defendant informed Butler that cocaine was coming from his wife in Cadillac by way of Metcalf and Kim Miller. Butler returned to defendant's residence approximately an hour later and, after another 30 minutes, Metcalf and Miller arrived with cocaine. Based on this evidence, the trial court did not err in denying defendant's motion for a directed verdict.

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[2] The Court was addressing MCL 333.7410(4), but its statement also applies to MCL 333.7410(2). MCL 333.7410(4) provides:

> An individual 18 years of age or over who violates section 7401b or 7403(2)(a)(v), (b), (c), or (d) by possessing gamma-butyrolactone or a controlled substance on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7401b or 7403(2)(a)(v), (b), (c), or (d).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra