

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IRAKLI KANKAVA,

Defendant-Appellant.

UNPUBLISHED

September 30, 2010

No. 291244

Jackson Circuit Court

LC No. 07-003518-FH

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of possession with the intent to deliver 45 kilograms or more of marijuana, MCL 333.7401(2)(d)(i), for which he was sentenced to 12 months in prison with 188 days' credit for time served. He appeals as of right. We affirm.

Defendant first argues there was insufficient evidence to support his conviction. Specifically, he claims there was insufficient evidence that he knew that the packages in the van he was driving contained marijuana. We disagree.

We review defendant's argument de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find beyond a reasonable doubt that all essential elements of the prosecution's case were proven. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). We must resolve all credibility issues in favor of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The issue is properly before the Court for resolution. "Criminal defendants do not need to take special steps to preserve a challenge to the sufficiency of evidence." *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999).

To properly convict defendant of possession with the intent to deliver marijuana, as applied to the instant case, plaintiff had to prove (1) defendant knowingly possessed the marijuana, (2) intended to deliver the marijuana to someone else, (3) that the substance found in the plastic bags was marijuana and defendant knew the substance was marijuana, and (4) that the marijuana weighed 45 kilograms or more. MCL 333.7401(2)(d)(i).

It is undisputed that there was more than 45 kilograms of marijuana found in three cardboard boxes in the back of the van that defendant was driving. At trial, defendant's accomplice testified that he and defendant were hired to deliver the marijuana to someone in

Minnesota and that they both knew there was marijuana in the boxes. Based on this testimony, a rational juror could find beyond a reasonable doubt that defendant was guilty. *People v Heikkinen*, 250 Mich App 322, 327; 646 NW2d 190 (2002).

We find unconvincing defendant's argument that his conviction cannot stand simply because there were doubts concerning the veracity of his accomplice's testimony. It is for the jury to decide whether an accomplice's testimony is credible, and a jury may convict a defendant based on the accomplice's testimony alone. *Id.* Defendant concedes that the trial court's accomplice instruction was proper. "Jurors are presumed to follow their instructions." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Defendant has not overcome the presumption that the instruction was effective. Consequently, we defer to the jury's credibility determination. *Nowack*, 462 Mich at 400.

Next, defendant argues he was deprived of his due process right to a fair trial when the prosecution failed to disclose to the jury the full extent of the plea deal that his accomplice received in exchange for testifying against him at trial. We disagree.

We review defendant's unpreserved prosecutorial misconduct claim for plain error affecting substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Reversal is warranted under the plain error rule only when trial error resulted in the conviction of an innocent person, or seriously affected the fairness, integrity, or public reputation of the proceedings. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). Prosecutorial misconduct issues are decided on a case-by-case basis. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). The test of a prosecutorial misconduct claim is whether the defendant was denied a fair trial. *People v Dobek*, 274 Mich App 58, 63-64; 732 NW2d 546 (2007).

While a prosecutor must disclose to the jury the details of a plea agreement between the prosecution and a testifying accomplice upon request, no request was made in this case. *People v Dowdy*, 211 Mich App 562, 571; 536 NW2d 749 (1995). Furthermore, defendant cross-examined the accomplice on the details of the plea agreements and argued extensively in his closing argument how any plea agreement diminished his accomplice's credibility. Additionally, the jury was properly instructed regarding accomplice testimony. Defendant has not shown either plain error or any affect on his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

Lastly, defendant argues he was denied a fair trial when the trial court made erroneous rulings at trial. We disagree.

Defendant's argument regarding this issue is two-fold. First, defendant argues that the trial court abused its discretion when it held that he could not inquire during the cross-examination of a witness about statements that he made after his arrest because those statements were inadmissible hearsay. Defendant claims that his statements were admissible pursuant to MRE 801(d)(2) and, therefore, the trial court's holding otherwise was erroneous. We disagree.

Hearsay is defined as an out of court statement whether oral or written that is offered for the truth of the matter asserted. MRE 801(c). However, pursuant to MRE 801(d)(2), a statement is not hearsay if it "is offered against a party and is (A) the party's own statement. . . ."

Contrary to defendant's argument, the trial court did not abuse its discretion when it prevented him from eliciting testimony regarding his own statements. Defendant was not offering the statements against the party who made the statements, which was himself, as required by MRE 801(d)(2). Rather, defendant sought to introduce the statements merely to bolster his own credibility. Thus, the statements were not admissible pursuant to MRE 801(d)(2).

Second, defendant argues that he was deprived of fair trial when the trial court allowed plaintiff to elicit testimony on redirect examination that was outside the scope of the cross examination of the witness. We disagree.

Pursuant to MRE 611, a trial court has broad discretion to determine the order and mode of the presentation of evidence during trial. *People v Stevens*, 230 Mich App 502, 507; 584 NW2d 369 (1998). While the examination was outside of the scope of the items raised for the first time on cross-examination, we do not find that the trial court abused its discretion in allowing the questioning particularly since defendant was given an opportunity to recross-examine the witness regarding his testimony on redirect. Defendant cannot demonstrate how plaintiff gained an unfair advantage in introducing the testimony during redirect examination and we find no error requiring reversal. *Id.*

Defendant also argues that the testimony offered on redirect examination was irrelevant and inadmissible pursuant to MRE 403. However, we decline to address this issue because defendant has merely announced his position without providing any evidence or argument in support of the claim. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens