

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HUGO F. OCHOA,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 208796
Recorder's Court
LC No. 97-002205

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to deliver 225 grams or more, but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii); MCL 750.157a; MSA 28.354(1), and delivery of 225 grams or more, but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii). Defendant was sentenced to consecutive terms of ten to twenty years' imprisonment for each conviction. He appeals as of right and we affirm.

Defendant first argues that insufficient evidence was presented at trial to convict him of conspiracy to deliver and delivery of cocaine. Specifically, defendant contends that the prosecutor did not present sufficient evidence of jurisdiction and venue. When reviewing the sufficiency of the evidence in a criminal case, the court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999).

First, to properly convict defendant, the prosecutor needed to prove that the trial court had jurisdiction over defendant. In *People v Blume*, 443 Mich 476, 480; 505 NW2d 843 (1993), our Supreme Court extensively examined the issue of jurisdiction. The Court held the following regarding jurisdiction over a criminal defendant whose crimes were committed outside of Michigan:

The general rule is that jurisdiction is proper only over "offenses as may be committed within its jurisdiction." *People v Devine*, 185 Mich 50, 52-53; 151 NW 646 (1915). The authority to exercise jurisdiction over acts that occur outside the state's physical borders developed as an exception to the rule against extraterritorial

jurisdiction. That exception, however, is “limited to those acts that are intended to have, and that actually do have, a detrimental effect within the state.” *Strassheim v Daily*, 221 US 280, 285; 31 S Ct 558, 55 L Ed 735 (1911); *Deur v Newaygo Sheriff*, 420 Mich 440, 446-447; 362 NW2d 698 (1984). [*Blume, supra*, p 480.]

The Court further stated that the elements necessary for finding that a defendant intended a detrimental effect in Michigan are “specific intent to act and the intent that the harm occur in Michigan.” *Id.*, pp 480-481.

The evidence presented in this case overwhelmingly demonstrated that defendant had the specific intent to act as well as the intent that the harm would occur in Michigan. *Id.*, p 476. The evidence indicated that defendant was engaged in an ongoing drug operation with a person named Roy Knowles, defendant traveled to Michigan several times in furtherance of the drug operation, defendant had numerous prior contacts with Knowles, and defendant was aware that the drugs were being distributed in Michigan. Therefore, the evidence presented at trial clearly demonstrated that the trial court had jurisdiction over defendant because it showed that defendant had the “specific intent to act and the intent that the harm occur in Michigan.” *Id.*, pp 480-481.

Second, the prosecutor also had to prove that Wayne County was the proper venue for defendant’s trial. “Venue is a part of every criminal case and must be proved by the prosecutor beyond a reasonable doubt.” *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996). “Due process requires that trial of criminal prosecutions should be by a jury of the county or city where the offense was committed, except as otherwise provided by the Legislature.” *Id.*

Wayne County was the proper venue for this matter. In *People v Meredith*, 209 Mich App 403, 408; 531 NW2d 749 (1995), this Court noted that “a conspiracy case can be prosecuted in any jurisdiction in which an overt act occurred in furtherance of the conspiracy.” In the present case, the evidence clearly showed that defendant went to Wayne County in order to be paid for drugs he had constructively delivered to Knowles through his couriers, thus completing the delivery transaction. This was an overt act in furtherance of the conspiracy. Therefore, Wayne County was a proper venue for defendant’s charges.

Defendant next argues that the trial court erred when it denied his motion for a mistrial. Specifically, defendant contends that the trial court should have found that the prosecutor violated a prior court order which limited the prior acts evidence which the prosecutor could introduce. We review a trial court’s decision on a motion for a mistrial for an abuse of discretion. *People v Wolverton*, 227 Mich App 72, 75; 574 NW2d 703 (1997). An abuse of discretion occurs when the trial court’s decision has denied a defendant a fair and impartial trial. *Id.*

The trial court’s order stated that “other acts” evidence under MRE 404(b) was “restricted to that introduced at the preliminary examination and/or known to the defense at the preliminary stages of the prosecution.” After the prosecutor made his opening statement, defense counsel moved for a mistrial, arguing that this order had been violated. Defense counsel then explained to the trial court that he first became aware of the other acts evidence discussed by the prosecutor in his opening statement

on September 29, 1997. Defense counsel explained that the trial was originally to have begun on September 29, 1997. However, the trial did not actually begin until October 13, 1997. The trial court asked defense counsel why he waited until trial began to raise this objection when he was aware of the potential the evidence had for violating the order. Defense counsel responded that he assumed the prosecutor would follow the order. The prosecutor told the trial court that defense counsel was aware of everything in his opening statement as of September 29, 1997.

The trial court did not abuse its discretion in failing to grant defendant's motion for a mistrial. Defendant became aware of the evidence which the prosecutor was going to introduce on September 29, 1997, but did not object to the introduction of the evidence until after the prosecutor mentioned it during his opening statement on October 14, 1997. Reviewing the transcripts, it is clear that the trial court was concerned that defendant was aware of the potential violation of the order, but did nothing about it until trial began in order to gain a tactical advantage. Therefore, the trial court denied defendant's motion for mistrial. The denial of the motion for mistrial did not deny defendant a fair and impartial trial because defendant was aware of the evidence that the prosecutor sought to introduce over two weeks before the start of trial. Therefore, the trial court did not abuse its discretion when it denied defendant's motion for a mistrial.

Defendant next argues that the trial court erred when it failed to grant defendant's motion to dismiss for lack of jurisdiction. We review a trial court's ruling on a motion to dismiss for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998).

The evidence presented at the preliminary examination demonstrated that defendant intended a detrimental effect in Michigan because the evidence showed that defendant had the "specific intent to act and the intent that the harm occur in Michigan." *Blume, supra*, pp 480-481. The evidence at the preliminary examination demonstrated that defendant came to Michigan in order to be paid for the cocaine. An inference can be drawn from this evidence that defendant knew the cocaine he gave to Paul Bailey (a courier) was to be delivered in Michigan. Therefore, the evidence at the preliminary examination showed that defendant had the "specific intent to act and the intent that the harm occur in Michigan." *Id.* Therefore, the trial court did not abuse its discretion in denying defendant's motion to dismiss for lack of jurisdiction.

In a supplemental brief filed in pro per, defendant lastly argues that the prosecutor improperly elicited information about, and referenced in closing argument, plea bargain agreements made with two prosecution witnesses and that this effectively vouched for the credibility of those witnesses. In reviewing a claim of prosecutorial misconduct, this Court examines the remarks made in context to determine whether they denied defendant a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; NW2d (1995).

This issue was addressed by the Supreme Court in *Bahoda*. A prosecutor cannot vouch for the credibility of prosecution witnesses to the effect that the prosecutor has some special knowledge concerning a witness' truthfulness. *Id.*, p 276. Reference to a plea agreement containing a promise of truthfulness is not in itself grounds for reversal. *Id.* Although plea agreements should be admitted with great caution, admissibility of such agreements is not necessarily error requiring reversal unless it is used

by the prosecutor to suggest that the government had some special knowledge, not known to the jury, that the witness was testifying truthfully. *Id.*

In the present case, there was no objection made to the prosecutor's examination of the two witnesses in this regard. Rather, on cross-examination, defense counsel extensively questioned the two witnesses regarding the plea agreements (that is, that they would testify and not receive prison time). Further, upon review of the two witnesses' testimony, the prosecutor did not vouch for the credibility of the witnesses to the effect that the prosecutor had some special knowledge concerning the witnesses' truthfulness. Also, the trial court instructed the jury that the lawyers' statements and arguments were not evidence. See *id.*, p 281. Accordingly, defendant was not denied a fair trial due to any asserted prosecutorial misconduct.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Kathleen Jansen