

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER MAHLEBASHIAN,

Defendant-Appellant.

UNPUBLISHED

December 28, 2006

No. 263049

Macomb Circuit Court

LC No. 04-003496-FH

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for delivery of a controlled substance, MCL 333.7401(2)(b)(i) (ecstasy), conspiracy to deliver a controlled substance, MCL 750.157a and MCL 333.7401(2)(b)(i) (ecstasy), unarmed robbery, MCL 750.530, and resisting a police officer, MCL 750.81d(1). Defendant was sentenced to 3 to 40 years' imprisonment for the delivery of a controlled substance conviction, 3 to 40 years' imprisonment for the conspiracy to deliver a controlled substance conviction, 1 to 15 years' imprisonment for the unarmed robbery conviction, and one to two years' imprisonment for the resisting a police officer conviction. We affirm.

Defendant first argues that prosecutorial misconduct denied him a fair trial. This Court reviews preserved claims of prosecutorial misconduct case by case, examining the conduct in context to determine whether the defendant received a fair and impartial trial. *People v Rodriguez*, 251 Mich App 10, 29-30; 650 NW2d 96 (2002). The propriety of a prosecutor's conduct depends on all the facts of a case. *Id.* at 29-30.

Defendant argues that the prosecution wrongfully withheld evidence regarding a deal between witness Joshua Neal and the prosecution. A criminal defendant has a due process right to obtain exculpatory evidence possessed by the prosecutor if it would raise a reasonable doubt about the defendant's guilt. *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994), citing *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963). In order to establish a *Brady* violation, a defendant must prove: "(1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence nor could the defendant have obtained it with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different." *People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005).

Defendant has failed to establish a *Brady* violation. Even assuming that the prosecution suppressed evidence favorable to the defense, defendant cannot show that a reasonable probability exists that the outcome of the proceedings would have been different had the evidence been disclosed. While the prosecution did not disclose the deal, defendant brought it to light and the existence of a deal between Neal and the prosecutor for his cooperation in this case was the subject of extensive testimony at trial. Obviously, the jury did not find the evidence of a possible deal sufficiently damaging to Neal's testimony.

Defendant also argues that the prosecutor committed misconduct by allowing Detective Ron Lehman and Neal to falsely testify regarding the deal. Prosecutors have a constitutional obligation to report to the defendant and to the trial court whenever government witnesses lie under oath. *People v Lester*, 232 Mich App 262, 276; 591 NW2d 267 (1998). "Michigan courts have also recognized that the prosecutor may not knowingly use false testimony to obtain a conviction . . . and that a prosecutor has a duty to correct false evidence." *Id.* at 277. Again, even assuming that the witnesses testified falsely, defendant cannot show that he was denied a fair trial because the existence of a deal between Neal and the prosecutor was discussed extensively at trial.

Defendant next argues that the trial court erred by allowing the prosecution to amend its witness list. A trial court's decision to permit the prosecutor to add or delete witnesses to be called at trial is reviewed for an abuse of discretion. *People v Callon*, 256 Mich App 312, 325-326; 662 NW2d 501 (2003).

"The prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." MCL 767.40a(4). Mere negligence of the prosecutor is not the type of egregious case for which the extreme sanction of precluding relevant evidence is reserved. *Callon, supra* at 328. In this case, defendant was provided with the toxicologist's report and, while not identified by name, a toxicologist was on the witness list. Defendant never asked for more information regarding the toxicologist's identity. We conclude that the trial court did not abuse its discretion by allowing the prosecution to amend its witness list where defendant had notice that a toxicologist would testify and had been provided with the toxicologist's report.

Defendant next argues that insufficient evidence was presented to support his conviction for conspiracy to deliver a controlled substance. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo, in the light most favorable to the prosecutor, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Considering the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to infer intent. *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

To be convicted of conspiracy to deliver a controlled substance, the people must prove that: (1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirator possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirator possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. *People v Mass*, 464 Mich 615, 623-624; 628

NW2d 540 (2001), citing *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997). The prosecutor must prove only that the defendant cooperated in furthering the conspiracy's objective with knowledge that a conspiracy existed. *People v Meredith (On Remand)*, 209 Mich App 403, 412; 531 NW2d 749 (1995).

In this case, defendant arrived with codefendant Garry Sparkman at the location where Neal had agreed to buy 20 pills of ecstasy. Defendant and Sparkman went with Neal to another location, where defendant purchased 20 pills, which he gave to Neal. While defendant argues on appeal that he would not have conspired to deliver 20 pills for a mere \$20 profit, a reasonable juror could have found that defendant and Sparkman agreed to sell the pills to Neal together. Moreover, defendant's comment as he ripped the pills out of Neal's hands; i.e., that he was doing it because Neal had been a "bitch," suggests that Neal's actions during the buy caused defendant and Sparkman to change their initial plan. Viewing the above evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence for a rational trier of fact to conclude that defendant conspired to deliver ecstasy to Neal.

Defendant's final issue on appeal is whether the cumulative effect of the errors discussed above denied him a fair trial. This Court reviews this issue to determine if the combination of alleged errors denied the defendant a fair trial. *People v Knapp*, 244 Mich App 361, 387; 624 NW2d 227 (2001). The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not. *Id.* at 388. Reversal is warranted only if the effect of the errors was so seriously prejudicial that the defendant was denied a fair trial. *Id.* at 388.

Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999). Prejudicial error has not been identified in this case. As discussed above, the errors that defendant alleged occurred are not errors at all. Therefore, we conclude that defendant was not denied a fair trial based on the cumulative effect of errors in his case.

Affirmed.

/s/ Stephen L. Borrello

/s/ Janet T. Neff

/s/ Jessica R. Cooper