STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABOUD SITTO,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 184894
LC No. 92-116128-FC

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Defendant appeals by leave granted his conviction by jury of conspiracy to possess with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and sentence to a five to twenty year term of imprisonment. We affirm.

First, we reject defendant's claim that the trial court erroneously denied his motion to dismiss for lack of personal jurisdiction because he was allegedly forcibly abducted from Canada to stand trial in Michigan. Defendant contends that this violated his right to due process. As a matter of law, the alleged kidnapping of defendant, contrary to the treaty between Canada and the United States, would not have divested the trial court of jurisdiction over defendant. It did not violate defendant's due process rights. *United States v Alvarez-Machain,* 504 US 655; 112 S Ct 2188; 119 L Ed 2d 441 (1992); *Frisbie v Collins*, 342 US 519; 72 S Ct 509; 96 L Ed 541 (1952).

Next, defendant claims that the trial court erroneously denied his motion to suppress evidence discovered during a police search of the premises at 415 Adaline in Detroit. We disagree. Defendant's girlfriend consented to the search of the premises she shared with defendant. She was not threatened or forced to consent to the search. *People v Shaw,* 188 Mich App 520, 521-523; 470 NW2d 90 (1991). Hence, the trial court did not err in denying defendant's motion to suppress the evidence.

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant next argues that MCL 767.23; MSA 28.963 violates the title-object clause of the Michigan Constitution. Const 1963, art 4, § 24, states in part: "No law shall embrace more than one object, which shall be expressed in its title . . ." MCL 767.23; MSA 28.963 provides as follows:

> Indictment by grand jury; concurrence of 12 jurors, certification
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> No indictment can be found without the concurrence of at least 9 grand jurors; and when so found, and not otherwise, the foreman of the grand jury shall certify thereon, under his hand, that the same is a true bill.

Defendant contends that MCL 767.23; MSA 28.963 violates the title-object clause because the "title" of the statute indicates that an indictment requires the concurrence of twelve jurors while the body of the statute indicates that an indictment will not be issued without the concurrence of "at least" nine grand jurors. Defendant has confused the title of the act with the catch line associated with MCL 767.23; MSA 28.963. Regarding catch lines, MCL 8.4b; MSA 2.215 states:

> The catch line heading of any section of the statutes that follows the act section number shall in no way be deemed to be a part of the section or the statute, or be used to construe the section more broadly or narrowly than the text of the section would indicate, but shall be deemed to be inserted for the purposes of convenience to persons using publications of the statutes.

In *Builders Square v Dep't of Agriculture,* 176 Mich App 494, 497; 440 NW2d 639 (1989), this Court stated:

> The purpose of the title-object clause is to prevent the Legislature from passing laws not fully understood and to avoid bringing into one bill subjects diverse in their nature and having no necessary connection. *Advisory Opinion re Constitutionality of 1972 PA 294,* 389 Mich 441, 467; 208 NW2d 469 (1973), citing *People v Carey,* 382 Mich 285; 170 NW2d 145 (1969). The goal of the title-object clause is notice, not restriction of legislation, and the title-object clause is only violated where the subjects are so diverse in nature that they have no necessary connection. *Constitutionality of 1972 PA 294, supra,* p 467. The object of a law is its general purpose or aim. *Local No 1644, AFSCME v Oakwood Hospital Corp,* 367 Mich 79; 116 NW2d 314 (1962); *City of Livonia v Dep't of Social Services,* 423 Mich 466; 378 NW2d 402 (1985). A statute may authorize the doing of all things which further its general purpose.

If the act centers on one main general object or purpose that the title comprehensively declares, although in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary, or incidental to that general purpose, the constitutional requirement is met. *Loomis v Rogers,* 197 Mich 265-271; 163 NW 1018 (1917); *Ace Tex Corp v Detroit,* 185 Mich App 609, 615; 463 NW2d 166 (1990).

MCL 767.23; MSA 28.963 is part of the Code of Criminal Procedure, MCL 760.1; MSA 28.841. The title of 1994 PA 445 (quoting from 1927 PA 175, which enacted the Code of Criminal Procedure) states that one purpose of the act is "to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial." This title does not conflict with MCL 767.23; MSA 28.963, which provides for the number of grand jurors necessary to return an indictment. MCL 767.23; MSA 28.963 authorizes proceedings for the discovery of crime and sets forth the requirements to issue a grand jury indictment. See *People v Birch,* 329 Mich 38, 45-46; 44 NW2d 859 (1950). Hence, both the actual title of the Code of Criminal Procedure and the body of the statute relate to the same purpose. The primary purpose of the title-object rule is to avoid diverse and unrelated subjects in one act. *People v Rau,* 174 Mich App 339, 344; 436 NW2d 409 (1989). Because both the title and the body of the instant statute address the issuance of an indictment, the statute does not violate the title-object clause.

Next, we reject defendant's claims that the evidence was insufficient to support his conviction and that the verdict was against the great weight of the evidence. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant committed the offense of conspiracy to possess with intent to deliver between 50 and 225 grams of cocaine. *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992); *People v Atley,* 392 Mich 298, 311; 220 NW2d 465 (1974); *People v Ayoub,* 150 Mich App 150; 387 NW2d 848 (1985). Indeed, the testimony of George Naoum, Salwan Asker and Kevin Satterfield overwhelmingly established defendant's guilt.

Defendant also argues that the trial court erred in denying his motion to dismiss on the basis of double jeopardy after the court had declared a mistrial in his first trial. We review this issue de novo on appeal. *People v Price,* 214 Mich App 538, 542; 543 NW2d 49 (1995). Under the double jeopardy provisions of the federal and state constitutions, the state may not place a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *People v Hicks,* 447 Mich 819, 826; 528 NW2d 136 (1994); *People v Dawson,* 431 Mich 234, 250; 427 NW2d 886 (1988). An accused is placed in jeopardy as soon as the jury is selected and sworn. *Dawson, supra* at 251; *People v Booker (After Remand),* 208 Mich App 163, 172; 527 NW2d 42 (1994). If the trial court declares a mistrial after jeopardy has attached, the state may be precluded from trying the defendant a second time. *Dawson, supra* at 252-253; *Booker, supra* at 172. Both the federal and the state protections against successive prosecutions for the same offense preserve the finality of judgments in criminal prosecutions and protect the defendant from overreaching by the prosecutor. *People v Sturgis,* 427 Mich 392, 398-399; 397 NW2d 783 (1986).

The record reflects that the prosecutor's conduct was not designed to inject prejudice into the proceedings so as to deny defendant a fair trial. The prosecutor did not intend to provoke a mistrial. *Dawson, supra* at 234. Nor did the prosecutor's conduct amount to intentional conduct for an improper purpose with indifference to a significant resulting danger of mistrial or reversal. *Id.* at 255, n 53. Hence, the trial court properly denied defendant's motion to dismiss on double jeopardy grounds.

Defendant contends that certain witnesses improperly testified to statements of other alleged conspirators because the statements were not shown to have been made in the course of the conspiracy

on independent proof of the conspiracy. We disagree. Even if the court improperly admitted the statements, their admission did not prejudice defendant. The statements did not implicate defendant, but concerned others associated with the conspiracy. Further, in light of the overwhelming evidence against defendant, the admission of the statements was harmless.

Defendant next claims that the prosecutor excluded African-American jurors from the jury because of their race, thereby denying him an impartial jury. In support of his position, defendant cites *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). Defendant has failed to establish a prima facie case of intentional discrimination under *Batson*. Defendant challenged the removal of African-American jurors from the jury. Defendant, however, is not African-American, but Chaldean. Because defendant does not allege that the prosecutor exercised peremptory challenges to remove from the venire those of Chaldean heritage, defendant has failed to establish a prima facie case of intentional discrimination under *Batson*. In any event, the record does not support defendant's assertion that the prosecutor excluded African-Americans from the jury because of their race.

Next, defendant claims that the trial court abused its discretion in refusing to strike the entire trial testimony of George Naoum because the trial court's rulings denied defendant his right to confront and cross-examine his accusers. We disagree. The Confrontation Clause primarily secures the right of cross-examination. *Delaware v Van Arsdall*, 475 US 673, 678; 106 S Ct 1431; 89 L Ed 2d 674 (1986); *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). The right of cross-examination, however, is not without limit. Neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or to cross-examine on any subject. *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984). The right does not include a right to cross-examine on irrelevant matters and may bow to accommodate other legitimate interests of the trial process or of society. *United States v Nixon*, 418 US 683; 94 S Ct 3090; 41 L Ed 2d 1039 (1974); *People v Arenda*, 416 Mich 1, 8; 330 NW2d 814 (1982). Defendants are, however, guaranteed a reasonable opportunity to test the truth of a witness' testimony. *Adamski, supra*. A limitation on cross-examination that prevents a defendant from placing before the jury facts upon which an inference of bias, prejudice or lack of credibility of a witness may be drawn can be an abuse of discretion that denies the right of confrontation. *People v Holliday*, 144 Mich App 560, 566-567; 376 NW2d 154 (1985). Defendant is entitled to have the jury consider facts that might have influenced a witness' testimony. *People v Monasterski*, 105 Mich App 645, 657; 307 NW2d 394 (1981). The disclosure requirement may be considered satisfied if the "jury [is] made well aware" of such facts "by means of . . . thorough and probing cross-examination by defense counsel." *People v Atkins*, 397 Mich 163, 174; 243 NW2d 292 (1976).

Courts have generally identified three criteria in deciding whether to strike the testimony of a witness who has refused to answer questions posed on cross-examination.

> (1) If the information sought on cross-examination closely relates to the issues being tried and if the inability to develop the information deprives the defendant of his right to test the credibility of the witness, then the noncooperative witness's entire testimony should be stricken. (2) A less drastic approach is preferred where the information sought on cross-examination is only partly connected to the issues being tried or to the

> information obtained on direct examination. Under these circumstances a partial striking of the witness's testimony on direct examination is sufficient. (3) Finally, where the information sought on cross-examination is merely collateral or cumulative, the refusal of a witness to be cross-examined on those matters does not require that any testimony be stricken and an instruction to the jury is all that is necessary. [*People v Holguin*, 141 Mich App 268, 271-272; 367 NW2d 846 (1985).]

A trial court's improper refusal to strike testimony may be harmless error if other sufficient evidence proves defendant's guilt. *Holguin, supra* at 273.

The record reflects that defense counsel conducted a thorough, unrestricted cross-examination of Naoum. Defense counsel attacked Naoum's credibility by eliciting testimony that he was a cocaine dealer, that he had previously sold marijuana in Michigan, that he occasionally used both cocaine and marijuana, that he had been in trouble with the law in Texas, and that he had lied to the probation officer before sentencing. Defense counsel also attempted to impeach Naoum through the use of alleged prior inconsistent statements.

Defendant placed before the jury facts upon which an inference could be drawn of Naoum's bias, prejudice or lack of credibility. *Holliday, supra* at 566-567. Further, defendant's cross-examination of Naoum allowed the jury to consider facts that might have influenced Naoum's testimony. *Monasterski, supra* at 657. Defendant was not deprived of the opportunity to test Naoum's credibility. The question that Naoum refused to answer—whether he had ever gone to Mexico to "pick up" marijuana—was cumulative of previous testimony. Naoum had admitted already that he was both a cocaine and marijuana dealer in Michigan. Under these circumstances, the trial court was not required to strike Naoum's testimony. *Holguin, supra* at 271-272. In any event, in light of the overwhelming evidence of defendant's guilt, any error in this regard was harmless. *Id.* at 273.

We also reject defendant's claim that Salwan Asker's testimony that he was threatened in connection with this case requires reversal. Although the jury may have speculated that defendant made the threats despite the absence of such testimony, any prejudice was minimal. The trial court cautioned the jury to disregard Asker's testimony. It also instructed that the threats against Asker were not connected to defendant. Under these circumstances, any error in the admission of this testimony was harmless.

Lastly, defendant argues that prosecutorial misconduct denied him a fair trial. We disagree. Prosecutorial misconduct issues are decided case by case. This Court examines the pertinent portion of the record and evaluates a prosecutor's remarks in context. *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *Id.* Appellate review of improper prosecutorial remarks generally is precluded absent objection by counsel because the trial court is deprived of an opportunity to cure the error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). Defense counsel failed to object to the instances of alleged prosecutorial conduct now asserted on appeal. Review is precluded unless failure to review the issue would result in a miscarriage of justice. *People v Gonzales*, 178 Mich App 526, 534-535; 444

NW2d 228 (1989). The instances of alleged prosecutorial misconduct did not deny defendant a fair trial.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhof