

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DALVIN JONES,

Defendant-Appellant.

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UNPUBLISHED  
October 17, 2000

No. 216729  
Muskegon Circuit Court  
LC No. 98-042001-FH

Before: White, P.J., and Talbot and R. J. Danhof\*, JJ.

PER CURIAM.

Defendant was convicted by a jury of conspiracy to deliver more than 650 grams of a mixture containing cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and was sentenced to serve life imprisonment. He appeals as of right. We affirm.

Defendant first argues that the evidence was insufficient to sustain his conviction for conspiracy to deliver more than 650 grams of cocaine. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence 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 Nowak*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This Court's review is deferential, drawing all reasonable inferences and making credibility choices in support of the jury's verdict. *Id.* at 400; *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of the offense of conspiracy to possess with intent to deliver a controlled substance include:

(1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirators possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. [*Id.* at 349 (citation omitted).]

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

The term conspiracy has been defined to mean a “partnership in criminal purposes.” *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997) (citation omitted). A conspiracy is proven by “demonstrating that the parties specifically intended to further, promote, advance, or pursue an unlawful objective.” *Id.* at 347.

Identifying the objectives and even the participants of an unlawful agreement is often difficult because of the clandestine nature of criminal conspiracies. Thus, direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties. Inferences may be made because such evidence sheds light on the coconspirators’ intentions. [*Id.* (citation omitted).]

Circumstantial evidence may be used to determine the conspiracy’s scope. *Id.* at 348.

Here, the testimony indicated that the Sixth Street address was a drug house where defendant and several of his coconspirators took turns selling cocaine twenty-four hours a day, seven days a week. Drug paraphernalia was seized when police raided the house. After the Sixth Street raid, the evidence demonstrated that defendant and certain of his coconspirators continued to sell cocaine from Sixth Street as well as from several other locations. The raid of the Seventh Street address resulted in the seizure of drugs, drug paraphernalia, weapons, and a large amount of currency. One coconspirator who was a supplier of cocaine that was sold referred to defendant on one occasion as his trusted “left-hand man.” Testimony further revealed that defendant and several of his coconspirators grew up in the same Detroit neighborhood and that defendant recruited people from that neighborhood to sell drugs in Muskegon. Accordingly, viewed in a light most favorable to the prosecution, we find the evidence to be sufficient to prove that a conspiracy existed among defendant and his coconspirators to possess with intent to deliver more than 650 grams of cocaine.

Defendant argues that, even if sufficient evidence of a conspiracy was demonstrated, the statutory minimum of 650 grams could not be met by the evidence. We reject this argument. The aggregate amount of sales of cocaine from the Sixth Street house alone exceeded 650 grams of cocaine. Where there was sufficient evidence that defendant intended to join with his coconspirators to deliver the aggregate amount, his criminal liability for the aggregate amount of narcotics sold by his coconspirators during the entire period of the conspiracy is not negated by the fact that he was not present continuously during the drug operation, that he was not the only supplier of drugs for sale, and that no drugs were found in his possession when he was arrested. *Justice, supra*. See also *People v Mass*, 238 Mich App 333, 336-337; 605 NW2d 322 (1999), *lv gtd*. We likewise reject defendant’s challenge to the credibility of the witnesses who testified against him. Questions of credibility are for the trier of fact to determine. *Nowak, supra*.

Defendant next argues that the prosecutor improperly vouched for witnesses and made improper civic duty arguments. These allegations of error are not preserved because defendant failed to make appropriate objections at trial. *People v Avant*, 235 Mich App 499, 512; 597 NW2d 864 (1999). Appellate review of unpreserved claims of prosecutorial misconduct is precluded unless the prejudicial effect of the improper conduct could not have been cured by a cautionary instruction or unless failure to consider the issue would result in a miscarriage of justice. *People v Nimeth*, 236 Mich

App 616, 626; 601 NW2d 393 (1999). We conclude that the challenged conduct was either proper or could have been cured by timely objection and a curative instruction. Thus, there is no prosecutorial misconduct requiring reversal.

Finally, defendant argues that the trial court abused its discretion by admitting evidence of a song called “Thug Life,” testimony regarding a comment that a coconspirator made when listening to the song, and defendant’s response to the statement. We reject defendant’s argument that the evidence was inadmissible under MRE 801(d)(2)(E) on the basis that the statements were not made in furtherance of the conspiracy. We find it plausible that the coconspirator’s statement, made while listening to the song, was intended to provide reassurance and foster cohesiveness among the coconspirators, and to inform defendant of the status and progress of the conspiracy. Thus, the trial court did not abuse its discretion in admitting the testimony as evidence in furtherance of the conspiracy. See *People v Bushard*, 444 Mich 384, 395-396; 508 NW2d 745 (1993) (Boyle, J.). Further, defendant’s response to his coconspirator’s statement was relevant to the issue of defendant’s intent, without regard to the truth of the statement. Neither are we persuaded that the trial court abused its discretion in finding that the probative value of the challenged evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403.

Affirmed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Robert J. Danhof