

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND T. GRAVES,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 247659

Oakland Circuit Court

LC No. 2002-185415-FC

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of conspiracy to deliver or manufacture more than 650 grams of cocaine, MCL 750.157a.¹ The trial court sentenced him to twenty to forty years in prison. Defendant appeals as of right. We affirm.

I. Facts

On June 6, 2002, police began to investigate Ronald Graves with the assistance of a confidential informant who placed four recorded telephone calls to Graves at approximately 3:00 p.m. to set up a cocaine purchase to be made that evening. The informant and Graves made a deal to purchase a “big eight” and a quarter kilogram of cocaine. Ronald Few, who was to be paid \$100 for transporting the drugs, would arrive at Charlie’s Roost on a “sports type motorcycle.” When the police apprehended Few at Charlie’s Roost at approximately 6:00 p.m., they recovered a “big eight” and another softball-sized ball of cocaine from his person.

Based on information from Few, the police conducted surveillance of a house in Pontiac beginning at approximately 7:00 p.m. Officer Sean Jennings saw defendant pull up at the house and enter. He also saw Graves exit the house several times talking on a cellular telephone. There were no vehicles at the house other than defendant’s. Defendant was in the house for approximately ninety minutes before the search warrant was executed. After the police announced that they had a search warrant and entered the home, the occupants attempted to flee.

¹ Defendant was also charged with possession with intent to manufacture or deliver 650 grams or more of cocaine, MCL 333.7401(2)(a)(i) (the statute was subsequently amended to 1000 grams or more).

Defendant was apprehended in the backyard. Graves was apprehended a few houses away. Ernesto Gonzalez was arrested in the house.

Afterward, police searched the house, which was approximately 900 square feet. On a table, there were numerous cutting agents, mixing bowls, a scale, a tin box containing unpressed cocaine, and a cocaine press, which required two people to operate. There were also packaging materials and baggies containing “big eights” of cocaine and cocaine in powdered form. In a bedroom, there were eleven packages of pressed cocaine and more powdered cocaine. The police also found drugs hidden in a vent in the kitchen.

A search of defendant’s vehicle uncovered no drugs or drug paraphernalia. Police officers did not observe cocaine residue on defendant, Graves, or Gonzalez. Graves’ fingerprints were found on a glass baking pan and a knife. The total weight of the samples taken from the house was 881.15 grams. The drugs had a street value of approximately \$200,000.

The house was determined to belong to Few’s aunt. The plumbing did not work and the electrical system had been shut off, but electricity was “tapped into the lines from outside and kind of jerry rigged” The house had no gas, no hot water, and there was a carbon monoxide leak. It did not appear that anyone was living there. There were no security locks or bars on the house.

II. Admission of Recorded Telephone Conversations

Defendant argues that the trial court erred in admitting the tape recorded conversations between Few and Graves because they were inadmissible hearsay that did not fit within the hearsay exemption in MRE 801(d)(2)(E). Specifically, defendant argues that, before admission of the recorded conversations, the prosecution had failed to show by a preponderance that a conspiracy had occurred. “The trial court’s decision to admit or exclude evidence is generally reviewed for an abuse of discretion.” *People v Spanke*, 254 Mich App 642, 644; 658 NW2d 504 (2003).

Outside the presence of the jury, defense counsel objected to the admission of this evidence on the basis of hearsay.² The prosecution argued that it fell under MRE 801(d)(2)(E), an exemption to the hearsay rule for statements made by a co-conspirator of a party during the course of and in furtherance of a conspiracy, on independent proof of the conspiracy. The trial court admitted the evidence under MRE 801(d)(2)(E) and later clarified its ruling, stating: “There is a multitude of independent evidence that a conspiracy was the object of the Highland house project.”

According to MRE 801(d)(2)(E), a statement is not hearsay if it is “a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy.” For a statement to qualify as a coconspirator statement under MRE 801(d)(2)(E), three requirements must be met. At issue here is the requirement that there must

² Defendant also argued that the evidence was irrelevant, but does not raise this objection again on appeal.

be independent proof by a preponderance of the evidence that a conspiracy occurred. *People v Vega*, 413 Mich 773, 780-782; 321 NW2d 675 (1982) n 2. Because identifying the objectives and even the participants of an unlawful agreement is often difficult because of the clandestine nature of criminal conspiracies, proof may be derived from the circumstances, acts, and conduct of the parties. *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997).

The trial court did not err in ruling that there was independent proof of the conspiracy before admitting the recorded conversations. The evidence presented before the recorded conversations were admitted permitted the reasonable inference that Graves, Gonzalez and defendant were involved in a conspiracy to manufacture or deliver over 650 grams of cocaine. Testimony established that the police began surveilling a house in Pontiac at approximately 7:00 p.m. on June 6, 2002. During the surveillance, officers saw defendant arrive at the house in his car, the only one at that location. They also watched Graves step out of the house several times talking on a cellular telephone. Defendant remained in the house for approximately one and one half hours. Upon execution of the search warrant, police found that the house did not appear lived in or habitable, but rather, contained an ongoing large-scale cocaine production operation. When police officers entered the house, defendant and Graves attempted to flee out the back door while Gonzalez attempted to hide in the house. The amount of cocaine recovered from the house was 881.15 grams. These facts were sufficient to establish by a preponderance that a conspiracy to manufacture or deliver over 650 grams of cocaine occurred. Therefore, the trial court did not err in admitting the recording.

III. Sufficiency of the Evidence

Defendant also argues that there was insufficient evidence to support his conviction. This Court reviews a defendant's allegations of insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *Id.* This Court should not interfere with the jury's role of determining the weight of the evidence or the credibility of the witness. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Circumstantial evidence and reasonable inferences that arise therefrom can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). An inference can be built on an inference in order to establish an element of an offense. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Id.*

For a defendant to be convicted of conspiracy, the prosecution must prove beyond a reasonable doubt that the defendant intended to combine with others and intended to accomplish an illegal objective. *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). There must be proof that the individuals "specifically intended to further, promote, advance or pursue an unlawful objective." *Justice, supra.* at 347. Proof of a conspiracy can be drawn from the circumstances, acts and conduct of those involved, and inferences are permissible. *Id.* at 347. The scope of the conspiracy must be determined through examining circumstantial evidence, but any inferences that are drawn must be reasonable. *Id.* at 348.

We disagree with defendant's assertion that the evidence merely showed defendant's knowledge of the unlawful action and his mere presence at the location. Defendant remained in the house for approximately ninety minutes where the only activity going on was a large-scale cocaine production and packaging operation that required more than one person to operate. Even when Graves was stepping out of the house talking on a cellular telephone, defendant remained inside. Further, defendant had the only vehicle that was present at the house. The fact that the house contained approximately \$200,000 worth of cocaine and was not secured in any way could lead a rational trier of fact to conclude that once the packaging was complete, the drugs would be moved from that location. Further, when police officer entered the house, defendant and Graves attempted to flee out the back door while Gonzalez attempted to hide in the house. Flight is circumstantial evidence showing consciousness of guilt. *People v Adams*, 430 Mich 679, 693; 425 NW2d 437 (1988). We conclude that this evidence was sufficient to allow a rational trier of fact to find defendant guilty beyond a reasonable doubt.

Affirmed.

/s/ Michael S. Smolenski

/s/ Kirsten Frank Kelly