

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED
November 1, 1996

Plaintiff-Appellee,

v

No. 175798
LC No. 93-002441

PHILLIP JAMAL PRUDE a/k/a
MARVIN LEON GLENN a/k/a
MARVIN LEON GLEEN,

Defendant-Appellant.

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of delivery of less than fifty grams of a controlled substance, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), conspiracy to deliver less than fifty grams of a controlled substance, MCL 750.157a; MSA 28.354(1), and being a prisoner in possession of contraband, MCL 800.281(4); MSA 28.1621(4). The trial court sentenced defendant to consecutive terms of two to twenty years' imprisonment for the delivery of a controlled substance conviction, two to twenty years' imprisonment for the conspiracy conviction, and two to five years' imprisonment for the prisoner in possession of contraband conviction. We affirm.

I

Defendant first argues that the trial court erred in denying his motion for dismissal on the basis of entrapment. This Court reviews the trial court's finding that a defendant was not entrapped under the clearly erroneous standard of review. *People v Fabiano*, 192 Mich App 523, 525; 482 NW2d 467 (1992).

A defendant has the burden of proving entrapment by a preponderance of the evidence. *People v Butler*, 199 Mich App 474, 479, 481; 502 NW2d 333 (1993). Entrapment exists if either (1) the police engaged in impermissible conduct that would have induced a person similarly situated as

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

the defendant, though otherwise law-abiding, to commit the crime, or (2) the police engaged in conduct so reprehensible that it cannot be tolerated by the courts. *Fabiano, supra* at 526. Whether entrapment exists must be determined on the facts of each case. See *People v. Griffin*, 187 Mich App 28, 29; 466 NW2d 712 (1991).

Defendant argues that entrapment was established by a preponderance of the evidence because the operation was a fishing expedition and because the police exercised no control over the informant. However, a lack of police control over an informant does not require a finding that entrapment occurred. *People v LaClear*, 442 Mich 867; 497 NW2d 490 (1993), citing with approval *People v LaClear*, 196 Mich App 537, 542-542; 494 NW2d 11 (1992). (Taylor, J., dissenting). The informant was not given anything in return for his service, and Detective Sergeant Hazelroth verified the informant's reliability in a similar operation at another facility before consenting to the informant's activities. Moreover, the operation was not a fishing expedition because the informant specifically planned to buy drugs from Percell Pryor. The informant was not acquainted with defendant at the time of the transaction and did not learn his name until several days later.

We agree with the trial court that there is very little evidence of entrapment. There is no indication that the police did anything to cause defendant to sell heroin to the informant when he would not otherwise have done so. In addition, the police conduct in this case was not so reprehensible that it cannot be tolerated in a civilized society. The purpose of the operation was not to manufacture crime but to detect crime within the prison. The police merely furnished an opportunity for a crime to be committed. Furnishing an opportunity for a crime to be committed does not constitute entrapment. *People v Williams*, 196 Mich App 656, 663; 493 NW2d 507 (1992).

II

Defendant next argues that the prosecutor failed establish the elements of a conspiracy beyond a reasonable doubt. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

A conspiracy is a partnership in criminal purposes. The crux of the offense lies in the unlawful agreement between two or more persons. Establishing a conspiracy requires evidence of specific intent to combine with others to achieve an illegal objective. For intent to exist, the defendant must know of the conspiracy, know of the objective of the conspiracy, and intend to participate cooperatively to further that objective. *People v Turner*, 213 Mich App 558, 569-570; 540 NW2d 728 (1995).

After carefully reviewing the record, we conclude that sufficient evidence was presented to support defendant's conviction on the charge of conspiracy. The informant testified that he planned to buy heroin from Pryor on July 26, 1993. Pryor asked the informant if he were ready to complete the

transaction. After the informant replied in the affirmative, Pryor left and returned with defendant. Pryor, indicating defendant, told the informant that “old boy is going to hook you up.” Defendant told the informant that the heroin was good because it had not been mixed with other substances. Defendant instructed the informant to give the money to Pryor; after the informant did so, defendant handed him two packets of heroin. Viewing the informant’s testimony in the light most favorable to the prosecution, a rational factfinder could find that the elements of conspiracy had been proven beyond a reasonable doubt.

Defendant argues that the informant’s testimony was not credible. However, credibility determinations are left for the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). The facts as related by the informant indicate that defendant cooperated with Pryor, knowing that the purpose was to sell heroin and intending to further that objective. Accordingly, there was sufficient evidence to support defendant’s conviction.

III

In his next issue, defendant asserts that the trial court erred in denying his motion for a mistrial because juror misconduct denied him of his right to a trial before an impartial jury. This Court reviews the trial court’s grant or denial of a mistrial for an abuse of discretion. A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant’s ability to get a fair trial. *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995). A new trial will not be granted for misconduct on the part of a juror unless it affects the impartiality of the jury. *People v Strand*, 213 Mich App 100, 103-104; 539 NW2d 739 (1995).

A

Defendant first argues that the trial court should have granted his motion for a mistrial after a juror stated that he would change his decision in the case in order to end his jury obligation quickly. We disagree. The juror in question was dismissed. The trial court properly denied defendant’s motion for a mistrial because there was no showing that the juror’s actions affected the impartiality of the jury. Although the juror admitted that he told the other jurors that he wanted to leave because he was missing too much time from work, he did not tell them that he would be willing to alter his vote to hasten a verdict. The mere fact that the other jurors knew that the juror wanted to leave for economic reasons does not indicate that their impartiality was compromised.

B

Defendant also contends that the fact that the jury requested an enlargement of one of the exhibits indicates that they discussed the case before all the evidence was presented. However, absent evidence that the jurors had discussed the case or that defendant was otherwise prejudiced, a defendant’s right to an impartial trial is not compromised by written questions submitted by the jury before closing arguments. *People v Rutherford*, 208 Mich App 198, 203; 526 NW2d 620 (1994). We cannot infer that the jury began its deliberations prematurely solely from the fact that it submitted a note requesting that an exhibit be enlarged. Based on the comments made by the trial court and the

codefendant's attorney, the exhibit was apparently small and difficult to see. In the absence of evidence of precipitate jury discussions or an affirmative showing of prejudice, the trial court properly denied defendant's motion for a mistrial.

IV

In his final issue, defendant asserts that the trial court erroneously imposed consecutive sentences pursuant to MCL 333.7401(3); MSA 14.15(7401)(3) when the convictions arose from a single transaction. Statutory interpretation is a question of law that is reviewed de novo on appeal. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995).

We find that the trial court properly imposed consecutive sentences. This Court has already held that, pursuant to the plain language of the statute, a defendant's sentence for the separate offense of conspiracy to deliver a controlled substance must be consecutive to his sentence for the offense of possession with intent to distribute the controlled substance. See *People v Sammons*, 191 Mich App 351, 375; 478 NW2d 901 (1991), lv den 439 Mich 938, cert den 505 US 1213 (1992).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.