

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LILLY DURON,

Defendant-Appellee.

UNPUBLISHED

June 14, 2002

No. 229924

Kent Circuit Court

LC No. 99-012407-FH

Before: Jansen, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of maintaining a drug house, in violation of MCL 333.7405(1)(d). Defendant appeals as of right from her conviction. We affirm.

Defendant first argues that the evidence admitted at trial was insufficient to support her conviction. Specifically, defendant argues that the evidence was insufficient to support a finding that she knew about any drug use occurring in her house. When reviewing the sufficiency of the evidence in a criminal prosecution, this Court must view the evidence in the light most favorable to the prosecution and determine whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The statute under which defendant was charged and convicted provides that a person:

(d) Shall not knowingly keep or maintain a . . . dwelling . . . or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article. [MCL 333.7405(1)(d).]

Defendant focuses on the statutory requirement that a person shall not “knowingly” maintain a drug house, and argues that the evidence presented at trial was insufficient to support a conclusion that she *knew* that persons were using drugs in her house. In contrast, the prosecutor relies on *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999), for the proposition that the only elements of the offense of maintaining a drug house are that the defendant exercised control over the premises for the purpose of making it available for the keeping or selling of narcotics, and did so for an appreciable period of time. We conclude that

defendant's interpretation of the statute is correct. The plain language of MCL 333.7405(1)(d) provides that a person must "knowingly" keep or maintain a dwelling that is frequented by persons using controlled substances, for the purpose of using controlled substances. The prosecutor's reliance on *Griffin* is misplaced because that opinion focused on whether the evidence was sufficient to prove the "keep or maintain" element of the offense, not the "knowingly" element. *Id.* at 32.¹

Nevertheless, we conclude that the evidence presented at trial was sufficient to support defendant's conviction. Viewed in the light most favorable to the prosecution, the evidence presented could support a rational jury in finding that defendant did know about drug use occurring in her house.

Officer Didion testified that he had personally surveilled defendant's house on over twenty separate occasions, and that he had observed a pattern of traffic into and out of defendant's home, which was consistent with drug trafficking. A reasonable inference arose from Didion's testimony that the house was a locus for drug trafficking, over an appreciable period of time. The jury could have reasonably inferred from that testimony that defendant knew about all of the traffic occurring at her house. Furthermore, the amount and nature of the drug paraphernalia found scattered throughout defendant's house supported an inference that the house was "frequented by persons using controlled substances . . . for the purpose of using controlled substances," and that defendant knew about such use of her house. MCL 333.7405(1)(d). In particular, we note the testimony presented at trial that a crack cocaine pipe was found immediately adjacent to the couch where defendant claimed to sleep. In fact, the evidence suggested that defendant was attempting to hide the crack pipe at the time of her arrest. Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented so that a rational jury could find defendant guilty of maintaining a drug house, beyond a reasonable doubt.

Defendant next argues that her trial counsel rendered ineffective assistance when she failed to object to one of the trial court's statements to the jury. Defendant contends that, during Officer Didion's testimony, the trial court instructed the jury that evidence regarding his surveillance of defendant's house could only be used to help explain why police were interested in watching defendant's house, and could not be used as evidence probative of defendant's guilt. Defendant then contends that the trial court erred in failing to repeat that limiting instruction when the jury asked whether it could consider Didion's testimony regarding his surveillance as substantive evidence of defendant's guilt.

First, our review of the record reveals that defense counsel expressly approved the trial court's answer to the jury's question. Therefore, appellate review of this issue has been waived, and we need not address it. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

¹ The defendant in *Griffin* argued that he did not "keep or maintain" the property because he did not own the property and did not reside there, but was only an occasional visitor at the time of the police raid. *Id.* at 32-33. In the present case, defendant conceded that the house in question was hers.

However, even if we were to address defendant's argument, we would find it to be without merit. The trial court never instructed the jury that evidence regarding police surveillance of defendant's house could only be used to help explain why police were interested in watching defendant's house, and could not be used as evidence probative of defendant's guilt. Rather, the limiting instruction to which defendant refers was given in regard to evidence that police received tips from confidential informants. In answering the jury's questions, the trial court accurately repeated his evidentiary rulings at trial. Defendant's argument is based on a misreading of the record, and is without merit.

Affirmed.

/s/ Kathleen Jansen

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder