

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANDREW ROESCH,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 193784
Grand Traverse Circuit Court
LC No. 95-006796-FH

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of perjury, MCL 750.423; MSA 28.665. He was sentenced to forty-five days' imprisonment and two years' probation. Defendant now appeals as of right. We affirm.

I

Defendant first argues that there was insufficient evidence to convict him because, in order to prove falsity, it was not enough simply to present defendant's prior inconsistent statements and there was not strong corroborative evidence. One of the three elements of perjury is willful false statements or testimony by the defendant regarding facts sworn to. MCL 750.423; MSA 28.665; *People v Forbush*, 170 Mich App 294; 427 NW2d 622 (1989). It was stated in *People v McClintic*, 193 Mich 589, 601; 160 NW 461 (1916), that, in order to sustain a conviction for perjury, the prosecution cannot merely present contradictory statements of the defendant but must prove which of the statements is false and must show that statement to be false by evidence other than the contradictory statement. Strong corroborating circumstances are required. See *People v Kennedy*, 221 Mich 1, 4; 190 NW 749 (1922).

Here, there was sufficient evidence to allow a jury to convict defendant. Defendant designated Slick in his statements to the police as a possible source of the marijuana. Although defendant contradicted these statements at trial, the making of the initial statements was corroborated by police officers, who also indicated that the substance of various statements was consistent. Moreover, the

various police officers corroborated each other. In addition, facts consistent with defendant's original statements were established. Defendant possessed marijuana and showed such intimate knowledge of drug dealings in the area at that time that an inference can be drawn that he would have had knowledge of Slick being a distributor if Slick in fact was one. Finally, defendant had a motive to protect Slick. While this motive did not conclusively show that Slick was the source of the 1992 marijuana, it was some evidence of a reason that defendant would perjure himself. Based on the evidence taken as a whole, a rational trier of fact could have found that the elements of perjury were established beyond a reasonable doubt. Accordingly, the evidence was sufficient.

II

Defendant next argues that there was insufficient evidence to prove that he lied when he testified that he had never obtained marijuana from Slick. He argues that the prosecution relied exclusively on the testimony of one witness, Tammy Kiel, who denied ever seeing a sale or presentation of marijuana from Slick to defendant. He further argues that, even if Kiel's attenuated testimony tended to establish the falsity of defendant's grand jury testimony, the prosecution offered no evidence to corroborate the witness.

Although Kiel's testimony was somewhat equivocal, she testified that Slick was a drug seller and that she saw Slick give marijuana to defendant. Since the ambiguities in Kiel's testimony could be explained in terms of her close and long-standing friendship with defendant and Slick, and her possible desire to protect defendant, the jury could have concluded that the portions of her testimony that tended to implicate defendant were true. The real issue therefore is whether Kiel's testimony had to be corroborated.

As previously indicated, to sustain a conviction for perjury, the falsity of a statement made by a defendant must be proven, and strong corroboration is needed. *McClintic, supra*; *Kennedy, supra*. The corroboration must take the form of evidence other than the defendant's contradictory statements. *McClintic, supra*..

Applied to the present case, it is evident that Kiel's testimony alone could not be sufficient to prove the falsity of defendant's statement before the grand jury. However, Kiel's testimony provided corroboration for Lieutenant John C. Conn's testimony that defendant had told him that he obtained marijuana in the past from Chris Slick., and Kiel's testimony is corroborated by evidence of a circumstantial character such as defendant's intimate knowledge of drug dealing in the area and his motive to protect Slick. Accordingly, we find that there was sufficient evidence to establish that defendant testified falsely when he stated that he had never obtained marijuana from Slick.

III

Last, defendant argues that there was insufficient evidence to convict him of perjury with regard to the proposition that he "never obtained" marijuana from Slick. Defendant contends that he did not deny ever obtaining marijuana from Slick, but he did deny ever purchasing it. In considering all the evidence as a whole, the rational inference that defendant made false statements willfully in front of the

grand jury was proven beyond a reasonable doubt. Testimony before the grand jury showed that defendant did not consistently draw a fine distinction between terms such as “buy” and “get.” While he denied buying any drugs from Slick and admitted lying to police officers with regard to buying drugs from Slick, he also stated that he did not “get” any drugs from Slick. Questioning the distinction between “buy” and “obtain,” the trial court found that if defendant bought the marijuana, it meant that he obtained it. From defendant’s own use of the term “get,” a synonym of the word “obtained,” the charge in the indictment alleging that defendant falsely testified before the grand jury that he “never obtained” marijuana from Slick appears to be justified.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Richard A. Bandstra