

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD JOSEPH MCNAMARA,

Defendant-Appellant.

UNPUBLISHED

October 24, 2006

No. 267336

Kalkaska Circuit Court

LC No. 05-002556-FH

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of marijuana, MCL 333.7403(2)(d), and maintaining a drug house, MCL 333.7405(1)(d). He was sentenced to probation for 18 months, with the first 45 days to be served in jail. He appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to support his conviction for maintaining a drug house. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proven beyond a reasonable doubt. *People v Griffin*, 235 Mich App 27, 31; 597 NW2d 176 (1999).

MCL 333.7405(1)(d) provides that a person

[s]hall not knowingly keep or maintain a . . . dwelling . . . 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.

In *Griffin*, this Court stated:

[T]o “keep or maintain” a drug house it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period. [*Id.* at 32.]

The evidence indicated that the police found a grocery bag at the foot of defendant's bed that contained numerous pre-packaged bags of marijuana, empty baggies, rolling papers, a "one-hitter" pipe, two prescription pill bottles containing pills, and two scales. Filler material, which is often used by sellers, was also recovered from defendant's residence. Detective Belcher, a narcotics investigator, testified that the individually wrapped bags of marijuana and the scales were indicative of distribution activity. Defendant admitted that the drugs were his and claimed that some had been purchased as far back as three years earlier. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude that defendant made the property available for keeping or selling proscribed drugs and did so continuously for an appreciable period.

Defendant next argues that the trial court erred in denying his request for a supplemental jury instruction. Relying on *Griffin, supra*, defendant requested that the trial court instruct the jury that, in order for defendant to be guilty of keeping or maintaining a drug house, the house "needs to be more of a drug house than just a primary residence." The trial court found that the requested instruction was not supported by the law and declined to give it.

The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court. *People v Heikkinen*, 250 Mich App 322, 327; 646 NW2d 190 (2002). This Court reviews jury instructions in their entirety to determine "if error requiring reversal occurred." *Id.* There is no error requiring reversal if, on balance, the instructions fairly presented the issues and sufficiently protected the defendant's rights. *Id.*

Defendant's requested supplemental instruction is not supported by this Court's decision in *Griffin*, or the language of MCL 333.7405(1)(d). Neither suggests that a house must be more of a drug house than a primary residence in order to qualify as a drug house within the meaning of the statute. The statute merely prohibits a person from knowingly keeping or maintaining a dwelling that is used for keeping or selling drugs. The trial court's instructions adequately informed the jury of the applicable elements of the statute, and the trial court did not abuse its discretion in refusing to give defendant's requested supplemental instruction.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens