

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
July 21, 2015

v

WILFREDO VASQUEZ GARRASTEGUI,  
  
Defendant-Appellant.

No. 321848  
Kent Circuit Court  
LC Nos. 13-005147-FH;  
13-005149-FH

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Before: SERVITTO, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Following a jury trial, defendant, Wilfredo Vasquez Garrastegui, was convicted of conspiracy to possess with intent to deliver less than 50 grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(iv); keeping or maintaining a drug house, MCL 333.7405(1)(d); and receiving or concealing stolen property worth at least \$1,000 but less than \$20,000, MCL 750.535(3)(a). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to 3 to 20 years' imprisonment for conspiracy to possess with intent to deliver less than 50 grams of cocaine, 2 to 15 years' imprisonment for maintaining a drug house, and 3 to 20 years' imprisonment for receiving or concealing stolen property worth at least \$1,000. Defendant appeals as of right. We affirm.

I. FACTS

On or about February 25, 2013, Chris Spencer returned home to find that his house had been broken into and that two laptop computers and a flat-screen television were missing. He suspected that his sister, Andrea Spencer, was involved in the theft. Andrea had previously lived with Chris, but Chris asked her to leave his home because of her drug use. After Andrea left Chris's home, she moved in with defendant. At trial, Andrea testified, pursuant to a plea agreement, that she told defendant about the television and laptops at Chris's home, and that she and defendant broke into Chris's home and stole the items. They stored the items in defendant's home and took photographs of defendant with the stolen items in his home. Jawun Kenney, who was an operations manager at the building where defendant was staying, took a photograph of a flat-screen television in defendant's home one day when he was performing maintenance because he believed that that the television "seemed out of place." At trial, Chris testified that the television in the photograph matched his stolen television.

On March 25, 2013, defendant entered the Ottawa County Jail for reasons not pertinent to this appeal. While he was in jail, defendant contacted Andrea on the telephone and discussed a quantity of crack cocaine that he had in his home. According to Andrea, defendant spoke to her about the cocaine in code because they knew their conversations were being recorded. In one of the telephone calls he referred to “the last of the Mohicans,” which Andrea believed was defendant’s way of expressing that the cocaine at the house was the last of his supply. Andrea testified that she and defendant discussed selling the cocaine, as well as paying a man referred to as “Red Beard,” who was defendant’s supplier. A man named “Lloyd” helped Andrea sell some of the drugs and brought customers to defendant’s home.

On March 27, 2013, police officers came to defendant’s home to investigate the February 25, 2013 home invasion. At the time the officers entered the home, Andrea was on the telephone with defendant. Afraid of being apprehended, Andrea hid in the attic, which was accessible from defendant’s bedroom, at defendant’s direction. Andrea brought cocaine and drug paraphernalia—sandwich bags, baking soda, and a scale—with her into the attic. Upon entering the home, officers found the two stolen laptops in defendant’s bedroom. Andrea eventually surrendered to the officers.

## II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that there was insufficient evidence to support his convictions. We review the sufficiency of the evidence de novo. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). Our review concerns “whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt.” *Id.* at 175. In making this determination, we view “the evidence in the light most favorable to the prosecution.” *Id.* Circumstantial evidence and reasonable inferences may be used to prove the elements of a crime. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

The elements of conspiracy to possess with intent to deliver less than 50 grams of cocaine are:

- (1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirator possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his coconspirator possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. [*People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002), quoting *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997).]

Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant’s conspiracy conviction. While in jail, defendant talked to Andrea and told her to sell cocaine that he purchased before his incarceration. He told Andrea how much cocaine should be in the home, what she should do with it, and what she should do with the proceeds. He told her that he owed Red Beard a certain amount for the cocaine, and he estimated the amount that would be left over from the cocaine sales; the leftover money was to be Andrea’s profit for selling the cocaine. At the time of Andrea’s arrest, officers found her with a digital scale and other drug paraphernalia that was indicative of a delivery operation. Defendant’s direction to Andrea clearly showed that he had the specific intent to deliver the cocaine and that he intended

to combine with Andrea to deliver it. *Hunter*, 466 Mich at 6-8. The fact that Andrea admitted that she sold drugs for defendant while he was in jail and that she was arrested with cocaine and a digital scale established that she had the same intent as defendant. See *Hunter*, 466 Mich at 6-8. As to the statutory amount, less than 50 grams, defendant told Andrea how much cocaine he had left and that she needed to sell for him, and the amount of cocaine recovered was approximately 9.94 grams. Therefore, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded beyond a reasonable doubt that defendant conspired to possess with intent to deliver less than 50 grams of cocaine. See *Harverson*, 291 Mich App at 175.<sup>1</sup>

Regarding defendant's conviction for keeping or maintaining a drug house, MCL 333.7405(1)(d) provides that a person "[s]hall not knowingly keep or maintain a . . . dwelling, building, [or] vehicle . . . that is used for keeping or selling controlled substances in violation of this article." A person must have "the ability to exercise control or management over the house." *People v Bartlett*, 231 Mich App 139, 152; 585 NW2d 341 (1998). The phrase "keep or maintain" as used in the statute "implies usage with some degree of continuity that can be deduced by actual observation of repeated acts or circumstantial evidence . . ." *People v Thompson*, 477 Mich 146, 155; 730 NW2d 708 (2007).

The evidence, viewed in a light most favorable to the prosecution, supported that defendant kept or maintained a drug house. Initially, there was evidence that defendant exercised control or management over the house that was used for selling drugs. Police officers recovered mail in defendant's room with his name on it, thereby leading to the inference that defendant had some control over the premises. Also, in this regard, the evidence showed that defendant lived in the home for eight or nine months and he kept his cocaine there. Andrea testified that defendant directed her to sell drugs out of the house. In other words, defendant exercised control or management over the sale of drugs at that house, even after he was incarcerated. Further, there was sufficient evidence on the element of continuity. Andrea testified that defendant sold drugs out of the house before he was incarcerated. And, Andrea testified that she was "making crack and bagging it up for customers that *I knew I could sell to them at the house.*" In other words, she knew from past experience that there were certain customers to whom she could sell cocaine at the house. The evidence shows that there was a continuous scheme of keeping and selling cocaine at defendant's house and that defendant maintained control over the sale of cocaine from his home even while he was in jail. Viewing the evidence in the light most favorable to the prosecution, a rational juror could have concluded beyond a reasonable doubt that defendant kept or maintained a drug house. *Harverson*, 291 Mich App at 175.

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<sup>1</sup> Defendant argues that there was insufficient evidence that he possessed the drugs that were found at his home. Whether there was sufficient evidence for a jury to find that defendant *possessed* the drugs was irrelevant in this case. He was convicted of conspiracy to possess with the intent to deliver less than 50 grams of cocaine; his possession of the drugs was not an element of the offense. See *Hunter*, 466 Mich at 6.

Finally, there was sufficient evidence to support defendant's conviction for receiving or concealing stolen property worth at least \$1,000 but less than \$20,000. With regard to this offense, the prosecution was required to prove:

(1) that the property was stolen; (2) the value of the property; (3) the receiving, possession or concealment of such property by the defendant with the knowledge of the defendant that the property had been stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty constructive or actual knowledge of the defendant that the property received or concealed had been stolen. [*People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996), quoting *People v Hooks*, 139 Mich App 92, 96; 360 NW2d 191 (1984).]

Andrea told defendant about a television and laptop computers in her brother's house. Subsequently, Andrea and defendant went to the brother's house, and Andrea stood watch while defendant took the television and two laptops. Because they went there to take the items, they both wore hoods to conceal their identity, and Andrea stood as a lookout, it is reasonable to infer that defendant knew that the property was stolen. See *Williams*, 268 Mich App at 419. Indeed, he stole the property. Defendant and Andrea took the items back to defendant's home, and police ultimately found the stolen laptops in defendant's room. The unchallenged value of the property was \$2,150, and Chris confirmed at trial that the laptops and television in defendant's home were the ones that had been stolen. In short, this evidence established that the property was stolen, its value was over \$1,000, and defendant possessed, received, or concealed the property with the requisite knowledge that the property was stolen.

As an overarching argument for all three convictions, defendant contends that Andrea or another occupant of the home could have brought in the cocaine or the stolen property while he was in jail. Defendant further contends that Andrea's testimony lacked credibility. However, "[w]itness credibility and the weight accorded to evidence is a question for the jury, and any conflict in the evidence must be resolved in the prosecution's favor." *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005). The jury heard testimony on all of the issues, but the jury concluded that Andrea's testimony regarding defendant's involvement was credible. This determination of weight and credibility should be left to the jury. *Id.*

Affirmed.

/s/ Deborah A. Servitto  
/s/ Jane M. Beckering  
/s/ Mark T. Boonstra