IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

RODNEY EUGENE CHEADLE,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
-vs-	)	No. F-2000-386
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

OPINION

STRUBHAR, JUDGE:

Appellant, Rodney Eugene Cheadle, was charged, in the District Court of Grady County, Case Number CF-98-301, with Unlawful Distribution of Controlled Dangerous Substance Within One Thousand Feet of a Public School (Counts I and II), Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School (Count III), Felonious Possession of a Firearm (Count IV), Maintaining a Place for Keeping or Selling of Drugs (Count V), Illegal Use of a Radio During Commission of a Crime (Count VI), Unlawful Possession of Paraphernalia (Count VII), Unlawful Possession of Stolen Property (Count VIII), First Degree Murder (Count IX) and Conspiracy to Commit Murder (Count X). The non-capitol felony offenses were charged After Former Conviction of Two or More Felonies and a Bill of Particulars was filed regarding the First Degree Murder charge. Appellant was tried by a jury before the Honorable Richard G. Van Dyck. Following its return of a guilty

verdict on each count, the jury assessed punishment at twenty years imprisonment on each of Counts I, II, III, IV, V, VI and VIII, one year on Count VII, forty years imprisonment on Count X and life without the possibility of parole on Count IX. The trial court sentenced Appellant accordingly, ordering the sentences to run consecutively.

FACTS

On September 28, 1998, Donna Phillips was arrested by the Chickasha police on a misdemeanor warrant. While in custody Phillips arranged to make some controlled buys from Appellant, her drug dealer. The following day, Phillips made two controlled purchases of crack cocaine from Appellant at his house. That same day, the police secured a search warrant for Appellant's house. Appellant was not home when they arrived with the warrant so they waited for him until he arrived at about 9:00 p.m. Because Appellant did not stop at his house, but rather drove on by, the police pulled him over and arrested him. They searched the vehicle he was driving and executed the search warrant of the house. Crack cocaine residue was found inside Appellant's car. Inside the house, police found crack cocaine residue and a razor blade on a black plate, a stolen rifle, a pistol and a police scanner.

While Appellant was in the Grady County Jail, several inmates heard him say that he wanted to get rid of Phillips so that she could not testify against him

at his trial. Appellant offered some of the inmates drugs, money and other compensation for killing Phillips. One of these inmates, Vance Foust, was released from jail on December 14, 1998.

On the evening of January 5, 1999, Foust was driving around Chickasha with Chad Schneider and Jeff Craine. They were drinking beer and had smoked some crack cocaine. They saw Donna Phillips walking and stopped to talk to her. She got in the vehicle with them and they drove out into the country where they stopped and got out of the vehicle. Foust grabbed a screwdriver he had put in the vehicle and stabbed Phillips repeatedly. After killing Phillips, Foust went to Appellant's house and reported to Appellant's wife that Phillips wouldn't show up for court. Appellant's wife smiled and said that she would let Appellant know.

On January 6, 1999, the body of Donna Phillips was found north of Chickasha in rural Grady County. She died from multiple stab wounds.

After Phillips had been killed, Appellant's cell mate, Alan Smith, came forward and told the authorities about Appellant's involvement in the conspiracy to kill her. He also revealed that Appellant had solicited him to kill Foust because Appellant didn't think Foust was the type of person who could be trusted. Appellant was afraid Foust might snitch him out for having Phillips killed. Smith then worked with the police to garner evidence against Appellant.

PROPOSITIONS

Appellant complains in his third proposition that the evidence was insufficient to support his conviction for First Degree Murder. This Court has long held that the standard of review for determining whether evidence is sufficient to sustain a conviction is whether, taking the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202.

Appellant was charged with First Degree Murder under 21 O.S.Supp.1996, 701.7(D), which provides that, "[a] person commits murder in the first degree when that person unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully . . . distributing or dispensing controlled dangerous substances . . . unlawfully possessing with intent to distribute or dispense controlled dangerous substances. . . ." The State charged that Appellant committed this crime by soliciting Vance Foust to kill Donna Phillips "to prevent her from testifying against [him] in a pending criminal case alleging [he] unlawfully distributed Cocaine to Donna Phillips and Possessed Cocaine with Intent to Distribute on or about the 29th day of September, 1998 in Grady County."[1]

---

[1] Original Record at 40.

In his opening statement the prosecutor told the jury that the State's evidence would prove that Appellant solicited the death of Donna Phillips to prevent her from testifying against him regarding a controlled drug purchase she had made from him. This is precisely what the State's evidence proved. Several State's witnesses, including Vance Foust, testified that while in the county jail, Appellant stated that he wanted someone to kill Phillips as he believed that if she were dead and therefore unavailable to testify against him at trial, the charges against him would be dropped. Appellant argues on appeal that by proving only that he solicited the death of Phillips to prevent her from testifying against him about drug deals which had already occurred, the State failed to sustain its burden of proving that he had solicited her death "in furtherance of" the distribution of controlled dangerous substances as is required by 21 O.S.Supp.1996, § 701.7(D).

The State agrees that the evidence at trial clearly showed that Phillips was killed to keep her from testifying against Appellant. However, it contends that this evidence was sufficient to show that the murder was planned in furtherance of Appellant's drug operation. The State argues that "[i]t would be absurd and nonsensical to contend that the statute would not apply to murder plots that arise in connection with drug operations particularly where, as in the case at bar, the murder was an intricate part of preserving or protecting the

drug business."[2] This argument would be better received if, in fact, the evidence showed that the murder was solicited for the purpose of preserving or protecting Appellant's drug business. It simply does not. The State alleges that Appellant's offer to set Foust up in an auto parts store in which Appellant could front his drug operation is evidence that Phillips was killed to further the distribution of drugs. However, the record reveals that this was just one of several offers Appellant made to entice someone into killing Phillips for him. Appellant also promised to reward whoever killed Phillips with drugs, money or property. He even offered a car to one person as compensation for killing Phillips. The inescapable conclusion is that Appellant was willing to offer anything he could to entice someone into killing Phillips so that she would not testify against him, not to further the distribution of drugs. The State's argument to the contrary is not persuasive.

The resolution of this issue rests upon the meaning of the phrase "in furtherance of" within Section 701.7(D). This Court has held that the fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature as expressed in the statute. *State v. Anderson*, 1998 OK CR 67, ¶ 3, 972 P.2d 32, 33; *Wallace v. State*, 1996 OK CR 8, ¶ 4, 910 P.2d 1084, 1086, *cert. denied*, 516 U.S. 888, 116 S.Ct. 232, 133 L.Ed.2d 160 (1995);

---

[2] Appellee's Brief at 16.

Thomas v. State, 1965 OK CR 70, ¶ 4, 404 P.2d 71, 73. However, this Court has also long adhered to the rule that statutes are to be construed according to the plain and ordinary meaning of their language. *Wallace v. State*, 1997 OK CR 18, ¶ 4, 935 P.2d 366, 369-70, *cert. denied*, 521 U.S. 1108, 117 S.Ct. 2489, 138 L.Ed.2d 996 (1997); *Lynch v. State*, 1995 OK CR 65, ¶ 6, 909 P.2d 800, 802; *Virgin v. State*, 1990 OK CR 27, ¶ 7, 792 P.2d 1186, 1188; 25 O.S.1991, § 1. "We must hold a statute to mean what it plainly expresses and no room is left for construction and interpretation where the language employed is clear and unambiguous." *Stewart v. State*, 1999 OK CR 9, ¶ 12, 989 P.2d 940, 943; *Abshire v. State*, 1976 OK CR 136, ¶ 6, 551 P.2d 273, 274.

From this, we can conclude that a person cannot be convicted of first degree murder under Section 701.7(D) simply upon a showing that the solicitation of murder was somehow *related to* or *connected with* a drug transaction. Rather, we must afford the phrase "in furtherance of" its plain meaning and require that the murder have been solicited to further the goals of manufacturing, distributing, possessing with intent to distribute or trafficking in illegal drugs. *Cf. Omalza v. State*, 1995 OK CR 80, ¶ 13, 911 P.2d 286, 295-96 (Title 12 O.S.1981, § 2801(4)(b)(5), which provides that a statement offered against a party and made by his coconspirator during the course and "in furtherance" of their conspiracy is admissible and is not hearsay, was

construed by this Court to require a finding that the statements offered "furthered the goals of the conspiracy."). Thus, when the evidence presented in the present case is viewed in a light most favorable to the State, it does not support the finding that Appellant solicited the killing of Phillips to further his goals of distributing drugs. Rather, it proved only that Appellant sought to have Phillips killed to prevent her from testifying against him regarding a drug transaction which had already transpired.

While the evidence failed to show that Appellant solicited the killing of Phillips to further his goals of distributing drugs, it did prove that he solicited another person to kill Phillips. Thus, Appellant is guilty of the crime of Solicitation for Murder in the First Degree in violation of 21 O.S.1991, § 710.16. This Court has the power, under 22 O.S.1991, § 1066, to reverse, affirm, or modify appellant's judgment and sentence. *See McArthur v. State*, 1993 OK CR 48, 862 P.2d 482, 485. Accordingly, this case is remanded to the District Court to modify the Judgment from First Degree Murder to Solicitation for Murder in the First Degree, and to modify Appellant's Sentence from life imprisonment without the possibility of parole to life imprisonment.

Appellant raises in his first and second propositions errors pertaining to his conviction for Conspiracy to Commit Murder in Count X. We need not address Appellant's first and second propositions in light of our decision in

Proposition III wherein we modified Appellant's conviction from First Degree Murder to Solicitation for Murder in the First Degree. Because Appellant's convictions for solicitation and conspiracy involved the same people, the same proof was needed to support both of these crimes. Thus, Appellant's conviction for both conspiracy and solicitation violates constitutional prohibitions against Double Jeopardy. *See Moss v. State*, 1994 OK CR 80, 888 P.2d 509, 516 (Double Jeopardy may occur where the solicitation and conspiracy involved the same person.). Accordingly, we find that Appellant's conviction for Conspiracy to Commit Murder must be reversed with instructions to dismiss.

In his fourth proposition Appellant alleges that the evidence was insufficient to support his convictions for Felonious Possession of a Firearm and Unlawful Possession of Stolen Property. The Felonious Possession of a Firearm conviction was supported by evidence that a handgun was found in the bedroom of Appellant's home. The Unlawful Possession of Stolen Property conviction was supported by evidence that a rifle found in Appellant's living room was stolen property. Appellant complains that there was no evidence presented at trial which connected him to these firearms. Rather, he asserts that there was only evidence that his wife was dealing in firearms.

Appellant acknowledges that possession of contraband may be established by joint possession where a party willfully and knowingly shares with another

the right to control the contraband. *See Russell v. State*, 1988 OK CR 248, ¶ 9, 763 P.2d 1180, 1182. However, he notes that this Court has held that joint possession cannot be inferred solely from a defendant's presence where the contraband was found, there must be additional evidence of the defendant's knowledge and control. *See Brown v. State*, 1971 OK CR 55, ¶ 8, 481 P.2d 475, 477. *Id.*

In the present case, there was evidence that Appellant and his wife both had dominion and control over the residence in which the guns were found. The evidence also showed that both worked together selling drugs and dealing with guns. Given the nature of the illegal activities engaged in by Appellant and his wife, a rational trier of fact could have found, beyond a reasonable doubt, that Appellant and his wife jointly possessed the guns at issue. *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202. This proposition is without merit.

Next, Appellant complains that the evidence was insufficient to prove that he used a police scanner during the commission of the crime of distribution of a controlled dangerous substance. The evidence at trial showed that Appellant sold crack cocaine to Donna Phillips at his home at around 11:40 a.m. and again at 1:45 p.m. on September 29, 1998. After this, the officers involved in the controlled buy went to get a warrant to search Appellant's house. When they came back to the house, they noticed that Appellant was not there as his car was

gone. They waited in the area for Appellant to return. When Appellant came back to the area, he drove by his house without stopping. The police stopped him in his car and arrested him. They then executed the search warrant upon Appellant's house. In the house, they noted an "operable scanner" in the living room which was turned on to a police frequency. Appellant contends that there was no evidence presented at trial that this scanner was being used during the time that he distributed cocaine as was alleged in the Information. He also complains that there was no evidence this scanner was a "mobile radio" as is required by 21 O.S.1991, § 1214.

The State responds only by stating that the jury could infer from the evidence presented at trial that the scanner was on when Appellant sold the cocaine to Phillips. Because the radio was turned on to a police frequency when the warrant was executed, a reasonable trier of fact could conclude that it had been turned on before Appellant left the house. Whether it was on during the time that Appellant sold the drugs to Phillips is purely speculative. While it is possible that the radio was on when Appellant sold the cocaine to Phillips, it is equally possible that it was not but he turned it on sometime after the drugs had been sold. Thus, the evidence presented at trial does not support the conclusion, beyond a reasonable doubt, that Appellant committed the crime of Illegal Use of a Radio During Commission of a Crime. *See Spuehler v. State,*

1985 OK CR 132, 709 P.2d 202. Thus, Count VI must be reversed with instructions to dismiss.

In his sixth proposition Appellant contends the evidence was insufficient to support his conviction for Maintaining a Place for Keeping or Selling of Drugs. He specifically complains that the evidence showed the residence was maintained for the purpose of providing a home for his family. Appellant concedes that there was evidence that drugs were sold at the house, but he maintains these activities were a collateral, not substantial, reason for maintaining the dwelling.

To sustain this conviction the prosecution must show that (1) Appellant maintained the house with the substantial purpose of keeping, selling, or using drugs; and (2) the activity giving rise to the charge is more than a single, isolated activity, which may be proved by circumstantial evidence of the intent to continue illicit activities at the house. *See Ott v. State*, 1998 OK CR 51, ¶ 11, 967 P.2d 472, 476, *cert. denied*, 525 U.S. 1180, 119 S.Ct. 1119, 143 L.Ed.2d 114 (1999). *See also Howard v. State*, 1991 OK CR 76, ¶ 9, 815 P.2d 679, 683. Again, it is not necessary to show that the residence was maintained for the *primary* purpose of keeping or selling drugs, only that such was a *substantial* purpose of maintaining the residence. *Id. See also Meeks v. State*, 1994 OK CR 20, ¶ 4, 872 P.2d 936, 938.

Clearly, the house was Appellant's residence. There was no indication Appellant kept or maintained the dwelling primarily to sell drugs. However, the evidence did show that Appellant sold drugs out of his home on a regular basis. This evidence supports the finding, beyond a reasonable doubt, that Appellant maintained the house with the substantial purpose of keeping or selling drugs. Thus, the evidence was sufficient to support Appellant's conviction for the crime of Maintaining a Place for Keeping or Selling of Drugs. This proposition is without merit.

When the police stopped Appellant in his car and arrested him and then executed the search warrant of his residence, they found a residual amount of crack cocaine under the driver's seat of his car and a residual amount of crack cocaine on a black plate in the living room area of his house. The residue on the plate was consistent with what is left over after drugs are cut up. These drugs apparently formed the bases for Appellant's conviction of Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School in Count III. Appellant argues in his seventh proposition that the evidence was insufficient to support his conviction for this crime.

The essential elements of the crime of possession of a controlled dangerous substance with intent to distribute are: (1) knowing and intentional; (2) possession; (3) of a controlled dangerous substance; (4) with an intent to

distribute. 63 O.S.1991, § 2-401. Although this Court has not defined the amount of drugs necessary to support a finding of possession with intent to distribute, in prior cases in which this crime has been upheld, there was evidence that the defendant possessed an amount of drugs capable of distribution.[3] Such evidence was not presented in the current case. While there was evidence that Appellant had actually possessed and distributed cocaine the day of his arrest, he was convicted of these separate crimes in Counts I and II. There was no evidence that the residue remaining on the plate after he cut and sold drugs to Phillips as well as the residue found in his car was of an amount capable of distribution. Thus, we do not find that a rational trier of fact could have found, beyond a reasonable doubt, that Appellant possessed the drug residue with the intent to distribute it. Accordingly, Appellant's conviction for Unlawful Possession of Controlled Dangerous Substance With Intent to

[3] *See Scott v. State*, 1991 OK CR 31, ¶ 8, 808 P.2d 73, 76 (evidence that the defendant threw a sack containing four vials containing thirty-five doses of PCP out the apartment window, and that twenty-eight vials of PCP were recovered inside the apartment was strong, if not overwhelming evidence that he possessed PCP with the intent to distribute it); *Fallon v. State*, 1986 OK CR 129, ¶¶ 8-10, 725 P.2d 603, 605 (five baggies containing approximately 4,500 Diazepam pills was sufficient evidence of possession with intent to distribute); *Champeau v. State*, 1984 OK CR 54, ¶ 5, 678 P.2d 1192, 1194-95 (evidence of drying racks, cut marijuana, irrigated fields, water hoses, pump houses and a total of four (4) tons of marijuana was sufficient to support conviction for possession with intent to distribute).

Distribute Within One Thousand Feet of Public School in Count III is reversed with instructions to dismiss.

In his eighth proposition, Appellant complains that his convictions for two counts of Unlawful Distribution of Controlled Dangerous Substance Within One Thousand Feet of a Public School and one count of Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School violate his constitutional right to be free from Double Jeopardy and his statutory right to be free from double punishment under 21 O.S.1991, § 11. Because we found that error raised in Proposition VII requires Appellant's conviction for Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School be reversed with instructions to dismiss, we need not address Appellant's argument in this proposition as it applies to that conviction. However, we do address his argument as it relates to his conviction for two counts of Unlawful Distribution of Controlled Dangerous Substance Within One Thousand Feet of a Public School.

We first must determine if the convictions violate the provisions of 21 O.S.1991, § 11. In pertinent part Section 11 provides that, "an act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, . . . but in no case can it be

punished under more than one...." If the crimes truly arise out of one act as they did in *Hale v. State*, 1995 OK CR 7, 888 P.2d 1027, then section 11 prohibits prosecution for more than one crime. In the present case, Appellant was convicted of selling crack cocaine to Donna Phillips at around 11:40 a.m. and then again at 1:45 p.m. on September 29, 1998. As Appellant was not punished twice for a single act, but rather once for each separate act there was no Section 11 violation.

The constitutional right to be free from Double Jeopardy bars conviction for multiple counts of one offense arising out of one transaction. *See Hunnicutt v. State*, 1988 OK CR 91, 755 P.2d 105. Again, as Appellant committed the crime of Unlawful Distribution of Controlled Dangerous Substance Within One Thousand Feet of a Public School on two separate and distinct occasions, there was no constitutional violation in convicting him once for each separate criminal act.

Finally, Appellant alleges that the charging language in the Information regarding Count III, Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School, was insufficient to apprise him of the crime he was to defend against. As we have already determined in Proposition VII, that Appellant's conviction on this Count

must be reversed with instructions to dismiss, we need not address this final allegation of error.

In light of the foregoing discussion, Appellant's convictions for Unlawful Possession of Controlled Dangerous Substance With Intent to Distribute Within One Thousand Feet of Public School (Count III), Illegal Use of a Radio During Commission of a Crime (Count VI) and Conspiracy to Commit Murder (Count X) are **REVERSED** with instructions to **DISMISS.** His conviction on Count IX is **REMANDED** to the District Court to **MODIFY** the Judgment from First Degree Murder to Solicitation for Murder in the First Degree, and to **MODIFY** Appellant's Sentence from life imprisonment without the possibility of parole to life imprisonment. His Judgment and Sentence on the remaining counts is **AFFIRMED**.

APPEARANCES AT TRIAL

JOHN B. ALBERT
204 N. ROBINSON
OKLAHOMA CITY, OKLAHOMA
73106
GEORGE MISKOVSKY, III
210 PARK AVENUE
OKLAHOMA CITY, OKLAHOMA
73102
ATTORNEYS FOR APPELLANT

GENE CHRISTIAN
BRET BURNS
GRADY COUNTY COURTHOUSE
CHICKASHA, OKLAHOMA 73018
ATTORNEYS FOR THE STATE

APPEARANCES ON APPEAL

THOMAS PURCELL
OKLAHOMA INDIGENT DEFENSE
SYSTEM
1623 CROSS CENTER DRIVE
NORMAN, OKLAHOMA 73019
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF
OKLAHOMA
PATRICK T. CRAWLEY
ASSISTANT ATTORNEY GENERAL
112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OKLAHOMA
73105
ATTORNEYS FOR APPELLEE

OPINION BY: STRUBHAR, J.
LUMPKIN, P.J.: CONCUR IN PART/DISSENT IN PART
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR IN PART/DISSENT IN PART

LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART

I concur in the Court's decision to affirm the judgments and sentences as set out in the opinion. However, I dissent to the reversal of the conviction for first degree murder. The Court has taken a very narrow view of the evidence in order to reach its conclusion. I agree that the phrase "in further of" found in 21 O.S.Supp.1996, § 701.7(D) should be given its plain meaning and that the evidence required for a conviction should show the murder was solicited to further the goals of manufacturing, distributing, possessing with intent to distribute or trafficking in illegal drugs. The evidence in the present case showed that Phillips was killed so she could not testify against Appellant about a prior drug transaction. The fact is if Phillips had testified against Appellant, and he was convicted and incarcerated, he would not have been able to continue to distribute drugs as he had been. So in order to further his goals of distributing drugs, Appellant made sure that Phillips was out of the way and could not hinder the continuance of his drug operation. Reviewing the evidence in the light most favorable to the State, I find the evidence sufficient to support the conviction for first degree murder.

I also disagree with the reversal of the conviction for Illegal Use of a Radio During Commission of a Crime. It is stated in the opinion that "[w]hile it is possible that the radio was on while Appellant sold the cocaine to Phillips, it is also equally possible that it was not . . . ." This Court has repeatedly held

that the jury is the exclusive judge of the weight of the evidence and the credibility of the witnesses testimony. *Robedeaux v. State,* 866 P.2d 417, 429 (Okl.Cr.1993). Although there may be conflict in the testimony, if there is competent evidence to support the jury's finding, this Court will not disturb the verdict on appeal. *Id.* A reviewing court must accept all reasons, inferences and credibility choices that tend to support the verdict. *Id.* Here, the jury heard the evidence and found it sufficient to show the radio was on during the drug transaction. It is not for this Court to second guess the jury.

LILE, JUDGE: CONCURS IN PART/DISSENTS IN PART

Rodney Eugene Cheadle was a drug dealer. He had been for sometime, and if he could get out of jail, he intended to continue selling drugs. In fact, he was dealing drugs, through his wife, even while he was in jail. He told Vance Foust that if Foust would kill Donna Phillips, so that Cheadle's cases would be dropped, then when Cheadle got out of jail he would set up a big shop down on 3rd Street, across from Gibson's. Foust could run it for Cheadle and they would use the shop as a front to sell drugs. Foust killed Donna Phillips and sent word to Cheadle of the murder. This evidence, if believed by the jury, is sufficient to support a conclusion that the murder was solicited to further the Appellant's goal of manufacturing, distributing, possessing with intent to distribute or trafficking in illegal drugs. The majority opinion concedes that this evidence was before the jury but concludes that this was just "one of several offers Appellant made to entice someone into killing Phillips." However, the jury was justified in believing that this offer was accepted by Foust. Under *Spuehler v. State*, 1985 OK CR 132, 709 P.2d 202, taking the evidence in the light most favorable to the State, a rational trier of fact could have found the elements of the crime charged.

I don't disagree with the legal analysis setting forth what "furtherance" requires under this statute. However, the evidence, set forth above, does support those requirements. I would affirm the conviction.