

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY TAYLOR,

Defendant-Appellant.

UNPUBLISHED

March 12, 1999

No. 205230

Ingham Circuit Court

LC No. 96-070715 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Defendant appeals of right from his conviction of delivery of more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), entered after a jury trial. We affirm.

At trial, the evidence showed that undercover officers arranged with James Taylor, defendant's brother, and Carol Taylor, James' wife, for the sale of cocaine. One undercover officer testified regarding defendant's participation in the delivery of the cocaine. Subsequently, another undercover officer testified regarding the events that occurred prior to the delivery. The officer stated that he inquired if James could arrange a sale of \$6,000 worth of cocaine. James indicated that he had six kilos of cocaine in Detroit, and then made a telephone call and said "I've got six big ones ready to go." James indicated that his brother would bring the cocaine from Detroit. Defendant objected to these statements as hearsay. The trial court overruled the objection on the basis that the remarks were admissible as statements made by a co-conspirator. The evidence showed that shortly before the officers received a message that the cocaine had arrived, Carol went to a car in the building's parking lot and retrieved a package. The officers testified that defendant was present when the delivery took place, and that he actively participated in the transaction. Both defendant and James answered in the affirmative when asked if other sales could be arranged.

The jury returned a verdict of guilty as charged. The court sentenced defendant to ten to twenty years in prison.

A conspiracy is a partnership of two or more persons in a criminal purpose. It is complete upon the formation of the agreement. It must be shown that the parties agreed to advance or pursue an unlawful objective. *People v Justice (After Remand)*, 454 Mich 334, 345-347; 562 NW2d 652 (1997). A statement made by a co-conspirator during the course of and in furtherance of the conspiracy is admissible as an exception to the hearsay rule. MRE 801(d)(2)(E). Any such statement is not admissible unless and until the conspiracy is shown by independent evidence. *People v Brownridge*, 225 Mich App 291, 305; 570 NW2d 672 (1997). A conspiracy must be shown by a preponderance of the evidence. *People v Vega*, 413 Mich 773, 782; 321 NW2d 675 (1982). The order of proofs is not dispositive. A trial court may admit a co-conspirator's statement contingent upon later production of independent evidence of the conspiracy. A conspiracy can be established by circumstantial evidence and inferences. *People v Till*, 115 Mich App 788, 794; 323 NW2d 14 (1982).

Contrary to defendant's assertion, independent evidence established the existence of a conspiracy of which he was a part. After the officers were told that James' brother would bring the cocaine from Detroit, Carol was observed retrieving a package from a car. Defendant was present when the actual delivery occurred. Defendant took the money and counted it. Defendant and James told the officers that the cocaine was of good quality. Both defendant and James answered in the affirmative when asked if another sale could be arranged. When police entered the apartment to make arrests, defendant jumped out a window in an apparent attempt to escape. The evidence establishing that defendant, James' brother, arrived after James said his brother would bring the cocaine from Detroit, that Carol retrieved a package from a car shortly before the transaction occurred, and that defendant directly participated in the transaction involving the exchange of money and cocaine, constituted both direct and circumstantial independent evidence of a conspiracy to deliver cocaine. Admission of the statements was proper under MRE 801(d)(2)(E).

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot