

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON LADELL CONWAY,

Defendant-Appellant.

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UNPUBLISHED

October 8, 2002

No. 233453

Macomb Circuit Court

LC No. 00-000661-FH

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of delivery of a controlled substance of at least 225 grams but less than 650 grams, MCL 333.7401(2)(a)(ii), and one count of conspiracy to that charge, MCL 750.157a.<sup>1</sup> Finding substantial and compelling reasons for a downward departure from the statutory minimum sentence, the trial court sentenced defendant to 7 to 30 years' imprisonment for each count. Defendant appeals as of right. We affirm.

On February 12, 2000, police officers from the County of Macomb Enforcement Team (COMET) initiated a purchase of cocaine through a confidential informant from James Feggan.<sup>2</sup> The officers set up surveillance at a motor lodge where Feggan was staying and observed defendant and another individual enter Feggan's room.<sup>3</sup> Shortly thereafter, Feggan left the room and delivered eight ounces of cocaine to the confidential informant who had been waiting in a nearby parking lot. After officers arrested Feggan, officers arrested defendant as he attempted to leave the motel room.<sup>4</sup>

Defendant's sole issue on appeal is that there was insufficient evidence for the jury to find him guilty of delivery and conspiracy to deliver cocaine. In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor to determine

<sup>1</sup> The judgment of sentence erroneously lists the conspiracy conviction as MCL 750.157c.

<sup>2</sup> Before trial, James Feggan pleaded guilty to one count of delivery of cocaine and one count of conspiracy to commit that offense and received a reduced sentence of 3 to 20 years' imprisonment for each count.

<sup>3</sup> Apparently, a separate jury acquitted this third individual of all charges.

<sup>4</sup> Testimony at trial established that the cocaine obtained from Feggan weighed over 225 grams.

whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Questions of credibility are left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). It is for the trier of fact, not this Court, to determine what inferences can be fairly drawn from the evidence and determine the weight accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

To convict defendant of the delivery charge, the prosecution had to show that defendant knowingly delivered or aided in the delivery of some amount of cocaine, and the jury had to determine that at least 225 grams of cocaine were delivered. *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). To support a finding that defendant aided and abetted the crime, the prosecution had to show that (1) the charged crime was committed by defendant or some other individual, (2) defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001), quoting *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), overruled in part *Mass*, *supra*.

Feggan testified that he contacted defendant to obtain eight ounces of cocaine. Although defendant told Feggan he could not obtain that amount, he would contact someone who could. Feggan thereafter spoke to defendant and the third individual over the phone to set up the delivery. When defendant and the third individual arrived at Feggan's motel to deliver the cocaine, defendant went in first and then motioned for the other individual to go in. When Feggan went to put on his coat, either defendant or the other individual put the cocaine on the table. Feggan then went to deliver the cocaine to the confidential informant and was arrested.

Lieutenant Daniel Heythaler, who was assigned to COMET, testified that in a statement, defendant admitted that he supplied eight ounces of cocaine to Feggan for a total of \$8,000 - \$7,200 was to go to the supplier and defendant would keep \$800.

Defendant essentially argues that both Feggan and Lieutenant Heythaler lied during testimony at trial. Defendant took the stand and testified that he went to Feggan's motel room that day only to borrow money and that he had no knowledge of any drug transaction. However, it was for the jury to examine the testimony and weigh its credibility. From the evidence presented, the jury could find that defendant gave Feggan the cocaine to deliver to the confidential informant. Or, at the very least, the jury could find that defendant put Feggan in contact with someone who could obtain the cocaine and then assisted in the delivery. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to convict defendant of delivery of at least 225 but less than 650 grams of cocaine.

With regard to conspiracy to commit the crime, MCL 750.157a provides:

Any person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein . . . .

“If a conspiracy to deliver and a delivery charge are coupled (and the proofs for the delivery demonstrate the weight of the substance delivered) such proofs may suffice to demonstrate [a] defendant’s knowledge of the amount for the conspiracy charge.” *Mass, supra* at 634.

Again, Feggan testified that he called defendant to get eight ounces of cocaine. Lieutenant Heythaler testified defendant admitted delivering eight ounces of cocaine to Feggan. Over 225 grams of cocaine was delivered to the confidential informant. Viewing the evidence in the light most favorable to the prosecution, we conclude the evidence was sufficient for the jury to find defendant guilty of conspiracy to deliver at least 225 but less than 650 grams of cocaine.<sup>5</sup>

Affirmed.

/s/ Richard Allen Griffin  
/s/ Hilda R. Gage  
/s/ Patrick M. Meter

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<sup>5</sup> We find no merit in defendant’s contention that because Thompson was acquitted of any charges, defendant could not be convicted of conspiracy.