

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON MOHEAD, II.,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 196986

Calhoun Circuit Court

LC No. 96-000396

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant was convicted by a jury of conspiracy to deliver less than fifty grams of cocaine, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(1) and (2)(a)(iv); MSA 14.15(7401)(1) and (2)(a)(iv). Defendant was sentenced to a term of two to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Without considering any coconspirator statements, the circumstances of the transaction, including defendant's acknowledgment that "it" was "good stuff" and his acceptance of the purchase price at the same time that Terran Scott delivered the cocaine to the police officer, provided sufficient independent evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant and Scott mutually agreed to deliver the cocaine. *People v McCoy*, 223 Mich App 500, 501; 566 NW2d 667 (1997); *People v Moscara*, 140 Mich App 316, 319; 364 NW2d 318 (1985). We thus find no abuse of discretion in allowing testimony concerning Scott's out-of-court statements subject to the later independent proof of the conspiracy. *People v Cadle*, 204 Mich App 646, 653-654; 516 NW2d 520 (1994), remanded on another ground 447 Mich 1009 (1994), on remand 209 Mich App 467 (1995); *People v Loy-Rafuls*, 198 Mich App 594, 599-600; 500 NW2d 480 (1993), rev'd in part on another ground 442 Mich 915 (1993); *Moscara, supra* at 319-322.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski

