STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LAWRENCE WATSON,

Defendant-Appellant.

UNPUBLISHED
April 8, 1997

No. 187061
Saginaw Circuit Court
LC No. 93-008238-FH

Before: Taylor, P.J., and McDonald and C. J. Sindt*, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by jury of two counts of delivery of cocaine less than fifty grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and one count of conspiracy to deliver cocaine less than fifty grams, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The trial court sentenced defendant to consecutive terms of six to twenty years' imprisonment for each delivery conviction, and eight to twenty years for the conspiracy conviction, all consecutive to a sentence defendant was already serving. We affirm.

Defendant first argues there was insufficient evidence on which to convict him of the of the charged offenses. We disagree.

Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of an offense. *People v Truong*, 218 Mich App 325; 553 NW2d 692 (1996). Viewing the evidence in a light most favorable to the prosecution, we find a rational jury could have concluded there was sufficient evidence to convict defendant of the delivery offenses on an aiding and abetting theory, *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994), and considering the informant's testimony, coupled with the other evidence, sufficient evidence to establish defendant intentionally conspired with one or more persons to commit an offense prohibited by law. MCL 750.157a; MSA 28.354(1); *People v Cotton*, 191 Mich App 377; 478 NW2d 681 (1991).

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant next argues the trial court erred in admitting the informant's testimony that co-conspirator Suppes told him defendant was Suppes' supplier. We disagree. There was ample circumstantial evidence from which to deduce the existence of an unlawful agreement, independent of Suppes' statement. "A statement is not hearsay if . . . the statement is offered against a party and is . . . a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy." MRE 801(d)(2)(E); *People v Vega*, 413 Mich 773, 780, 782; 321 NW2d 675 (1982). The trial court did not abuse its discretion in admitting the informant's testimony. *People v Crump*, 216 Mich App 210; 549 NW2d 36 (1996).

Defendant also argues the trial court erred in admitting into evidence the prerecorded buy money seized from defendant's vehicle alleging the police did not have probable cause either to arrest defendant or to search his vehicle. We disagree. Defendant was observed driving away from the scene of a controlled purchase of cocaine, having just been handed a package by Suppes during what appeared to be a prearranged meeting. This exchange followed several other meetings between defendant and Suppes that occurred immediately prior to the controlled purchase. These facts and circumstances would warrant a reasonably prudent person to believe a crime had been committed or that evidence of that crime could be found within the defendant's vehicle. *People v Johnson*, 431 Mich 683; 431 NW2d 825 (1988); *People v Williams*, 160 Mich App 656; 408 NW2d 415 (1987). Thus, there was probable cause to arrest which in turn made the search permissible. *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992).

Defendant next argues his six to twenty year sentence for delivery and eight to twenty year sentence for conspiracy are disproportionate to the offense and the offender. We disagree. Testimony at sentencing established defendant had been supplied with substantial amounts of cocaine, up to eighteen ounces on one occasion, over a period of many months. Furthermore, subsequent to defendant's and Suppes' arrest, the two conspired with others to shoot and kill the informant in this case. The informant was shot in the face. As a result, defendant was separately convicted of conspiracy to assault and assault with intent to do great bodily harm, inducing a minor to commit a felony, obstruction of justice and possession of a firearm while committing a felony. Given the seriousness of this matter, the sentencing court did not abuse its discretion when departing upward one year for the delivery count and three years for the conspiracy count from the range suggested by the sentencing guidelines, and the sentences are proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The fact a sentence is consecutive to another is irrelevant to a determination whether a sentence is disproportionately excessive. *People v Warner*, 190 Mich App 734; 476 NW2d 660 (1991); *People v Miles*, ___ Mich ___; ___ NW2d ___ (Docket No. 100683, issued 03/06/97).

Finally, defendant argues the sentencing court had no statutory authority to impose defendant's conspiracy sentence consecutive to defendant's prior sentence stemming from the felonious assault conviction. We disagree. Although defendant is correct in asserting the conspiracy charge is a substantive offense not subject to the consecutive sentencing provisions of the controlled substance act, MCL 333.7401(2); MSA 14.15(7401)(2), because the assault conviction was committed while the conspiracy charges were pending, MCL 768.7b; MSA 28.1030(2), permits the imposition of

consecutive sentences. The consecutive sentence may be imposed on the prior or subsequent offense, whichever receives a sentence later in time. *People v Kaake*, 118 Mich App 71; 324 NW2d 488 (1982).

Affirmed.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt