

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MILTON OAKES,

Defendant-Appellant.

UNPUBLISHED

April 8, 1997

No. 192233

Kalamazoo Circuit Court

LC No. D94-000130-FH

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer,* JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and his sentence of four to twenty years' imprisonment. We affirm.

Defendant's conviction arose following his sale of 7.2 grams of cocaine to a police informant for \$400. On appeal, defendant specifically challenges the sufficiency of the evidence as to the element of possession alone. However, because defendant was tried and convicted for the actual delivery of cocaine, rather than possession with the intent to deliver, the element of possession is not an issue. We note that defendant mentions nothing about the delivery aspect of the crime charged, and find that his argument concerning possession is irrelevant and without merit. Even when giving defendant the benefit of the doubt and assuming that he instead argues that he never *delivered* the cocaine, because he never *possessed* it, we conclude that where delivery from defendant is proven, it can in turn be inferred that defendant possessed the substance he delivered. Here, when looking only at the evidence favorable to the prosecution, and leaving all issues of credibility to the jury, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), there was testimony presented by the informant himself that defendant personally handed him forty-two rocks of cocaine on the day in question. Such evidence, if believed by the jury, is sufficient to convict defendant of the crime charged.

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

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer