

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD MITCHELL, a/k/a TERENCE  
COLEMAN,

Defendant-Appellant.

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UNPUBLISHED

July 26, 2002

No. 230520

Wayne Circuit Court

LC No. 00-007927

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant, a fourth habitual offender, MCL 769.12, to an enhanced term of 2 to 20 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that insufficient evidence support his conviction. In reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

To sustain defendant's conviction, the prosecution had to show that defendant delivered a mixture containing cocaine that weighed less than fifty grams. MCL 333.7401(2)(a)(iv). "Delivery" means "the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship. MCL 333.7105(1); *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001). "The cases are well settled that the act of transferring a controlled substance is sufficient to sustain a finding of an actual delivery." *Schultz*, *supra* at 704, quoting *People v Maleski*, 220 Mich App 518, 522; 560 NW2d 71 (1996).

At the bench trial, an undercover narcotics officer testified that while he posed as a construction worker outside an apartment building, he witnessed a drug transaction between defendant and a woman. The officer observed the woman approach defendant and engage him in a brief discussion, after which defendant accepted cash from the woman and in exchange gave her a yellowish, lumpy substance. According to the parties' stipulation, the substance, which

was taken from the woman following her arrest, constituted a rock of crack cocaine weighing .17 grams. This evidence supported the trial court's rational determination beyond any reasonable doubt that defendant violated MCL 333.7401(2)(a)(iv).

To support his contention that insufficient evidence existed, defendant points to several inconsistencies in the trial testimony. While defendant suggests that the contradictions cast doubt on the otherwise incriminating testimony of the police officers, we have long repeated that assessing witness credibility and weighing evidence remain matters for the trier of fact to decide. *People v Cain*, 238 Mich App 95, 119; 605 NW2d 28 (1999); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). The trial court explicitly found credible the police officers' account of defendant's delivery of the cocaine, and we will not second guess this determination.

Defendant also argues that his conviction was against the great weight of the evidence. In light of the ample evidence presented supporting defendant's conviction, we cannot conclude that the evidence preponderated so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). We conclude that defendant's conviction was not against the great weight of the evidence.

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder