STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 2, 2001
v	No. 214420 Oakland Circuit Court
GRANDVILLE LEE MASSEY a/k/a GRANVILLE MASSEY, Defendant-Appellant.	LC No. 94-135059-FH

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted as charged of possession with intent to deliver between 225 and 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), conspiracy to commit that offense, MCL 750.157a; MSA 28.354(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was tried jointly with codefendant Mark Richardson. Defendant was sentenced as a fourth habitual offender, MCL 762.12; MSA 28.1084, to consecutive terms of twenty to sixty years' imprisonment for each controlled substance conviction, along with the mandatory two-year consecutive prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress the evidence found on his person on the ground that there was no probable cause to arrest him.[1] We disagree. This Court reviews the trial court's ultimate decision with regard to a motion to suppress evidence de novo, but reviews the trial court's factual findings for clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

The search incident to a lawful arrest exception to the warrant requirement allows an arresting officer to search the person arrested to remove any weapons the latter might use to escape or resist arrest. *People v Stergowski*, 391 Mich 714, 723; 219 NW2d 68 (1974), citing

[1] On appeal, defendant does not challenge the stop of the vehicle or the search of the glove compartment of Richardson's car.

Chimel v California, 395 US 752, 762-763; 89 S Ct 2034; 23 L Ed 2d 685 (1969). The officer may also search for and seize any evidence on the arrestee's person to prevent its concealment or destruction. *Stergowski*, *supra* at 723-724, citing *Chimel*, *supra* at 395 US 763; *People v Catanzarite*, 211 Mich App 573, 581; 536 NW2d 570 (1995). A search justified by an arrest may occur immediately before the arrest if the police have probable cause to arrest the suspect before conducting the search. *People v Champion*, 452 Mich 92, 115-116; 549 NW2d 849 (1996). "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id.* at 115.

In this case, the agents had probable cause to arrest defendant before conducting the search of his person that yielded slightly less than one ounce of cocaine, two pagers, a small gram scale and $1,800 in cash. Defendant was ordered out of the car after special agents had to force it to a stop when the driver ignored the police sirens and signals. After the agents carried out the patdown search for weapons, but before the items were seized from defendant's person, the agents discovered eight ounces of cocaine and a gun in the glove compartment of the car. When the car was stopped on the way to deliver the cocaine, defendant was sitting directly in front of the glove compartment where the eight ounces of cocaine and the gun were found. Further, the agents had information that Richardson was delivering nine ounces of cocaine to a confidential informant, and that Richardson told the confidential informant that "we'll be there." The agents also testified that they could not recall a situation in which an individual acted alone in delivering such a quantity of drugs. Under these facts and circumstances, we conclude that the agents had probable cause to arrest defendant because it was reasonable to believe that he was assisting Richardson in the delivery of the cocaine. *Champion*, *supra* at 115. Thus, the cocaine, pagers, small scale and money from defendant's person were properly seized pursuant to a search incident to an arrest, and the trial court did not err in denying defendant's motion to suppress this evidence.

Next, the trial court did not err by failing to instruct the jury whether defendant had knowledge of the statutory amount in order to convict him of possession with intent to deliver between 225 and 650 grams of cocaine and conspiracy to commit that offense because knowledge of the precise quantity of the controlled substance is not an essential element of either offense. *People v Northrop*, 213 Mich App 494, 498; 541 NW2d 275 (1995); *People v Mass*, 238 Mich App 333, 335-339; 605 NW2d 322 (1999), lv gtd 462 Mich 877 (2000).[2] Moreover, there was no error because the instructions as a whole fairly presented the issues to be tried. *Id.* at 339. Finally, any omission of an instruction about defendant's knowledge of the quantity involved did not deny him a fair trial where defendant's knowledge of the statutory amount was not an issue in the case.

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[2] We acknowledge that the issue "whether knowledge of the amount of the controlled substance was a necessary element of the delivery and conspiracy charges and . . . whether the omission of it from the jury instructions deprived the defendant of a fair trial" is currently before our Supreme Court. 462 Mich 877 (2000). However, until the issue is conclusively decided, we are bound by MCR 7.215(H)(1) to follow the precedent established by this Court.

There was also sufficient evidence to establish the essential elements of the conspiracy charge where the direct and circumstantial evidence, and the reasonable inferences therefrom, established that defendant and Richardson agreed to deliver the statutory amount to the confidential informant. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Crawford*, 232 Mich App 608, 616; 591 NW2d 669 (1998); see also *People v Justice (After Remand)*, 454 Mich 334, 349; 562 NW2d 652 (1997) (elements of conspiracy to possess with the intent to deliver a controlled substance). Finally, as we previously concluded, there was sufficient evidence to establish the essential elements of the conspiracy and possession with intent to deliver charges because knowledge of the quantity of the controlled substance is not an essential element of either offense. *Northrop*, *supra* at 498; *Mass*, *supra* at 335-339; see also *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998), CJI2d 12.3, and *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995) (elements of possession with intent to deliver cocaine and aiding and abetting).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter