

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 182324

Oakland Circuit Court

THOMAS MCCLAIN HUNTER,

LC No. 93-129161 FC

Defendant-Appellant.

Before: Hoekstra, P.J. and Wahls and Gribbs, JJ

GRIBBS, J., (concurring in part and dissenting in part)

I respectfully dissent from that portion of the majority opinion reversing defendant's conspiracy conviction. The coconspirator in this case had an intimate relationship with defendant and spent a great deal of time with him. She testified that she saw defendant with "kind of a large quantity" of cocaine, larger than a sandwich bag, every two or three days. The coconspirator indicated the size of the bags with her hands for the jury. Defendant arranged to go to California to "check on some situation" concerning cocaine, and told her that he was going to mail a package of cocaine to her apartment. The coconspirator testified that she and defendant discussed the package of cocaine on a regular basis and that defendant indicated that the package was worth "too much money" to walk away from. The coconspirator knew that she could get into trouble for signing for the package, and knew that defendant planned to take the cocaine and "run with the package" immediately as soon as the package arrived. The coconspirator also testified that she accepted a plea bargain that would result in a possible twenty-year minimum term, or a possible penalty of life imprisonment in exchange for her testimony. Finally, the trial court properly instructed the jury that, to convict defendant of conspiracy in this case, it must find that defendant and the coconspirator knowingly agreed to possess, with the intent to deliver, over 650 grams of cocaine.

I believe that a jury could infer from the evidence presented at trial that the coconspirator had the specific intent to deliver in excess of 650 grams of cocaine to a third person, even though she was not aware of the exact number of grams of cocaine that would be in the package. Accordingly, I would affirm defendant's convictions and sentences in all respects.

/s/ Roman S. Gibbs