STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 2001
v	No. 214180 Oakland Circuit Court
MARK I. RICHARDSON, Defendant-Appellant.	LC No. 94-135060-FH ON REMAND

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

PER CURIAM.

A jury convicted defendant of conspiracy to deliver more than 225 but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii), possession with intent to deliver more than 225 but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii), possession of an altered driver's license, MCL 257.324, and possession of a firearm during the commission of a felony, MCL 750.227b. A judge convicted him of possession of a firearm by a convicted felon, MCL 750.224f. After defendant appealed by right to this Court, we affirmed all his convictions. Subsequently, defendant appealed to the Supreme Court, which remanded the case to us to reconsider defendant's conspiracy conviction only in light of *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001), a case that had been pending in the Supreme Court at the time of our initial decision. We now reverse the conspiracy conviction and remand for a new trial on that charge.

In *Mass*, *supra* at 638-639, the Supreme Court held that in order for a trier of fact to convict a defendant of conspiracy to deliver more than 225 but less than 650 grams of cocaine, it must find that the defendant "conspired to deliver, not just any amount of cocaine, but at least 225 grams." Here, the trial court originally instructed the jurors as follows:

> To find the defendant guilty of conspiracy you must be satisfied beyond a reasonable doubt that there was an agreement to deliver between 225 and 650 grams of cocaine.

After deliberating for some time, the jurors asked, "In order to be found guilty of conspiracy to deliver between 225 and 650 grams of cocaine, does each Defendant need to know the exact amount to be delivered or that the amount is in that range?" The court responded:

> The amount need not be known to the Defendants. Only that there is a conspiracy to deliver and that the substance is cocaine. The subsequent determination of the amount determines the actual charge.

Defendant argues that this re-instruction requires reversal. We agree. Jury instructions are to be read as a whole rather than extracted piecemeal to establish error, and even if the instructions are somewhat imperfect, no error exists as long as the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995); *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

Here, even considering the court's initial, correct instruction, we conclude that the instructions as a whole did not fairly present the issues to be tried or sufficiently protect the defendant's rights. Indeed, the last instruction the jurors heard with regard to the conspiracy charge informed them that "[t]he amount need not be known to the Defendants." This is in clear contravention to *Mass* and requires a new trial. See *Mass, supra* at 640-641.

Given our resolution of this issue, we need not address the additional basis on which defendant contends that a new trial is warranted.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Patrick M. Meter