

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIDAL D. MCDONALD,

Defendant-Appellant.

UNPUBLISHED

June 12, 1998

No. 201656

Oakland Circuit Court

LC No. 96-147312 FH

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction following a jury trial for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm.

On appeal defendant challenges the trial court's failure to give his requested jury instruction as to use of a controlled substance. Defendant asserts that this instruction was supported by the expert testimony of a police officer that 47 grams of cocaine could be for personal use.

On appeal, jury instructions are reviewed in their entirety. Reversal is not required where the instructions, taken as a whole, sufficiently protect the defendant's rights. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995). Failure to give a requested instruction is error requiring reversal only if the requested instruction (1) is substantially correct, (2) was not substantially covered in the charge given to the jury, and (3) concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense. *Id.*, 159-160.

Here, use was not an important point at trial. There was no evidence offered that defendant used drugs. The police officer only testified that it was possible that 47 grams of cocaine could be for personal use, although he had never seen that situation. Where the jury was instructed on simple possession as well as possession with intent to deliver, and there was no evidence that defendant used cocaine, the trial court did not err in refusing to give an instruction as to personal use.

Affirm.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage