

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAY D. SATCHEL,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 168412

LC No. 92-60264-FH

Before: Saad, P.J., and McDonald and M. A. Chrzanowski,* JJ.

PER CURIAM.

Following a jury trial defendant was convicted of attempt to possess with intent to deliver cocaine, MCL 333.7401(a)(iv); MSA 14.15(7401), MCL 750.92; MSA 28.287, and conspiracy to possess with intent to deliver cocaine, MCL 333.7401(a)(iv), MSA 14.15(7401); MCL 750.157a; MSA 28.354(1), and sentenced to consecutive prison sentences of from two to twenty years for the attempt conviction and four to forty years for the conspiracy conviction, as enhanced by defendant's status as a second drug offender under MCL 333.7413; MSA 14.15(7413). Defendant now appeals as of right raising numerous alleged errors. We affirm.

The trial court did not abuse its discretion in permitting the introduction of certain hearsay testimony by a coconspirator. *People v Briseno*, 211 Mich App 11; 535 NW2d 559 (1995). No hearsay testimony was permitted until after the court ruled sufficient evidence of the existence of the conspiracy was presented. *People v Vega*, 413 Mich 773; 321 NW2d 675 (1982). We will affirm a trial court's ruling on this matter regardless of the trial court's unfortunate misstatement of the required level of proof where, as here, it is clear the prosecutor proved the existence of the conspiracy by a preponderance of the evidence. *People v Rockwell*, 188 Mich App 405; 470 NW2d 673 (1991).

No manifest injustice resulted from the trial court's failure to give a police agent-conspiracy instruction. The instruction was not requested and was not supported by the evidence. The conspiracy instructions given by the court were proper. *People v Vaughn*, 447 Mich 217; 524 NW2d 217

* Circuit judge, sitting on the Court of Appeals by assignment.

(1994); *People v Holt*, 207 Mich App 113; 523 NW2d 856 (1994). There was also sufficient evidence presented to prove all the elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992).

Finally we find no prejudicial deficiency in defendant's trial counsel apparent from the record, *People v Moseler*, 202 Mich App 296; 508 NW2d 192 (1993); *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1994), and decline to review defendant's remaining claim because defendant has taken no action to preserve the issue. Although defendant claims his vehicle was forfeited, he has not provided this court with any supporting evidence and there is no indication he has filed a written request pursuant to MCR 6.433(A) for any documents or transcripts related the issue.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Mary A. Chrzanowski