

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON SAMUEL,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

No. 193318

Recorder's Court

LC No. 95-005710

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant was convicted, following a bench trial, of the careless, reckless or negligent use of a firearm causing injury, MCL 752.861; MSA 28.436(21). He received a sentence of two years' probation. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor charged defendant with assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court acquitted defendant of these charges, but convicted defendant of the cognate lesser offense of reckless use of a firearm causing injury. *People v Taylor*, 195 Mich App 57, 62; 489 NW2d 99 (1992). Defendant argues that the trial court's finding of guilt of this lesser included offense is unsupported by the evidence presented at trial and, therefore, that the verdict reflects the judge's attempt to reduce the prosecutor's charges to comport with some idea of fairness. *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984). We disagree.

The victim never testified that defendant intentionally pointed the handgun at her and discharged it in her direction. Instead, the victim gave testimony, found credible by the court, that supports the conclusion that defendant discharged the firearm under circumstances demonstrating

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

carelessness or negligence. MCL 752.861; MSA 28.436(21); *People v Dabish*, 181 Mich App 469, 474; 450 NW2d 44 (1989); CJI2d 11.20. Accordingly, we decline to upset defendant's conviction and sentence on appeal. *People v Garcia*, 398 Mich 250, 262-263; 247 NW2d 547 (1976).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell