

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JOHN SHAMBEAU,

Defendant-Appellant.

UNPUBLISHED

April 12, 2002

No. 229087

Montmorency Circuit Court

LC No. 99-001176-FH

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault and battery. MCL 750.81. We affirm. This appeal is being decided without oral arguments pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court erred in failing to give the accident instruction that he requested, CJI2d 7.3a. The trial court declined to give the instruction, stating that it was not supported by the evidence.

This Court will review jury instructions in their entirety to determine whether error requiring reversal occurred. *People v Perry*, 218 Mich App 520, 526; 554 NW2d 362 (1996). Instructions must fairly present to the jury the issues to be tried, and protect the rights of the defendant. *Id.* A trial court is required to give requested jury instructions only if the instructions are supported by the evidence or the facts of the case. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court. *Id.*

The trial court did not abuse its discretion in refusing to give the accident instruction. Defendant presented no evidence showing that his act was accidental. Suggesting an accident theory in opening or closing statements does not warrant an instruction on that theory. *People v Mills*, 450 Mich 61, 82 n15; 537 NW2d 909 (1995). The instruction was not supported by the evidence.

Affirm.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh