MAY 31 1979
IOWA SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff - Appellee,	)	Filed May 31, 1979
vs.	)	
GAVINO ALANIS,	)	126 62218
Defendant - Appellant.	)	

Appeal from Muscatine District Court - Robert K. Stohr, Judge.

Defendant appeals conviction of delivery of marijuana alleging insufficient evidence of intent to profit and erroneous refusal to submit his requested jury instruction. - Affirmed.

Jose Olvera, of Gomez, Feuerbach, Olvera & May, Muscatine, for Appellant.

Thomas J. Miller, Attorney General of Iowa, Thomas A. Evans, Jr., Assistant Attorney General, and Stephen Petersen, Muscatine County Attorney, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Gavino Alanis appeals conviction of delivery of marijuana in violation of section 204.401(1), The Code 1977. We affirm.

The evidence presented at trial showed a typical undercover purchase of marijuana. Special agent Roger Timco, accompanied by a police informant, met the defendant at his residence and was advised to follow the defendant to a nearby park. There, defendant delivered a brown bag of marijuana to Timco in exchange for $300. Timco then asked defendant if the price of future drug purchases could be reduced. Defendant responded that the price would be lower if a larger quantity of marijuana was purchased. In State v. Didley, 264 N.W.2d 732, 733 (Iowa 1978), the court held that direct evidence is not necessary in order to show that a defendant delivered controlled substances for the purpose of obtaining "an excess of return over expenditures." In the instant case, the jury could find that the exchange between defendant and Timco was an arms-length commercial transaction through which defendant sought pecuniary gain. Trial court correctly overruled defendant's motions for directed verdict and for new trial.

Defendant also argues the trial court erred in failing to submit defendant's requested jury instruction. Said instruction would have informed the jury that in determining defendant's guilt or innocence it should consider only the transaction which occurred on May 31, 1977, and not a separate transaction which took place approximately fifteen days earlier. An examination of the instructions which were given, however, reveals that the point raised by defendant's requested instruction was substantially covered by Instructions No. 4 and 5. Accordingly, the refusal to grant the requested instruction was within the trial court's discretion. See State v. Tensley, 249 N.W.2d 659, 662 (Iowa 1977).

Defendant's conviction is affirmed.