

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE BURLEY,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 196814
Recorder's Court
LC No. 95-013586

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant was convicted in a bench trial of armed robbery, contending that his contemporaneous acquittal of a felony-firearm charge, under the facts of the case, rendered the guilty verdict inconsistent. Inconsistent verdicts are not permitted in bench trials. *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982). Defendant's appeal by right is being decided without oral argument pursuant to MCR 7.214(E).

In its findings of fact, the trial court concluded that defendant possessed and used, during the robbery, an article "used or fashioned in a manner to lead the person to believe it was a firearm," but the trial judge also expressed a reasonable doubt as to whether the object was, in fact, a firearm. Such a verdict is not inconsistent. For armed robbery, the prosecution must establish beyond a reasonable doubt merely that defendant was armed with a weapon or an object or article used or fashioned reasonably to lead the victim to believe it to be a dangerous weapon. *People v Saenz*, 411 Mich 454; 307 NW2d 675 (1981). Felony firearm, however, requires an actual firearm. *People v Ray*, 119 Mich App 724 (1982). The trial court's verdict was neither legally nor factually inconsistent.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly
/s/ Roman S. Gribbs