

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

EZELL CALDWELL, JR.,

Defendant-Appellant.

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UNPUBLISHED  
September 30, 2003

No. 240224  
Wayne Circuit Court  
LC No. 01-004360-01

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that there was insufficient evidence to support his conviction. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

To be guilty of felony-firearm, one must carry or possess a firearm when committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Here, the evidence showed that two people attempted the underlying crime, using two weapons. The victim shot outside the house, indicating that one of the assailants was outside. Defendant was shot while outside, and a hat along with a handkerchief tied into a mask were found next to him. Defendant admitted to police that prior to the attack, he was outside the victim's house with another man who had a rifle. A reasonable juror could find that defendant was guilty of felony-firearm.

Defendant also asserts that the court erred in denying his motion for a mistrial. This Court will review a trial court's decision to grant or deny a mistrial for abuse of discretion. *People v Ortiz-Kehoe*, 237 Mich App 508, 512; 603 NW2d 802 (1999). A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial. *Id.*, 513.

There is no showing that defendant was prejudiced by the prosecutor's comment in closing argument that defendant admitted possessing a gun. Defense counsel objected that the prosecutor's argument was not supported by the evidence. The court instructed the jury repeatedly that the attorneys' arguments were not evidence, and that it should decide the case on the evidence presented. The trial court did not abuse its discretion in finding that there was little danger that the jury was influenced by the comment, and that a mistrial was not warranted.

Affirmed.

/s/ Michael R. Smolenski

/s/ William B. Murphy

/s/ Kurtis T. Wilder