

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LATISHA SLOAN,

Defendant-Appellant.

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UNPUBLISHED  
February 28, 2008

No. 274836  
Wayne Circuit Court  
LC No. 06-007937-01

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit armed robbery, MCL 750.89, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 10 to 15 years' imprisonment for the assault with intent to commit armed robbery conviction, two years' probation for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

**I. FACTS**

On August 31, 2005, Wanda Anderson was at 15140 Evergreen Road in Detroit. Anderson lived at the home with her son, her adult daughter, Natasha Anderson, and Natasha's three children. According to Wanda, at approximately 9:00 a.m., defendant arrived at the home with her boyfriend, Raschid, and an individual named Jamal, who may have been her cousin. It had been several months since Wanda had last seen defendant. Defendant asked Wanda if she could use her bathroom. After defendant used the bathroom, the group left the home.

The group returned to the home at approximately 12:00 p.m. Defendant informed Wanda that she was in the area looking at a house. Raschid and Jamal both sat on a sofa in the living room while defendant again used the bathroom.

When defendant came out of the bathroom, Wanda called Natasha so that she could talk to defendant. Natasha said that she was on her way to the house and the group decided to wait for her to get home. When Natasha arrived at the house, she placed her belongings inside her bedroom door and then closed and locked the bedroom door. Natasha then began to talk to Jamal and defendant. According to Natasha, Raschid was in the bathroom. When Raschid came out of the bathroom, he had a gun drawn. Raschid held the gun to Natasha's head and demanded

her belongings. Wanda grabbed Raschid, apparently in an effort to stop the attack on Natasha. Defendant then grabbed Wanda from behind and began to punch her in the face. Defendant ordered Jamal to close the front door and not let anyone leave. At some point during the struggle, defendant allegedly took Wanda's cell phone from the dining room table.

During the course of this confrontation, Natasha's four-year-old daughter, Jayla, was present in the room. According to Wanda, Jamal was holding Jayla, while Raschid and defendant fought with her and Natasha. According to Wanda, Natasha, and Jayla, Raschid held the gun to Jayla's head. Natasha heard defendant yell "kill her" in reference to Jayla. Raschid then took Jayla to a back room in the house. It appears that the fighting had stopped, but resumed when Jayla was taken to the back room. During the renewed fighting, Wanda was struck with the firearm, causing injury to her head, which required seven staples to repair. She does not know who struck her. Natasha further testified that she witnessed Raschid hand the firearm to defendant. At some point during the confrontation, Natasha was able to get to the back room and get Jayla. Natasha and Jayla then ran out of a side door of the house. Wanda heard defendant yell out that Natasha had placed a phone call. Raschid then jumped out of a side window and defendant ran out of the front door.<sup>1</sup>

After running out of the home, Natasha encountered an unknown motorist. The automobile stopped and picked her up. Natasha then went to the police station to make a statement regarding the incident. She then went to visit Wanda, who had apparently been taken to the hospital. Wanda also provided a statement to police at some point that day. While Natasha claims that she told the police that Raschid had held the gun to Jayla's head, no such allegation appears in the police reports that were constructed based on Wanda's and Natasha's statements, nor did the reports say that defendant stole a cell phone. Furthermore, while Wanda told the police that defendant chased Natasha as Natasha ran from the house, Natasha claimed that nobody pursued her when she exited the home.

According to defendant, she did not make two trips to Natasha's home that day. Rather, defendant testified that she woke up that morning with plans to go see apartments. As she was leaving her house, Raschid arrived. Raschid then accompanied her as she went to visit one apartment. Defendant and Raschid then went to the home on Evergreen before they were to make a visit to a second apartment. Defendant testified that there was not a third person with her on that day and she does not know anybody named Jamal. Upon arriving at the home, defendant used the bathroom. When she came out of the bathroom, Raschid had a gun in his hand. He proceeded to strike Wanda with the gun and then demanded Natasha's belongings. Defendant, who did not know that Raschid had brought a gun with him, ran out of the house when Raschid was taking Jayla to the back room. Defendant then got on a bus. Upon arriving home, defendant was informed that the police were looking for her. She went to the police station and was questioned about Raschid's whereabouts. Defendant was not arrested until one year after the confrontation.

## II. JURY INSTRUCTIONS

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<sup>1</sup> It is unclear how Jamal exited the home.

Defendant first contends that her due process rights were violated when the trial court failed to instruct the jury about the proper consideration of prior inconsistent statements allegedly made by two of the witnesses. She also asserts that her counsel was ineffective in failing to request such an instruction. We reject both arguments.

Because defendant failed to request this instruction or object to the omission of the instruction, we review for plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We find no such error. The jury received general instructions on witness credibility, including that if they judged a witness not credible, they could reject the witnesses' testimony. There is no basis for defendant's assertion that the failure to give the more specific instruction resulted in the jury's assumption that they could not consider the inconsistent statements for any purpose, including to judge the witnesses' credibility.

We further conclude that defendant was not denied the effective assistance of counsel by counsel's failure to object to the omission of the prior inconsistent statement instruction. In order to prevail on an appeal based on ineffective assistance of counsel, a defendant must establish that her attorney's assistance "fell below an objective standard of reasonableness and that this was so prejudicial to [her] that [s]he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). There is a strong presumption that defense counsel's actions were sound trial strategy. *Id.* In order to demonstrate prejudice, defendant must establish that there is a reasonable probability that, but for the mistakes of her attorney, the result of the trial would have been different. *Id.* at 302-303.

Defendant has not established either that counsel made a mistake or that he was prejudiced. In fact, it appears that counsel may have deliberately eschewed the instruction so that the witnesses' prior inconsistent statements, which were more favorable to defendant than the testimony at trial, could be used by the jury as substantive evidence, and not only in assessing the witnesses' credibility. Thus, we find no error on the part of counsel and no prejudice to defendant.

### III. SUFFICIENCY OF THE EVIDENCE

Finally, defendant argues that there was insufficient evidence to convict her of felony-firearm. We disagree.

#### A. Standard of Review

When deciding whether there was insufficient evidence to support a conviction, this Court reviews the record de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), *aff'd* 466 Mich 39 (2002). We analyze the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could determine that the elements of the charged offense were proven beyond a reasonable doubt. *Id.*

#### B. Analysis

Felony-firearm is established where the prosecutor proves beyond a reasonable doubt that the defendant carried or possessed a firearm while committing or attempting to commit a felony.

*People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). For the purpose of the felony-firearm statute, the term firearm has been statutorily defined as “any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BB’s not exceeding .177 caliber by means of spring, gas or air.” MCL 8.3t.

Defendant contends that because the weapon used during the confrontation was never fired, and because none of the witnesses were experts in firearms, it is not possible to say that the weapon was an operational firearm. This Court has previously stated that the operability of the firearm is not an element of the felony-firearm offense, and thus, does not have to be proven by the prosecution. *People v Mason*, 96 Mich App 47, 51; 292 NW2d 480 (1980). Further, this Court has also held that the prosecution need not recover the alleged firearm in order to secure a conviction for felony-firearm. *People v Hayden*, 132 Mich App 273, 295-296; 348 NW2d 672 (1984). In doing so, this Court explained that to require the prosecution to produce the alleged firearm at trial in order to secure a felony-firearm conviction would lessen the protections that the felony-firearm statute was designed to provide. *Id.* at 296.

In the present case, Wanda, Natasha, and Jayla each testified that a firearm was used during the robbery. Natasha was able to speculate that the weapon was a .38 caliber revolver, and testified that she saw defendant holding the weapon during the confrontation. Defendant does not contest that there was sufficient evidence to establish the underlying felonies of assault with intent to commit armed robbery and felonious assault. As such, the only question is whether a rational finder of fact could conclude that a firearm was utilized. The various witnesses testified to the presence of a gun, and because the prosecutor need not prove the gun was operational to secure a conviction, defendant’s conviction for felony-firearm is supported by sufficient evidence.

Affirmed.

/s/ Helene N. White  
/s/ Joel P. Hoekstra  
/s/ Bill Schuette