

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON BURRELL,

Defendant-Appellant.

UNPUBLISHED
February 18, 2003

No. 237771
Wayne Circuit Court
LC No. 00-011621

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for armed robbery, MCL 750.529, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that he was denied due process of law by the prosecutor’s inadequate explication of the theory of the case in the opening statement. MCR 6.414(B) provides:

Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor’s case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable limits on the opening statement.

The prosecutor adequately presented the theory that defendant did not have actual possession of the weapon during the robbery. Defendant failed to object to opening statement, he has not shown how his case was affected by any inadequacy of the prosecutor’s opening statement, and reversal is not required. *People v Stimage*, 202 Mich App 28, 32; 507 NW2d 778 (1983).

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, amended 441 Mich 201 (1992).

To convict a defendant of felony-firearm under an aiding and abetting theory, it must be established that defendant assisted in obtaining or retaining the possession of the weapon. *People v Johnson*, 411 Mich 50, 54; 303 NW2d 442 (1981). In his statement to police, defendant admitted that just before the robbery, he handed the weapon to his co-defendant. There was sufficient evidence to show that defendant aided and abetted co-defendant in using a firearm in the commission of a felony.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray