

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PASON BYRDSONG,

Defendant-Appellant.

UNPUBLISHED

October 23, 2003

No. 241566

Wayne Circuit Court

LC No. 01-007950-01

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions in separate trials on charges of possession of a firearm during the commission of a felony, MCL 750.227b, and carrying a concealed weapon (CCW), MCL 750.227. We affirm.

First, defendant argues the prosecutor presented insufficient evidence to support his felony-firearm conviction. We disagree. Review of the sufficiency of the evidence in a criminal case is de novo. *People v Mahew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

Defendant's arguments primarily focus on witness credibility. Defendant notes inconsistencies in the victim's testimony and asserts that the victim had a motivation to lie, and he challenges police officer testimony indicating defendant had a gun when he was arrested. However, this Court should not interfere with the fact-finder's role of determining witnesses' credibility. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Instead, we must view the evidence in the light most favorable to the prosecutor and make credibility choices in support of the verdict. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Under this standard, the evidence, when viewed in a light most favorable to the prosecution, leads to a reasonable conclusion that defendant committed the offense of felony-firearm.

Defendant also correctly notes that while a jury may render an inconsistent verdict, this Court must not rule in a way that creates an inconsistency in the jury's verdict. *People v Burgess*, 419 Mich 305, 310-312; 353 NW2d 444 (1984). However, only defendant's felony-firearm conviction is before this panel. "[I]t is not required that defendant be convicted of a felony or the attempt to commit a felony in order to be convicted of felony-firearm." *People v Banham*, 182 Mich App 130, 135-136; 451 Mich 530 (1989). As such, the jury's decision to acquit defendant of armed robbery does not compel a conclusion that there was insufficient

evidence to convict defendant of felony-firearm. Thus, our decision cannot create an inconsistency because no other conviction exists for our review and because defendant can be convicted of felony-firearm when acquitted of armed robbery.

Second, defendant contends that the trial court improperly instructed the jury that it must find defendant not guilty *and* guilty of felony-firearm. However, defense counsel affirmatively expressed satisfaction with the jury instructions. By doing so, defense counsel relinquished his client's right to object to them later. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Accordingly, defendant has waived this issue and no error exists for our review. *Id.* at 216.¹

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Jane E. Markey

¹ We note that even if the issue was not waived, reversal is not required as the instructions, as a whole, fairly presented the issues and sufficly protected defendant's rights. See *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). Moreover, our review of the record demonstrates that the phrase was used in describing options on the verdict form and when read in context was not erroneous.