

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD C. JARRETT,

Defendant-Appellant.

UNPUBLISHED

April 9, 1999

No. 207193

Recorder's Court

LC No. 96-001687

Before: Murphy, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant was initially charged with two counts of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), and one count of felony-firearm. MCL 750.227b; MSA 28.424(2). After the defense rested, the trial court granted defendant a directed verdict of acquittal on the two first-degree murder charges, but permitted the case to proceed to the jury on two counts of second-degree murder. MCL 750.317; MSA 28.549. The jury found defendant guilty of the felony-firearm charge, acquitted defendant of one count of second-degree murder, and could not reach a verdict regarding the other count of second-degree murder. Defendant was subsequently retried on one count of second-degree murder, after which this second jury also failed to reach a verdict. The trial court then dismissed the remaining second-degree murder charge on the basis that a third trial would violate defendant's due process rights. Defendant now appeals as of right from his felony-firearm conviction, for which the trial court imposed the mandatory term of two years' imprisonment. We affirm.

Defendant first suggests that when the trial court directed a verdict of acquittal on the first-degree murder charges, it should have dismissed the case against him altogether. Defendant contends the trial court erroneously submitted the second-degree murder charges to the jury. This issue presents a question of law, which this Court reviews de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

The trial court properly permitted the two counts of second-degree murder to proceed to the jury.

[U]pon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury, or the judge in a trial without a jury, may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of a degree of that offense inferior to that charged in the indictment, or of an attempt to commit that offense. [MCL 768.32(1); MSA 28.1055(1).]

MCL 768.32; MSA 28.1055 thus allows for punishment of an offense of different degrees whenever the charge for the higher offense includes a charge for the lesser. *People v Chamblis*, 395 Mich 408, 415-416; 236 NW2d 473 (1975). Every charge of first-degree murder necessarily includes the lesser offense of second-degree murder. *People v Jenkins*, 395 Mich 440, 442; 236 NW2d 503 (1975). Accordingly, defendant's first-degree murder charges necessarily included charges of second-degree murder, and therefore the trial court did not err in submitting second-degree murder charges to the jury after directing a verdict of acquittal on the first-degree murder charges.

Defendant next argues that his conviction of felony-firearm should be reversed because he was not convicted of an underlying felony. However, the Supreme Court has held that a conviction of felony-firearm may stand where the jury has acquitted defendant of the underlying felony. *People v Lewis*, 415 Mich 443, 453-454; 330 NW2d 16 (1982).

Defendant also alleges that the jury must have believed defendant's self-defense theory when it acquitted defendant of one count of second-degree murder and then failed to reach a decision with regard to the remaining second-degree murder charge. Therefore, defendant reasons, his felony-firearm conviction should be reversed because the evidence did not establish that he committed a felony. However, defendant's argument calls for speculation, and this Court will not speculate regarding a jury's conclusions. *People v Garcia*, 448 Mich 442, 460-461 n 25; 531 NW2d 683 (1995). Moreover, juries are not held to any rules of logic and possess the capacity for leniency. *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984). Accordingly, this Court will not reverse defendant's felony-firearm conviction.

Affirmed.

/s/ William B. Murphy

/s/ Hilda R. Gage

/s/ Brian K. Zahra