

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS SHORTER,

Defendant-Appellant.

UNPUBLISHED

March 21, 2000

No. 212725

Wayne Circuit Court

Criminal Division

LC No. 97-004632

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2),¹ for which he was sentenced to a mandatory term of two years' imprisonment. We affirm.

Defendant first contends that the trial court erred in permitting the prosecutor to elicit testimony that certain witnesses were apprehensive about testifying. We disagree. We review a trial court's ruling on the admission of evidence for an abuse of discretion. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court properly allowed the testimony as to witnesses Chicquila Bostic and Angela Jorgensen for the purpose of explaining their inability or reluctance to identify defendant. *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). Defendant failed to preserve this issue with respect to the other witnesses by failing to timely object to the challenged testimony, *People v Welch*, 226 Mich App 461, 464; 574 NW2d 682 (1997), and we are not convinced that the trial court's ruling represented a clear or obvious error that affected the outcome of trial. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant next contends that he was denied a fair and impartial trial due to prosecutorial misconduct. Because defendant did not object at trial to the challenged comments, appellate review is precluded unless a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in manifest injustice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Having examined the record and evaluated the alleged improper remarks in context, we conclude that defendant was not denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

Defendant next asserts that the constitutional prohibition against double jeopardy precludes his conviction of felony-firearm where, as here, the jury acquitted him of the underlying felonies. Defendant has not explained how his conviction implicates any of the three protections afforded by the double jeopardy clause, *People v Gonzalez*, 197 Mich App 385, 392; 496 NW2d 312 (1992), and thus has abandoned the issue. See *People v Kean*, 204 Mich App 533, 536; 516 NW2d 128 (1994). Furthermore, while the jury's verdict may have been illogical and inconsistent, that is not grounds for reversal. *People v Wakeford*, 418 Mich 95, 109 n 13; 341 NW2d 68 (1983); *People v Lewis*, 415 Mich 443, 452-453; 330 NW2d 16 (1982). Defendant's claim that the trial court erred in responding to a jury note asking if the jury could acquit defendant of the underlying felonies does not provide a basis for appellate relief, defendant having stipulated to the challenged action below. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995).

Defendant next claims error with respect to the trial court's instruction on reasonable doubt. Not only did defendant fail to preserve this issue with a timely objection at trial, *People v Sardy*, 216 Mich App 111, 113; 549 NW2d 23 (1996), it is well-established that CJI2d 3.2(3), as given by the court, is not erroneous. *People v Hubbard (After Remand)*, 217 Mich App 459, 487-488; 552 NW2d 493 (1996); *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991); *People v Jackson*, 167 Mich App 388, 390-392; 421 NW2d 697 (1988).

Lastly, we find no merit in defendant's contention that his two-year determinate sentence for felony-firearm is unconstitutional. See *People v Cooper*, 236 Mich App 643, 660-664; 601 NW2d 409 (1999).

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald

¹ Defendant was acquitted of the underlying charges of first-degree murder, MCL 750.316; MSA 28.548, and two counts of assault with intent to murder, MCL 750.83; MSA 28.278.