

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS RICARDO EDWARD,

Defendant-Appellant.

UNPUBLISHED

February 17, 2004

No. 243842

Wayne Circuit Court

LC No. 02-000365-01

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of armed robbery, MCL 750.529, for which he was sentenced as an habitual offender, MCL 769.10, to seven to fifteen years in prison. We affirm.

Defendant's sole claim on appeal is that the trial court erred in failing to sua sponte instruct the jury regarding prior inconsistent statements by two prosecution witnesses. Not only did defendant fail to preserve this issue by requesting the omitted instruction or objecting to the instructions given, *People v Gonzalez*, 468 Mich 636, 642-643; 664 NW2d 159 (2003), he waived any error when his attorney expressed satisfaction with the instructions given by the court. *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2002); *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001). In any event, the instruction was not applicable to witness MacPherson because his prior testimony was not inconsistent. Moreover, defendant failed to show that the jury would have likely accepted his defense of duress if the instruction had been given as to witness Kas-Marogi. Finally, defendant has not established that he was denied the effective assistance of counsel because he has not shown there was a reasonable likelihood of acquittal if the instruction had been given. *Ortiz, supra*.

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens