

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHASTITY SHESONIE FREEMAN,

Defendant-Appellant.

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UNPUBLISHED

October 12, 2004

No. 247396

Macomb Circuit Court

LC No. 02-001438-FC

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right her bench trial conviction for assault with intent to rob while armed, MCL 750.89. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the court entered impermissibly inconsistent verdicts where it convicted her of assault with intent to rob while armed, yet acquitted her of felony-firearm. While a jury may render inconsistent verdicts, a judge sitting as trier of fact does not share this freedom. *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984). If a trial court, sitting as a finder of fact, acquits a defendant of a charge when its findings of fact clearly show the defendant's guilt, the defendant is still constitutionally protected by double jeopardy principles. *People v Ellis*, 468 Mich 25, 28; 658 NW2d 142 (2003). Here, the trial court clearly expressed its desire to be lenient on defendant.<sup>1</sup> Defendant received the benefit of that leniency in avoiding a felony-firearm conviction. That leniency does not need to be extended to require defendant's acquittal on the assault with intent to commit armed robbery charge. See *People v Smith*, 231 Mich App 50, 52; 585 NW2d 755 (1998).

Defendant also argues that the evidence is insufficient to support her conviction. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing

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<sup>1</sup> The trial court initially stated that it was the "prerogative" of the fact finder to render a verdict that may "sound" inconsistent. That clearly is not the case, *Burgess, supra*, and the Supreme Court has admonished the trial courts regarding employment of the "waiver break" practice. *Ellis, supra*. However, based on the trial court's supplemental statements at sentencing regarding the intent to be lenient, defendant is not entitled to relief on this basis.

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 1201 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A conviction for assault with intent to commit robbery while armed requires the prosecutor to prove: (1) an assault with force and violence, (2) an intent to rob, and (3) defendant was armed. *People v Smith*, 152 Mich App 756, 761; 394 NW2d 94 (1986). To support a finding of aiding and abetting, the prosecutor must show that (1) the crime was committed, (2) defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time she gave aid and encouragement. *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001).

There was sufficient evidence to support defendant’s conviction. Defendant was identified as a former employee of the store. Complainant saw defendant at the front door, and defendant blocked her escape. A reasonable finder of fact could conclude beyond a reasonable doubt that defendant aided co-defendant’s commission of the crime.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Christopher M. Murray  
/s/ Karen M. Fort Hood