

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUELINE SYREETA WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

November 29, 2007

No. 269296

Oakland Circuit Court

LC No. 2005-202985-FH

Before: Servitto, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. She was sentenced to 183 days' imprisonment for the possession of marijuana conviction, and 2 years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

On appeal, defendant challenges the jury instruction on the felony-firearm charge. Defendant did not object to the trial court's instruction, and expressed satisfaction with the jury instructions. If a party invites instructional error, by expressing satisfaction with a trial court's instructions, it constitutes a waiver that extinguishes any error regarding the instructions. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Accordingly, there is no error to review in this case. *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004) (Where defense counsel stated that he had no objections to the jury instructions after the jury was instructed, the instructional issue was waived).

We note, however, that the trial court properly instructed the jury. Contrary to defendant's assertion, the trial court did instruct the jury that in order to find defendant guilty of felony-firearm, it had to find that defendant committed a felony beyond a reasonable doubt. This instruction mirrored CJI2d 11.34, which has been cited by both our Supreme Court and this Court as setting out the elements of felony-firearm. *People v Duncan*, 462 Mich 47, 49 n 3, 58; 610 NW2d 551 (2000) (Corrigan, J. Dissenting); *People v Simon*, 189 Mich App 565, 569; 473 NW2d 785 (1991). Conviction of a felony is not an element of felony-firearm. MCL 750.227b. And, the jury is not required to reach consistent verdicts with regard to a felony-firearm charge and the accompanying felony. *People v Lewis*, 415 Mich 443, 451-452; 330 NW2d 16 (1982). As is the case here, a jury may acquit the defendant of the underlying felony and convict the defendant of felony-firearm. *Id.*

Finally, defendant also argues that the trial court should have informed the jury of the penalty for felony-firearm, to allow the jury to exercise its nullification power. Defendant had no right to the instruction at issue. Jury nullification is a de facto power with regard to which the jury is not instructed. *People v Torres (On Remand)*, 222 Mich App 411, 420; 564 NW2d 149 (1997).

Affirmed.

/s/ David H. Sawyer

/s/ Christopher M. Murray