

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UNPUBLISHED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.

SERVITTO, J. (*concurring*)

While I agree with the conclusion reached by the majority, I write separately to address the questions posed by the jury in this matter. During deliberations, the jury sent out a note requesting clarification of a felony firearm charge and further questioning whether, if a defendant is found guilty of possession of marijuana (a misdemeanor)¹, he or she could still be found guilty of felony firearm.

The trial court in the instant matter gave the appropriate instruction with respect to the felony firearm charge. That instruction provides, part:

(2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3) First, that the defendant committed [or attempted to commit] the crime of [possession with the intent to deliver a controlled substance], which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed [or attempted to commit] that crime, she knowingly carried or possessed a firearm.

CJI2d 11.34

¹ Defense counsel advised the jury several times throughout his closing argument that possession of marijuana was a misdemeanor offense.

However, given the questions posed by the jury, there was apparently some confusion with respect to the above instruction. It is not clear from the record whether the trial court simply repeated the jury instruction to the jury, or provided additional guidance to eliminate (or attempt to eliminate) the confusion. In my opinion, the trial judge should have further explained to the jury that if it did not convict defendant of the felony charge of possession with intent to deliver, it could still convict her of the felony firearm charge so long as it found that the prosecutor had proven the elements of the felony charge of possession with intent to deliver beyond a reasonable doubt.

/s/ Deborah A. Servitto