

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT D. HARRIS,

Defendant-Appellant.

UNPUBLISHED

December 28, 1999

No. 205529

Recorder's Court

LC No. 96-000744

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant was charged with first-degree murder, MCL 750.316; MSA 28.548, and possession of a firearm in the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). A jury acquitted him of the first-degree murder charge and convicted him only of felony-firearm. The trial court sentenced defendant to the mandatory two years' imprisonment and made the sentence consecutive to a sentence defendant was already serving on an unrelated offense. Defendant now appeals of right and we affirm.

Defendant contends that the trial court erred when it instructed the jury regarding felony-firearm and when, responding to questions from the jury concerning that instruction, the court merely repeated its initial felony-firearm instruction. Defendant failed to request any specific modification to the felony-firearm instruction and failed to object to either the initial instruction or the re-instruction. This issue is therefore not preserved for appellate review. *People v Carines*, 460 Mich 750, 767; 597 NW2d 130 (1999).

This Court reviews unpreserved claims of instructional error for plain error. *Id.* We find no error here. The jurors were properly instructed regarding the elements of felony-firearm and were also properly instructed that defendant did not have to be convicted of the possible underlying felony offenses in order to be convicted of felony-firearm. CJI2d 11.34; *People v Burgess*, 419 Mich 305; 353 NW2d 444 (1984); *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982).

In addition, any error in this regard would have been harmless. The evidence indicated that a man meeting defendant's general description was seen standing next to defendant's automobile pointing

a long gun at a crowd of people. Loud gunshots, consistent with a 7.62 mm AK-47 assault rifle, were heard by several witnesses. Ten 7.62 mm shell casings and one live 7.62 mm bullet were found in the parking lot where the shooting occurred. The victim was killed by a high-velocity bullet that penetrated her upper back and exited through her eye socket. According to one of his friends, defendant possessed an AK-47 and its ammunition clip prior to the evening of the shooting, and defendant admitted that he shot at the crowd, but denied that he intended to hit anyone. Defendant's hands were positive for gunshot residue. We find no miscarriage of justice in this case. *People v Bartless*, 231 Mich App 139; 585 NW2d 341 (1998).

Affirmed.

/s/ Roman S. Gribbs

/s/ William B. Murphy

/s/ Richard Allen Griffin