

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 16, 2013

v

CHRISTIAN MICHAEL MATTHEWS,

Defendant-Appellant.

No. 308872
Wayne Circuit Court
LC No. 11-008628-FC

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant, Christian Michael Matthews, of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and acquitted him of assault with intent to murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84(1)(a), and felonious assault, MCL 750.82. The trial court sentenced defendant to two years' imprisonment. He appeals as of right. We affirm.

Defendant's conviction stems from the July 23, 2011, shooting of Veron Phelan. That afternoon, defendant showed up unannounced at Phelan's home. Phelan came out to talk to defendant, whom he had known for 12 years. Defendant said that he had nowhere to go and needed some money. Phelan offered to give defendant money when Phelan's mother returned home. According to Phelan, he turned away to spit and heard a gunshot; when he turned back around, he saw defendant pointing a gun at him and shooting. Phelan ran for cover as the shooting continued, and he sustained two gunshot wounds. Phelan's girlfriend heard the gunshots from inside the home and then witnessed an unidentified man run into the house and enter Phelan's bedroom. After what sounded like things being knocked over, the man ran back outside. When Phelan's girlfriend tried to retrieve her car keys so that she could drive Phelan to the hospital, she discovered that her purse was missing from the bedroom.

Phelan and his girlfriend both testified at trial that they briefly spoke to each other on their cellular telephones before the shooting began. Phelan's girlfriend called him to ask who was there, and Phelan responded, "Budda's brother," referring to defendant. Phelan's girlfriend did not mention either the telephone call or the identity of the shooter in her statement to the police hours after the shooting. When the police took Phelan's statement at the hospital after the shooting, Phelan identified defendant as the shooter.

Defendant argues that he is entitled to a reversal of his felony-firearm conviction because his acquittal on all underlying felony charges indicates that the prosecution produced insufficient evidence to prove beyond a reasonable doubt that he violated MCL 750.227b. We disagree.

We review de novo challenges to the sufficiency of evidence. *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012). “A court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the prosecution and determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt.” *Id.*

“The elements of felony-firearm are that the defendant [1] possessed a firearm [2] during the commission of, or the attempt to commit, a felony.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); see also MCL 750.227b(1) (“A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, [subject to certain exceptions], is guilty of a felony . . .”). Defendant challenges the second element, commission of a felony, arguing that the jury’s inconsistent findings demonstrate insufficiency of the evidence as a matter of law. However, the jury’s acquittal of defendant on the underlying felony counts does not indicate as a matter of law that no rational trier of fact could have convicted defendant on the same evidence.

A jury’s findings need not be wholly consistent.¹ See *People v Vaughn*, 409 Mich 463, 465; 295 NW2d 354 (1980); see also *People v Lewis*, 415 Mich 443, 448-454; 330 NW2d 16 (1982). A jury’s consideration of a predicate offense is separate and distinct from its consideration of a compound offense of which the predicate offense is an element. *People v Goss (After Remand)*, 446 Mich 587, 599; 521 NW2d 312 (1994). Conviction of a felony is not an element of felony-firearm, MCL 750.227b, and a jury may reach an inconsistent verdict with regard to a felony-firearm charge. See *Lewis*, 415 Mich at 448-452.

It necessarily follows that inconsistent verdicts do not demonstrate insufficient evidence as a matter of law. Therefore, whether the prosecution offered sufficient evidence to support a

¹ The Supreme Court reasoned as follows:

Juries are not held to any rules of logic nor are they required to explain their decisions. The ability to convict or acquit another individual of a crime is a grave responsibility and an awesome power. An element of this power is the jury’s capacity for leniency. Since we are unable to know just how the jury reached their conclusion, whether the result of compassion or compromise, it is unrealistic to believe that a jury would intend that an acquittal on one count and conviction on another would serve as the reason for defendant’s release. . . . But we feel that the mercy-dispensing power of the jury may serve to release a defendant from some of the consequences of his act without absolving him of all responsibility. [*Vaughn*, 409 Mich at 466.]

guilty verdict on the felony-firearm charge is answerable only by examining the evidence in a light favorable to the prosecution. Phelan's testimony, along with the corroborating circumstantial evidence, supported beyond a reasonable doubt the jury's conclusion that defendant committed felony-firearm. A felonious-assault victim's testimony alone suffices to uphold a jury's felony-firearm verdict. See *Avant*, 235 Mich App at 505-506. This flows from the general rule that questions of witness credibility fall squarely within the province of the jury, which "is free to believe or disbelieve, in whole or in part, any of the evidence presented." *People v Russell*, 297 Mich App 707, 721; 825 NW2d 623 (2012), quoting *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Here, the evidence supported that defendant possessed a firearm and feloniously assaulted Phelan.

Defendant further contends that his acquittal of the assault charges demonstrates that someone else must have shot Phelan. For the reasons described above, the jury's decision to acquit defendant of the assault charges has no bearing on whether the evidence adequately supported the jury's other findings. Both Phelan and his girlfriend's testimony placed defendant at the scene. Phelan testified that he had known defendant for 12 years, and he identified defendant as the person he saw pointing a gun at him and shooting. If the jury believed Phelan's testimony, nothing more would be required to justify a guilty verdict for felony-firearm. Thus, eyewitness testimony along with other corroborating evidence provided a sufficient basis for a rational trier of fact to conclude beyond a reasonable doubt that defendant was the gun-wielding perpetrator responsible for Phelan's injuries. Accordingly, sufficient evidence supported defendant's conviction under MCL 750.227b.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Kelly