

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAJOR ELIJAH THAXTON,

Defendant-Appellant.

---

UNPUBLISHED

September 13, 2007

No. 272185

Wayne Circuit Court

LC No. 05-009557-01

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Following a bench trial, defendant was acquitted of felonious assault, MCL 750.82, but convicted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. He was sentenced to a prison term of 30 months to 5 years for the felon in possession conviction, and a consecutive five-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We vacate defendant's felony-firearm conviction and affirm his felon in possession conviction. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues, and the prosecution concedes, that the trial court impermissibly rendered an inconsistent verdict, requiring that the felony-firearm conviction be vacated.

A jury may render illogical or inconsistent verdicts and may convict a defendant of felony-firearm while acquitting him of the underlying felony. *People v Wakeford*, 418 Mich 95, 109 n 13; 341 NW2d 68 (1983); *People v Lewis*, 415 Mich 443, 452-453; 330 NW2d 16 (1982). However, a trial court sitting as the finder of fact may not enter an inconsistent verdict. *People v Ellis*, 468 Mich 25; 658 NW2d 142 (2003). Where a court finds that the underlying offense was not committed, it cannot properly convict a defendant of felony-firearm predicated on that offense.<sup>1</sup> See *People v Burgess*, 419 Mich 305, 310-312; 353 NW2d 444 (1984) (reversing a felony-firearm conviction where this Court had reversed the underlying felonious assault

---

<sup>1</sup> In this case, felonious assault was the only felony listed in the complaint and information as the predicate offense for the felony-firearm count.

conviction because an appellate court, like a trial judge sitting as the finder of fact, “does not normally enjoy the freedom to be inconsistent or to compromise”).

In this case, the only underlying felony for the felony-firearm charge was felonious assault. The trial court’s determination that a felonious assault was not established is inconsistent with its guilty verdict for the felony-firearm charge predicated on felonious assault. Absent a finding that the underlying offense was committed, the felony-firearm conviction must be vacated. *Burgess, supra*. Accordingly, we affirm defendant’s conviction and sentence for felon in possession of a firearm, but vacate his conviction and sentence for felony-firearm.

Affirmed in part and vacated in part.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder