

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AMIEL IRVIN,

Defendant-Appellant.

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UNPUBLISHED

December 17, 2020

No. 350620; 350621

Wayne Circuit Court

LC No. 19-002736-01-FC

19-002737-01-FC

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

In Docket No. 350620, defendant appeals as of right his convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, involving victim Juwan Cunningham. In Docket No. 350621, defendant appeals as of right convictions of armed robbery and felony-firearm involving victim Excel Newton. The cases were consolidated below and defendant was tried before a single jury. He was sentenced to prison for concurrent terms of 10½ to 20 years for the armed robbery convictions and two years for the felony-firearm convictions, with the felony-firearm sentences to be served consecutive to and preceding the armed robbery sentences. In both appeals, we affirm.

**I. BACKGROUND**

These cases involve two separate incidents. The first occurred on March 6, 2019, while the second occurred on March 9, 2019.

On March 6, 2019, defendant robbed Newton at gunpoint after Newton responded to an ad on Facebook Marketplace. Newton and defendant agreed to meet at a location in Detroit in order for Newton to purchase a new iPhone from defendant. Upon arrival, Newton testified that after he greeted the defendant, the defendant produced a black and silver semiautomatic handgun and ordered Newton to the ground. Defendant took Newton's cellphone as well as some cash.

On March 9, 2019, Cunningham responded to an ad on Facebook Marketplace and agreed to meet defendant in hopes of purchasing seven pairs of shoes. Upon Cunningham's arrival at the agreed-upon location, defendant told him to wait in the car while he went to get the shoes. It was

Cunningham's testimony that defendant told him via text to come to the front door of the residence where they had met. When Cunningham went to the front door, defendant came up from behind, and according to Cunningham, drew a black and silver semiautomatic handgun from his waist, and ordered him to go inside the house. Defendant ordered Cunningham to empty his pockets. Cunningham complied, removing his phone, \$350, some change, and the keys to his car. Defendant then ordered Cunningham upstairs so that he could kill him, but Cunningham refused and ran out the front door. Video surveillance footage retrieved from a neighbor's security system corroborated Cunningham's testimony. The footage showed an individual drawing what appeared to be a black and silver handgun from his waist.

## II. SUFFICIENCY OF THE EVIDENCE

On appeal, defendant claims only that the evidence supporting the felony-firearm conviction was insufficient. He argues that a rational trier of fact could not have returned a guilty verdict because the object used during the commission of the armed robberies could have been a toy gun and there was no testimony at trial that the object used was in fact a real firearm. We disagree.

"We review de novo challenges to the sufficiency of the evidence." *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). "In reviewing a claim of insufficient evidence in a criminal case, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt." *People v Moorer*, 262 Mich App 64, 76-77; 683 NW2d 736 (2004).

A person is guilty of felony-firearm when he or she "carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony[.]" MCL 750.227b. "Possession may be proven by circumstantial as well as direct evidence." *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). "The question of possession is factual and is to be answered by the jury." *Id.* A firearm is defined as "any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive." MCL 8.3t. However, "the prosecutor need not present proof of operability as an element of a prima facie case in a felony-firearm prosecution." *People v Broach*, 126 Mich App 711, 714; 337 NW2d 642 (1983); see also *People v Peals*, 476 Mich 636, 656; 720 NW2d 196 (2006).

Presuming that a toy gun would not suffice for purposes of establishing the crime of felony-firearm, see *People v Schofield*, 124 Mich App 134; 333 NW2d 607 (1983), rev'd 417 Mich 988; 334 NW2d 376 (1983); but see *People v Brooks*, 135 Mich App 193, 199; 353 NW2d 118 (1984), neither victim provided testimony that the weapon used against them was a toy. In fact, Cunningham testified that the gun was a semiautomatic handgun and Newton testified that he was somewhat familiar with guns and described the weapon as a black and silver semiautomatic handgun. The home surveillance video from the Cunningham robbery revealed a silver and blue object in the defendant's possession. Thus, there was direct evidence that the object was in fact a gun. In *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999), we held that the victim's testimony that the defendant pointed an assault weapon at his head was "sufficient for a reasonable factfinder to find that the elements of . . . felony-firearm were established beyond a reasonable doubt." Here, two victims described the weapon in nearly identical terms and video surveillance

appeared to confirm Cunningham's testimony. While the gun was not recovered, and therefore, definitive proof that it was indeed a gun was lacking, the consistent descriptions of the firearm, coupled with both victims' description of the object as a semiautomatic handgun, and the video surveillance footage, provided sufficient evidence for a rational trier of fact to find the essential elements to convict the defendant of felony-firearm beyond a reasonable doubt.

Affirmed.

/s/ Christopher M. Murray  
/s/ Kirsten Frank Kelly  
/s/ Cynthia Diane Stephens