

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL DRAKE,

Defendant-Appellant.

UNPUBLISHED
October 12, 1999

No. 210560
Oakland Circuit Court
LC No. 97-156289 FH

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of carrying a concealed weapon, MCL 750.227; MSA 28.424, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The police stopped defendant's vehicle for a traffic violation. When defendant opened the vehicle's center compartment to retrieve requested documents, the officer observed a gun magazine in the compartment. A .380 automatic weapon, six rounds, and the magazine were recovered from defendant's vehicle. The weapon was located on the floor in the rear of the vehicle, and the magazine and rounds were located in the center compartment. Defendant testified on his own behalf, and estimated that it would have taken him one and one-half to two minutes to assemble and use the weapon.

The trial court refused defendant's request that it read CJI2d 11.6 to the jury. That instruction reads as follows:

It is not against the law to carry a gun that is so [out of repair / taken apart with parts missing / welded together / plugged up] that it is totally unusable as a firearm and cannot be easily made operable.

* Circuit judge, sitting on the Court of Appeals by assignment.

The court found that the facts of the case did not fit any of the listed alternatives, and that defendant had not presented an affirmative defense that the weapon was inoperable, or that it could not readily have been made to fire. The jury found defendant guilty as charged.

We review jury instructions in their entirety to determine if reversal is required. The failure to give a requested instruction constitutes reversible error only if the requested instruction (1) is substantially correct; (2) was not sufficiently covered in the charge given to the jury; and (3) concerned an important point in the trial so that the failure to give the instruction seriously impaired the defendant's ability to present a defense. *People v Moldenhauer*, 210 Mich App 158, 159-160; 533 NW2d 9 (1995).

A defendant can put forth an affirmative defense to the charge of carrying a concealed weapon by presenting evidence that the gun would not fire and could not readily be made to fire. *People v Gardner*, 194 Mich App 652, 655; 487 NW2d 515 (1992). A firearm that is temporarily inoperable but which can be made operable within a reasonable time is within the purview of statutes governing the use and possession of firearms. *People v Hill*, 433 Mich 464, 477; 446 NW2d 140 (1989).

We affirm. Defendant's assertion that the evidence that he would have required one and one-half to two minutes to "assemble" the weapon so that it could be fired did not create a question of fact regarding whether the weapon was inoperable at the time the police seized it. Defendant used the term "assemble" to describe the loading of the gun with the live rounds of ammunition. However, MCL 750.222(c) clearly states that the carrying of a concealed yet unloaded pistol violates the concealed weapons statute.

In sum, the trial court correctly concluded that defendant failed to present any evidence that would justify charging the jury with CJI 2d 11.6.

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich