

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

GEORGE EDWARD CAMPBELL,

Defendant-Appellant.

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UNPUBLISHED

August 17, 2001

No. 221692

Eaton Circuit Court

LC No. 98-020175-FC

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of careless, reckless, or negligent use of a firearm resulting in death, MCL 752.861, and possession of a firearm during the commission of a felony, MCL 750.227b. The jury acquitted defendant of involuntary manslaughter, MCL 750.321. He was sentenced to thirteen to twenty-four months in prison for the careless, reckless or negligent use of a firearm resulting in death conviction, and two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred in failing to instruct the jury that it must find beyond a reasonable doubt that defendant committed involuntary manslaughter in order to convict him of felony-firearm. Defendant further argues that the trial court should have informed the jury that the lesser included charge of careless, reckless or negligent use of a firearm resulting in death is a misdemeanor.

Defendant has waived review of this issue. Defense counsel stated to the trial court that he had “no objections to the instructions.” “A defendant may not waive objection to an issue before the trial court and then raise it as an error on appeal.” *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

Further, we find no error in the trial court’s instructions to the jury. This Court reviews claims of instructional error de novo. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). With respect to the felony-firearm charge, the trial court properly instructed the jury that it must find that defendant committed the crime of involuntary manslaughter and that at the time he committed that crime he knowingly carried or possessed a firearm. MCL 750.227b; *People v Duncan*, 462 Mich 47, 60 n 3; 610 NW2d 551 (2000). The court instructed the jury that it must find each element of felony-firearm beyond a reasonable doubt. Finally, we find no error with

regard to the jury instruction on careless, reckless or negligent use of a firearm with death resulting. In the absence of any other qualifying felony charge, a defendant's felony-firearm conviction may be sustained by a jury's conviction on a lesser included misdemeanor count. *People v Bonham*, 182 Mich App 130, 136; 451 NW2d 530 (1989); *People v Hooper*, 152 Mich App 243, 247; 394 NW2d 27 (1986). Viewed as a whole, the jury instructions fairly and completely presented the issues to be tried and protected defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000); *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

Defendant next asserts that his convictions for felony-firearm and the lesser included misdemeanor violate the prohibition against double jeopardy. We disagree.

Whether a defendant's protection from double jeopardy has been violated is a question of law that we review de novo. *People v Echavarría*, 233 Mich App 356, 358; 592 NW2d 737 (1999). The prohibition against twice placing a defendant in jeopardy for the same offense is guaranteed by both the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 15. Courts may not impose multiple punishments for the same offense and prosecutors generally may not try a defendant more than once for the same offense. *Wayne Co Prosecutor v Recorder's Court Judge*, 406 Mich 374, 391-392; 280 NW2d 793 (1979).

“With regard to the Double Jeopardy Clause of the state constitution, this Court uses traditional means to determine legislative intent, such as the subject, language, and history of the statutes.” *People v Parker*, 230 Mich App 337, 342; 584 NW2d 336 (1998), citing *People v Denio*, 454 Mich 691, 708-709; 564 NW2d 13 (1997). The plain language and subject of the statutes at issue indicates that the Legislature intended to protect against distinct types of harm and proscribe different conduct. See *Parker, supra* at 343. The careless, reckless or negligent use of a firearm resulting in death is a misdemeanor addressing the *use* of a firearm where death results. MCL 752.861. The felony-firearm statute prohibits the *possession* of a firearm during the commission of a felony. 750.227b. It is well settled that the felony-firearm statute evidences the Legislature's intent to create a separate crime with cumulative penalties when a person carries a weapon during the commission of a felony. *People v Mitchell*, 456 Mich 693, 697; 575 NW2d 283 (1998); *People v Morton*, 423 Mich 650, 656; 377 NW2d 798 (1985); *Wayne Co Prosecutor, supra* at 391. “The legislative history of the statute also reflects a commitment to reach all but the excepted felonies.” *People v Sturgis*, 427 Mich 392, 407-408; 397 NW2d 783 (1986). Accordingly, we reject defendant's claim that punishment for both offenses violates the prohibition against double jeopardy.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot