

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUGENE WILLIAM HOWELL, III,

Defendant-Appellant.

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UNPUBLISHED

May 30, 1997

No. 191147

Recorder's Court

LC No. 94-13138 FH

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of carrying a pistol in an automobile without a license, and resulting 40 to 60 month sentence. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not err in refusing to instruct the jury on the affirmative defense that the pistol was not operable. *People v Gardner*, 194 Mich App 652, 654; 487 NW2d 515 (1992). Defendant's own ballistic expert testified that although defendant had the wrong ammunition for the weapon, the weapon itself was anything but inoperable. There was, accordingly, no evidence in support of this affirmative defense and no basis for instructing the jury with respect to that defense.

Nor did the trial court err in refusing to instruct the jury on defendant's defense of "mere transportation" under MCL 750.231a(1)(f); MSA 28.428(1)(1)(f). For that defense to apply, the pistol must be unloaded, in a wrapper or container, and "not readily accessible to the occupants of the vehicle" when the vehicle does not have a trunk. Defendant's own testimony indicated that he placed the pistol, wrapped in a paper bag, in the glove compartment of his Chevrolet Blazer. By leaning slightly to his right after he stopped his vehicle at his home, he was able to retrieve the pistol. Therefore, it was readily accessible to defendant as an occupant of the vehicle, and there was no factual basis for an instruction to the jury on the transportation defense under the statute.

Since the trial court did not err in denying the requested instructions, any consequences to the ability of defendant to defend against the charges arose from the facts of the case and not from any trial court error.

Although defendant's sentence exceeds the maximum of the guideline range by four months, the trial court accurately noted that at a young age defendant already has three prior felony convictions. Under these circumstances, the sentence imposed does not represent an abuse of the trial court's sentencing discretion nor is the sentence disproportionate to the offense or the offender. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald