

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE LAMAR COLLINS,

Defendant-Appellant.

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UNPUBLISHED  
September 23, 2010

No. 293184  
Wayne Circuit Court  
LC No. 08-004399-FH

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

MEMORANDUM.

Defendant was convicted by a jury of possession of a short-barreled shotgun, MCL 750.224b, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to probation for one year for the possession of a shotgun conviction, and a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After hearing gunshots and investigating the source of those shots, police officers observed defendant standing in front of a house holding a short-barreled shotgun. Upon seeing the officers, defendant dropped the gun and went inside the house, ignoring the officers' orders to stop. Defendant testified that, like the police, he heard the gunshots and went to investigate. He claimed that he saw some youths firing the gun, so he took it away from them.

Defendant first argues that his convictions must be reversed because any violation of the possessory weapons offenses was excused by the momentary innocent possession defense recognized in *People v Coffey*, 153 Mich App 311, 315; 395 NW2d 250 (1986). Because defendant did not challenge the construction of the statutes below or request an instruction on momentary innocent possession, this issue is not preserved. Similarly, defendant did not object to the prosecutor's statements that the law prohibits a person from possessing a short-barreled shotgun and, therefore, a person's reasons for possessing such a weapon do not matter. Accordingly, our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant cannot show plain error because *Coffey* was overruled by *People v Hernandez-Garcia*, 477 Mich 1039, 1040; 728 NW2d 406 (2007), in which the Supreme Court expressly held that momentary innocent possession is not a defense to a charge of unlawfully carrying a concealed weapon. Further, the prosecutor's statement of the law was not improper. In the case

of a general intent crime, the only intent necessary is to do the act itself, i.e., to knowingly possess a short-barreled shotgun. See *People v Fennell*, 260 Mich App 261, 266; 677 NW2d 66 (2004); CJI2d 11.30(1) and (2). The intent requirement does not extend to the defendant's purpose for possessing the weapon. *Hernandez-Garcia*, 477 Mich at 1040 n 1.

Defendant also argues that his multiple convictions for possession of a short-barreled shotgun and felony-firearm violate the constitutional prohibition against double jeopardy. Because this issue was not raised below, it too is not preserved and is thus reviewed for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763-764; *People v Matuszak*, 263 Mich App 42, 47; 687 NW2d 342 (2004). Defendant has not shown plain error. MCL 750.227b(1) prohibits possession of a firearm during the commission of any felony other than those expressly exempted, and MCL 750.227b(2) specifically authorizes a term of imprisonment "in addition to the sentence imposed for the conviction of the [underlying felony]." Because the offense of possession of a short-barreled shotgun is not expressly excluded from the operation of the felony-firearm statute, multiple punishments are authorized and do not violate double jeopardy protections. *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Morton*, 423 Mich 650, 656; 377 NW2d 798 (1985).

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Christopher M. Murray