

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON LAMAR JONES,

Defendant-Appellant.

UNPUBLISHED

May 12, 2009

No. 284270

Oakland Circuit Court

LC No. 2007-217544-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury convictions of delivery/manufacture of 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), possession of a short-barreled shotgun, MCL 750.224b, two counts of possession of a firearm during the commission of a felony, MCL 750.227b, and possession of marijuana, MCL 333.7403(2)(d), arguing that his conviction of both possession of a short-barreled shotgun and the corresponding charge of felony-firearm violate the constitutional prohibition against double jeopardy. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Ream*, 481 Mich 223, 227; 750 NW2d 536 (2008). These guarantees protect a defendant against successive prosecutions for the same offense, and against the imposition of multiple punishments for the same offense. *People v Smith*, 478 Mich 292, 299; 733 NW2d 351 (2007).

Defendant did not assert a double jeopardy violation below; thus, this issue is not preserved. However, because defendant raises a constitutional question, we choose to review it. See *People v Lugo*, 214 Mich App 699, 705; 542 NW2d 921 (1995). A double jeopardy issue presents a question of law that we review de novo on appeal. *Id.*

We affirm defendant's convictions in their entirety. In *People v Mitchell*, 456 Mich 693, 696-698; 575 NW2d 283 (1998), our Supreme Court held that conviction of both felony-firearm

and a felony not explicitly enumerated in the felony-firearm statute¹ did not violate the constitutional prohibition against double jeopardy. *Id.* at 696-698. The offense of possession of a short-barreled shotgun is not one of the felonies enumerated in the felony-firearm statute; therefore, a defendant's simultaneous conviction of possession of a short-barreled shotgun and felony-firearm is constitutionally permissible. *Id.*

Affirmed.

/s/ David H. Sawyer

/s/ Christopher M. Murray

/s/ Cynthia Diane Stephens

¹ MCL 750.227b(1) provides that a person cannot be convicted of felony-firearm if the underlying charged felony is selling firearms without a license or to one not permitted to possess same, MCL 750.223; carrying a concealed weapon, MCL 750.224; unlawful possession of a pistol by a licensee, MCL 750.227a; or altering the identification marks of a firearm, MCL 750.230.