

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARLON DEWAYNE FOGGAN,

Defendant-Appellant.

---

UNPUBLISHED  
February 19, 2002

No. 227824  
Oakland Circuit Court  
LC No. 99-168186-FH

Before: Whitbeck, C.J., and Markey and K. F. Kelly, JJ.

PER CURIAM.

A jury convicted defendant Marlon Foggan of carrying a concealed weapon (CCW),<sup>1</sup> felon in possession of a firearm (“felon in possession”),<sup>2</sup> and second-offense possession of a firearm during the commission of a felony (“felony-firearm”).<sup>3</sup> The trial court sentenced Foggan as a third habitual offender<sup>4</sup> to prison terms of two to ten years each for the CCW and felon in possession convictions and five years for felony-firearm. The trial court ordered Foggan to serve his felony-firearm sentence concurrently with the CCW sentence, but to serve the sentence for felon in possession consecutive to the felony firearm sentence. Foggan appeals as of right. We affirm.

**I. Basic Facts And Procedural History**

The underlying facts are not at issue. Foggan was convicted of a “specified” felony within the past five years, as required under MCL 750.224f(2). The police received an anonymous tip that there was a concealed weapon in a blue Yukon Dinali. Police officers observed a vehicle matching the description in the tip and stopped it when they observed it speeding. Foggan was driving the vehicle. As they approached the car, officers could smell marijuana and saw that the passenger was holding a marijuana “blunt” in his hand. The officers searched the car and found a gun.

---

<sup>1</sup> MCL 750.227.

<sup>2</sup> MCL 750.224f.

<sup>3</sup> MCL 750.227b.

<sup>4</sup> MCL 769.11.

On April 20, 2000, before trial, Foggan sought to suppress the evidence and quash the charge of felony-firearm. The trial court held an evidentiary hearing and denied Foggan's motion, noting in pertinent part:

Charging and trying a defendant on both felony firearm and felon in possession of a firearm, however, does not violate the double jeopardy protections. As long as the jury is not allowed to return guilty verdicts on both felony firearm and felon in possession of a firearm, no multiple punishments will result.

Foggan raised the issue again in his motion for a directed verdict. The trial court, this time relying on *People v Mitchell*,<sup>5</sup> found that the felony-firearm and felon in possession charges did not violate his right to be free from double jeopardy.<sup>6</sup>

After the jury convicted Foggan as charged of all counts, he filed a motion to vacate the felony-firearm sentence or for new trial. The trial court denied Foggan's motion, stating:

This Court's ruling in its order dated April 20, 2000 was erroneous. The Court corrected that ruling in its subsequent opinion on Defendant's motion for a directed verdict. The Court's prior ruling noted that Defendant could be charged and tried on both felony firearm and felon in possession of a firearm. Defendant was charged and tried on both charges. Defendant was then convicted and sentenced on both charges. Such a result is warranted . . .

Foggan now claims that the trial court erred in ruling on his post-conviction motion because it lacked the authority to reconsider its pretrial order and, in any event, double jeopardy barred his convictions for felony-firearm and felon in possession.

## II. Standard Of Review

Both issues Foggan raises in this appeal present questions of law subject to review de novo.<sup>7</sup>

## III. Correcting Errors

Foggan cites two cases for the proposition that *parties* are bound by pretrial orders. Indeed, this precedent does state that pretrial orders bind parties.<sup>8</sup> However, aside from the fact that this authority is discussing a specific form of pretrial order in civil cases – not all rulings on pretrial motions in criminal cases – Foggan then proceeds to argue that the trial court's pretrial decision concerning double jeopardy bound it, as if the *trial court* were a party to this prosecution. Clearly, that is not the case. Further, the court rules grant trial courts the authority

<sup>5</sup> *People v Mitchell*, 456 Mich 693; 575 NW2d 283 (1998).

<sup>6</sup> See US Const, Am V; Const 1963, art 1, § 15.

<sup>7</sup> See *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

<sup>8</sup> See *Thomas v Gray*, 19 Mich App 90, 94; 172 NW2d 50 (1969).

to correct its own errors before entering judgment.<sup>9</sup> Thus, the trial court had authority to reconsider its decision concerning the double jeopardy implications of the charges in this case.

#### IV. Double Jeopardy

Foggan next contends that his convictions of felony-firearm and felon in possession violate the double jeopardy protection against multiple punishments for the same crime.<sup>10</sup> This Court recently decided this issue in *People v Dillard*,<sup>11</sup> holding that “these two statutes have distinct purposes that address different social norms, [and therefore] they should be viewed as separate and amenable to permitting multiple punishments.”<sup>12</sup> Thus, Foggan’s convictions under these same statutes for felon in possession and felony-firearm do not violate the constitutional protections against double jeopardy.

Affirmed.

/s/ William C. Whitbeck  
/s/ Jane E. Markey  
/s/ Kirsten Frank Kelly

---

<sup>9</sup> See MCR 6.435(B).

<sup>10</sup> See, generally, *People v Walker*, 234 Mich App 299, 305; 593 NW2d 673 (1999).

<sup>11</sup> *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001).

<sup>12</sup> *Id.* at 171.