

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE LAMONT WIGGINS,

Defendant-Appellant.

UNPUBLISHED

March 10, 2009

No. 283158

Wayne Circuit Court

LC No. 07-013417-FC

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83, two counts of assault with intent to commit great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals as of right. We vacate defendant's assault with intent to commit great bodily harm conviction as to Samuel Tarver, but affirm defendant's remaining convictions.

Defendant's convictions stem from his assaults on Samuel and Malcolm Tarver. Defendant was dating the victims' sister, Kessa Tarver. Samuel and Malcolm drove to defendant's home, and defendant met Malcolm in the middle of the walkway. According to Malcolm, defendant "just snapped" and began to hit him with a gun. The gun discharged at least once as defendant hit Malcolm. Samuel left the truck and moved toward defendant and Malcolm. Defendant pointed the gun at Samuel, who started running away. Malcolm followed Samuel. As the two ran, defendant shot repeatedly at Samuel, striking him twice in the leg.

Defendant now argues that his convictions for both assault with intent to commit murder and assault with intent to commit great bodily harm as to Samuel Tarver violated the constitutional double jeopardy prohibition against multiple punishments for the same offense. Plaintiff agrees, stating that defendant's assault on Samuel Tarver consisted of one continuous sequence of events.

Defendant did not raise this issue below; thus, his assertion of constitutional error is reviewed only for plain error affecting substantial rights. See *People v McCuller*, 479 Mich 672, 681; 739 NW2d 563 (2007). Under the plain error rule, three requirements must be met, namely (1) an error must have occurred, (2) the error was plain, meaning clear or obvious, and (3) the

plain error affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The prohibition against double jeopardy in both the federal and state constitutions protects against (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004).

This Court has consistently held that there is no double jeopardy violation if one crime is complete before the other occurs, even if the offenses share common elements or one is a lesser-included offense of the other. *People v Ford*; 262 Mich App 443, 459; 687 NW2d 119 (2004); *People v Colon*, 250 Mich App 59, 63; 644 NW2d 790 (2002); *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995) ("Because the act resulting in the felonious assault conviction was complete before the act leading to the assault with intent to do great bodily harm occurred, there is no violation of double jeopardy protections."). However, if criminal conduct is presented as a continuing sequence of events that culminate in an offense, such as an armed robbery that results in a death, conviction of both armed robbery and felony murder would be improper. *People v Bulls*, 262 Mich App 618, 629; 687 NW2d 159 (2004).

Here, the testimony showed that defendant pointed his gun at Samuel Tarver, shot at Tarver repeatedly as he tried to get away, and hit Samuel twice in the leg. This evidence does not suggest that one assault, separate in space and time, was completed against Samuel before the other began. Compare, *Colon*, *supra* at 63-64; *Lugo*, *supra* at 703-704, 709. We concur with the parties' characterization of the assault as continuous, and their agreement that defendant's conviction for assault with intent to commit great bodily harm as to Samuel Tarver should be dismissed.

We vacate defendant's conviction for assault with intent to commit great bodily harm as to Samuel Tarver. Defendant's remaining convictions are affirmed. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering