

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON KEITH MANNERS,

Defendant-Appellant.

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UNPUBLISHED

March 10, 2011

No. 294585

Wayne Circuit Court

LC No. 08-009946-FH

Before: MURPHY, C.J., and STEPHENS and M. J. KELLY, JJ.

PER CURIAM.

Defendant Jason Keith Manners appeals as of right from his bench convictions of being a felon in possession of a firearm, second offense, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. The trial court sentenced Manners as a third habitual offender, see MCL 769.11, to serve five years in prison for the felony-firearm conviction, to be served consecutively to concurrent terms of one to five years each for the concealed carry and felon in possession convictions. Because we conclude that there were no errors warranting reversal, we affirm Manners' convictions. However, because the trial erred when it ordered Manners to serve his sentence for felony-firearm consecutive to his sentence for carrying a concealed weapon, we remand this case to the trial court for correction of the judgment of sentence to indicate that the sentence for the concealed carry conviction runs concurrently to the other two sentences.

This case arises from an early morning police raid at a nightclub in Detroit. The prosecution presented evidence that during the raid police officers saw defendant take a small handgun from his waistband, drop it, then fall upon it when the officers ordered everyone to the floor.

Defendant first argues that the trial court failed to properly apply the applicable evidentiary standard, burden of proof, and failed to properly apply the presumption of innocence. Defendant concedes that this claim was not raised below. Accordingly, in order to warrant relief, defendant must show plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant argues that the trial court's statements from the bench show that it did not understand the burden of proof. After the close of proofs, the trial court explained that it did not think that the evidence raised a reasonable doubt about whether defendant had the gun at issue:

And the defense raises . . . about four issues in terms of perhaps there being reasonable doubt. The first one, that well [Officer] Passmore doesn't testify regarding the [Special Response Team] coming through the door. Well, he testified there was a narcotics crew. That there were a . . . number of officers there executing the search warrant. And the Court doesn't believe that, that discrepancy if you will rises to the level of reasonable doubt. There's also the discrepancy as to distance. Passmore says thirty some feet, [Officer] Turner says well, maybe it's more like twelve or fifteen feet. It was a large room, lots of folks. The Court can infer that there was lots of noise, as well. This was an after hours club, if you will. These folks weren't sitting around playing chess in the quiet solitude of 3:30 a.m. . . . Lots of confusion.

The defense . . . argument is well, . . . [t]he gun is there, it's underneath [defendant] and it's either security['s] or somebody else['s]. . . . Passmore testifies security is near the door. So unless the security took that gun and swished it along the floor and he's stupid enough to fall on top of it. Not very likely. It being someone else? . . . There's a female next to him, and it's just not plausible that [defendant] is going to fall on top of a gun that isn't his. He's going to fall backwards, going to fall to the side, and perhaps not fall at all because as Turner testifies there's all of these other people that haven't necessarily immediately gone to the ground.

About the only thing that I thought might hold some reasonable doubt is this whole idea of well, it's his jogging pants and how is it that you get a gun to stay in the jogging pants? Maybe make some inferences that he was there having a good time doing a little bit of dancing, but it's a very small gun, it's a very light gun. Perhaps that gun was in a pocket near the waistband, perhaps it very likely could have been held up by a sweatpants with a string attached to it.

The Court doesn't believe that any of those alone nor added altogether provide the reasonable doubt necessary, and the Court does believe that the People have established their burden beyond a reasonable doubt. Respectfully, will enter a judgment accordingly.

These remarks, considered in isolation, *could* be interpreted to indicate that the trial court was searching through the evidence for some affirmative basis for finding a reasonable doubt to rebut some improper presumption of guilt. However, those remarks can more reasonably be interpreted as indicating that the court was persuaded by the testimony that defendant was guilty of the gun possession, but determined to consider carefully defense counsel's arguments to the contrary.

"A trial judge is presumed to know the law." *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). In this case, the judge showed such knowledge by not only referring, at the end of the passage above, to the prosecution's burden to prove guilt beyond a reasonable doubt, but by preceding that passage with a detailed summary of the evidence. The court plainly credited the truthfulness of the two police witnesses, even while noting some minor discrepancies. The court's statements, considered as a whole, show that the court had a solid

basis for concluding that the prosecution had met its proper burden, even after considering carefully the arguments of defense counsel.

There was no plain error.

Defendant next argues that his convictions of both felon in possession and felony-firearm violate his double-jeopardy rights. See US Const, Am V; Const 1963, art 1, § 15. This Court reviews de novo constitutional claims of error such as whether multiple convictions violate the prohibition against double jeopardy. *People v Calloway*, 469 Mich 448, 450; 671 NW2d 733 (2003). Because this issue is unpreserved, we must review it for plain error. *Carines*, 460 Mich at 763.

Whether multiple punishments for one criminal act violate principles of double jeopardy is a question of legislative intent. *Calloway*, 469 Mich at 451. Our Supreme Court has considered this precise issue and held that, in enacting the felony-firearm statute, the Legislature intended to authorize an additional felony charge and sentence for persons who possess firearms while committing felonies except in cases involving certain enumerated felonies. *Id.* at 452. “Because the felon in possession charge is not one of the felony exceptions in the statute, it is clear that defendant could constitutionally be given cumulative punishments when charged and convicted of both felon in possession . . . and felony-firearm . . .” *Id.*

Defendant suggests that because the felony-firearm statute was drafted before the felon-in-possession statute, it was mere legislative inadvertence not to have amended the former to include the latter among its exceptions. However, such speculation is not an appropriate basis for interpreting legislation. See *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995) (explaining that, in interpreting a statute, courts may not speculate about the probable legislative intent beyond the statutory language employed). Moreover, our Supreme Court’s decision in *Calloway* is binding on this Court. *Ferguson v Gonyaw*, 64 Mich App 685, 694; 236 NW2d 543 (1975). For these reasons, we reject this claim of error.

Finally, defendant argues that the trial court erred in ordering that his sentence for the concealed carry conviction run consecutively to his sentence for the felony-firearm conviction. The prosecution concedes the error. Concurrent sentencing is the norm. *People v Brown*, 220 Mich App 680, 682; 560 NW2d 80 (1996). Consecutive sentences may be imposed only when specifically authorized by statute, such as for felony-firearm and the underlying felony. *Id.* at 681-682. Accordingly, the trial court properly ordered consecutive sentences in connection with defendant’s convictions of felony-firearm and felon in possession. However, concealed carry is among the statutorily enumerated felonies upon which felony-firearm may not be predicated. MCL 750.227b(1).

Accordingly, we remand this case to the trial court with instructions to amend the judgment of sentence to indicate that the sentence for the conviction of concealed carry runs concurrently with both of the other sentences. The trial court is further instructed to ensure that a copy of the corrected judgment of sentence is delivered to the Department of Corrections. *Brown*, 220 Mich App at 685.

Affirmed in part and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly