

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WENDELL GREEN, JR.,

Defendant-Appellant.

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UNPUBLISHED  
February 24, 2005

No. 252727  
Wayne Circuit Court  
LC No. 03-008761-01

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, third offense, MCL 750.227b. He was sentenced to a term of two to five years' imprisonment for the felon in possession conviction, and a consecutive ten-year term of imprisonment for the felony-firearm third conviction. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise from an altercation with his former boss, Frederick Binno, during which both men were shot. There was no dispute that two guns were involved, but the men disagreed over who initially possessed both guns.

We disagree with defendant's claim that the evidence was insufficient to support his convictions. An appellate court's review of the sufficiency of the evidence to sustain a conviction should not turn on whether there was any evidence to support the conviction, but whether there was sufficient evidence to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The evidence must be reviewed in a light most favorable to the prosecution. *Id.* at 514-515.

MCL 750.224f provides that a person convicted of a felony shall not be permitted to possess, use, or carry a firearm until certain conditions are satisfied. Felony-firearm requires proof that the defendant possessed a firearm during the commission or attempted commission of a felony. *People v John Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). In challenging his convictions, defendant argues that there was insufficient evidence that he possessed a firearm.

Although defendant denied bringing either gun to the collision shop where he encountered Binno, Binno testified that defendant came to the shop armed with both guns. Binno's testimony, viewed most favorably to the prosecution, was sufficient to enable the jury to conclude that defendant possessed a firearm. The credibility of Binno's testimony was for the jury to resolve, and this Court will not resolve it anew.

Defendant also argues that the trial court erroneously failed to instruct the jury on self-defense or imperfect self-defense. Claims involving instructional error are reviewed de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. . . . Even if somewhat imperfect, instructions do not warrant reversal if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. . . . The instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is supporting evidence. . . . No error results from the absence of an instruction as long as the instructions as a whole cover the substance of the missing instruction. [*Id.* (citations omitted).]

A trial court is required to give a defendant's requested instruction when it concerns his theory of the case and is supported by the evidence. *People v Rodriguez*, 463 Mich 466, 472-473; 620 NW2d 13 (2000).

During trial, defendant informed the trial court that he intended to raise self-defense because he claimed that it was Binno who possessed both guns. Defense counsel ultimately agreed with the trial court that an instruction on self-defense was not required if the court instructed the jury that if defendant merely touched a gun inadvertently or unintentionally, or to protect himself from being shot, this would not establish possession for purposes of the two weapons offenses. When instructing the jury on the elements of felon in possession of a firearm, the trial court stated, in pertinent part:

Now, it is not enough if the Defendant merely knew about the gun. The Defendant possessed the gun only if he had control of it or the right to control it. For the felon in possession charge the Defendant cannot be found guilty of that crime if he merely touched the gun as part of his effort to prevent being shot or if his possession was unintended or inadvertent.

A similar instruction was given with regard to the felony-firearm charge.

Although defendant now argues that the trial court should have instructed the jury on self-defense or imperfect self-defense, the federal decisions on which he relies do not require standard self-defense or imperfect self-defense instructions. Instead, those cases recognize a very narrow defense based upon self-protection or protection of others as a matter of necessity to an offense involving the unlawful possession of a firearm. See *United States v Newcomb*, 6 F3d 1129 (CA 6, 1993); *United States v Singleton*, 902 F2d 471 (CA 6, 1990); *United States v Panter*, 688 F2d 268 (CA 5, 1982). This Court also recognized a limited defense of temporary innocent possession to a weapons charge in *People v Coffey*, 153 Mich App 311, 315; 395 NW2d 250 (1986). In *Coffey*, this Court held "that momentary or brief possession of a weapon resulting

from the disarming of a wrongful possessor is a valid defense against a charge of carrying a concealed weapon if the possessor had the intention of delivering the weapon to the police at the earliest possible time."

The trial court's instructions in this case were appropriately tailored to the facts of the case and fairly presented defendant's defense. *Kurr, supra*. The jury was instructed that defendant could not be convicted of felon in possession of a firearm or felony-firearm if he temporarily possessed a gun only to protect himself, or his possession was unintended or inadvertent. The court's instruction fairly presented the defense theory and sufficiently protected defendant's rights.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Richard Allen Griffin  
/s/ Pat M. Donofrio