STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 14, 1999
v	No. 202856 Jackson Circuit Court
JERNARDO DAMOND EDWARDS, Defendant-Appellant.	LC No. 96-078227 FH

Before: Fitzgerald, P.J., and Holbrook, Jr., and O'Connell, JJ.

PER CURIAM.

A jury convicted defendant of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424, possession of a firearm by a felon (felon in possession), MCL 750.224f; MSA 28.421(6), and operating a motor vehicle with a suspended license, MCL 257.904(1); MSA 9.2604(1). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to prison terms of fifteen to thirty years for the conviction of possession with intent to deliver cocaine, five to ten years for the conviction of carrying a concealed weapon, two to five years for the conviction of felon in possession, and ninety days each for the convictions of possession of marijuana and operating a motor vehicle with a suspended license. He appeals as of right. We affirm.

Defendant first argues that he was denied a fair trial when evidence was introduced of his previous convictions for possession with intent to deliver less than fifty grams of cocaine. Defendant complains particularly of the admission of a judgment of sentence from one of his prior convictions. We find no error in the admission of evidence of defendant's prior convictions. In order to prove a defendant's guilt on the charge of felon in possession, the prosecutor must establish that the defendant was a convicted felon. MCL 750.224f(2); MSA 28.421(6)(2); *People v Parker*, 230 Mich App 677, 688-689; 584 NW2d 753 (1998). If a defendant offers to concede that he is a convicted felon by stipulating to the fact of his prior felony conviction, then the prosecutor may not introduce evidence beyond that stipulation. *People v Mayfield*, 221 Mich App 656, 661; 562 NW2d 272 (1997); *People v Swint*, 225 Mich App 353, 377; 572 NW2d 666 (1997). See also *Old Chief v United*

States, 519 US 172, 174; 117 S Ct 644; 136 L Ed 2d 574 (1997) (holding that trial court abused its discretion in rejecting defendant's offer to stipulate the fact of prior conviction in exchange for exclusion of judgment of sentence). However, if the defendant does not offer such a stipulation, "he may not [on appeal] contend that the admission of evidence beyond the mere fact of his conviction constituted error." *Mayfield*, *supra* at 661.

In this case, defendant did not offer to stipulate to the mere fact of his convictions. Indeed, defendant stipulated to the *admission* of the judgment of sentence from one of his prior convictions – the very evidence of which he now complains. As the parties and the court were handling preliminary matters, the following exchange took place:

> *Prosecutor:* Your Honor, the other matter I would just like to take up with counsel, one of the counts that we have charged is the fact that the Defendant was in possession of a firearm and was previously a convicted felon.
>
> We have, in effect, a certified copy of a previous conviction of the Defendant. We also have the clerk of . . . St. Clare [sic] County, who's prepared to drive all of the way down here to authenticate this. I guess I would just show this to defense counsel and ask whether or not we can just stipulate to one of the prior convictions of his client. We have several there for purposes of proof, as opposed to bring [sic] the clerk from St. Clare [sic] County in. He's prepared to drive here this morning.
>
> *Defense Counsel:* Just a moment, please, your Honor.
>
> *Court:* Yes, sir.
>
> *Defense Counsel:* Can I speak to counsel for just a second, your Honor?
>
> *Court:* Yes, sir.
>
> *Defense Counsel:* We have no objection, your Honor, to the judgment of sentence, commitment to the corrections department, dated, I believe this is 10-26-1992.
>
> *Court:* All right. That's a certified record. You have no objection to the certified record then being admitted in place of the St. Clare [sic] County Clerk actually appearing in court then, . . . ? Is that correct?
>
> *Defense Counsel:* That's correct.

Defendant clearly agreed to the admission of the judgment of sentence when he stated that he had no objection to the certified record being admitted. This was not a stipulation to the mere fact of defendant's prior conviction, but to the admission of the record of that conviction.

During trial, when the prosecutor was questioning one of the arresting officers about the judgment of sentence, defendant objected to its admission. After a bench conference, the court

indicated that it had considered defendant's objection and would admit the judgment of sentence pursuant to the earlier stipulation. The court later allowed defendant to make a record of his objection, which was that the evidence was unfairly prejudicial. The court noted that the judgment of sentence was appropriate proof of defendant's status as a convicted felon because evidence of the specific felony was required. Although evidence of the specific felony of which defendant was convicted was not necessarily required to be presented to the jury, the judgment of sentence was nonetheless appropriate evidence in light of defendant's failure to offer to stipulate to the mere fact of his convicted-felon status.

The trial court then proceeded to give the jury a limiting instruction regarding the document, instructing the jury to only consider the judgment of sentence as evidence that defendant was previously convicted of a felony. The court specifically instructed the jury that the type of felony was unimportant, and that it should not use the document to infer that defendant was guilty of the current charges. In light of defendant's failure to offer to stipulate to the fact of his prior convictions, such a limiting instruction provided an adequate safeguard that defendant would be given a fair trial. *Mayfield*, *supra* at 659-660; *People v Green*, 228 Mich App 684, 691-692; 580 NW2d 444 (1998). We conclude that the trial court did not err in admitting evidence of defendant's convicted-felon status. Additionally, were we to conclude that the admission of this evidence was error, we would hold that, in light of the overwhelming evidence of defendant's guilt, defendant has failed to demonstrate that "it is more probable than not that a different outcome would have resulted without the error." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant next claims that he was denied a fair trial because the prosecutor characterized him as an experienced drug trafficker. However, defendant's claim of prosecutorial misconduct is unpreserved because he failed to object to the alleged misconduct. *People v Messenger*, 221 Mich App 171, 179; 561 NW2d 463 (1997). Accordingly, we do not review this issue because defendant has failed to demonstrate that "a curative instruction could not have eliminated the prejudicial effect of the remarks or . . . failure to review the issue would result in a miscarriage of justice." *Id*. at 179-180.

We also reject defendant's argument that the prosecutor presented insufficient evidence to allow the jury to convict him of possession with intent to deliver cocaine and possession of marijuana. The cocaine and marijuana were found in a vehicle that defendant was driving. Also, after being released from jail on bond, defendant signed for and took possession of the bag in which the marijuana was found. We conclude that, when viewed in the light most favorable to the prosecutor, the evidence was sufficient to allow a rational trier of fact to find defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992).

Defendant next argues that he was entrapped when, upon his release from jail, he was "tricked" into signing for the duffel bag found in his trunk. We disagree. We first note that defendant forfeited appellate review of this issue by failing to raise it before the trial court. *People v Martin*, 199 Mich App 124, 126; 501 NW2d 198 (1993). In any event, we conclude that this claim is meritless. Signing for the bag was not a crime, and the police did nothing more than provide defendant with an opportunity to supply the police with additional evidence. See *People v Ealy*, 222 Mich App 508, 510; 564 NW2d 168 (1997).

Defendant also claims that he was denied the effective assistance of counsel. Again, we disagree. To establish that he did not receive effective assistance of counsel, defendant must show that "(1) the performance of counsel was below an objective standard of reasonableness under prevailing norms and (2) a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different." *People v Plummer*, 229 Mich App 293, 307; 581 NW2d 753 (1998). Because defendant did not move for a new trial or request an evidentiary hearing on the issue of counsel's effectiveness, review is limited to those errors apparent on the record. *People v Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). Defendant asserts that counsel was ineffective by failing to move for a hearing on the issue of entrapment and failing to move to sever the felon-in-possession charge from the other charges. Because we have determined that there was no evidence to support defendant's claim he was entrapped, we necessarily conclude that the outcome of the case was not negatively impacted by counsel's failure to move for a hearing on the matter. Counsel need not make a useless motion. *People v Tullie*, 141 Mich App 156, 158; 366 NW2d 224 (1985). Defendant also fails to establish that the outcome of the trial would have been different had defense counsel moved to sever the felon-in-possession charge.

We decline to review defendant's claim that the evidence should have been suppressed as the result of an illegal search because defendant failed to raise this issue before the trial court. *People v Carroll*, 396 Mich 408, 412; 240 NW2d 722 (1976). However, we do note that defendant's challenge is based on an allegedly illegal inventory search of the vehicle; however, the evidence of which defendant complains was the result of a search at the time of defendant's arrest, before the vehicle was impounded.

We also reject as meritless defendant's claim that his double jeopardy rights were violated. Defendant was not twice put in jeopardy by a criminal prosecution for the same offense. *People v Burks*, 220 Mich App 253, 256; 559 NW2d 357 (1996).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell