

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER E. CARPENTER,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 234911

Wayne Circuit Court

LC No. 00-007862

Before: O’Connell, P.J., and White and B. B. MacKenzie*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, possession of a controlled substance less than 25 grams, MCL 333.7403(2)(a)(v), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). Defendant was sentenced to five years’ probation on each of the first three charges and was given a mandatory two-year prison sentence on the felony-firearm charge. Defendant appeals as of right. We affirm.

On the morning of trial, defendant made a motion to sever the charge of felon in possession of a firearm from the other three charges. The court denied the motion, noting that trying the charges together was allowable. The court did, however, agree to implement alternative safeguards to protect the defendant from unfair prejudice, including admitting defendant’s felon status by stipulation and issuing a limiting instruction to the jury regarding the proper use of that evidence.

Defendant argues on appeal that the court erred in denying his motion and that, as a result, he was unfairly prejudiced and denied a fair trial. We disagree.

A trial court’s refusal to sever charges under MCR 6.120(C) is reviewed for an abuse of discretion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997). An abuse of discretion occurs when an unprejudiced person, considering the facts on which the court acted, would conclude that there was no justification or excuse for the court’s ruling. *People v Schutte*, 240 Mich App 713, 715; 613 NW2d 370 (2000). The relevant provision of the court rule pertaining to joinder and severance of charges reads:

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

On the motion of either party, except as to offenses severed under subrule (B), the court may join or sever offenses on the ground that joinder or severance is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. Subject to an objection by either party, the court may sever offenses on its own initiative. [MCR 6.120(C).]

As we stated in *Duranseau*, *supra* at 208, "while . . . a trial court may sever related offenses under certain circumstances, MCR 6.120(C), a trial court is not required to do so."

In *People v Mayfield*, 221 Mich App 656; 562 NW2d 272 (1997), we adopted the rule that a felon-in-possession charge need not be severed from remaining charges provided other safeguards are utilized to protect the defendant against unfair prejudice and ensure a fair trial. Those safeguards include: entering the defendant's felon status by stipulation; providing a limiting instruction to the jury regarding the proper use of that evidence; and emphasizing to the jury that each charge must be considered separately. *Id.* at 660.

We reaffirmed our view that a fair trial can be provided by means other than severance in *People v Green*, 228 Mich App 684, 691-692; 580 NW2d 444 (1998):

This Court has explained that "adequate safeguards" can be erected to ensure that a defendant charged with both felon-in-possession and other charges arising from the same incident suffers no unfair prejudice if a single trial is conducted for all the charges. See *Mayfield*, *supra* at 659-660. Specifically, these "safeguards" are (1) the introduction by stipulation of the fact of the defendant's prior conviction, (2) a limiting instruction emphasizing that the jury must give separate consideration to each count of the indictment, and (3) a specific instruction to consider the prior conviction only as it relates to the felon-in-possession charge.

In this case, all three safeguards were implemented. Defendant stipulated to his felony status, keeping from the jury any evidence regarding the nature of his prior offense. In addition, the court instructed the jury that the evidence could be considered only as it related to the felon-in-possession charge and not for any other purpose. Last, the court provided a separate instruction for each of the four charges and clearly identified the distinct elements of each. Under *Mayfield*, the use of these safeguards adequately prevented undue prejudice and ensured a fair trial. *Mayfield*, *supra* at 659-660.

Defendant attempts to distinguish *Mayfield* from the case at bar by stating that in *Mayfield*, the issue of severance was not preserved for appeal. This distinction is without substance. Our conclusion in *Mayfield* that a fair trial can be ensured by means other than severance was not limited to cases where the issue of severance was not preserved at trial. In any criminal case where one of several charges is felon in possession of a firearm, the

defendant's right to a fair trial can be ensured by severing the felon-in-possession charge from the remaining charges *or* by implementing other procedural safeguards. In this case, the latter course was taken.

Defendant further attempts to support his position by emphasizing the prejudicial nature of evidence of a defendant's prior criminal history and the general rule that such evidence cannot be used to impeach or establish defendant's character. However, the evidence was not admitted in this case for the purpose of impeachment or establishing defendant's character – the evidence was admitted to prove a necessary element of a crime charged. In a criminal trial on a charge of felon in possession of a firearm, whether tried separately or together with other charges, the defendant's status as a convicted felon is an element of the crime and must be established beyond a reasonable doubt. MCL 750.224f. The admission of this evidence, by way of stipulation or otherwise, is not only permissible, but required, to prove the defendant's guilt. *People v Nimeth*, 236 Mich App 616, 627; 601 NW2d 393 (1999). While evidence of a prior criminal conviction may create the potential for prejudice, the evidence was clearly admissible in this case.

The safeguards identified in *Mayfield* and implemented in the case at hand adequately protected defendant from unfair prejudice and made severance unnecessary. The trial court did not abuse its discretion in denying defendant's motion to sever under MCR 6.120(C).

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Barbara B. MacKenzie