

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK PAUL DESSERT,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2011

No. 295306

Macomb Circuit Court

LC No. 2009-001308-FH

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK PAUL DESSERT,

Defendant-Appellant.

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No. 295308

Macomb Circuit Court

LC No. 2009-001119-FH

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Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In Docket No. 295306, defendant Mark Paul Dessert appeals as of right his jury conviction of second-degree fleeing and eluding. See MCL 257.602a(4). In Docket No. 295308, defendant appeals as of right his jury conviction of second-degree fleeing and eluding. In that same docket, he also pleaded guilty to retail fraud, MCL 750.356d, and driving with a suspended license, MCL 257.904. The trial court sentenced defendant as a fourth habitual offender, see MCL 769.12, to concurrent prison terms of six to 30 years each on the fleeing and eluding convictions, and to 93 days in jail each on the misdemeanor convictions. Because we conclude that there were no errors warranting relief, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

Defendant put a perfume gift set inside his jacket and then left a CVS drug store without paying. A manager retrieved the item from defendant and called the police. The manager gave the police a description of defendant and his license plate number as he drove away. Two officers in a marked patrol car were parked across the street and pursued defendant with

activated lights and siren. They saw defendant go through red lights and cross Eight Mile Road through heavy traffic before they aborted their pursuit.

Approximately four hours later, another officer in a marked patrol car pulled into a parking lot and saw defendant walking to his truck. After defendant drove away in a hurry, the officer activated his lights and siren and followed defendant. He observed defendant disregard a stop sign and go through a red light. He stopped pursuing defendant after about one-half mile. Subsequently, the officer picked defendant's picture out of an array of photographs.

Defendant moved to sever the trials on the fleeing and eluding charges, pointing out that the chases were hours apart. In denying the motion, the trial court concluded that the offenses were related. In essence, the trial court found that the incidents were part of a sequence of events and the same plan or scheme.

Although defendant frames this as a constitutional question, it merely presents a question regarding a motion to sever. In deciding such a motion, the lower court must find the relevant facts and determine whether the facts show that the offenses were related. *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009). This Court reviews the trial court's factual findings for clear error and reviews de novo, as a question of law, whether the offenses were related. *Id.* However, this Court generally reviews a trial court's ultimate ruling for an abuse of discretion. *Id.* at 234 n 6.

A trial court may generally "join offenses charged in two or more informations or indictments against a single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense." MCR 6.120(B). Joinder is appropriate if the offenses are related. MCR 6.120(B)(1). And offenses are related if they are based on the same conduct or transaction, or on a series of connected acts, or on a series of acts constituting parts of a single scheme or plan. *Id.* If the offenses are not related as defined under MCR 6.120(B), the trial court must sever them for separate trials. MCR 6.120(C).

In *Williams*, our Supreme Court construed the precursor to this court rule, which provided that offenses were related only if they involved the same conduct or transaction, or a series of acts constituting part of a single scheme or plan. *Williams*, 483 Mich at 233. In that case, the defendant was charged with drug-related offenses that resulted from the execution of separate search warrants three months apart. The police officers found cocaine, drug paraphernalia, cash, and weapons during the execution of each search. *Id.* at 228-229. Our Supreme Court concluded that the offenses were related within the meaning of the prior court rule:

The offenses charged were plainly "related" under MCR 6.120(B)(2). In both cases, defendant was engaged in a scheme to break down cocaine and package it for distribution. Evidence of acts constituting part of defendant's single scheme was found in both the motel room and the house at 510 Nevada. Even if one views defendant's first arrest in November and his second arrest in February as discrete moments in time, direct evidence indicated that he was engaging in the same particular conduct on those dates. The charges stemming from both arrests were not "related" simply because they were "of the same or similar character."

Instead, the offenses charged were related because the evidence indicated that defendant engaged in ongoing acts constituting parts of his overall scheme or plan to package cocaine for distribution. Accordingly, the trial court complied with what the language of MCR 6.120 unambiguously required. [*Id.* at 234-235].

Under the revised court rule, the standard for finding that offenses are related is a lesser standard than that discussed in *Williams*. Here, the larceny was connected to the first chase, and the failed first chase led to the attempt to apprehend defendant with the second chase. Thus, both events were part of a series of connected acts. MCR 6.120(B)(1)(b). The acts also constituted “a series of acts constituting parts of a single scheme or plan.” MCR 6.120(B)(1)(c). Defendant had committed a larceny and attempted to avoid capture for the larceny by fleeing from the police officers in both chases. Therefore, the two fleeing and eluding offense were “related” as a matter of law. The trial court did not abuse its discretion in denying defendant’s motion to sever.

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael J. Kelly  
/s/ Amy Ronayne Krause