

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR LEE SCHOTTS,

Defendant-Appellant.

UNPUBLISHED

July 26, 1996

No. 180094

LC No. 94-036671

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

A jury convicted defendant of conspiracy to commit assault with intent to do great bodily harm less than murder, MCL 750.157a; MSA 28.354(1), and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. The trial court sentenced him to imprisonment for three to ten years for each conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion and prejudiced him in severing his trial from that of his codefendant after the jury had been selected. The trial court severed the trial after it became aware that the prosecution intended to offer statements which may have violated the rule established by the United States Supreme Court in *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968). In *Bruton*, the Supreme Court held that a defendant is deprived of his Sixth Amendment right of confrontation when a nontestifying codefendant's facially incriminating confession is admitted at their joint trial, even if the jury is instructed to consider the confession only against the codefendant.

A trial court's decision to sever a trial is reviewed for an abuse of discretion. *People v Hana*, 447 Mich 325, 331; 524 NW2d 682 (1994). This Court "will find an abuse of discretion only if an unprejudiced person, considering the facts upon which the trial court made its decision, would conclude that there was no justification for the ruling made." *People v Miller*, 198 Mich App 494, 495; 499 NW2d 373 (1993). After reviewing the record, we agree with the trial court that there may have been

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

a potential *Bruton* rule violation if the trial court had not severed the trial. Accordingly, we cannot conclude that there was no justification for the trial court's decision to sever the trial. Furthermore, a trial court's decision to sever will not be reversed absent a showing of prejudice to the defendant's substantial rights. *Hana, supra*, 339. Defendant has failed to persuade us that he was prejudiced by the trial court's decision to sever. We therefore reject his claim of prejudice.

Defendant also argues that the prosecutor improperly shifted the burden of proof to defendant by implying during closing argument that defendant had a duty to produce witnesses. The prosecutor's statements during closing argument did not prejudice defendant's right to a fair and impartial trial because they were made in response to matters first raised by defense counsel during his closing argument. *People v Dersa*, 42 Mich App 522, 525-527; 202 NW2d 334 (1972). Moreover, any possible prejudicial effect was cured by the trial court's instruction after defendant objected to the prosecutor's closing argument statements as well as the trial court's instruction at the end of trial.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.