

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARED JAROD CAMERON,

Defendant-Appellant.

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UNPUBLISHED

June 19, 2012

No. 304094

Saginaw Circuit Court

LC No. 10-034275-FC

Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224(f), and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227(b). The trial court sentenced defendant as a fourth-offense offender, MCL 769.12, to prison terms of 20 to 40 years for the armed robbery and felon in possession convictions, to be served consecutive to concurrent two-year terms for each of the felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion to sever his trial from the trial of his codefendants. The decision regarding whether codefendants will be tried separately is reviewed for an abuse of discretion. *People v Missouri*, 100 Mich App 310, 348-349; 299 NW2d 346 (1980).

A defendant does not have an absolute right to a separate trial. *People v Hoffman*, 205 Mich App 1, 20; 518 NW2d 817 (1994). Indeed, there is a strong policy favoring joint trials in the interest of justice, judicial economy, and administration. *People v Etheridge*, 196 Mich App 43, 52-53; 492 NW2d 490 (1992). Joinder of distinct criminal charges is permitted against multiple defendants where “(1) there is a significant overlapping of issues and evidence, (2) the charges constitute a series of events, and (3) there is a substantial interconnectedness between the parties defendant, the trial proofs, and the factual and legal bases of the crimes charged.” *Missouri*, 100 Mich App at 349; 299 NW2d 346 (1980). Severance should be granted “only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *People v Hana*, 447 Mich 325, 359-360; 524 NW2d 682 (1994).

Defendant argues that his trial should have been severed from that of his codefendants because the July 26, 2009, incident for which the codefendants were tried was not factually

related to the August 22, 2009, incident for which both defendant and his codefendants were tried. The trial court disagreed, finding that defendant could not demonstrate that the August 22 robbery was totally unrelated to the July 26 robbery. The August 22 robbery occurred at the same store and in a similar manner to the July 26 robbery. Codefendant Lula Belvin was working at the store during both robberies and was allegedly involved in the planning of both robberies. An uncharged individual was involved in executing both robberies and described codefendant William Conner's participation in both. Conner was working at the store during the first robbery. Given the significant overlapping of issues and evidence and the substantial interconnectedness between the codefendants and the trial proofs, the court did not abuse its discretion in denying the motion to sever.

Further, the trial court instructed the jury on more than one occasion that defendant was not charged with a crime relating to the July 26 robbery and that evidence regarding the July 26 robbery could not be considered against defendant. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Next, defendant argues that the trial court erred in allowing the complaining witness's in-court identification of defendant. This Court will not reverse a trial court's decision to admit identification evidence unless it finds the decision clearly erroneous. Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake was made. *People v Hornsby*, 251 Mich App 462, 466; 650 NW2d 700 (2002). In order to sustain a due process challenge to an identification lineup, a defendant must show that the pretrial identification procedure was so suggestive in light of the totality of the circumstances that it led to a substantial likelihood of misidentification. *People v Kurylczyk*, 443 Mich 289, 302; 505 NW2d 528 (1993). Improper suggestion in identification procedures arises when the witness is shown a group of people in which one person is singled out in some way. *People v McAllister*, 241 Mich App 466, 472; 616 NW2d 203 (2000).

Here, defendant argues that a pretrial lineup was unduly suggestive because the six subjects were asked to wear masks in the same manner that the witness viewed the assailant during the crime. Defendant argues that the witness was not asked to identify the actual perpetrator, but only the one that looked the most like the perpetrator while masked. However, the relevant inquiry is whether the lineup was unduly suggestive in light of all of the circumstances. *Kurylczyk*, 443 Mich at 306. Here, the lineup did not suggest any particular individual for identification because all the subjects were seated and masked. Under the circumstances, the lineup provided an opportunity for the witness to view the subjects in the same manner that the witness viewed the perpetrator of the robbery.

Even if deemed improper, an independent basis existed for the in-court identification. See *People v Gray*, 457 Mich 107, 115-116; 577 NW2d 92 (1998). The witness identified defendant in the courtroom and on a surveillance photograph as the man who robbed the store. The witness explained that defendant wore a mask from the nose down, but he observed defendant pointing a gun at him from a couple feet away for 10 seconds. The witness explained that he was able to recognize defendant in court due to the shape of defendant's nose and head, as well as by defendant's hairline.

Defendant next argues that during voir dire the trial court improperly read to the jury defendant's prior convictions listed in the information, and that trial counsel was ineffective in not objecting. The information sets forth specific prior convictions for the felon in possession count. In reciting the charge of felon in possession, the court read the allegation that defendant had prior convictions for first-degree home invasion and possession of less than 25 grams of cocaine. After a break, defense counsel indicated to the court that

I didn't do it this morning before you read the Information concerning my client's felon-in-possession charge . . . and the Court read the two felonies of which he was convicted. What I would like to do is enter into an old chief stipulation, that those not be repeated at any point. And we would just stipulate that my client had a prior felony conviction and had not yet had his rights restored.

The trial court agreed with defense counsel's request.

Defendant failed to preserve this issue below. Thus, we review for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Under this standard, this Court will reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* While it would have been prudent for the trial court to have raised this issue with counsel before reading the information, the court agreed not to reference the prior convictions once the issue was raised. The jury understood that defendant was a convicted felon. Assuming the jury kept in mind the prior convictions, notwithstanding the fleeting reference, we are not persuaded that the information affected the jury's decision or the fairness or integrity of the proceedings.

Similarly, we conclude that defendant is not entitled to a new trial based on the ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation prejudiced him so as to deprive him of a fair trial. *People v Taylor*, 275 Mich App 177, 186; 737 NW2d 790 (2007). Defendant must also show that the resultant proceedings were fundamentally unfair or unreliable. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). While counsel should have raised the issue before the court read the information, we are satisfied that the outcome of the trial would not have been different.<sup>1</sup> Further, we are unable to conclude that counsel's handling of the matter after the information was read was ineffective. Counsel secured a ruling that assured that the convictions would not be referred to again. Additionally, we presume that the jury followed the court's instructions to determine the facts based on the evidence and that "a past conviction is not evidence that the defendant committed the crimes alleged in this case." *Graves*, 458 Mich at 486.

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<sup>1</sup> Testimony was presented by a witness who identified defendant as the individual that pointed a gun at him and robbed the store at which the witness was working. Another witness was a participant in the robbery and detailed defendant's involvement in the robbery, and the jury viewed a surveillance video of the robbery.

Defendant also argues that he was denied his right to confront the evidence against him when the jury was allowed to use a magnifying glass to view photographs during deliberations that were not magnified during the trial. The photographs on which the jury used the magnifying glass were evidence that was admitted at trial. It is permissible to allow the jury to use the magnifying glass as an aid to inspection of photographic evidence. *People v Thorngate*, 10 Mich App 317, 322; 159 NW2d 373 (1968).

Finally, defendant argues that the trial court erred by denying his motion for a new trial and that the verdict was against the great weight of the evidence. A trial court's decision to grant or deny a new trial is reviewed for an abuse of discretion. *People v Terrell*, 289 Mich App 553, 559; 797 NW2d 684 (2010). The Court reviews for an abuse of discretion the trial court's denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001).

Defendant's argument that he is entitled to a new trial is premised upon his arguments raised above regarding the identification of defendant as a perpetrator and allowing the jury to use a magnifying glass to examine photographic evidence. Similarly, defendant's argument that his conviction was against the great weight of the evidence is premised on the alleged errors regarding identification and the use of the magnifying glass. However, we have already rejected those arguments as being without merit. Additionally, defendant has failed to provide any discussion of the evidence and how it allegedly preponderates against the verdict. Consequently, defendant's argument regarding the weight of the evidence is without merit and abandoned. *People v Mackle*, 241 Mich App 583, 604; 617 NW2d 339 (2000).

Affirmed.

/s/ Jane M. Beckering  
/s/ E. Thomas Fitzgerald  
/s/ Cynthia Diane Stephens