

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

March 28, 2000

Plaintiff-Appellee,

v

No. 212192

St. Joseph Circuit Court

FREDDIE BROWN,

LC No. 97-008782-FH

Defendant-Appellant.

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals by of right from his convictions of felonious assault, MCL 750.82; MSA 28.277, felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), entered after a jury trial. We affirm.

As defendant was originally charged, the offense of felonious assault was designated the predicate felony for the offense of felony-firearm. During trial, the prosecution moved to amend the information to designate either felonious assault or felon in possession as the predicate felony for the offense of felony-firearm. Defendant objected but the trial court granted the motion, finding that defendant would not be prejudiced. The jury convicted defendant on all three counts.

Defendant argues that the trial court abused its discretion by granting the prosecution's motion to amend the information to allow felon in possession to serve as a predicate felony for the offense of felony-firearm. We disagree. Before, during, or after trial, a trial court may permit the prosecution to amend the information unless to do so would result in undue prejudice to the defendant. MCL 767.76; MSA 28.1016; MCR 6.112(G). Undue prejudice includes unfair surprise, inadequate notice, or insufficient opportunity to defend. *People v Hunt*, 442 Mich 359, 364; 501 NW2d 151 (1993). The parties discussed amending the information before trial; no unfair surprise or inadequate notice resulted from the amendment. Defense counsel had ample opportunity to devise a trial strategy that took into consideration a possible amendment of the information. Moreover, the amendment did not add a new charge to the information, and did not deprive defendant of a sufficient opportunity to defend against the charges.

Both the United States Constitution and the Michigan Constitution prohibit placing a defendant twice in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15. Defendant argues that his right to be free from double jeopardy was violated when the jury was allowed to consider both felonious assault and felon in possession as the predicate offense for the charge of felony-firearm. We disagree. MCL 750.227b; MSA 28.424(2) specifies certain weapons offenses that cannot form the predicate felony for the offense of felony-firearm. In *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998), our Supreme Court held that the list is inclusive, and that a weapons offense not included on the list can serve as the predicate offense for a conviction of felony-firearm. The offense of felon in possession is not included in the list in MCL 750.227b; MSA 28.424(2); therefore, it can serve as the predicate felony for the offense of felony-firearm. No error occurred.

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey