STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 12, 2015
v	No. 324341 Jackson Circuit Court
RODNEY JAMAR MCKEE, Defendant-Appellant.	LC No. 14-004196-FC

Before: BOONSTRA, P.J., and SAAD and MURRAY, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by leave granted[1] the trial court's denial of his motions to reconsider its order consolidating lower court docket number 14-004196-FC (defendant charged with first-degree arson, MCL 750.72) and lower court docket number 14-004193-FH (defendant charged with carrying a concealed weapon (CCW), MCL 750.227), or in the alternative to sever the charges for separate trials pursuant to MCR 6.120(B). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

A Jackson police officer, Sergeant Scott Watson, responded to a "be-on-the-lookout" for defendant alert issued by police dispatch in relation to an investigation of an arson that had just occurred. While looking for defendant in the area of an associated address, Watson saw defendant's vehicle—a white Ford Explorer—stop at a nearby intersection.[2] Watson saw defendant exit his vehicle and approach the vehicle behind it, a black Ford Explorer driven by Lashonda Jackson. Watson activated his patrol vehicle's emergency lights, exited his vehicle, and asked defendant to approach him. Defendant hesitated and put his hands in his pockets.

[1] *People v McKee*, unpublished order of the Court of Appeals, entered December 16, 2014 (Docket No. 324341).

[2] It is unclear from Watson's preliminary examination testimony whether the "be-on-the-lookout" alert included a description of defendant's vehicle, or whether Watson learned of it during the course of his investigation. Watson's police report does indicate, however, that defendant was "last seen driving a white SUV." In any event, Watson stated that he recognized defendant's vehicle as one that defendant was "supposed to be driving."

Watson ordered defendant to lie on the ground, and defendant did. After defendant was handcuffed, he told Watson and Officer Brandon Casler that a firearm was in his vehicle. The search of defendant's vehicle revealed a firearm stored in the glove compartment, separate from its ammunition, which was in a box on the rear passenger seat. These items were collected as evidence. A gas can was found during a search of Jackson's vehicle.[3]

The charges of arson and CCW against defendant were initially brought in separate cases assigned to different prosecutors. The prosecutor in charge of the CCW case sought consolidation of the two cases, arguing that the two cases arose from the same investigation and that evidence from defendant's arrest and related vehicle search would be introduced at the arson trial, although the prosecution did not specify precisely to what evidence it was referring. Defendant objected on the grounds that there were no shared witnesses or evidence and that there was no evidence that a firearm was involved in the arson. The trial court granted consolidation over defendant's objection, which objection defense counsel renewed in motions to reconsider consolidation and to sever the charges. The trial court stated that it considered these charges part of a "series of connected acts," analogizing the situation to one where a defendant is arrested on a warrant and drugs or weapons are found during his arrest. This appeal followed.

II. STANDARD OF REVIEW

The permissibility of joinder presents a mixed question of fact and law; we review for clear error the trial court's findings of fact as to whether offenses are related, and review the underlying law de novo. *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009). We review a trial court's ruling on a motion to sever for an abuse of discretion. *Id*. at 234 n 6. An abuse of discretion does not occur merely when the trial court selects a different outcome than a different court may have selected; rather a trial court only abuses its discretion when it selects an outcome "that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

III. ANALYSIS

MCR 6.120(B) permits trial courts to "sever offenses charged in a single information or indictment 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." Joinder is appropriate if the offenses are "related," which MCR 6.120(B)(1) defines as "based on (a) the same conduct or transaction, or (b) a series of connected acts, or (c) a series of acts constituting parts of a single scheme or plan." MCR 6.120(C) states that "[o]n the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1)." In *Williams*, the Michigan Supreme Court held that joinder is appropriate where the charges are "logically related, and there is a large area of overlapping proof[.]" *Id*. at 237 (quotation omitted).

Defendant argues that the charged arson and CCW offenses are not "related" under MCR 6.120(B)(1). We disagree, and decline to find on the current record that the trial court

[3] The record does not reflect whether a gas can was used during the arson.

abused its discretion. The trial court noted that defendant was arrested as a suspect in the arson on the same day that it occurred. The prosecution alleged that evidence from defendant's arrest and the resulting search of defendant's or Jackson's vehicles (a detail on which the record is not entirely clear) would be introduced at the arson trial. The introduction of that evidence may thus require the testimony of Watson and Casler at both trials. Further, defendant would not have been arrested, and subsequently charged with CCW, if he had not been a suspect in the arson investigation. The two charges thus shared some of the same facts and circumstances and, according to the prosecution's representations, contained areas of overlapping proof. On the record before this Court, we conclude that the trial court's decision to consolidate the cases was not outside the range of principled outcomes. *Young*, 276 Mich App at 448; MCR 2.610(B)(1)(b). Although defendant takes issue with the prosecution's failure to identify what evidence from defendant's arrest would be introduced at trial, we do not find that the prosecution's lack of specificity renders the trial court's decision an abuse of discretion.[4]

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Christopher M. Murray

[4] Our decision on defendant's interlocutory appeal does not foreclose, and should not be read as a comment on the likelihood of success of, a later challenge or appeal regarding the propriety of severance based upon the evidence as it develops. For example, should the prosecution in fact fail to present any evidence from defendant's arrest or the search of defendant's or Jackson's vehicles in order to prove defendant's guilt on the arson charge, or should the evidence presented as proof of either charge prove unfairly prejudicial to defendant's defense of the other charge, defendant is free to raise those issues subsequently before the trial court, or on appeal, at which point they will be considered independently of this opinion, and this opinion will not foreclose a conceivably different outcome.