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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-8

Filed 5 November 2024

Cabarrus Co., Nos. 21 CRS 53130–31

STATE OF NORTH CAROLINA

v.

KENNETH LEE ISENHOUR, Defendant.

Appeal by Defendant from judgment entered 24 March 2023 by Judge Stephanie L. Reese in Cabarrus County Superior Court. Heard in the Court of Appeals 27 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Daniel K. Covas, for the State.

Christopher J. Heaney, for Defendant-Appellant.

CARPENTER, Judge.

Kenneth Lee Isenhour (“Defendant”) appeals from judgment after a jury convicted him of one count of each of the following: possession of a firearm by a felon; trafficking twenty-eight grams or more of an opioid by possession; trafficking more than four but less than fourteen grams of an opioid by possession; and maintaining a dwelling house for keeping and selling controlled substances. Defendant contends

the trial court erred by joining the possession of a firearm by a felon charge with his trafficking twenty-eight grams or more of an opioid by possession, trafficking more than four but less than fourteen grams of an opioid by possession, and maintaining a dwelling house for keeping and selling controlled substances charges (“drug-related charges”) for a single trial. After careful review, we affirm the trial court.

I. Factual & Procedural Background

On 4 October 2021, a Cabarrus County grand jury indicted Defendant for possession of a firearm by a felon and three drug-related crimes—trafficking twenty-eight grams or more of an opioid by possession, trafficking fourteen to less than twenty-eight grams of an opioid by possession, and maintaining a dwelling house for keeping and selling controlled substances.

On 20 March 2023, the Honorable Stephanie L. Reese of the Cabarrus County Superior Court conducted a pre-trial hearing on the joinder of Defendant’s charges for trial. The State moved to join all charges for one trial and Defendant moved for severance of the possession of a firearm by a felon charge from the drug-related charges. After hearing arguments, the trial court joined the charges for trial, finding there was “a connection between the trafficking charges and the possession of a firearm by a felon charge,” and joinder “will not unjustly or prejudicially hinder the Defendant’s ability to protect himself” nor “preclude the Defendant receiving a fair trial on all the charges.” That same day, the State began trying Defendant and the evidence tended to show the following.

On 17 August 2021, as part of an ongoing investigation of illegal drug activity, law enforcement obtained a search warrant for Defendant's home. At the time of the search, Defendant and his girlfriend were home alone. During the search, law enforcement found a bolt-action rifle behind the couch in Defendant's living room. In Defendant's bedroom, law enforcement found prescription bottles filled with opioid pills, a plastic sandwich bag containing 16 oxycodone tablets in the pocket of a motorcycle jacket, along with 12-gauge ammunition, .30-06 ammunition, shotgun slugs, 12-gauge and bird shot. Law enforcement also discovered over \$8,000 in cash hidden throughout Defendant's home—\$2,488 in a nightstand drawer, \$320 inside a boot in the bedroom closet, and \$6,355 behind the dishwasher and in cabinets in the kitchen. Defendant stipulated he was a convicted felon due to a 1995 breaking and entering conviction.

Defendant did not renew his motion to sever during trial. On 24 March 2023, the jury found Defendant guilty of possession of a firearm by a felon, trafficking twenty-eight grams or more of an opioid by possession, trafficking more than four but less than fourteen grams of an opioid by possession, and maintaining a dwelling house for keeping and selling controlled substances. The trial court sentenced Defendant to a consolidated sentence of 225 to 282 months imprisonment. On 31 March 2023, Defendant filed written notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issue

The issue on appeal is whether the trial court erred by joining Defendant's possession of a firearm by a felon charge with his drug-related charges for trial.

IV. Analysis

A. Joinder of Charges

1. Preservation and Standard of Review

Section 15A-926 provides that “[t]wo or more offenses may be joined . . . for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan.” N.C. Gen. Stat. § 15A-926(a) (2023). “It is within the trial judge’s discretion whether to permit the consolidation of offenses against a defendant and we will not overturn that decision absent a clear showing of abuse of discretion.” *State v. Cromartie*, 177 N.C. App. 73, 78, 627 S.E.2d 677, 681 (2006) (citing *State v. Perry*, 142 N.C. App. 177, 181, 541 S.E.2d 746, 749 (2001)). “But if the joined charges possess no transactional connection, then the trial court’s decision to join is improper as a matter of law.” *State v. Larkin*, 237 N.C. App. 335, 348, 764 S.E.2d 681, 690 (2014) (citing *State v. Owens*, 135 N.C. App. 456, 458, 520 S.E.2d 590, 592 (1999)).

If a defendant believes consolidation of charges is unfair, the defendant may move to sever the charges. *See* N.C. Gen. Stat. § 15A-927 (2023). The defendant is required “to file a motion to sever charges prior to trial or, if the grounds for severance

are not known before trial, file a motion to sever no later than the close of the State's evidence." *State v. Yarborough*, 271 N.C. App. 159, 164, 843 S.E.2d 454, 459 (2020) (citing N.C. Gen. Stat. §§ 15A-927(a)(1)–(2)). If a defendant files a pretrial motion for severance and the trial court overrules that motion, the defendant "may renew the motion on the same grounds before or at the close of all the evidence. Any right to severance is waived by failure to renew the motion." N.C. Gen. Stat. § 15A-927(a)(2).

"Where a defendant has waived any right to severance, on appeal this 'Court is limited to reviewing whether the trial court abused its discretion in ordering joinder at the time of the trial court's decision to join.'" *State v. Wood*, 185 N.C. App. 227, 230, 647 S.E.2d 679, 683 (2007) (quoting *State v. McDonald*, 163 N.C. App. 458, 463–64, 593 S.E.2d 793, 797, *disc. review denied*, 358 N.C. 548, 599 S.E.2d 910 (2004)). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citing *State v. Parker*, 315 N.C. 249, 337 S.E.2d 497 (1985)).

Here, Defendant filed a pretrial motion to sever his charges but did not renew his motion at trial. Therefore, Defendant waived his right to severance, *see* N.C. Gen. Stat. § 15A-927(a)(2), and we review whether the trial court abused its discretion in its decision to join Defendant's charges at the time of its decision to join, *see Wood*, 185 N.C. App. at 230, 647 S.E.2d at 683.

2. Discussion

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“Joinder is a decision which is made prior to trial; the nature of the decision and its timing indicate that the correctness of the joinder must be determined as of the time of the trial court’s decision and not with the benefit of hindsight.” *State v. Silva*, 304 N.C. 122, 127, 282 S.E.2d 449, 453 (1981). “Public policy favors consolidation of offenses because it tends to expedite the administration of justice, reduces congestion of trial dockets, and conserves judicial time and lessens the burden on jurors and witnesses.” *State v. Manning*, 139 N.C. App. 454, 459, 534 S.E.2d 219, 223 (2000) (citing *State v. Boykin*, 307 N.C. 87, 296 S.E.2d 258 (1982)).

In determining whether joinder was appropriate, we assess whether: “(1) there is a transactional connection among the offenses; and (2) the accused ‘can receive a fair hearing on more than one charge at the same trial.’” *Yarborough*, 271 N.C. App. at 164, 843 S.E.2d at 459 (quoting *Silva*, 304 N.C. at 126, 282 S.E.2d at 452). In evaluating transactional connection(s), we consider: “(1) the nature of the offenses charged; (2) any commonality of facts between the offenses; (3) the lapse of time between the offenses; and (4) the unique circumstances of each case.” *Perry*, 142 N.C. App. at 181, 541 S.E.2d at 749 (quoting *State v. Montford*, 137 N.C. App. 495, 498–99, 529 S.E.2d 247, 250, *cert. denied*, 353 N.C. 275, 546 S.E.2d 386 (2000)).

Here, the trial court did not abuse its discretion as it is clear from the record that the trial court engaged in the two-step analysis to determine whether there was a transactional connection among Defendant’s offenses, and whether Defendant could receive a fair hearing on more than one charge at the same trial. *See Yarborough*,

271 N.C. App. at 164, 843 S.E.2d at 459; *Perry*, 142 N.C. App. at 181, 541 S.E.2d at 749.

Concerning the first prong—a transactional connection—the trial court stated at the pretrial hearing, in relevant part, that it:

[finds] that there is a connection between the trafficking charges and the possession of firearm by a felon charge in that there is temporal proximity of evidence between the two crimes, hence, the drugs or the gun were found at the same time pursuant to the same search warrant, they are close in proximity and that the drugs and the guns are alleged to have been found at the same residence that is being attributed to the Defendant.

The same witnesses . . . will be used to prove the trafficking as well as the possession of a firearm by a felon[.]

. . .

There is certainly some suggestion that the motive and connection between trafficking drugs and the possession of a firearm are connected in that one needs a gun to protect oneself when one is committing drug crimes. So there would be similar motive evidence for both possession of the drugs and the gun.

In addition, the efficiency of judicial resources in hearing all of the evidence in one hearing outweighs any potential prejudice.

Consistent with the factors in *Perry*, record evidence shows that the nature of Defendant's alleged offenses were possessory, arose at the same time and same location, and the forecasted evidence would be introduced by the same witnesses from common facts. *See Perry*, 142 N.C. App. at 181, 541 S.E.2d at 749. In addition, the

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circumstances of this case involved an ongoing investigation of illegal drug activity, and the State's theory of guilt was that guns are a part of a drug operation. The anticipated testimony at trial included that "all of these substances, drugs, money, and guns, were found together in one living space, occupied, resided by the Defendant, who is a convicted felon[.]"

Accordingly, the trial court's pretrial findings and conclusion relative to the nature and circumstances of Defendant's offenses, as well as the "temporal" and geographical connection between the possession of a firearm by a felon charge and the drug-related charges were manifestly supported by reason. *See Hennis*, 323 N.C. at 285, 372 S.E.2d at 527; *see also Silva*, 304 N.C. at 127, 282 S.E.2d at 453 ("Joinder is a decision which is made prior to trial; . . . the correctness of the joinder must be determined as of the time of the trial court's decision and not with the benefit of hindsight.").

As to the second prong—fair trial on more than one charge—the trial court stated at the pretrial hearing, in pertinent part, that:

hearing the possession of firearm charge at the same time as the trafficking charge will not unjustly or prejudicially hinder the Defendant's ability to protect himself. It will not preclude any defense that could be raised in one charge that could not be raised in another charge and will not preclude the Defendant receiving a fair trial on all of the charges.

Record evidence shows Defendant's possession of a firearm by a felon charge and the other drug-related charges "were not so separate in time or place or so distinct in circumstances that consolidation unjustly or prejudicially hindered or deprived defendant of his ability to defend one or other of the charges." *See State v. Effler*, 309 N.C. 742, 752, 309 S.E.2d 203, 209 (1983). The evidence to be presented at trial was not complicated, nor so difficult to separate proof of one charge from proof of the others. *See* N.C. Gen. Stat. § 15A-927(b)(1) (2023).

Thus, the trial court's joinder of Defendant's charges for trial was the result of a reasoned decision, and we conclude the trial court did not abuse its discretion by joining Defendant's charges for trial. *See Hennis*, 323 N.C. at 285, 372 S.E.2d at 527.

B. Ineffective Assistance of Counsel

Defendant next asserts that he received ineffective assistance of counsel ("IAC") based on his trial counsel's failure to renew his motion to sever at the close of all evidence. Defendant's IAC claim rests on whether this Court concludes that Defendant's attorney failed to preserve the issue of the joinder or severance for appellate review. As set out above, the issue of joinder was reviewable on appeal and the trial court did not abuse its discretion. To the extent Defendant asserts IAC based on severance preservation, we dismiss without prejudice for Defendant's right to file a motion for appropriate relief before the trial court.

V. Conclusion

We hold that the trial court did not abuse its discretion by joining Defendant's

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possession of a firearm by a felon charge with his drug-related charges for trial.

AFFIRMED IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).