IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 2009

DANIEL D. COOPER,

Appellant,

v. Case No. 5D08-2684

STATE OF FLORIDA,

Appellee.

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Opinion filed July 17, 2009

Appeal from the Circuit Court
for Orange County,
Bob Wattles, Judge.

James S. Purdy, Public Defender, and Nancy Ryan, Assistant Public Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Anthony J. Golden, Assistant Attorney General, Daytona Beach, for Appellee.

EVANDER, J.

Cooper was convicted, after a jury trial, of possession of a firearm by a convicted felon,[1] and possession of less than 20 grams of cannabis.[2] We affirm the firearm conviction without further discussion. However, we reverse the cannabis conviction and

[1] § 790.23, Fla. Stat. (2007).

[2] § 893.13(6)(b), Fla. Stat. (2007).

remand for a new trial on that count, because the trial court should have granted Cooper's pretrial motion to sever the two counts.

The decision to grant or deny a motion for severance rests within the sound discretion of the trial court. *Smithers v. State,* 826 So. 2d 916, 923 (Fla. 2002). However, that discretion is sharply curtailed when it concerns a request to sever a charge of possession of a firearm by a convicted felon. *Tucker v. State,* 884 So. 2d 168, 172 (Fla. 2d DCA 2004). Here, the admission of evidence that Cooper was a convicted felon was necessary to prove the count charging him with possession of a firearm by a convicted felon, but was inadmissible and unduly prejudicial with regard to the cannabis count. *See State v. Vazquez,* 419 So. 2d 1088 (Fla. 1982); *Tucker; Craft v. State,* 441 So. 2d 704 (Fla. 2d DCA 1993); *Smith v. State,* 434 So. 2d 18 (Fla. 5th DCA 1983).

AFFIRMED in part; REVERSED in part; REMANDED.

PALMER and SAWAYA, JJ., concur.