

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL DARNELL PEOPLES,

Defendant-Appellant.

UNPUBLISHED

October 12, 2001

No. 223173

Macomb Circuit Court

LC No. 98-000439-FH

Before: Hoekstra, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

The prosecutor charged defendant Russell Darnell Peoples with domestic violence,¹ possession with intent to deliver cocaine,² possession of a firearm during the commission of a felony³ (felony-firearm), and being a felon in possession of a firearm⁴ (felon in possession).⁵ The trial court directed a verdict of acquittal for the domestic violence charge. The jury acquitted Peoples of the cocaine and felony-firearm charges, but convicted him of felon in possession. The trial court later sentenced Peoples to the 463 days he had already spent in jail. He appeals as of right. We affirm.

I. Basic Facts

On December 28, 1997, at approximately 9:00 p.m., a Mt. Clemens police dispatcher directed four police officers to the area near the houses at 82 and 95 Inches Street, where individuals had heard shots being fired.⁶ 82 Inches Street and 95 Inches Street are four houses

¹ MCL 750.81(2).

² MCL 333.7401(2)(a)(vi).

³ MCL 750.227b

⁴ MCL 750.224f

⁵ The prosecutor charged Peoples with several other crimes, but dismissed the charges before trial.

⁶ Evidently, the shots fired were reported as shots from a small firearm, not a shotgun.

apart and 82 Inches Street is known as a “flophouse.” When the police arrived at the scene, they interviewed Vatrina Thompson briefly.⁷ From this conversation as well as from speaking with other witnesses, the police determined that a gunman was barricaded in 82 Inches Street.

Lisa Sanford walked out of the house at 82 Inches Street about half an hour after the police arrived. Though Sanford did not appear to have been assaulted or shot, the police present at the scene determined that they needed additional tactical support, both to handle the situation in the house and the growing crowd on the street observing the standoff. Consequently, they summoned a SWAT⁸ team, as well as additional assistance from the Macomb County Sheriff’s Department and the Clinton Township Police Department. Though a hostage negotiator participated in attempting to resolve the standoff between Peoples and the police by speaking to Peoples from the street using a bullhorn, Peoples did not respond. The police fired a special weapon that discharges “big round rubber dowels” to break some windows in the house, ostensibly to be able to fire teargas canisters into the house if necessary, but did not fire any other weapons at the house. Nor did anyone in the house brandish a weapon or fire at the police.

Peoples finally came out of the house about six hours after the police arrived at the scene. He was cooperative when the police arrested him. The police then entered the house in order to ensure that there were no other suspects or victims, weapons or contraband inside the building. Once inside, the police found no one there. However, the police did find a loaded shotgun in an upstairs bedroom closet. The closet had no door on it and the shotgun was leaning against the right side of the closet toward the front. The police seized the shotgun. The police were not able to connect any of the personal items, such as clothing, near the shotgun with Peoples, nor were they able to find his fingerprints on the shotgun. The police also found drugs in a hole in a wall on the first floor. The police conducted this protective sweep in approximately three to five minutes.

II. Procedural History

Following his arrest, Peoples entered into a plea agreement in July 1998, agreeing to plead no contest to possession of cocaine, felon in possession, and domestic violence in exchange for dismissal of the felony-firearm charge at sentencing. However, in September 1998, Peoples’ motion to withdraw his plea was granted. Unfortunately, the police, aware of Peoples’ guilty plea and under the impression that the evidence was no longer necessary, destroyed the drugs and shotgun on October 21, 1998, because they were unaware that he had withdrawn his plea.

⁷ At a suppression hearing, Officer James Disser said that he had been told that Peoples had been in a confrontation with Thompson and had fired two shots at her. He had also been told that Peoples had dragged another woman to 82 Inches Street and hit her in the face with a gun. This evidence was not presented to the jury.

⁸ SWAT is an acronym for special weapons and tactics, a special police unit that often responds to barricaded gunmen and hostage situations.

Earlier, on October 9, 1998, Peoples had moved to suppress the drug evidence, arguing that it was gathered illegally because the police lacked a search warrant when they entered his home. Among his several arguments, Peoples contended that there were no exigent circumstances justifying the warrantless search. In January 1999, Peoples filed a supplemental brief in which he argued that the seized gun should be suppressed as well because there were no exigent circumstances excusing the police from obtaining an arrest and search warrant. On February 19, 1999, after having heard police testimony, the court entered its opinion and order denying the motion. The trial court concluded that that the evidence was seized pursuant to a valid protective sweep and that the gun was in plain view.

At trial, after the prosecutor concluded presenting her witnesses, Peoples moved for a directed verdict of acquittal on the four charges. The prosecutor did not oppose the motion for directed verdict on the domestic violence charge, so the trial court granted it. However, the trial court refused to rule on Peoples' motion for a directed verdict of acquittal of the three other charges. Though defense counsel argued that the trial court had to rule on the motion, the trial court took the motion under advisement and suggested that defense counsel should brief the issues.

Peoples then testified on his own behalf, explaining that in December 1997 he lived in Ann Arbor. His mother had purchased the house at 82 Inches Street when he was a child. Though his mother did not live at the house, she allowed her children and other people to stay there. According to several other witnesses, Peoples' brother, Jethro Peoples, actually owned the house at the time of the standoff.

Peoples testified that in December 1997, several other people were living at the house at 82 Inches Street. Early in the morning preceding the standoff, Peoples went to the house at 82 Inches Street, where he had previously stayed on occasion. Some time later, he learned that his brother, Jethro Peoples, had died. He and Horton Peoples, one of his surviving brothers, started drinking. While he and others had planned to go to his mother's house because of his brother's death, he and Sanford became involved in an argument.

[S]o I told them I didn't want to go [to my mother's house]. I was just gonna stay there at the house [at 82 Inches Street]. So Lisa had a ride with my brother and everybody else and I just stayed at the house by myself. Lisa came back in the house and says, well, Russell, the police is outside. I says, what for? She goes, your brother's arguing with them. I said, arguing about what? She goes, I don't know. I says, go out there and tell him to come in the house. I went in and got into bed.

Peoples said that because he was not accustomed to drinking, he went to bed, fell into a heavy sleep, and never heard the police trying to contact him. Peoples first became aware that there were people outside the house when he

heard something hit the window, boom. Some – I don't know if it was like gunshot or whatever it was and I got up and I went to the door and I goes, what's going on? He goes, come on, we want to talk to you. I says, what's going on? He says, I we want to talk to you. I says, well, hold on, I have to use the

bathroom. He says, well, go ahead. I went and used the bathroom, came back to the door. He says, come out. I went – I went out.

According to Peoples, when the police processed him following his arrest, he was too intoxicated to tell the police where he lived. Peoples categorically denied selling cocaine, possessing cocaine, possessing a weapon, firing at the police, or possessing the shotgun found in the house, which he said his brother Horton Peoples owned.

Peoples subsequently filed his written motion for a directed verdict, arguing that the trial court's decision to reserve ruling on his motion violated MCR 6.419.⁹ Peoples contended that the prosecutor failed to present any evidence connecting the firearm to him. Peoples also moved to dismiss the charges because the drugs and shotgun had been destroyed before trial. On the last day of trial, the trial court refused to dismiss the charges, ruling that the police had not acted in bad faith when destroying the evidence and there was no evidence that the rifle constituted exculpatory evidence. The trial court refused to grant a directed verdict, without specifically addressing the issues Peoples had raised. After the jury left to deliberate, Peoples renewed his objection that the court had improperly delayed ruling on his motion for a directed verdict. While the court seemed to recognize that the court rule required that it rule on the motion at the close of the prosecution's proofs, it said there was no prejudice and declined to reverse its position.

During deliberations, the jury asked whether Peoples' arrest card, which had been admitted into evidence and showed his address as 82 Inches Street, was accurate even though the card had been prepared six months before the charged incident. The trial court told the jury to strike the arrest card from evidence and to disregard it completely. The jury then convicted Peoples of being a felon in possession.

After the jury returned its verdict, Peoples moved for acquittal of his felon in possession conviction. He maintained that the evidence was insufficient because the prosecutor failed to submit in evidence the shotgun and any evidence connecting him to it. Defendant also moved for a mistrial on the grounds that the jury had considered the wrong arrest card for almost two hours during deliberations.

The trial court initially agreed that admitting the wrong arrest card could have prejudiced the jury and, therefore, granted the motion for mistrial. When the prosecutor then indicated that it would retry the case and objected to this decision, the trial court reiterated that it was granting the motion for a mistrial. The prosecutor then moved to reinstate all the charges against Peoples, but defense counsel objected that double jeopardy prevented retrial on the three charges of which Peoples had been convicted. Defense counsel also maintained that the prosecutor had committed misconduct in allowing fraudulent evidence, i.e., the wrong arrest card, to be presented to the jury. The court indicated that it would have to "revisit this issue" in light of the prosecutorial

⁹ Although it was filed after the trial was over, the motion was apparently submitted to the court beforehand, because the court ruled on it on the last day of trial.

misconduct argument, and thus would take “the whole motion” under advisement, directing the parties to file briefs.

The prosecutor subsequently filed her “Answer to defendant’s motion for mistrial.” The prosecutor argued that the destruction of the evidence was a mistake. On July 2, 1999, the court entered its opinion and order denying defendant’s motion to dismiss the conviction for felon in possession of a firearm, ruling that Peoples had received a fair trial, notwithstanding the fact that the gun was not admitted into evidence.

On July 16, 1999, Peoples moved for reconsideration of this order. He pointed out that the court failed to address his motion for mistrial, including the arrest card and the intentional prosecutorial misconduct. Defendant contended that, had the court ruled on the motion for a mistrial, it would have determined that retrial was barred because of double jeopardy.

On September 2, 1999, the court entered its opinion and order acknowledging that it had initially granted a mistrial because the jury had received the incorrect arrest card. However, the trial court claimed that it vacated this decision when Peoples raised additional issues regarding prosecutorial misconduct, took the matter under advisement, and directed the parties to submit briefs. The trial court conceded that its July 2, 1999, opinion failed to address the issue of the arrest card. Therefore, the trial court addressed the issue in its September 2, 1999, opinion, ruling that the arrest card did not taint the jury and that a mistrial was not required. The trial court also ruled that there was no prosecutorial misconduct resulting in manifest injustice and that Peoples received a fair trial. Therefore, the court declined to find palpable error and denied the motion for reconsideration.

III. Suppression

A. Standard Of Review

Peoples first argues that the trial court committed error requiring reversal when it refused to suppress evidence of the gun found in the house at 82 Inches Street. We review a trial court’s findings of fact regarding a motion to suppress for clear error.¹⁰ However, the trial court’s ultimate decision regarding a motion to suppress is subject to review de novo.¹¹

B. Warrant Requirement

The Fourth Amendment and Const 1963, art 1, § 11, “guarantee the right of the people to be free from unreasonable searches and seizures.¹² “Searches and seizures conducted without a warrant are unreasonable per se,”¹³ making evidence gathered because of such an illegal search

¹⁰ *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

¹¹ *Id.*

¹² *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996).

¹³ *Id.* at 98.

subject to exclusion from trial.¹⁴ However, there are “several specifically established and well-delineated”¹⁵ circumstances in which the police may search a house and seize items without violating the constitution when probable cause also exists and the search remains reasonable.¹⁶

The “exigent circumstances” exception to the warrant requirement is most relevant in this case. In *In re Forfeiture of \$176,598*,¹⁷ the Michigan Supreme Court explained this exception, stating:

Pursuant to the exigent circumstances exception, we hold that the police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect. If the police discover evidence of a crime following the entry without a warrant, that evidence may be admissible.

The trial court had more than enough evidence of each of these factors to deny the motion to suppress the shotgun evidence. According to the police testimony at the suppression hearing, at the time the police entered the home, they believed that Peoples had fired shots, dragged a woman to 82 Inches Street, and physically assaulted her. This was enough evidence to create probable cause to believe that a crime had been committed there recently and that there was evidence of the crime or a victim in the house. Though Peoples contends that the police had time to secure a search warrant during the standoff, we think that the facts of the situation speak for themselves in establishing the exigency that existed that justified the responding officers’ decision to stay at the scene to protect bystanders. Further, even when Peoples surrendered himself, the exigency persisted in the sense that the police had a real fear that people might be injured in the home or that they might injure themselves with a weapon left there. Accordingly, the police entry was constitutionally permissible. Moreover, once inside the home, the police observed the shotgun in plain view, which justified its seizure.¹⁸ Thus, the trial court’s decision not to suppress the evidence does not merit reversing Peoples’ conviction.

¹⁴ See *People v Manning*, 243 Mich App 615, 636-637; 624 NW2d 746 (2000) (discussing the exclusionary rule).

¹⁵ *Champion*, *supra* at 98.

¹⁶ See *People v Brzezinski*, 243 Mich App 431, 434-435; 622 NW2d 528 (2000).

¹⁷ *In re Forfeiture of \$176, 598*, 443 Mich 261, 271; 505 NW2d 201 (1993).

¹⁸ *Champion*, *supra* at 101-102.

IV. Directed Verdict

A. Standard Of Review

Peoples argues that the trial court erred in denying his motion for a directed verdict because there was insufficient evidence to support his conviction of felon in possession. He also challenges the trial court's decision to reserve its ruling on the motion. Because we review the evidence on the record at the time a defendant moved for a directed verdict without deferring to the trial court's view of the evidence,¹⁹ our review is effectively de novo for this issue.

B. Possession

In *People v Crawford*,²⁰ this Court explained the legal analysis employed to determine whether a trial court should have granted a motion for a directed verdict:

In reviewing a trial court's decision regarding a motion for a directed verdict, this Court views the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime were proved beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997).

This case does not present us with an opportunity to examine the felon in possession statute in great detail. At trial, the parties stipulated that Peoples was a felon. They only disputed whether he possessed the shotgun found in the bedroom at the house at 82 Inches Street.

Like the parties, we assume that the possession required under the felon in possession statute may be proven under the same theories and with evidence that is substantively similar to evidence used to prove possession under other statutes. In *People v Hill*, the Michigan Supreme Court examined possession in the context of MCL 750.224b, which makes it illegal to possess a short-barreled shotgun, noting:

Michigan courts also have recognized that the term "possession" includes both actual and constructive possession. As with the federal rule, a person has constructive possession if there is proximity to the article together with indicia of control. *People v Davis*, 101 Mich App 198; 300 NW2d 497 (1980). Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. Physical possession is not necessary as long as the defendant has constructive possession. *People v Terry*, 124 Mich App 656; 335 NW2d 116 (1983).

¹⁹ See *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

²⁰ *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998).

Peoples, however, points out that the police never observed him with or near the shotgun, there was no fingerprint evidence tying him to the weapon, and there was no proof that it was found in a place he controlled.

We agree that the evidence in this case was circumstantial. However, there is ample evidence tying Peoples to the house at 82 Inches Street. He conceded that he stayed there on occasion and was there during the standoff. There is evidence that the shotgun was loaded, with a round already in the firing chamber, and that the shotgun had been placed at an area of the closet and in a manner that made it easily accessible. Peoples also admitted that he knew that the shotgun was in the house and stated that, after speaking with Sanford, he “went in and got into bed,” which associated his presence in the house with the area of the house in which the officers found the shotgun. The length of time Peoples remained in the house while the police attempted to get him to leave also allowed him ample time to remove any fingerprints on the shotgun. Thus, there was sufficient evidence of possession when we view that evidence in the light most favorable to the prosecutor.

Peoples also notes that MCR 6.419 explicitly precludes a trial court from reserving its decision on a motion for a directed verdict made at the close of the prosecutor’s case-in-chief. The rationale for this requirement is that a defendant should have the benefit of a ruling on that motion determining whether and what evidence to present as a defense.²¹ Peoples certainly did not have the benefit of the ruling to consider his options. However, though the trial court clearly erred in this respect, Peoples does not contend that this was a structural error defying harmless error analysis, and therefore meriting automatic reversal.²² Peoples also fails to explain how this error constituted a miscarriage of justice under a more probable than not standard.²³ Therefore, the trial court’s failure in this regard does not require reversal.

V. Double Jeopardy

A. Standard Of Review

Peoples claims that the trial court violated his right to be free from double jeopardy because, after granting the motion for a mistrial, the trial court then reconsidered its order and reinstated the conviction. This Court reviews a double jeopardy issue de novo.²⁴ However, to the extent that we must determine whether the trial court properly granted a mistrial originally,

²¹ *People v Mehall*, 213 Mich App 353, 360; 539 NW2d 593 (1995), reversed on other grounds, 454 Mich 1 (1997), quoting 3 ABA Standards for Criminal Justice (2d ed), Standard 15-3.5(b) staff comment.

²² *People v Carines*, 460 Mich 750, 765, 774; 597 NW2d 503 (1999).

²³ *Id.* at 774; see also *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

²⁴ *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999).

and therefore erred in reversing its decision on the matter, our review is for an abuse of the trial court's discretion.²⁵

B. Mistrial

As we noted at the outset of this opinion, after the jury returned its verdict, Peoples moved for a mistrial on the ground that the jury had the wrong arrest card for almost two hours. The trial court initially agreed that admitting the arrest card in evidence could have prejudiced the jury, and consequently granted the motion for a mistrial. When the prosecutor objected, the trial court reiterated its decision. However, when Peoples suggested that he would challenge retrial on double jeopardy grounds in light of the prosecutor's alleged misconduct in submitting the erroneous arrest card to the jury, the trial court then said that it would have to "revisit this issue," take "the whole motion" under advisement, and directed the parties to file briefs. The trial court later admitted in its written order and opinion that it had "granted" the motion for a mistrial, but said it had "vacated" its decision. The trial court then proceeded to explain why it had erred when declared the mistrial:

The Court is not persuaded the jury was tainted by the arrest card which was given to them. Whole the arrest card indicated an arrest prior to the date of the alleged offense, the charge for which defendant was convicted was felon in possession of a firearm. Defendant had already conceded that he was a felon, and an arrest card does not indicate a conviction. An arrest card merely indicates an individual was arrested on a specific charge and shows defendant's fingerprints. In this case, the jury asked if the arrest card was the correct arrest card for this case. The Court instructed the jury the arrest card had no bearing on the case and to disregard it. Since defendant had already conceded he was a felon, and an arrest card does not necessarily indicate a conviction, the Court is not persuaded a mistrial was necessary. The arrest card was irrelevant to the case, and the Court is not persuaded defendant was unduly prejudiced by the jury's exposure to the arrest card so as to result in a manifest necessity.

Further, the trial court rejected Peoples' argument that the prosecutor provoked him to move for a mistrial by committing misconduct, noting that "defendant received a fair trial, as evidenced by the fact that the jury did not convict on all counts."²⁶

In *People v McGee*,²⁷ this Court determined that a trial court has discretion to revoke a declaration of mistrial and concluded that the trial court in that case did not abuse its discretion

²⁵ See *People v Ortiz-Kehoe*, 237 Mich App 508, 513; 603 NW2d 802 (1999); see also *People v McGee*, *infra*.

²⁶ We are not convinced that partial acquittal is dispositive of whether a defendant received a fair trial, especially as concerns the crime or crimes of which the defendant was convicted. However, Peoples does not challenge this aspect of the trial court's reasoning.

²⁷ *People v McGee*, __ Mich App __; __ NW2d __ (2001), slip op at 6-7.

when revoking its declaration of mistrial because the declaration, itself, was erroneous.²⁸ The critical issue in *McGee*, indeed the issue requiring reversal, was whether the trial court had a valid verdict to reinstate. The *McGee* Court was concerned with the trial court's decision to recall and poll the jury in order to have it render a verdict after it had been discharged.²⁹ Doing so was error because the trial court attempted to "reinstate" a verdict that had never been rendered.³⁰ Thus, the *McGee* decision conformed to the principle that only reinstating a "valid" verdict is constitutionally permissible³¹ because it poses no potential for successive prosecution.³²

Peoples does not specifically argue that the verdict in this case was invalid in the sense that it failed to conform with the court rules, as was the case in *McGee*.³³ Though his argument is not perfectly clear, Peoples evidently claims that when a prosecutor prompts a defendant to move for a mistrial by committing misconduct, that misconduct is as relevant to whether a trial can *reinstate* a conviction as it is relevant to whether a defendant may be *retried* for the same crime.³⁴ Peoples has not provided any authority to support this proposition. In fact, as we have already noted, the effect of reinstating a valid criminal conviction is wholly different from being forced to "run the gauntlet" of a second trial.³⁵ As far as we can tell, Peoples is substantively challenging the trial court's exercise of discretion in "vacating" its prior declaration of a mistrial. In other words, under Peoples' theory as we understand it, if a mistrial was warranted, then the trial court abused its discretion by reversing its decision to grant a mistrial in the first place and reinstating Peoples' conviction.³⁶

²⁸ *Id.*

²⁹ *Id.* at 7.

³⁰ *Id.* at 7-8.

³¹ See, generally, *People v Jones*, 203 Mich App 74, 79, n 1; 512 NW2d 26 (1993) ("Although retrial following acquittal is barred under the Double Jeopardy Clause, the government may appeal if reinstatement of the jury's verdict of conviction, rather than retrial, is sought.").

³² See, generally, *People v Torres*, 452 Mich 43, 65-67, 69; 549 NW2d 540 (1996).

³³ See *McGee*, *supra* at 8.

³⁴ See *People v Tracey*, 221 Mich App 321, 326; 561 NW2d 133 (1997) ("[W]hen a mistrial is declared, retrial is permissible under double jeopardy principles in two circumstances: (1) where there was 'manifest necessity' to declare the mistrial or (2) where the defendant consented to the mistrial and was *not goaded into consenting by intentional prosecutorial misconduct.*") (emphasis added).

³⁵ See *Torres*, *supra* at 68, quoting *Abney v United States*, 431 US 651, 662; 97 S Ct 2034; 52 L Ed 2d 651 (1977).

³⁶ See *McGee*, *supra* at 7.

Ultimately, we agree with the trial court that there were no grounds for a mistrial.³⁷ There was no need to show the jury the incorrect arrest card because Peoples had already stipulated that he was a felon within the meaning of the felon in possession statute, making the information on the arrest card merely cumulative.³⁸ Yet we have no evidence that the prosecutor purposefully submitted the wrong card to the jury.³⁹ Nor is there any indication that the trial court's curative instruction was inadequate to stem whatever minimal prejudice may have flowed from submitting this piece of evidence to the jury.⁴⁰

The other aspects of the prosecutor's performance in this case that Peoples points to, including the police destruction of evidence, cannot be attributed to intentional misconduct, given Peoples' initial guilty plea.⁴¹ In this regard, we note that Peoples' argument that the police destroyed the evidence because the case against him was weak is illogical. If the case against him were weak, the prosecutor would seek to use every available piece of evidence. Moreover, we have no idea what the prosecutor would gain from destroying this evidence because there is no indication that it was exculpatory.⁴² Therefore, even if prosecutorial misconduct is relevant to

³⁷ It is interesting that the possibility of a retrial caused the trial court to reconsider whether a mistrial was necessary. We stress that whether a trial court should grant or deny a defendant's motion for a mistrial does not depend on whether the prosecutor will have another chance to convict the defendant, especially when the prosecutor's misconduct goads the defendant into moving for a mistrial. See, generally, *People v Dawson*, 431 Mich 234; 427 NW2d 886 (1988). In any event, Peoples does not challenge the trial court's motivation for deciding to reconsider its decision to grant his motion for a mistrial.

³⁸ See MRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of . . . needless presentation of cumulative evidence."); see also *People v Norman*, 176 Mich App 271, 275; 438 NW2d 895 (1989) ("Because the parties stipulated to admission of documentary evidence establishing defendant's problem with alcoholism, the proffered testimony regarding defendant's alcoholism and blackouts was merely cumulative.").

³⁹ See *People v Gaval*, 202 Mich App 51, 54; 507 NW2d 786 (1993) (defense counsel elicited testimony that was grounds for mistrial, thus mistrial was improper because it "was not the result of *intentional misconduct* on the part of either the prosecutor or the trial court") (emphasis added); *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993) ("Failure to preserve evidentiary material that may have exonerated the defendant will not constitute a denial of due process unless *bad faith on the part of the police is shown.*") (emphasis added).

⁴⁰ See, generally, *People v Mitchell*, 61 Mich App 153, 163-164; 232 NW2d 340 (1975) (though defense counsel submitted arrest card to jury to establish the defendant's height, which accidentally revealed to the jury the defendant's history of narcotic use, the error was not so prejudicial it required reversal).

⁴¹ See *People v Lane*, 127 Mich App 663, 670; 339 NW2d 522 (1983) (though police were negligent in breaking and discarding evidence, it was not error requiring reversal because "there was no evidence presented of intentional misconduct, bad faith, or suppression of evidence on the part of the police").

⁴² See *Tracey, supra* at 323-324 (considering whether evidence the defendant claimed the prosecutor should have disclosed was exculpatory in the context of whether failure to disclose the evidence was intentional misconduct).

determining whether a trial court may reinstate an otherwise valid conviction, there was no misconduct in this case that would lead us to believe that the trial court erred in reinstating Peoples' felon in possession conviction.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Henry William Saad

/s/ William C. Whitbeck