

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

James T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Samuel E. Haney, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2022

Court of Appeals Case No.
21A-CR-2563

Appeal from the Vigo Superior
Court

The Honorable John T. Roach,
Judge

Trial Court Cause No. 84D01-
2004-MR-1518

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Samuel Haney Jr. (Haney), appeals his convictions for two Counts of felony murder, Ind. Code § 35-42-1-1(2); two Counts of arson, Level 4 felonies, I.C. §§ 35-43-1-1-(a)(1), (2); burglary, a Level 4 felony, I.C. § 35-43-2-1; and his enhancement for being an habitual offender, I.C. § 35-50-2-8.
- [2] We affirm.

ISSUE

- [3] Haney presents this court with one issue, which we restate as: Whether the trial court abused its discretion when it denied Haney's motion for mistrial after four members of the jury briefly saw him in shackles while his trial was not in session.

FACTS AND PROCEDURAL HISTORY

- [4] In April 2020, Tammy Darkis (Darkis) was living in the downstairs apartment of a duplex house located in the 1800 block of North 10th Street in Terre Haute, Indiana. Darkis had previously shared the apartment with Haney, with whom she was romantically involved. Darkis also allowed Haney's brother, Terry Haney (Terry), to store some of his belongings in her apartment. Darkis had also been romantically involved with Terry.
- [5] In the early morning hours of April 28, 2020, Terry came to Darkis' house and slept on a couch on Darkis' enclosed porch. Later that morning, Darkis told Terry that he had to leave because she needed to run errands. Haney was also

in Darkis' neighborhood that morning. Haney had been consuming alcohol, and he fought with Darkis and others around the neighborhood. Haney was upset that Terry was spending time at Darkis' apartment.

[6] Shortly before 4:30 p.m., Haney had an argument with one of Darkis' neighbors. Another neighbor who was present, Joshua Kirmse (Kirmse), saw Haney walk away down an alley towards Darkis' house. Around that time, another neighbor, John Franklin (Franklin), heard Haney cursing and yelling near Darkis' house and then saw Haney walk from the side of Darkis' house through the door of her enclosed porch. A third neighbor, Trevor Hanson (Hanson), saw Haney walk quickly out of Darkis' house, cross the street, and walk away between two houses to an alley.

[7] Within approximately two minutes of Hanson seeing Haney walk away, Darkis' house was discovered to be on fire. Two of the six tenants of the upstairs apartment, a mother and her two-year-old child, were at home and fled as smoke filled their apartment. Terry arrived at the scene of the fire and went inside the burning building, where he was overcome by the smoke and heat. Firefighters arrived and pulled Terry from the burning building. Terry was unconscious and had sustained second and third degree burns over the majority of his body.

[8] After Haney left Darkis' house, he walked to the nearby home of his ex-wife, Susan Haney (Susan). Haney walked into Susan's home and told her that he had "burned that bitch's house down." (Transcript Vol. II, p. 204). Susan

observed that Haney was bleeding from an injury on his arm. Susan looked out her window and saw smoke coming from the direction of Darkis' house. Susan told Haney that he had to leave. Haney was quickly identified as a suspect in the fire and was taken into custody within two hours. Before being transported, Haney was patted down and was found to have a flip-top lighter in his possession. Haney agreed to speak with investigators. Haney's arm was bleeding. Haney said he had fallen, but his injury appeared to be more consistent with a cut. After initially denying any involvement, Haney admitted that he had broken a window of Darkis' house, reached in, and set the curtains on fire with his lighter. Haney acknowledged that he knew that there were tenants in the upstairs apartment of Darkis' building.

[9] After being extracted from the fire, Terry was treated locally but was then airlifted to Eskenazi Hospital in Indianapolis, where he was put on life support. Two days later, Terry's family made the decision to remove him from life support, and he succumbed to injuries he had sustained in the fire. The upstairs tenants in Darkis' building sustained damage to their property as a result of the fire. Subsequent investigation revealed that the fire was not accidental and had been started at the base of an exterior window of Darkis' apartment.

[10] On April 30, 2020, the State filed an Information, charging Haney with two Counts of felony murder, two Counts of Level 4 felony arson, and one Count of Level 4 felony burglary. The State also alleged that Haney was an habitual offender. Prior to trial, Haney underwent a psychological evaluation. Haney

told his evaluator that he had set the fire because he was upset that Terry was spending time at Darkis' house.

[11] On August 31, 2021, the trial court convened Haney's three-day jury trial. In its preliminary instructions, the trial court informed the jury, in relevant part, that "[t]he filing of a charge and the defendant's arrest are not to be considered by you as any evidence of guilt." (Appellant's App. Vol. II, p. 104). During Darkis' testimony, she was asked about the argument she had with Haney on the day of the fire. Darkis testified that "he said, 'Can I come home?' I said, 'I don't want you to come home. I don't [want] to be beat on anymore.'" (Tr. Vol. II, p. 145). Prior to Haney's cross-examination of Darkis, Haney moved for a mistrial based on Darkis' testimony referring to Haney beating her. The prosecutor argued that the testimony was relevant to show the relationship between the parties. The trial court denied Haney's motion for a mistrial, and he declined the trial court's offer of a limiting instruction regarding Darkis' testimony. Darkis' testimony was concluded, and the trial court declared a recess for lunch.

[12] When trial resumed, Haney moved again for a mistrial, this time based on something that had occurred during the lunch recess. Haney's counsel represented to the trial court that Haney, who was dressed in a suit but whose hands and legs were shackled, had been moved from the courthouse to the jail during the lunch recess. Due to the physical layout of the buildings and construction that was taking place, there was a small gap between buildings. After the escorting deputies looked and gave the alert that it was clear for

Haney to pass through the gap, a group of four of Haney's jurors came into view and observed Haney. Haney moved for mistrial, arguing that the jurors had seen him in custody. The trial court ruled that it had given the standard preliminary instruction that Haney's arrest was not evidence of his guilt and that, in a case such as Haney's, jurors understand that Haney is in custody. The trial court denied Haney's mistrial motion and, after trial reconvened, issued the following curative instruction to the jury:

The charges which have been filed are the formal method of bringing a defendant to trial. The filing of a charge, the defendant's arrest, *and/or the defendant's incarceration while this matter is pending*, are not to be considered by you as any evidence of guilt. Pleas of not guilty have been entered on behalf of the defendant.

(Tr. Vol. II, p. 167) (emphasis added). Trial resumed. In closing argument, neither party mentioned the fact that Haney had been shackled. The trial court issued the same curative instruction that it had provided the jury during trial as its Final Instruction No. 4. The jury found Haney guilty as charged. Haney then admitted that he had two prior unrelated felony convictions, and the trial court found that he was an habitual offender.

[13] On October 21, 2021, the trial court held Haney's sentencing hearing. Due to double jeopardy concerns, the trial court sentenced Haney for one Count of felony murder, one Count of arson, and the burglary only. The trial court sentenced Haney to sixty years for his felony murder conviction, enhanced by ten years for being an habitual offender. The trial court imposed ten-year

sentences for each of Haney's other two convictions and ordered him to serve his sentences concurrently, for an aggregate sentence of seventy years.

[14] Haney now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[15] Haney appeals the trial court's denial of his motion for mistrial after four jurors briefly saw him in shackles while his trial was in recess. A mistrial is an extreme remedy in a criminal case and is only properly granted when nothing else can rectify the situation. *Knapp v. State*, 9 N.E.3d 1274, 1284 (Ind. 2014). "Because the trial court evaluates first-hand the relevant facts and circumstances at issue and their impact on the jury, it is in the best position to evaluate whether a mistrial is warranted." *Weisheit v. State*, 26 N.E.3d 3, 15 (Ind. 2015). Accordingly, we review a trial court's denial of a motion for mistrial only for an abuse of its discretion. *Id.*

II. *Analysis*

[16] In *Jenkins v. State*, 492 N.E.2d 666 (Ind. 1986), our supreme court was confronted with a factual scenario similar to that presented by this case. Jenkins stood trial on a charge of Class B felony robbery. *Id.* at 667. During trial, Jenkins moved for a mistrial based on his allegation that during a recess members of his jury had seen him handcuffed to a police officer in a hallway. *Id.* at 669. After the trial court denied the motion and Jenkins was convicted, he appealed. *Id.* The *Jenkins* court affirmed, holding that "the fact that a

defendant has been seen by jurors while being transported in handcuffs is not a basis for reversal, absent a showing of actual harm.” *Id.* The court further held that no harm to Jenkins could be discerned, “as reasonable jurors could expect him to be in police custody while in the hallway of the courthouse.” *Id.*

[17] Here, while not separately appealing the trial court’s denial of his motion for mistrial as to Darkins’ testimony about Haney beating her, Haney argues that he suffered actual harm because four jurors saw him in shackles and “[j]ust before lunch, the jury heard from Darkis that Haney had been physically abusive and violent towards her in the past, and that they had argued before the fire was set.” (Appellant’s Br. p. 11). As a result, Haney asserts that the jurors must have concluded that he was a violent man who had committed the arson. Haney also contends that the trial court’s curative instruction only drew attention to the fact that he “was being held in custody during his trial.” (Appellant’s Br. p. 11).

[18] However, Haney must demonstrate “actual harm” flowing from the jury seeing him in restraints. *Jenkins*, 492 N.E.2d at 667. Haney presents us with no authority finding actual harm resulting in such a brief encounter with the jury during a recess, where there is other negative evidence of the defendant’s character in the record. In addition, the trial court issued a preliminary instruction to the jury that Haney’s arrest was not evidence of his guilt of the charged offenses. After the four jurors briefly saw Haney in shackles, the trial court issued a curative instruction that specifically informed the jury that Haney’s “incarceration while this matter is pending [was] not to be considered

by you as any evidence of guilt,” and it reissued the same instruction in its final instructions. (Tr. Vol. II, p. 167). As the State correctly points out, a jury is presumed to have followed a trial court’s instructions. *Morgan v. State*, 903 N.E.2d 1010, 1019 (Ind. Ct. App. 2009), *trans. denied*. Haney’s argument that he suffered actual harm because the jury must have concluded that he was in custody is not persuasive in light of *Jenkins*, and he has not otherwise overcome the presumption that the jury followed the trial court’s instructions sufficient to show that the extreme measure of a mistrial was warranted. Accordingly, we find no abuse of the trial court’s discretion in denying Haney’s motion for mistrial. *See Weisheit*, 26 N.E.3d at 15.

CONCLUSION

[19] Based on the foregoing, we conclude that Haney has failed to demonstrate any actual harm to him as a result of four jurors briefly seeing him in shackles during a recess of his trial, and that, therefore, the trial court acted within its discretion when it denied Haney’s motion for a mistrial.

[20] Affirmed.

[21] Bailey, J. and Vaidik, J. concur