

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 27, 2011

v

KURTIS SAM SINGLETON III,
Defendant-Appellant.

No. 298889
Wayne Circuit Court
LC No. 09-027227-FH

Before: SERVITTO, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of resisting or obstructing a police officer, MCL 750.81d(1), felon in possession of a firearm, MCL 750.22f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him, as a fourth habitual offender, MCL 769.12, to concurrent sentences of 2 to 15 years' imprisonment for the resisting or obstructing a police officer conviction, and 3 to 20 years' imprisonment for the felon in possession of a firearm conviction, and a consecutive two years' of imprisonment for the felony-firearm conviction. We affirm.

Defendant's convictions stem from his possession of a firearm near his residence in Detroit on October 7, 2009. When a police officer saw defendant with the weapon, defendant threw it to the ground and fled on foot. The officer eventually caught up with defendant and, after a brief struggle, arrested him. During jury selection, the trial court, while reading aloud the charges contained in the information, told the jury pool that defendant's felon in possession of a firearm charge stemmed from his prior cocaine possession conviction. The court denied defendant's requests for a mistrial or a new jury panel. Defendant argues that the jury's knowledge of the nature of his previous felony conviction prejudiced him and denied him his constitutional right to a fair trial. We disagree.

We review for an abuse of discretion a trial court's grant or denial of a mistrial. *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Id.* Further, we review de novo whether defendant was denied a fair trial. *People v Steele*, 283 Mich App 472, 478; 769 NW2d 256 (2009).

"A trial court should grant a mistrial 'only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial.'" *Schaw*, 288 Mich App at 236,

quoting *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995). Here, the trial court did not abuse its discretion when it denied defendant's motion for a mistrial. Defense counsel never asked the trial court to give a curative instruction. In fact, because a curative instruction would have drawn more attention to the previous cocaine conviction, it is likely that defense counsel weighed the costs and benefits of such an instruction and elected to forego one. In any event, after reading the charges, the trial court instructed the jurors as follows: "[y]ou should clearly understand that the Information I have just read is not evidence. An Information is read in every criminal trial, so the defendant and jury can hear the charges." The trial court also instructed the jurors that, "you may only consider the evidence that has been properly admitted in this case." These instructions had the same effect as a curative instruction.

Further, the trial court referenced the nature of defendant's previous conviction only once and immediately thereafter instructed the jury pool that the information was not evidence. Nor was the previous conviction discussed during trial because the parties stipulated that defendant was legally ineligible to possess a firearm. Moreover, defendant failed to present any evidence that he did not possess the firearm and merely presented witnesses who testified that he was a victim of police harassment. Therefore, the trial court's statement of the charges did not prejudice defendant or impair his ability to receive a fair trial, and the trial court acted within its discretion by denying defendant's motion for a mistrial.

In his Standard 4 brief on appeal, defendant appears to assert that informing the jury of the nature of his previous conviction was a structural error that defies harmless error analysis. Preserved constitutional errors fall into two categories: structural errors, which can never be considered harmless and automatically require reversal, and trial errors, which require reversal only if the error was not harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 404-406; 521 NW2d 538 (1994). Even assuming that the alleged error here was a constitutional error, as defendant contends, it was a trial error rather than a structural error because it involved the manner in which the case was presented to the jury and not a defect in the trial mechanism. *Id.* For the reasons previously discussed, any error was harmless beyond a reasonable doubt.

We affirm.

/s/ Deborah A. Servitto

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly