

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE A. REDDEN,)
) C.A. No. 81, 2008
 Defendant Below,)
 Appellant,) Court Below: Superior Court
) of the State of Delaware in
 v.) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID. No. 0701015161
)
 Plaintiff Below,)
 Appellee.)

Submitted: November 5, 2008

Decided: January 14, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 14th day of January 2009, it appears to the Court that:

1. Tyrone A. Redden appeals his Superior Court conviction on three counts of Burglary Second, three counts of Theft over \$1000, three counts of Conspiracy Second, Possession of Burglary Tools, Theft of a Firearm, and Possession of a Deadly Weapon by a Person Prohibited. The State indicted Redden with codefendant James Ross.

2. On this appeal, Redden claims that the trial judge denied him his right to an impartial and fair jury.¹ Redden argues that the trial judge erred by failing to

¹ U.S. Const. amend. VI; Del. Const. Art. 1, § 7.

instruct the jury that it could not infer Redden's guilt from Ross's flight during trial. Redden argues that the trial judge inadequately instructed the jury on Ross's right not to be present at trial because the instruction did not address the inference of guilt. Redden also appeals the trial judge's decision to deny Redden's motions for a mistrial and severance, based on the facts arising out of Ross's flight.

3. Between January 3, 2007 and January 17, 2007, four homeowners contacted the police about burglaries and attempted burglaries. One homeowner witnessed someone attempting to pry open his door and another person standing on the deck. That homeowner later identified Ross but not Redden. Another homeowner heard footsteps upstairs so she called out but received no response. She ran outside and saw someone running but could not identify him. A neighbor of another homeowner had installed an outdoor security video camera previously. The neighbor's video recording taped people getting out of a white minivan and entering the homeowner's house.

4. On January 17, 2007, two police officers on patrol spotted a vehicle that matched the department's description. Redden, the driver, followed police instructions. Ross, the passenger, refused to comply and fled after a struggle with the police. While chasing Ross a police officer saw Ross toss or drop several pieces of jewelry, a brown coat, and a black cap. The police officer caught Ross. The police detained both men and impounded their vehicle. The following day, the

New Castle County Police searched the vehicle and found a handgun and money. The police also searched Redden's house in which he lived with at least five other people. The police found a handgun under the sofa and jewelry elsewhere in the residence. Police arrested Ross and Redden on January 18, 2007.

5. Ross failed to appear for the fifth day of trial. The trial judge addressed this issue before bringing in the jury. Ross's counsel had tried unsuccessfully to locate Ross. All counsel and the trial judge agreed that Ross had probably fled.

6. Redden made a timely motion for a mistrial because Ross's absence "could be construed by the jury as a comment against [him]."² The trial judge denied Redden's motion. After denying the motion, the trial judge brought the jury into the courtroom and immediately instructed them that:

[Y]ou will notice that the defendant, James Ross, is not in court today at the present time. Both defendants have a Constitutional right to be here or not be here, as they chose. You must not take that exercise of that right as an indication that either of the defendants is guilty of the crimes charged or for any other purpose, and you must not discuss it during the deliberations. Like every other person charged with an offense, the defendants are presumed innocent until proven guilty beyond a reasonable doubt.³

² Redden later characterized the motion for a mistrial as a motion for severance.

³ The trial judge based his instruction on the instruction given in *Walls v. State*, 850 A.2d 287 (Del. 2004).

Neither party objected to the instruction other than to clarify a typographical error.

The State continued the prosecution against Redden and Ross *in absentia*.

7. We review a trial judge's refusal to declare a mistrial for an abuse of discretion.⁴ We recently explained the trial judge's duty when a defendant requests a mistrial as:

A trial judge should grant a mistrial only when there is manifest necessity or the ends of public justice would be otherwise defeated. The remedy of a mistrial is mandated only when there are no meaningful and practical alternatives to that remedy. A trial judge's prompt curative instructions are presumed to cure error and adequately direct the jury to disregard improper statements. Juries are presumed to follow the trial judge's instructions.⁵

8. The trial judge's curative instruction practically mirrored the instruction we affirmed in *Walls v. State*.⁶ In *Walls*, the defendant Walls himself

⁴ *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002).

⁵ *Revel v. State*, 2008 WL 3113247, at *3 (Del.) (internal citations and quotations omitted).

⁶ In *Walls*, the trial judge instructed the jury that:

The defendant is not in the court at the present time. The defendant has a constitutional right to be here or not be here, as he chooses. You must not take the exercise of that right as an indication that the defendant is guilty of the crimes charged or for any other purpose, and you must not discuss it during your deliberations. Like every other person charged with an offense, this defendant is presumed innocent until proven guilty beyond a reasonable doubt. 850 A.2d at 288.

voluntarily missed his last day of trial.⁷ The trial judge gave a curative instruction about his right not to be present.⁸ We affirmed the trial judge's judgment.

9. The trial judge did not instruct the jury to infer Redden's consciousness of guilt because of Ross's flight. The trial judge instructed the jury not to ascribe guilt to either defendant as a result of Ross's absence. The trial judge promptly instructed the jury to avoid inferring Redden's guilt from Ross's absence.⁹ We find that the trial judge's curative instruction adequately dealt with Redden's codefendant's absence on the last day of trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁷ *Id.* at 288-290.

⁸ *Id.* at 288.

⁹ *Revel*, 2008 WL 3113247, at *3.