

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL RODRIGUEZ,	§	
	§	No. 271, 2010
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	ID No. 0903019123A
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: August 4, 2010
Decided: September 13, 2010

Before **BERGER, JACOBS,** and **RIDGELY,** Justices.

ORDER

This 13th day of September 2010, it appears to the Court that:

(1) Defendant-Appellant Michael Rodriguez appeals from his Superior Court convictions for assault second degree, conspiracy second degree, possession of a firearm during the commission of a felony (“PFDCF”), burglary first degree, aggravated menacing, and reckless endangering first degree. Rodriguez contends that the Superior Court erred when it denied his motion to strike the jury panel after the clerk told the jury venire that Rodriguez was charged with possession of a deadly weapon by a person prohibited (“PDWBPP”), a charge that had been severed prior to his trial. The trial judge promptly gave a curative instruction. We find no merit to Rodriguez’s appeal and affirm.

(2) Rodriguez was charged by indictment with attempted murder first degree, four counts of PFDCF, one count of PDWBPP, two counts of assault second degree, burglary first degree, aggravated menacing, two counts of reckless endangering first degree, and conspiracy first degree. One count of assault second degree and one count of PFDCF were *nolle prossed*.

(3) Rodriguez moved to sever the PDWBPP charge and the Superior Court granted his motion. Thereafter, the prosecution filed an amended indictment that excluded the severed charge. At trial, the courtroom clerk informed the jury venire of the nature of the case to be tried. The clerk did not have the amended indictment and, instead, read to the jury all of the charges in the original indictment, including the severed PDWBPP charge. The trial judge asked counsel to approach the bench and informed counsel of the mistake. The prosecution suggested that the trial judge give a curative instruction. The defense counsel objected and moved to strike the jury panel. Following this conference, the trial judge stated:

I am just going to tell [the jury] that was a mistake, the defendant is not charged with that offense; to ignore it. And if you can't ignore it, let me know. Then we'll go on. And if someone can't ignore it, I'll ask them to tell me.

The trial judge then gave the jury venire the following curative instruction:

Ladies and gentlemen, we made a mistake. She read that the defendant is charged with [PDWBPP]. That is

incorrect. The defendant is not charged with that offense. You should ignore that. If you cannot ignore that when you come up, if you come up, tell me that you cannot ignore that.

No member of the jury venire informed the trial judge of any inability to follow the instruction to ignore the mistake and a jury was selected.

(4) Rodriguez was convicted of assault second degree, conspiracy second degree, PFDCF, burglary first degree, aggravated menacing, and reckless endangering first degree. The trial judge denied Rodriguez's post-verdict motion for judgment of acquittal and sentenced Rodriguez to 59 years imprisonment. This appeal followed.

(5) Rodriguez argues that the Superior Court violated his right to a fair trial by an impartial jury guaranteed by the Sixth Amendment to the U.S. Constitution and Article I, § 7 of the Delaware Constitution. We review a claim alleging the denial of a constitutional right *de novo*.¹ We have held that “conclusory assertions that the Delaware Constitution has been violated will be considered to be waived on appeal.”² Rodriguez made no legal argument and cited no case or other authority in support of his conclusory declarative assertion that his rights under the Delaware Constitution had been violated. Therefore, that alleged

¹ *Norman v. State*, 976 A.2d 843, 857 (Del. 2009).

² *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2005).

violation of the Delaware Constitution will not be addressed because it was not fully and fairly presented to this Court as an issue on appeal.³

(6) We find no reversible error in this case. The trial judge promptly gave a curative instruction to the jury venire. No member of the jury venire indicated that he or she could not follow the instruction given. “A trial judge’s prompt curative instructions ‘are presumed to cure error and adequately direct the jury to disregard improper statements.’”⁴ Juries are presumed to follow the judge’s curative instructions.⁵ “Trial judges are in the best position to observe the impact of improper statements at the time they are made, to determine the extent to which they may have affected the jury or the parties, and to remedy any ill effects.”⁶ The Superior Court did not err as a matter of law in denying Rodriguez’s request to have a new jury venire impaneled.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ *See id.*

⁴ *Revel v. State*, 956 A.2d 23, 27 (Del. 2008).

⁵ *See id.*

⁶ *Smith v. State*, 913 A.2d 1197, 1219 (Del. 2006).