

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM E. MORRISON, JR.,	§
	§ No. 433, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0907024289
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 11, 2011

Decided: April 25, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 25<sup>th</sup> day of April 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) On April 6, 2010, the defendant-appellant, William E. Morrison, Jr., was found guilty by a Superior Court jury of Burglary in the Second Degree, Unlawful Imprisonment in the Second Degree and Offensive Touching.<sup>1</sup> On the burglary conviction, he was sentenced as a habitual offender<sup>2</sup> to 8 years of Level V incarceration, to be followed by 1 year of Level III probation. On the unlawful imprisonment conviction, he

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<sup>1</sup> On January 19, 2010, the Superior Court granted Morrison's request to represent himself at trial. Morrison also represents himself in this direct appeal.

<sup>2</sup> Del. Code Ann. tit. 11, §4214(a).

was sentenced to 1 year at Level V, to be suspended for 1 year at Level IV Work Release. On the offensive touching conviction, he was assessed a \$50 fine. This is Morrison's direct appeal.

(2) Morrison raises three issues for this Court's consideration. He claims that he was denied a fair trial because a) the complaining witness's testimony was different from her statement to police; b) the prosecutor failed to ask the complaining witness if her testimony was truthful; and c) the police failed to investigate the case properly and preserve exculpatory evidence. Because Morrison raised no objections at trial with respect to any of his three claims, our standard of review is plain error.<sup>3</sup>

(3) The evidence presented at trial was as follows. On July 24, 2009, Tiffany Taylor walked from her newly-rented apartment in West Dover, Delaware, to the Dover Public Library on South State Street. After picking up some books and movies for her two young daughters, she encountered Morrison while walking back to her apartment. Morrison asked Taylor for change for a \$20 bill, but she told him she had no money. After Morrison made a personal remark that Taylor considered offensive, she

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<sup>3</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (under the plain error standard of review, the alleged error must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process).

curtailed her conversation with him. Morrison continued to walk with Taylor until she reached her apartment complex.

(4) Once at the complex, Morrison asked Taylor to use her bathroom. Taylor told him that the apartment clubhouse had a bathroom. Morrison then asked Taylor if he could have a glass of wine. Taylor said no, but gave him a choice of water or sweet tea. Morrison said he would have water. Taylor told him to wait outside and she would bring the water to him. Taylor went into her apartment and closed the door behind her. She did not lock it, however. After pouring the water into a glass, Taylor turned around and saw Morrison standing in her dining room. Startled, Taylor put the glass down and started to walk out of the kitchen.

(5) As Taylor reached the dining room, Morrison suddenly grabbed her and carried her into the living room. He told Taylor that he had a gun. Taylor screamed in the hope that one of her neighbors would hear her. Taylor testified that, when Morrison grabbed her, "it scared [her] to death." After Taylor began screaming, Morrison released her and left the apartment. Taylor watched as Morrison left the apartment complex. Taylor later picked up her daughters at daycare. She took them for ice cream at a nearby shopping center. While there, she contacted the Dover Police Department about the incident with Morrison.

(6) Late in the afternoon of July 24, 2009, Officer Derrick Mast arrived at Taylor's apartment to conduct an investigation. Officer Mast noted that Taylor was trembling and her hands were shaking as she spoke about the incident. Taylor described Morrison to Officer Mast and told him that Morrison had identified himself as "Will." She described, in particular, some distinctive scarring on Morrison's face. Officer Mast recognized the description and name because, by chance, he had had contact with Morrison earlier that morning. The next day, Officer Mast showed Taylor a photo array he had compiled, which included a photo of Morrison. Taylor immediately identified Morrison as the individual who had entered her apartment the preceding day.

(7) On July 26, 2009, Officer Mast arrested Morrison and took him to the police station for an interview. During the interview, Morrison told Officer Mast that Taylor had invited him into her apartment for a drink. Morrison also stated that, when Taylor pushed him away as he tried to give her a hug, he left the apartment. As such, he stated, he "only trespassed," but "did not commit any burglary." Morrison claimed to have used Taylor's bathroom, but, when asked to describe the bathroom, was unable to do so. At trial, Taylor testified that her bathroom has a highly distinctive decor---her bathtub is bright yellow and the room has a "rubber ducky" theme.

(8) Morrison's first claim is that he did not receive a fair trial because Taylor's trial testimony was different from her original statement to police. Any inconsistencies or contradictions between a witness's statement to police and his or her testimony at trial are subject to cross-examination by the defense.<sup>4</sup> It is then up to the jury as the trier of fact to assess the witness's credibility and attempt to resolve any apparent conflicts in the evidence.<sup>5</sup> In this case, the trial transcript reflects that Morrison, acting *pro se*, did not cross-examine Taylor regarding any alleged inconsistencies between her statement to police and her trial testimony. The transcript does not reflect that Morrison was prevented from cross-examining Taylor on that issue or that the jury failed to carry out its obligation as the trier of fact to resolve any apparent conflicts in the evidence. In the absence of any evidence whatsoever that Morrison's trial was unfair, we conclude that there was no error, plain or otherwise, with respect to Morrison's first claim.

(9) Morrison's second claim is that the prosecutor failed to ask Taylor if her testimony was truthful. There is no obligation on the part of the prosecutor to inquire of a complaining witness whether his or her testimony has been truthful. It is for the defense to cross-examine the

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<sup>4</sup> *Saunders v. State*, 401 A.2d 629, 631 (Del. 1979).

<sup>5</sup> *Washington v. State*, 4 A.3d 375, 378 (Del. 2010) (quoting *Poon v. State*, 880 A.2d 236, 238 (Del. 2005)).

witness and point out any inconsistencies and for the jury as the trier of fact to judge the credibility of the witness and determine the truthfulness of his or her testimony.<sup>6</sup> We, therefore, conclude that there was no error, plain or otherwise, with respect to Morrison's second claim.

(10) Morrison's third, and final, claim is that the police failed to investigate the case properly, resulting in the loss of exculpatory evidence, such as fingerprints on Taylor's bathroom wall. The consequences of a failure by police to preserve evidence are determined in accordance with a three-part analysis: a) the degree of negligence or bad faith; b) the importance of the missing evidence; and c) the sufficiency of other evidence to sustain the conviction.<sup>7</sup> At trial, Officer Mast testified that it was not necessary to check Taylor's bathroom for Morrison's fingerprints because Morrison was unable to provide any description of the bathroom. As such, there is no basis for a claim that Officer Mast acted negligently or in bad faith by not checking for Morrison's fingerprints in Taylor's bathroom. Nor does the record reflect that the police acted negligently or in bad faith with respect to the handling of any other evidence. We, therefore, conclude that

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<sup>6</sup> Id.

<sup>7</sup> *Johnson v. State*, 753 A.2d 438, 441-42 (Del. 2000) (citing *Deberry v. State*, 457 A.2d 744, 749-50 (Del. 1983); *Lolly v. State*, 611 A.2d 956, 960-62 (Del. 1992); and *Bailey v. State*, 521 A.2d 1069, 1091 (Del. 1987)).

there was no error, plain or otherwise, with respect to Morrison's third claim.

(11) This Court has reviewed the record carefully and has concluded that Morrison's appeal is wholly without merit and devoid of any arguably appealable issue. As such, the Superior Court's judgment must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice