IN THE SUPREME COURT OF THE STATE OF DELAWARE

MALINDA S. KLINE,	)	
	)	No. 650, 2010
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. 0904012804
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: May 25, 2011
Decided: July 11, 2011

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

O R D E R

This 11th day of July 2011, it appears to the Court that:

(1) Malinda Kline asks us to reverse her jury conviction for falsely reporting an incident. She contends that the trial judge abused his discretion by admitting the testimony of two witnesses and then later striking that testimony from the record. We affirm.

(2) On October 20, 2007, several Delaware State Troopers responded to a 911 call from an unidentified woman who had become unresponsive to the dispatcher. Corporal Jason Baxley and two other troopers found Kline lying, unresponsive, on a sidewalk. Baxley called an ambulance, which came and took Kline to Christiana Hospital. The next morning, pursuant to his supervisor's

orders, Baxley interviewed Kline. He interviewed her inside the hospital, and then he returned to his patrol car to prepare a "face copy" summary of the interview. After preparing the "face copy," he returned to Kline's hospital room and gave her a copy of the summary and his business card.

(3) Approximately eight months later, on June 16, 2008, the Delaware State Police Internal Affairs Unit received an anonymous complaint accusing Baxley of physical assault. After investigating the complaint, the Internal Affairs Unit dismissed the complaint as unfounded. Kline later admitted that she submitted the anonymous complaint against Baxley.

(4) Several months after the Internal Affairs Unit received Kline's anonymous complaint, on October 28, 2008, Kline filed another complaint against Baxley. This complaint alleged that he had raped her. Detective Tonya Widdoes of the Delaware State Police Major Crimes Unit investigated this complaint. As part of her investigation, Widdoes interviewed both Kline and Baxley. Ultimately, Widdoes concluded that Kline had falsely accused Baxley.

(5) A grand jury indicted Kline for falsely reporting an incident. At Kline's jury trial, several witnesses testified, including Baxley and Widdoes. The State also called New Castle County Police Officer David Hildick and Nurse Lee Daniels as witnesses. Hildick testified, and Daniels was expected to testify, about a different allegation of false reporting that Kline directed at Baxley. This

different allegation of false reporting occurred on May 22, 2010—about nineteen months after the rape allegation—and the State did not charge Kline for falsely reporting an incident to the NCC police.

(6) Defense counsel made no objections during Hildick's testimony. After Hildick testified and shortly after the prosecutor began her direct examination of Daniels, defense counsel asked for a sidebar and objected on relevance grounds, explaining that "[t]he indictment is dealing with something that happened a year before [the May 2010 incident]." The judge dismissed the jury from the courtroom and then heard argument from the prosecutor and defense counsel on the admissibility of testimony about the May 2010 incident. Defense counsel stated at one point, "[T]he indictment is in October of the year before, and this is more confusing, and if you weigh it [under Rule of Evidence 403], I think it should come out that this should be excluded, rather than giving this jury this new incident in May of 2010."

(7) After hearing argument, the trial judge performed a Rule 403 weighing of the probative value of the proffered evidence against the potential for unfair prejudice, confusion, or waste of time. The record reflects his analysis. Afterwards, the judge explained, "When I recall the jury, I will tell the jury that they should disregard the testimony of Officer Hildick, because it relates to some—I won't say why, but the reason is, again, it relates to a crime for which she

was not indicted." Defense counsel did not object. After a brief recess, the judge instructed the jury:

> I am going to instruct you to disregard the testimony of County Police Officer Hildick. Officer Hildick testified, as I'm sure you recall, about events taking place in 2010, but the defendant has been indicted for events that allegedly took place in 2008, and I have ruled that the events that allegedly took place in 2010 are not relevant to the issue as to what happened in 2008, and therefore, I'm going to instruct you to disregard Officer Hildick's testimony.

Once again, defense counsel did not object.

(8) The jury found Kline guilty of falsely reporting an incident. The trial judge sentenced Kline to one year at Level V detention, with credit for thirty six days previously served but with no possibility of early release. He also fined Kline $1,000 and ordered her to perform 100 hours of community service. Kline now appeals her conviction.

(9) We review a trial judge's evidentiary rulings for abuse of discretion.[1] When a party fails to object to an evidentiary ruling, however, we review any claim of error pertaining to that ruling under a plain error standard.[2] According to the plain error standard of review, we may reverse an evidentiary ruling only if

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[1] *Harris v. State*, 991 A.2d 1135, 1138 (Del. 2010) (citing *Zimmerman v. State*, 693 A.2d 311, 313 (Del. 1997)).

[2] *See* Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."); *Turner v. State*, 5 A.3d 612, 615 (Del. 2010) (quoting *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995)).

"the error complained of [is] so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[3] In fact, plain error "is limited to material defects which are apparent on the face of the record; which are basic, serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[4]

(10) Kline argues that the Superior Court judge erred by admitting Hildick's testimony and Daniels's limited testimony and then "*sua sponte*" striking them from the record. Kline concedes that the trial judge's analysis was correct with respect to both prejudice and confusion, but nevertheless argues that the prejudice and confusion had already infected the jury by the time the judge struck the testimony from the record. Accordingly, Kline argues that the prompt curative instruction was insufficient—and too late—to overcome the effect of the confusion and, therefore, prejudiced her.

(11) It is well established in Delaware that we presume a trial judge's prompt curative instruction adequately directs the jury to disregard improper statements and the jury follows the judge's instructions, curing any error.[5] Here,

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[3] *Turner*, 5 A.3d at 615 (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).

[4] *Id.*

[5] *See, e.g.*, *McNair v. State*, 990 A.2d 398, 403 (Del. 2010); *Purnell v. State*, 979 A.2d 1102, 1109 (Del. 2009); *Banther v. State*, 977 A.2d 870, 891 (Del. 2009); *Smith v. State*, 963 A.2d 719,

defense counsel neither moved for a mistrial nor objected to the curative instruction. Therefore, we presume that the prompt curative instruction adequately directed the jury to disregard Hildick's and Daniels's testimony and that the jury followed the instruction. Kline has not shown plain error.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

722–23 (Del. 2008); *Revel v. State*, 956 A.2d 23, 27 (Del. 2008); *Justice v. State*, 947 A.2d 1097, 1100 (Del. 2008); *Dawson v. State*, 637 A.2d 57, 62 (Del. 1994).