

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL H. BROWN,	§
	§
Defendant Below,	§
Appellant,	§ No. 528, 2000
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. 00-01-1023 and 1024
Plaintiff Below,	§
Appellee.	§ I.D. #0001005150

Submitted: June 20, 2001

Decided: July 31, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**O R D E R**

This 31<sup>st</sup> day of July 2001, it appears to the Court that:

1) The defendant-appellant, Samuel H. Brown was arrested and charged by information with Rape in the First Degree and Continuous Sexual Abuse of a Child. Following a three-day jury trial in the Superior Court, Brown was convicted of both offenses. Brown was sentenced, *inter alia*, on the Rape in the First Degree charge to forty years at Level V incarceration suspended after twenty-five years. For the Continuous Sexual Abuse of a Child offense, Brown was sentenced, *inter alia*, to five years incarceration at Level V suspended after two years.

2) In this direct appeal. Brown challenges the Superior Court's decision to deny his motion for a new trial. The denial of a motion for a new trial is reviewed on appeal for abuse of discretion.<sup>1</sup>

3) During its deliberations, the jury sent the trial judge a note containing several questions. In the note, the jurors inquired as to why the middle daughter had to leave the family's home and if the State was allowed to present evidence that the stepfather ever molested the alleged victim's sisters. The jurors also asked if defense counsel was a Public Defender.

4) In discussing these jury questions with counsel, the trial judge indicated that the inquiries about the sister leaving home and whether or not Brown had molested any of the other female siblings "are not evidence before the jury and not for the jury's consideration. They have to make a decision based only upon what was presented." After the trial judge indicated he would give the jurors a "generic instruction, that you have to make up your mind based only on what you heard," Brown's trial counsel suggested the following additional language: "And not to speculate on the

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<sup>1</sup> See *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1207-08 (1995). See *Zimmerman v. State*, Del. Supr., 628 A.2d 62, 65 (1993) ("Under an abuse of discretion standard, this Court will disturb a discretionary ruling of the trial court only when the ruling is based upon unreasonable or capricious grounds.").

answers to the questions.” The trial court judge advised counsel that he would inform the jury that it was irrelevant as to whether or not defense counsel was a Public Defender and that the jury was not to speculate on that issue either. As to the final questions of “If the State would have been allowed to tell if the sisters [were] ever molested by the stepfather,” Brown’s counsel stated that the answer to this question should be the same as the response to the first and third questions. After giving these additional instructions in response to the jury note inquiries, the jury was excused to continue their deliberations.

5) In his motion for a new trial after the jury verdict, Brown argued that two questions concerning whether or not defense counsel was a Public Defender and whether or not the State was allowed to present evidence that any of the complaining witness’ sisters had ever been molested by their stepfather were prejudicial to the defense and as a consequence Brown did not receive a fair and impartial trial.

6) In denying the new trial motion, the trial judge addressed these two arguments. With regard to the inquiry as to whether or not defense counsel was a Public Defender, the Superior Court ruled:

[T]his matter was never brought to the jury’s attention during the trial. The jury was told that it didn’t matter one way or

another. I have every reason to believe that the jury followed that. Frankly, to me, it's not clear, even if it were known to the jury that Mr. Callaway was a Public Defender, how this might have prejudiced the defendant, and the defendant has offered no reason as to how or why this would have prejudiced him.

7) The trial judge's instruction to the jury that whether or not defense counsel was a Public Defender was irrelevant was a correct instruction. Brown's argument assumes that the jury did not follow the trial judge's instructions. The record reflects that there was no evidence presented at trial that defense counsel was a Public Defender. In denying the new trial motion, the trial court judge pointed out that "there was no reference at all throughout the trial that the defendant was represented by a Public Defender. The jury was told that that was irrelevant, and I have no reason to believe that the jury considered it any further." No presumption of prejudice is raised arise by the jury's question regarding the status of Brown's attorney.<sup>2</sup> Brown's jury was properly instructed that the issue was of no significance.

8) The trial judge also denied the new trial motion challenging the jury inquiries about why the middle sister had left home and whether or not the stepfather had also molested her. The trial judge noted that "This

is mere speculation. There is no reason to believe this. There is no reason to believe that the jury didn't follow the instructions that I gave them to decide the case solely based on the evidence, and I note that their decision was consistent with the evidence in this case." This ruling constituted a proper exercise of the trial judge's discretion and is supported by the record.

9) The questions asked by Brown's jury were not sufficiently egregious to raise a presumption of prejudice.<sup>3</sup> When egregious circumstances do not exist, the defendant must show actual prejudice to warrant a new trial.<sup>4</sup> Brown has established no actual prejudice resulting from either jury's questions or the trial judge's response.

10) The trial judge's instructions to the jury were legally correct. A jury is presumed to understand and follow the instructions given by the Superior Court.<sup>5</sup> Mere speculation is not a sufficient basis for the grant of a new trial.<sup>6</sup> There is no objective basis to conclude that the jury did not

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<sup>2</sup> See *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1207-08 (1995).

<sup>3</sup> See *Massey v. State*, Del. Supr., 541 A.2d 1254, 1257-58 (1988).

<sup>4</sup> See generally *Hughes v. State*, Del. Supr., 490 A.2d 1034, 1046-48 (1985); *Estes v. Texas*, 381 U.S. 532 (1965).

<sup>5</sup> See *Dawson v. State*, Del. Supr., 637 A.2d 57, 62 (1994); *Zimmerman v. State*, Del. Supr., 628 A.2d 62, 66 (1993) (jury instruction usually sufficient to remedy prejudice caused by improper admission of evidence).

<sup>6</sup> See *Lovett v. State*, Del. Supr., 516 A.2d 455, 475 (1986).

follow the trial judge's instructions in reaching their verdict. Brown's new trial motion after the jury verdict was properly denied.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice