

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL M. HUDSON,	§	No. 478, 2011
	§	
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
	§	Cr. I.D. No. 1003019773
STATE OF DELAWARE,	§	
	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 22, 2012
Decided: September 18, 2012

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

ORDER

This 18th day of September 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Michael M. Hudson, the defendant-below (“Hudson”), appeals from his convictions of one count of First Degree Murder and other related crimes after a Superior Court jury trial. On appeal, Hudson claims the Superior Court erred in denying his motion for a mistrial after a witness gave allegedly “unresponsive, inadmissible, speculative and highly prejudicial testimony.” We disagree and affirm.

2. In February 2010, Hudson shot and killed his teenage son at Hudson's home, after his son allegedly threatened him with a baseball bat. After the homicide, Hudson's son remained missing for almost two months. During that time, Hudson professed ignorance of his son's whereabouts. In March 2010, the State Police arrested Hudson after finding his son's corpse about 200 feet from his home.

3. During the May 2011 jury trial, the prosecutor asked John Fleming, a witness for the State and Hudson's lifelong friend, what Fleming had told a State Police Officer regarding an incident between Fleming and Hudson that occurred while Hudson's son was missing. Fleming recounted his statements to the Officer, but added that the Officer replied, "Well, you are probably lucky to be alive."

4. Hudson objected, and the Superior Court struck Fleming's comment about the Officer's reply on the basis that the comment was speculation. The court also instructed the jury to disregard the comment. At a sidebar, the Superior Court denied Hudson's motion for a mistrial based on Fleming's prejudicial comment. Hudson replied that he was "not arguing with [the Superior Court's] decision on [his] motion," but that he would ask the Superior Court to give an additional jury instruction. The Superior Court then further instructed the jury as follows:

When I struck the comment made to [Fleming] by the [Officer], it was stricken from the record. It was speculative. It has no place in the courtroom. You are to understand that when I struck it, my meaning

was that you disregard it. Pay no attention to it whatsoever. Completely disregard it.

5. In June 2011, the jury found Hudson guilty of all charges. In August 2011, the Superior Court sentenced Hudson to life in prison for the homicide, with additional sentences for the other related offenses.

6. On appeal, Hudson argues that the Superior Court erred in denying his motion for a mistrial under the United States and Delaware Constitutions.¹ We review questions of law *de novo*, and review the Superior Court’s denial of a motion for a mistrial for abuse of discretion.²

7. A trial court should grant a mistrial “only when there is ‘manifest necessity’ or the ‘ends of public justice would be otherwise defeated.’”³ 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 these instructions.⁵

¹ The State argues that Hudson waived his claim under the Delaware Constitution. As this Court does not perceive a substantive difference in the legal analysis, we address Hudson’s claim only on the merits.

² *Gattis v. State*, 955 A.2d 1276, 1281 (Del. 2008); *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002).

³ *Smith v. State*, 963 A.2d 719, 722 (Del. 2008) (quoting *Brown v. State*, 897 A.2d 748, 752 (Del. 2006)).

⁴ *Revel v. State*, 956 A.2d 23, 27 (Del. 2008); *Pena v. State*, 856 A.2d 548, 551 (Del. 2004).

⁵ *Revel*, 956 A.2d at 27.

8. A trial court considers four factors in deciding whether to grant a mistrial based on a witness's allegedly prejudicial comment: (1) the nature and frequency of the comment; (2) the likelihood of resulting prejudice; (3) the closeness of the case; and (4) the adequacy of the trial judge's actions to mitigate any potential prejudice.⁶

9. Here, Fleming's single comment was unsolicited and nonresponsive to the prosecution's question. Although Hudson suffered some prejudice from Fleming's comment, this case contained clear and ample evidence of Hudson's guilt. Hudson not only admitted shooting his son (albeit in self-defense), but also falsely claimed ignorance of his son's whereabouts for nearly two months. Hudson also attempted to mislead the State Police investigating his son's disappearance, and numerous witnesses described Hudson's violent proclivities. Lastly, the Superior Court promptly issued a curative instruction, and then later issued a second, more extensive instruction at Hudson's request. Thus, to the extent Fleming's comment gave rise to error, the Superior Court's instructions presumably cured any error.

⁶ *Id.* at 28; *Pena*, 856 A.2d at 550-51.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice