

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME N. WATKINS,	§	
	§	No. 470, 2004
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. I.D. No. 0404008497
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 2, 2005

Decided: April 11, 2005

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

ORDER

This 11<sup>th</sup> day of April, 2005, on consideration of the briefs of the parties, it appears to the Court that:

1) Jerome N. Watkins appeals from his conviction, following a jury trial, of assault in a detention facility. Watkins argues that the trial court abused its discretion when it denied his motion for a mistrial. The prosecutor had made an improper comment during his opening statement, but the trial court decided to give a curative instruction to the jury rather than grant Watkins' motion for a mistrial.

2) On August 9, 2004, Watkins, Eric Russell, and Jamie Dixon were residing at the Violation of Probation Center, which is on the grounds of the Sussex

Correctional Institution in Georgetown, Delaware. They all happened to be in the laundry area that day. Watkins and Dixon were there as punishment for rules infractions; Russell was sorting laundry. After the three men exchanged some words, Watkins and Dixon confronted Russell in a small closet next to the laundry room. The three wound up in a “tussle” and Russell suffered a bump on his head after hitting some crates on a shelf in the closet.

3) During his opening statement at trial, the prosecutor started his description of the incident by stating that Watkins, Russell and Dixon all were serving sentences at the Violation of Probation (VOP) Center in Georgetown. After the prosecutor completed his very brief opening, Watkins objected to the reference to the VOP Center. He said that the jury would conclude from that reference that Watkins not only had been convicted of something, but also that he had done something to violate his probation. The trial court determined that the prosecutor’s inappropriate statement was not so prejudicial that a mistrial was required. Instead, the trial court instructed the jury that it should ignore the designation “VOP Center” and just consider it the “Center,” which is a Department of Corrections detention facility. The court also instructed the jury not to consider the fact that Watkins was in a detention facility for any purpose other than to establish the place where the incident allegedly occurred.

4) Curative instructions generally are sufficient to remedy any prejudice that may have resulted from an improper comment by the prosecutor.<sup>1</sup> In this case, where one of the elements of the crime was the fact that Watkins was in a detention facility, there was relatively little prejudice from the inappropriate reference to that facility as a VOP Center. Watkins offers no reason why a curative instruction would have been insufficient in this case, and our review of the record reveals none. Accordingly, we conclude that the trial court acted within its discretion when it gave a curative instruction rather than granting a mistrial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>1</sup>*Hardin v. State*, 840 A.2d 1217, 1220 (Del. 2003).