

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL O'DONNELL,	§	
	§	No. 437, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. I.D. No. 0301006683
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 16, 2004

Decided: May 13, 2004

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

ORDER

This 13th day of May, 2004, on consideration of the briefs of the parties, it appears to the Court that:

1) Paul O'Donnell appeals from his conviction, following a jury trial, of two counts of attempted robbery. O'Donnell argues that the trial court erred in refusing to grant a mistrial after the State asked objectionable questions about O'Donnell's alibi defense. We find no merit to the appeal and affirm.

2) The two incidents that led to O'Donnell's arrest occurred four days apart, at about 5:30 p.m., in the general location of the Central YMCA, in Wilmington,

Delaware. On Monday, January 6, 2003, Stephanie Peterson was walking from her workplace to her car, when she was accosted by a man who demanded money and told her not to make him hurt her. Peterson ran toward an occupied car in the parking lot and told the two occupants that the man following her was trying to rob her. The two men in the car gave chase, but the would-be robber fled.

3) On Friday, January 10, 2003, Mary Quinn was walking toward her car when a man confronted her, told her he had a knife, and demanded money. Quinn ran to the YMCA, and the assailant did not follow. Quinn called the police and gave them a description of the man. Shortly thereafter, the police apprehended a man who fit Quinn's description. Quinn identified O'Donnell when the police brought him back to the YMCA for a show-up identification. Peterson also identified O'Donnell from a 6 picture photographic array.

4) O'Donnell's mother provided an alibi for the Peterson attempted robbery. She testified that O'Donnell generally stayed with her over the weekend, and that on Monday, January 6th, O'Donnell was ill and stayed at her house instead of returning to the Central YMCA, where he lived during the week. O'Donnell also testified. He denied committing either crime and agreed with his mother's account of his whereabouts on Monday, January 6th. On cross-examination, the State asked

O'Donnell why he did not ask his mother to tell the police that he had been home sick on that Monday and that she was with him.

5) O'Donnell objected to the question, arguing that he has a constitutional right not to provide information to the police, and that he should not be prejudiced for exercising that right. O'Donnell asked for a mistrial, but the trial court was satisfied that the prejudicial effect of the State's question could be cured with an instruction to the jury. Immediately after the side-bar conference, the court told the jury:

I'm instructing you to disregard that question, and disregard the defendant's answer in its entirety. It is improper for the State to ask that question. You are not to consider the question or the answer in your deliberations, and I'll remind you that it is the State, not the defendant, that bears the burden of proof here. The defendant is under no obligation whatsoever to prove his innocence. It is the State's responsibility to prove guilt beyond a reasonable doubt. Do you all understand that?

6) A curative instruction normally is sufficient to counteract the effect of an improper question and answer.¹ This was not a particularly close case and the potential prejudice to O'Donnell was not so great that a mistrial was manifestly

¹*Steckel v. State*, 711 A.2d 5, 11 (Del. 1998).

necessary. Accordingly, we conclude that the trial court acted well within its discretion in denying O'Donnell's motion.²

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

²*Reyes v. State*, 819 A.2d 305 (Del. 2003).