

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IDYLL ALLISON,	§	
	§	
Defendant Below,	§	
Appellant,	§	No. 653, 2006
	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID 0512013537
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 28, 2007
Decided: January 31, 2008

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGLEY**, Justices, constituting the Court *en Banc*.

ORDER

This 31st day of January, 2008, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Idyll Allison was convicted, following two jury trials, of first degree robbery, possession of a deadly weapon by a person prohibited (PDWBPP), possession of a firearm during the commission of a felony (PFDCF), and conspiracy. Allison argues that the trial court abused its discretion in the first trial by refusing to impanel a new venire after the prospective jurors witnessed an altercation between Allison and prison

guards. In addition, he complains that the robbery instruction given in the second trial misled the jury. We find no merit to either argument, and affirm.

2) On December 19, 2005, two masked men entered the Audio Works store in Newark, Delaware. The first man, later identified as John Chavous, pointed a silver revolver at Paul Myhre, the store manager, and demanded money. The second man, later identified as Allison, stood in the middle of the store with his black pistol aimed at Myhre. He told Myhre not to move or “try anything funny.” Myhre removed the till from the cash drawer and Chavous took the \$88 that was in it. Chavous and Allison then walked out of the store.

3) While the robbery was underway, Henry Dalecki, the store owner, was in a room in back of the store. When Dalecki walked into the store, Chavous and Allison were still there, and Myhre was holding an empty cash drawer. As soon as Chavous and Allison left the store, Dalecki and one of his employees, Matt Keebler, followed the two robbers. Dalecki saw both men get into a red Plymouth Neon. One got into the front passenger side and the other got into the rear passenger side. Keebler was able to read the license plate on the car, and also got a close look at the person in the rear seat of the Neon, whom he identified as Allison.

4) Officer Morris Larue, of the Newark Police Department, responded to the report of a robbery at the Audio Works store. Larue spotted the red Neon, stopped the

car, and ordered the three occupants out. Chavous was in the front passenger seat, armed with a black pistol. Allison was in the back seat. The police found the silver revolver on the floor of the front passenger side of the car. The third occupant was Mark Watson, the driver.

5) Chavous and Allison were tried together in the first trial. At the start of jury selection, when the trial judge entered the courtroom, Allison failed to stand up. Two prison guards then attempted to lift Allison up, and there was a brief altercation. Thereafter, in response to the court's question about whether anyone had any bias or prejudice for or against the parties, two prospective jurors stated that Allison's behavior was disrespectful. They were excused. The court offered to ask the panel a more specific question about the impact of the altercation, but Allison declined. Instead, Allison asked that the court replace the entire panel, but the court denied that request. The jury convicted Allison of PDWBPP and conspiracy, but the jurors were unable to reach agreement on the remaining charges.

6) Two months later, Allison was retried without any co-defendants. He testified that he had nothing to do with the robbery. He said that he lost sight of Chavous and Watson when he went to order a piece of pizza at the Newark Shopping Plaza. Allison then returned to the back seat of the red Neon and waited for his

companions. He claimed to have no idea what they had been doing while he was getting his pizza. The jury found him guilty of first degree robbery and PFDCF.

7) Allison first argues that the trial court abused its discretion by refusing to replace the entire jury panel after the panel witnessed him jostling with his guards. A defendant's right to a fair trial includes the right to be judged by impartial jurors.¹ The trial court enforces that right through *voir dire*, after which prospective jurors may be excused for cause. Here, the trial court excused two prospective jurors who expressed concern about Allison's conduct. In addition, the trial court offered to ask the panel a more specific question about the impact of Allison's conduct, but Allison made the tactical decision that he did not want additional *voir dire*. We are satisfied that Allison's outburst was not so prejudicial as to require that the entire jury panel be replaced, and that the trial court acted well within its discretion in denying that request.²

8) Allison's second argument concerns the jury instructions given in the second trial. A defendant is not entitled to demand a particular form of jury instruction, as

¹*Banther v. State*, 823 A.2d 467, 481 (Del. 2003).

²*See Ashley v. State*, 798 A.2d 1019 (Del. 2002) (trial judge's instruction to jury did not cure prejudice from spectator's outburst); *Riley v. State*, 496 A.2d 997 (Del. 1985).

long as the instruction is not confusing and correctly states the law.³ The trial court begin its instructions by reading the indictment, which charged that:

Allison, ... when in the course of committing theft, did use or threaten the immediate use of force upon Paul Myhre ..., and in the course of the commission of the crime or the immediate flight therefrom, the defendant *or another participant in the crime* displayed what appeared to be a gun⁴

Allison argues that the reference to another participant in the crime caused confusion because it allowed the jury to find him guilty even if it believed that he did not go into the Audio Works store.

9) In advancing this argument, Allison ignores the more particularized instruction that followed the recitation of the indictment:

In order to find the defendant guilty of Robbery in the First Degree, you must find that all the following elements have been established beyond a reasonable doubt:

One, that the defendant's conduct occurred in the course of committing theft. A person commits theft when he takes ... property of another person intending to deprive him of it ...;

And, two, the defendant threatened the immediate use of force on another person;

And, three, the defendant acted with intent to compel the owner of the property to give up the property;

³*Perkins v. State*, 920 A.2d 391 (Del. 2007).

⁴Appellee's Appendix, B-34 (Emphasis added.)

And, four, the defendant displayed what appeared to be a deadly weapon in the course of the commission of the crime.⁵

10) This particularized instruction defeats Allison's claim that the jury could have found him guilty even if it believed that he was sitting in the car throughout the robbery. The State did not proceed on a theory of accomplice liability, and the jury was instructed that it could find Allison guilty only if it found, among other things, that he displayed what appeared to be a deadly weapon while committing theft. In short, if the jury believed Allison, the instructions required the jury to return a verdict of not guilty.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵Appellee's Appendix, B-34.