

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Caterina Gatto, Esquire
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801

Joseph M. Leager, Jr., Esquire
Assistant Public Defender
Office of the Public Defender
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801

**Re: State of Delaware v. Donnell Seeney
I.D. No. 0805019106**

**On Defendant's Motion to Dismiss.
DENIED.**

**Submitted: October 16, 2008
Decided: October 30, 2008**

Dear Counsel:

Defendant filed a Motion to Dismiss the Carrying of a Concealed Deadly Weapon count on August 20, 2008, and supplemented on August 22. The State has filed responses in opposition on August 15 and October 16.

The gist of Defendant's motion is that a "razorblade" cannot, as a matter of law, be a "deadly weapon" pursuant to 11 *Del. C.* 222(5).

Defendant therefore asks for pretrial dismissal of the Carrying a Concealed Deadly Weapon count on the basis that the arrest was not based on probable cause.

The State's position is that 1) the return by the Grand Jury of an indictment of Carrying a Concealed Deadly Weapon constitutes a finding of probable cause and 2) the manner in which the razorblade was used, to the extent it could be considered a dangerous instrument, is a fact sensitive question that needs to be raised at the conclusion of the State's case-in-chief.

Notably, the two cases listed in Defendant's "Addendum to Motion to Dismiss" were both rulings made during trial, not pre-trial. In *State v. Houchens*, Del. Super. Cr. A. No. 0601021645 (Nov. 21, 2006), a bench ruling, the trial judge stated that his decision to dismiss the charge of Carrying a Concealed Deadly Weapon based on a "razorblade" was made "under the circumstances of this case." In connection with the second case proffered by Defendant, *State v. Wheeler*, 2006 WL 337047 (Del. Super. 2006), the trial judge noted that "my findings with regard to [dismissal of the Carrying a Concealed Deadly Weapon charge involving a razor] are strictly confined to the facts of this case." The trial judge, in granting a motion to dismiss, also noted that the razor at issue in *Wheeler* "clearly looks as if it was at some point part of a tool. It has two notches or indentations on the flat end of it." Moreover, the only testimony in connection with the razor was that "it was used to fix a mirror in the car."

"Razor" is specifically identified in the Criminal Code as an object that is a "deadly weapon." 11 *Del. C.* § 222(5). A deadly weapon is also a dangerous instrument, defined as "any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury." 11 *Del. C.* § 222(4). A pre-trial ruling is not possible without a separate pre-trial hearing, which, given the need for judicial economy, this Court declines to schedule.

Accordingly, Defendant's Motion to Dismiss is **DENIED**, without prejudice to its being renewed as a Motion for Judgment of Acquittal

pursuant to Superior Court Criminal Rule 29 at the conclusion of the State's case-in-chief at trial, scheduled for November 6.

Very truly yours,

RRC/mtc
cc: Prothonotary