

jacking first degree. The State opposes Defendant's motion, arguing that there is no violation of either constitutional or statutory law. Having reviewed the parties' submissions as well as the applicable law, the Court concludes that the motion must be denied.

Discussion of multiple weapons charges. The Delaware Supreme Court has previously addressed the issue of multiple weapons charges when there is only one weapon used in carrying out more than one felony. The Court has found no double jeopardy violation because this charging practice is consistent with the purpose of 11 *Del. C.* § 1447, which is to deter the use of a deadly weapon while committing a felony because the weapon increases the chance of harm to the victim.²

Defendant now raises a challenge to the holding of *Graham v. State*³ as it pertains to this case. *Graham* held that aggravated menacing focuses on the victim's perception of threat while PDWDCF focused on actual danger. For this reason, the two crimes could be sentenced separately and did not merge.⁴ Defendant challenges that holding because this case involves a "firearm" instead of a "deadly weapon." The statutory definition of "firearm" includes inoperable and unloaded weapons (as well as operable and loaded

²*Nance v. State*, 903 A.2d 283, 288 (Del. 2006); *Graham v State*, 2004 WL 557168 (Del.); *Robertson v. State*, 630 A.2d 1084 (Del. 1993); *Pauls v. State*, 554 A.2d 1125 (Del. 1989); *LeCompte v. State*, 516 A.2d 898 (Del. 1986).

³2004 WL 557168 (Del.)(holding that aggravating menacing and PDWCF, which was based on felony aggravated menacing, could be separately sentenced).

⁴*Id.*

ones).⁵ For this reason, Defendant argues, PFDCF and aggravated menacing merge into one crime because there is no statutory distinction between actual danger and perceived danger from a loaded or inoperable gun. The Court disagrees, first, because an unloaded shotgun can be dangerous to a victim, as can any other unloaded or inoperable firearm.

Second, the Court observes that *Graham* dealt with PDWDCF, whereas this Defendant is charged with PFDCF. Defendant takes this into account only to the extent that it confirms his argument. When deciding whether a person has been charged for one act under two separate statutes, the question is whether each provision requires proof of a fact which the other does not.⁶ For PFDCF, the State will be required to prove that Defendant possessed a firearm.⁷ For aggravated menacing, the State will be required to prove that Defendant intentionally placed another person in fear of imminent physical injury.⁸ The Court finds that these are different statutory elements⁹ and that these offenses do not merge.

⁵Title 11 § 222 (12) provides as follows:

“Firearm” includes any weapon from which a shot, projectile or other object may be discharged by force or combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

⁶*Nance v. State*, 903 A.2d 283 (Del. 2006) (citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

⁷Title 11 *Del. C.* § 1447A.

⁸Title 11 *Del. C.* § 602(b).

⁹*Whalen v. United States*, 445 U.S. 684, 691-92 (1980).

The Court need not address the firearms charges associated with felonies other than aggravating menacing because Defendant has not presented any argument to support their dismissal or merger.

Conclusion. For all these reasons, Defendant's motion to merge or dismiss the eight counts of PFDCF against him is ***DENIED***.

IT IS SO ORDERED.

Richard F. Stokes, Judge

Original to Prothonotary

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