

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	ID. No. 0907015096
	)	
KENNETH MANISCALCO	)	
	)	
Defendant.	)	

Submitted: February 12, 2010  
Decided: May 19, 2010

On Defendant's Motion for Judgment of Acquittal  
**DENIED**

**MEMORANDUM OPINION**

Matthew Frawley, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Robert M. Goff, Jr., Esquire, Assistant Public Defender, Office of the Public  
Defender, Wilmington Delaware, Attorney for Defendant.

JOHNSTON, J.

In the early morning hours of June 27, 2009, defendant entered Happy Harry's Discount Drug Store and demanded Oxycontin and Oxycodone from pharmacist Shawn Sniadowski. To compel Sniadowski to comply, defendant stated: "I am armed." Believing defendant to be armed with a knife or gun, Sniadowski complied with the demand and turned over three bottles of Oxycontin. Defendant then fled.

On January 20, 2010, after a bench trial, defendant was convicted of one count of Robbery in the First Degree. On February 8, 2010, defendant filed this Motion for Judgment of Acquittal pursuant to Superior Court Criminal Rule 29. Defendant requests that a partial judgment of acquittal be granted, reducing his conviction to Robbery in the Second Degree.

In his Motion, defendant argues that the State failed to present sufficient evidence to secure a conviction under 11 *Del. C.* § 832(a)(2).<sup>1</sup> Specifically, defendant contends that the statement "I am armed" does not represent by word or conduct that he was in possession of a deadly weapon. Defendant claims that such a "general threat" does not satisfy the requirements of section 832(a)(2). Rather, defendant argues that a

---

<sup>1</sup> Section 832(a)(2) provides: "A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime... the person... [d]isplays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon."

conviction for Robbery in the First Degree is appropriate only when *specific* threats and conduct imply the existence of a *specific* weapon.

While this argument may have had some merit prior to the amendment of section 832(a)(2), it fails under the present version of the statute. In 2003, section 832(a)(2) was amended to clarify that “any person who represents by word or conduct that they are in possession or control of a deadly weapon is committing a more serious crime than if there were no such representations.”<sup>2</sup>

The General Assembly intended that section 832(a)(2) apply “whenever a criminal intends to intimidate a robbery victim by threatening the presence of a deadly weapon, regardless of whether the intimidation is accomplished by a physical display of what appears to be a deadly weapon or a verbal threat or other conduct that clearly implies that the criminal is so armed.”<sup>3</sup> Thus, under the current version of section 832(a)(2), all the State needs to prove is “that the victim subjectively believed the defendant's objectively manifested control of a deadly weapon.”<sup>4</sup>

The Delaware Supreme Court’s decision in *Word v. State*<sup>5</sup> is instructive. Although *Word* was decided prior to the amendment of section

---

<sup>2</sup> Del. H.B. 115, syn., 142nd Gen. Assem. (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Mitchell v. State*, 984 A.2d 1194, 1197 (Del. 2009).

<sup>5</sup> 801 A.2d 927 (Del. 2002).

832(a)(2), the holding remains applicable.<sup>6</sup> In *Word*, defendant was charged with Robbery in the First Degree after he entered a bank and passed a note to a bank teller that read: “This is a holdup. Give me all of the strapped money. No dye packs. I am armed.”<sup>7</sup>

After a bench trial, Word was convicted of Robbery in the First Degree for displaying what appeared to be a deadly weapon during the robbery.<sup>8</sup> On appeal, Word’s conviction was reversed. The Delaware Supreme Court found that the State had failed to prove that the defendant *displayed* what appeared to be a deadly weapon.<sup>9</sup> The Supreme Court found that, while the bank teller subjectively believed that Word was armed with a deadly weapon, her belief was not based on an objective physical manifestation of a deadly weapon.<sup>10</sup> The evidence showed that her belief was based *solely* on Word’s note that stated: “I am armed.”<sup>11</sup> The Supreme Court remanded for a new sentencing on Robbery in the Second Degree.<sup>12</sup>

---

<sup>6</sup> Prior to amendment, 11 *Del. C.* § 832(a)(2) stated: “A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, the person or another participant in the crime ...[d]isplays what appears to be a deadly weapon.”

<sup>7</sup> *Word*, 801 A.2d at 928.

<sup>8</sup> *Id.* at 929.

<sup>9</sup> To establish the “displays what appears to be a deadly weapon” requirement of Robbery in the First Degree, the State must prove that: “(1) the bank teller subjectively believed that Word was armed, and (2) the bank teller’s belief was objectively reasonable because the defendant either actually produced what appeared to be a deadly weapon or made another objective physical manifestation of such a weapon.” *Id.* at 931.

<sup>10</sup> *Id.* at 932.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 933.

In the instant case, defendant communicated an identical statement - “I am armed.” Sniadowski’s testimony at trial was that he interpreted “I am armed” as meaning that defendant was in possession or control of a gun or knife. Section 832(a)(2) now provides that Robbery First Degree is the appropriate charge when a defendant “represents by word or conduct that the person is in possession or control of a deadly weapon.” This Court found that the victim subjectively and reasonable believed that defendant was armed with a deadly weapon, based upon defendant’s representation.

The common understanding of “armed” is possession of a firearm. At the very least, “armed” indicates possession of a deadly weapon. Neither section 832(a)(2) nor case law requires proof of a specific threat or the existence of a specific weapon.

**THEREFORE**, defendant’s Motion for Judgment of Acquittal is hereby **DENIED**.

**IT IS SO ORDERED.**

---

The Honorable Mary M. Johnston