

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

STATE OF DELAWARE,

v.

GRAYSON JEFFERS,

Defendant.

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ID. No. 0411008406

Submitted: May 2, 2006
Decided: November 3, 2006

OPINION AND ORDER

Upon Consideration of Enhanced Sentence
Pursuant to DEL. CODE ANN. tit. 11, § 1448(e).

Indictment Found to Provide
Sufficient Notice of Charged Offense and Possible Sentence.

Appearances:

Brian J. Robertson, Esquire, Deputy Attorney General, for the State of Delaware.

Kester I.H. Crosse, Esquire, Assistant Public Defender, for Defendant.

JOHN E. BABIARZ, JR., JUDGE.

On this 3rd day of November 2006, the Court finds and concludes as follows:

1. Defendant Grayson Jeffers was tried and convicted of one count of Possession of a Deadly Weapon by a Person Prohibited, pursuant to DEL. CODE ANN. tit. 11, § 1448 (2004 Supp.). Following conviction, a question arose whether the phrase in the indictment “a handgun, a deadly weapon” was sufficient to put Defendant on notice that a “handgun” is a “firearm,” thereby subjecting Defendant to an enhanced sentence under § 1448(e).

2. Section 1448(e) provides that a prohibited person who possesses a firearm (as opposed to a deadly weapon) shall be sentenced to a minimum of three years at Level V if that person was convicted of a violent felony within 10 years of the date of the weapons charge. The State seeks this enhanced three-year sentence for Defendant Jeffers. Defendant does not dispute his prior violent felony conviction but challenges the use and definition of the word “handgun.”

3. The parties concede that the term “handgun” is not defined in § 1448(e) or in § 222, General definitions.¹ The State argues that in common parlance a “handgun” is a subset of the broader term “firearm” and that Defendant is therefore subject to the enhanced three-year sentence. Defendant argues that the indictment is vague and that his illegal conduct should therefore be considered to be possession of a deadly weapon rather than possession of a firearm.

4. DEL. CODE ANN. tit. 11, § 222 presents general definitions of words and phrases used in the Delaware Criminal Code. Section 222(5)

¹The Court notes that § 1448(a)(5) defines a handgun for purposes of juveniles as “any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand.”

provides that “‘Deadly weapon’ includes a firearm, as defined in subdivision (11) of this section. . . .” Section 222(11) provides that “‘Firearm’ includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.”

5. The Court finds these definitions to be clear and to be dispositive of the issue at bar. Under § 222, the definition of deadly weapons includes firearms, and the definition of firearms includes handguns, which are weapons from which shots are discharged.

6. The indictment provided notice to Defendant that he was charged with unlawful possession of a handgun, which is a type of firearm. At trial, the State presented evidence that Jeffers had in his possession a Haskel .45 caliber handgun, and the jury returned a verdict of guilty. The Court concludes that Jeffers is therefore subject to the enhanced three-year minimum sentence mandated in § 1448(e).

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEBjr/ram/bjw
Original to Prothonotary