

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CURTIS HAMILTON,	§	
	§	No. 95, 2008
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID. No. 0702017502
Appellee.	§	

Submitted: August 6, 2008
Decided: October 16, 2008

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 16th day of October, 2008, on consideration of the briefs of the parties, it appears to the Court that:

1) Curtis Hamilton appeals from his convictions, following a jury trial, of two counts of first degree robbery and one count of using a hoax device. He argues that the trial court erred in denying his motion for judgment of acquittal on one of the robbery charges or, alternatively, in denying his motion to merge the two robbery counts. We find no merit to this appeal and affirm.

2) On January 25, 2007, Hamilton entered a Wachovia Bank branch in Wilmington, Delaware, carrying two backpacks. He approached Amy Kasonovic, the

bank manager, who asked Hamilton how she could help him. According to Kasonovic, Hamilton responded that “his family . . . was being held, and that he had a bomb and gun and would use it if necessary because he needed money.” Hamilton ordered Kasonovic to fill one of his backpacks with money, and then followed Kasonovic to the teller area. Kasonovic instructed Sandra Simmons, a co-worker who was behind the counter, to fill the backpack. Simmons put money in the backpack and handed it to Hamilton, but he told the women that it was not full enough, so they went to another teller to get more money. Hamilton again complained that the backpack was not full enough, but Kasonovic told him that there was no more money, and Hamilton fled.

3) A person is guilty of first degree robbery when, while committing second degree robbery, the person “represents by word or conduct that the person is in possession . . . of a deadly weapon.”¹ A person is guilty of second degree robbery when, while committing theft, “the person uses or threatens the immediate use of force upon another person with intent to: (1) [p]revent or overcome resistance to the taking of the property . . . ; or (2) [c]ompel the owner of the property or another person to deliver up the property”² Hamilton argues that he did not rob Simmons because

¹11 *Del.C.* § 832(a) (2).

² 11 *Del.C.* § 831(a).

he never even spoke to her, and, therefore, never threatened the immediate use of force against her. Hamilton says that he only spoke to Kasonovic, who then carried out his instructions by ordering Simmons to fill the bags with money.

4) This argument overlooks the fact that “robbery is primarily a crime of physical violence against a person.”³ Thus, in *Harrigan v. State*⁴, for example, this Court held that a defendant was guilty of three robberies even though he only threatened to kill one of three family members who were together at the crime scene.

The Court reasoned:

First, even assuming there was no verbally expressed or other manifested threat against the father and grandmother . . . the situation inherently constitutes a threat of the use of force against the father and grandmother [T]he threat against the son if carried out necessarily leaves the defendant to deal with the other two named victims. The situation thus posed a direct threat of the use of force, in a personal harm sense, against the father and grandmother.

Second, . . . in this direct confrontation setting, force includes compulsion beyond physical violence to each individual victim. The physical force used and threatened against the son was used “to overcome resistance to theft [and] to compel [the father and the grandmother] to deliver up property.”⁵

³ *Washington v. State*, 836 A.2d 485, 490 (Del. 2003).

⁴ 447 A.2d 1191 (Del. 1982).

⁵ 447 A.2d at 1193 (Citations omitted.).

Here, Hamilton walked with Kasonovic to the teller area, where Simmons was working. Both women heard him tell Kasonovic that he would use his gun if necessary, and Simmons filled the backpack with money because of that threat. As in *Harrigan*, the threat of violence against Kasonovic was an inherent threat against Simmons, used to overcome her resistance and to compel her to deliver up the Bank's cash.

5) Hamilton's alternative argument, that the State improperly divided one criminal act into two, fails for similar reasons. It is settled law that, "multiple criminal counts are permitted in a single transaction when harm, such as that which occurs in a robbery, results to several persons."⁶ As noted above, there were two victims here – Kasonovic and Simmons. Both were threatened and both participated in providing money to Hamilton. Thus, Hamilton was properly charged with two robberies and the trial court correctly denied his motion to merge those charges.

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

⁶*Bass v. State*, 2000 WL 1508724, at ** 3 (Del. Supr.).