

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM GREGORY,	§	
	§	No. 278, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN99-02-0048
Plaintiff Below,	§	through IN99-02-0052
Appellee.	§	

Submitted: April 24, 2001

Decided: July 25, 2001

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

O R D E R

This 25th day of July, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1) William Gregory was convicted, following a jury trial, of attempted murder first degree, possession of a firearm during the commission of a felony, conspiracy first degree, assault second degree, and possession of a deadly weapon during the commission of a felony. He appeals the assault conviction on the ground that it should have been merged into the attempted murder conviction.

2) On November 22, 1998, Gregory and his co-defendant, Nugi Nichols, attacked Nichole Hansley in the bedroom of the apartment in which she was living.

Gregory had been using a closet in that apartment to store his drugs and money. Three days before the attack, when he discovered that his property was gone, Gregory accused Hansley of stealing it. Hansley feared for her safety and stayed in a motel for the next two nights, but she returned home on the day of the attack.

3) That evening, as Hansley was sleeping, Gregory entered her bedroom and hit her in the head with a baseball bat. Hansley woke up; Gregory demanded his property back; and he hit her again with the bat. At about that time, Nichols entered the bedroom carrying a revolver. After Hansley repeated that she was not responsible for the missing drugs and money, Gregory shot her in the head. Despite the gunshot wound, Hansley was able to talk and she started pleading for her life. Nichols then placed his gun against the side of her face and pulled the trigger, but the gun jammed. Gregory took Nichols' gun and was trying to figure out why it jammed when it fired, the bullet grazing Hansley's face. Nichols took the weapon back and fired it at Hansley's neck. The evidence indicates that only two bullets were fired, although some of the witnesses thought there were three shots. In any event, Hansley survived gunshot wounds to the neck and face.

4) Gregory argues that his continuous course of conduct, spanning only a few minutes, constituted one offense and that his assault conviction should have been

merged into the attempted murder conviction. This argument lacks merit. Gregory beat Hansley with a baseball bat while demanding that she return his drugs and money. When that approach did not work, Gregory put down the bat and put a gun to Hansley's head and shot her. Gregory engaged in two distinct acts and the short time span between those acts does not change the fact that they were different acts punishable as separate offenses.¹

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

¹*Wyant v. State*, Del. Supr., 519 A.2d 649, 661 (1986).