

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DURELL T. DUPREE,	§	
	§	No. 553, 2003
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Superior Court of the
STATE OF DELAWARE,	§	State of Delaware in
	§	and for New Castle County
Plaintiff Below,	§	Cr. I.D. No. 0209007645
Appellee.	§	

Submitted: July 21, 2004
Decided: September 23, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 23rd day of September, 2004, upon consideration of the briefs of the parties, it appears to the Court that:

1) Durell T. Dupree appeals from his conviction, following a jury trial, of multiple counts of aggravated menacing, assault, and possession of a firearm during the commission of a felony. Dupree argues that the trial court erred in failing to sever the numerous charges, which were based on events that transpired on five different dates.

2) The first incident occurred in November or December 2001, when Dupree walked up to a high school acquaintance, Jabbar Foster, who was sitting in a park with

two friends near the Saddlebrook development. Dupree was holding a gun, and told Foster that someone had told him that Foster was planning to beat him up. Foster heard the gun being cocked and testified that he thought he was going to die. The incident ended when Foster and his friends said they did not know what Dupree was talking about.

3) The second incident occurred on September 4, 2002. Robert Vicks, who knew Dupree through a friend, was driving through Hampton Green when he stopped to see some friends. At that time, Dupree asked Vicks if Vicks would like to “hook up with some sugar babes.” At Dupree’s instruction, Vicks and his passenger, Kelvin Powers, drove to the Ashton Condominiums parking lot. When Vicks pulled into the parking spot, Dupree was standing about ten feet away and motioned for Vicks to wait. A moment later, a man opened the driver side door, held a gun to Vicks’ head, and ordered Vicks to “give it up.” Vicks resisted, and during his struggle with the assailant, Vicks noticed Dupree making eye contact with the assailant. Vicks decided that he should stop fighting with the assailant and try to flee. As Vicks drove away, however, the assailant shot him and his passenger.

4) The third incident occurred shortly after the September 4th shooting. Vicks was driving with his fiancée, Lindsay Donnelly, and his brother. Vicks pulled into a gas station and Dupree, driving a green Firebird, pulled in behind him. Vicks drove

off and Dupree followed, flashing his lights. As Vicks was waiting to turn into a restaurant parking lot, Dupree fired four shots at Donnelly's car and then sped off. A few days later, a bullet was retrieved from one of the tires on Donnelly's car. That bullet was the same caliber as the bullets retrieved from two of the other September incidents.

5) The fourth incident occurred on September 10, 2002, when Lavon Byard and two other man ran into Dupree at a convenience store near Saddlebrook. Dupree told the three men that he had a gun, but nothing happened in the store. As Byard started walking home, Dupree came up to Byard and started checking the contents of Byard's pockets. Dupree found nothing, and then pulled out his gun and aimed it at Byard's stomach. Dupree told Byard that he was not going to get him, and Byard walked away.

6) The last incident occurred on September 11, 2002, when Dupree approached Byard and three of his friends in the Saddlebrook development. Dupree told them he had a gun and wanted to shoot someone because his cousin had been robbed the night before. The four men attacked Dupree, and, during the fight, Dupree shot and wounded three of them. The weapon used in this incident was the same as the weapon used on September 4th.

7) Dupree was convicted on the charges relating to the September 4th and September 11th shootings.

8) Prior to trial, Dupree alerted the court to the possibility that the charges should be severed. Dupree explained that, under the prosecutor's theory of the case, the separate incidents were all connected. If the evidence at trial did not support that theory, however, Dupree "reserved the right" to seek relief in the form of a motion to sever or a motion for a mistrial. Dupree never made such a motion.

9) Since the severance issue was not fairly presented to the trial court, our standard of review is plain error, which is an error "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the judicial process."¹ We are satisfied, based on our review of the record, that there was no plain error. First, there was a basis to join the September incidents since they occurred within one week and involved many of the same people, in the same neighborhood, being threatened or shot by the same gun.² Second, the fact that the jury acquitted Dupree on the charges relating to three of the five incidents indicates that Dupree suffered no prejudice from the joinder.³

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

¹*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

²*See*: Superior Court Criminal Rule 8(a).

³*Wiest v. State*, 542 A.2d 1193 (Del. 1988).

BY THE COURT:

/s/ Carolyn Berger
Justice