

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVEARL BACON,	§	
	§	No. 369, 2001
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 7, 2002

Decided: July 1, 2002

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

ORDER

This 1<sup>st</sup> day of July, 2002, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Devearl Bacon was convicted, following a jury trial, of carjacking and multiple counts of robbery first degree, possession of a deadly weapon by a person prohibited, wearing a disguise during the commission of a felony, aggravated menacing, and possession of a firearm during the commission of a felony. He appeals from one robbery conviction, arguing that the Superior Court erred in allowing that count of the indictment to be amended at the beginning of trial.

2) Bacon was charged with 36 counts of robbery and related offenses arising out of a two-day crime spree. The indictment at issue originally charged that Bacon threatened “the immediate use of force upon Roshelle Conkey with intent to compel the said person to deliver up property consisting of car keys and a car....” The State moved to amend the indictment to substitute “United States currency” for “car keys and a car.” The Superior Court granted the State’s motion over Bacon’s objection.

3) It is settled in Delaware that indictments may be amended as to matters of form, as long as “no new, additional, or different charge is made thereby and the accused will not suffer prejudice to substantial rights.”<sup>1</sup> The elements of the crime of robbery are, in relevant part: (1) the use or threatened immediate use of force on a person; (2) while committing the crime of theft; (3) in order to overcome the person’s resistance to the taking of the property.<sup>2</sup> The identity of the stolen property is not material to the offense of robbery. Thus, an amendment that changes the property from “car keys and a car” to “United States currency” does not create a new, additional or different charge.<sup>3</sup> Since the amendment was permissible as being one of form only,

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<sup>1</sup>*Robinson v. State*, 600 A.2d 356, 359 (Del. 1991).

<sup>2</sup> 11 *Del. C.* §831.

<sup>3</sup> *Roberts v. State*, 1998 WL 231269 (Del. Supr.).

and since Bacon makes no claim of prejudice, the trial court's decision granting the motion to amend must be upheld.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice