

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN DUPREE,	§	
	§	No. 63, 2006
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. I.D. No. 0408024419
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 16, 2006
Decided: October 3, 2006

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

ORDER

This 3rd day of October, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) John R. Dupree was convicted, following a bench trial, of 17 counts of first degree robbery, 6 counts of attempted first degree robbery, 2 counts of second degree robbery, 1 count of attempted second degree robbery, and 2 counts of first degree car jacking. He appeals from three of those convictions, arguing that he did not represent by words or conduct that he was in possession or control of a deadly weapon.

2) On August 23, 2004, Dupree walked into an Alko Clothing Store in Wilmington, and asked Gwendolyn Cortes, an employee, to show him a hat. After

Cortes retrieved the hat and placed it on the counter, Dupree told her that he had a gun and demanded that she open the cash register and place the money in the hat. Cortes did not see a weapon, and did not believe that Dupree had one. As a result, instead of following his directions, Cortes dialed 911 on a cordless phone that she had been holding. Dupree fled the store.

3) On August 27, 2004, Dupree was more successful. He entered a Video Advantage store in Wilmington, and asked James Stoddart, an employee, whether the store had a VHS copy of the movie, "12 Angry Men." Stoddart checked behind the counter and determined that the store did not have the movie. Dupree then said to Stoddart, "This is how it's going to work: You either give me the register or I'm going to start hitting you and you're going to get hit." Stoddart hesitated, and Dupree repeated, "I'm going to start shooting you and you're going to get shot." Stoddart feared for his safety, and gave Dupree all the bills in the register.

4) The third incident took place on August 29, 2004, at a Pep Boys store in Wilmington. Dupree picked out some items, and went to the counter. Shirley Wise started to ring up his selections when Dupree reached under his jacket, grabbed what appeared to be his belt buckle, and told her, "Don't say anything, don't scream, or I'll shoot you." Wise responded, "You said you're going to do what?" She then yelled for her boss, and Dupree fled.

5) Dupree argues that his conduct only amounted to second degree robbery (or attempted second degree robbery) because, in the course of committing theft, he “use[d] or threaten[ed] the immediate use of force....”¹ A person is guilty of first degree robbery when, in addition to all of the elements of second degree robbery, the person, “displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon....”²

6) The three charges being appealed did not involve the display of what appeared to be a deadly weapon. Therefore, the only issue is whether Dupree’s words were sufficient to support first degree robbery convictions. Dupree says that they were not, arguing that there is no difference between a threat to use force under §831 and a representation that the person has a deadly weapon under §832. We disagree.

7) First degree robbery is a more serious offense than second degree robbery because it involves more serious criminal conduct. The “threat to use immediate force” element of second degree robbery could be satisfied by a threat to punch the victim or hit the victim with a stick, for example. If a person tells a victim that he or she has a gun, or other deadly weapon, the person is threatening the victim with loss of life, not just potential injury. Thus, there is a difference in degree between the general “threat

¹11 *Del.C.* §831(a).

²11 *Del.C.* §832(a)(2).

to use immediate force” and the threat to kill that is communicated by the “representation that the person is in possession or control of a deadly weapon.”

8) In each of the three robberies on appeal, Dupree either told the victims that he had a gun or that he would shoot them. In doing so, Dupree represented that he was in possession or control of a deadly weapon. Thus, his convictions must be affirmed.

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