

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ADDISON,)
) No. 431, 2000
 Defendant-Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr.A. No. 99050952
)
 Plaintiff-Below,)
 Appellee.)

Submitted: May 22, 2001
Decided: May 30, 2001

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

This 30th day of May, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1. James Addison appeals from a judgment of the Superior Court after a jury convicted him of the single charge of Robbery in the First Degree. Addison argues that the record below does not establish that he “displayed what appeared to be a gun, a deadly weapon.”

2. We review claims of insufficient evidence on the basis of whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found all the essential elements of an offense to be established beyond a reasonable doubt.¹

¹ *Tice v. State*, Del. Supr., 624 A.2d 399 (1993).

3. It is apparent from the record that insufficient evidence supported the element of displaying a gun or what appeared to be a gun at trial. No witness testified that they either saw a gun or what appeared to be a gun during the commission of the robbery. One witness testified that she “just figured he had a weapon” based apparently on Addison’s words and posture. That testimony alone was insufficient as a matter of law to allow the charge of Robbery in the First Degree to go to the jury.²

4. Appellant further contends that the trial court erred by admitting, over defense counsel’s objection, selected photos from a video tape of the robbery. Appellant argues that the video tape “may have been exculpatory” in that the full video tape may have shown that the perpetrator of the robbery did not display what appeared to be a gun, an essential element of Robbery in the First Degree. Given our conclusion above this issue is moot. The photos otherwise identified James Addison as the perpetrator and along with the testimony of Mark Herron, constituted sufficient evidence to go to the jury and to support a conviction of Robbery in the Second Degree.

NOW, THEREFORE, IT IS ORDERED that the judgment of conviction of Robbery in the First Degree is REVERSED and this matter is REMANDED with

² See *Williams v. State*, Del. Supr., 539 A.2d 164, 168 (1988).

instructions to enter a judgment of conviction of Robbery in the Second Degree
and for reimposition of sentence in accordance with this Order.

BY THE COURT:

/s/ Myron T. Steele_____

Justice