

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAUDE JONES,	§
	§
Defendant Below,	§ No. 622, 2001
Appellant,	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN99110373 and
	§ IN99110378
Plaintiff Below,	§
Appellee.	§

Submitted: June 26, 2002

Decided: July 10, 2002

Before WALSH, HOLLAND, and BERGER, Justices.

ORDER

This 10th day of July 2002, upon consideration of the briefs of the parties it appears to the Court that:

(1) Claude Jones (“Jones”) appeals from his conviction following a jury trial of first degree robbery and a related weapons offense. Jones contends that the Superior Court erred in refusing to dismiss all the charges against him at the conclusion of the evidence.

(2) Jones was originally indicted on three counts of first degree robbery and the related weapons offense based on an incident that occurred at a supermarket on October 9, 1999. On that date, Jones, accompanied by a young girl who proved to be

his daughter, was in the cookie aisle of the store. A store employee, Lucy Miller, observed the young girl removing items from the shelves and placing them in her backpack. When Miller approached Jones and requested that he return the items to the shelves, Jones cursed Miller and, claiming to have a gun, made a movement with his hand. Jones and his daughter then quickly left the store. Two other employees, Sean Bradshaw and Joseph Taylor, pursued Jones into the parking lot and ordered him to stop. Jones cursed at them, threatened to shoot them, and partially withdrew an object from his pocket that Bradshaw described as a “brown object” but that Taylor, who was closer to Jones, described as a handgun, specifically a “dark, bluish” revolver. Both employees then ended the pursuit but were able to secure the license number of the vehicle Jones entered. Further investigation led to Jones’ arrest.

(3) Jones testified at his trial and, while admitting that he was at the store at the time of the incident, denied making a threat or displaying a weapon. At the conclusion of the evidence, the Superior Court granted Jones’ motion to dismiss two of the robbery counts because they alleged use of force to overcome “resistance to the taking of the property” rather than “the retention thereof immediately after the taking” as those terms appear in 11 *Del. C.* § 831(a)(1). The trial judge reasoned that the weapon was not displayed until Jones was leaving the store for the purpose of deterring pursuit. The court refused to dismiss the robbery count relating to Miller, however,

since it alleged Jones “in the course of committing theft did thereafter use force upon Lucy Miller and . . . in immediate flight therefrom, he displayed what appeared to be a gun, a deadly weapon.”

(4) Although Jones contends that all three robbery counts suffer from the same deficiency, we agree with the trial judge that the charge involving Lucy Miller, as a victim, was correctly alleged. Given the testimony of Bradshaw and Taylor describing the appearance of a gun during Jones’ flight from the store, there was sufficient evidence to prove the weapon element of robbery first degree. The use or display of a weapon during the course of a forcible theft, including shoplifting, provides the necessary element to sustain a conviction for robbery first degree. 11 *Del. C. § 832(a)(2)*; *Deshields v. State*, 706 A.2d 502, 507 (Del. 1998). Moreover, given the specific testimony concerning the presence of a weapon, there was no basis for instructing the jury on the lesser included offense of misdemeanor theft.

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

AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice