

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER TOTH,	§
	§
Defendant Below,	§
Appellant,	§ No. 167, 2002
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for Sussex County
	§ Cr. ID NO. 0107003212
Plaintiff Below,	§
Appellee.	§

Submitted: September 4, 2002
Decided: September 23, 2002

Before VEASEY, Chief Justice, WALSH, and HOLLAND, Justices.

ORDER

This 23rd day of September 2002 upon consideration of the briefs of the parties it appears to the Court that:

(1) The appellant, Christopher Toth (“Toth”), appeals from his conviction in the Superior Court of assault third degree. His sole contention on appeal is that the State was permitted to present improper rebuttal evidence involving a prior altercation between Toth and the victim of the assault. Toth has neglected to provide a full transcript of the trial proceedings to permit this Court to fully evaluate his claim as required by *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987). Nonetheless based on the

record evidence before us, we conclude that the State's use of the prior confrontation was proper rebuttal. The disputed evidence was not collateral to Toth's defense that the assault resulted from a spontaneous encounter with the victim. Accordingly, we affirm the conviction.

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