

Strafford
No. 78-126

THE STATE OF NEW HAMPSHIRE

v.

HERBERT ELDRIDGE

September 27, 1978

Thomas D. Rath, attorney general (*Peter W. Heed*, assistant attorney general, orally), for the State.

James Koromilas, of Dover, by brief and orally, for the defendant.

MEMORANDUM

This is an appeal from a conviction of the defendant for robbery. Defendant seeks to have his conviction overturned on the twin grounds that the trial court erred in failing to grant his motion to dismiss at the close of the State's case and in not setting aside the verdict of guilty as contrary to the weight of the evidence. The merits of the appeal rest wholly on an analysis of the facts. The established rule is that on review the evidence must be considered "in the light most favorable to the State with all reasonable inferences therefrom." *State v. Canney*, 112 N.H. 301, 303, 294 A.2d 382, 383 (1972); accord, *State v. Breest*, 116 N.H. 734, 367 A.2d 1320 (1976). A review of the facts reveals that the victim testified that the defendant robbed him, that he had picked defendant's picture out of ninety different mug shots, that when first contacted by the police he said he knew who had robbed him, that the robber's first name was Herbert and that he formerly drove a cab. There was conflicting evidence, but the case became a classic credibility dispute between two witnesses, the victim and a passenger in the defendant's car. The jury chose to believe the victim, and we find no error in its doing so.

Exceptions overruled.