

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

LONNIE L. HOLLINGSWORTH,

Appellant,

v.

CASE NO. 1D07-0297

STATE OF FLORIDA,

Appellee.

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Opinion filed February 13, 2008.

An appeal from the Circuit Court for Leon County.
Kathleen F. Dekker, Judge.

Nancy Daniels, Public Defender, Steven A. Been, Assistant Public Defender, Kathleen A. Stover, Assistant Public Defender, and Steven L. Seliger, Assistant Public Defender, Office of the Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Joshua R. Heller, Assistant Attorney General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The defendant, Lonnie Hollingsworth, appeals his judgment and sentence for attempted robbery with a deadly weapon. He contends that the evidence was not

sufficient to support a finding that he put the victim in fear or that he used a deadly weapon. Although we reject the first argument, we conclude that the trial court erred as a matter of law by allowing the jury to determine whether the defendant carried a deadly weapon. The state proved that the defendant brandished a metallic object which may have been a door handle. The object was not used in a way likely to cause death or great bodily harm so it does not qualify as a deadly weapon. Accordingly, we reverse with instructions to enter a conviction for the lesser included offense of robbery with a weapon. Because we are not able to determine whether the trial judge would have imposed the same sentence on the lesser charge, we remand for resentencing.

WOLF, BENTON, and PADOVANO, JJ., CONCUR.