

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| BRUCE L. WAPLES, | § |
| | § |
| Defendant Below- | § No. 122/163, 2007 |
| Appellant, | § Consolidated |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr. ID 0610029325 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: December 7, 2007

Decided: March 3, 2008

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

ORDER

This third day of March 2008, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) A Superior Court jury convicted the appellant, Bruce Waples, of one count of assault in a detention facility. The Superior Court sentenced him to four years at Level V incarceration to be suspended after serving two years for decreasing levels of supervision. This is Waples' direct appeal.¹

(2) The testimony presented by the State at trial fairly established that, on October 30, 2006, Waples was an inmate at the Sussex County

¹ Waples requested and was permitted to discharge his trial counsel and represent himself on appeal.

Violation of Probation of Center. Correctional Officer Michael Megee testified that, at about 6 a.m., he saw Waples sitting on a window sill. He ordered Waples to move. Waples responded with a vulgar insult. Megee then ordered Waples to put on his boots because Megee was going to escort Waples to a staging area to have Waples perform an extra work incentive as a consequence of his verbal abuse. Megee ordered Waples to tie his boots. Waples refused to comply and engaged in further verbal abuse as the two walked down a hallway to the staging area. In the staging area, Megee again ordered Waples to tie his boots, and Waples again failed to comply. Megee threatened to use pepper spray if Waples would not comply. Waples still did not comply. As Megee attempted to spray Waples with the pepper spray, Waples punched Megee in the mouth. Megee attempted to spray Waples a second time, and Waples punched Megee again, knocking Megee to the floor. Megee testified that, as a result of Waples' assault, he received a cut on his chin and lost a tooth.

(3) Although Waples enumerates thirteen paragraphs in his argument on appeal, the Court finds only four discernible issues articulated in the opening brief: (i) ineffective assistance of trial counsel; (ii) prosecutorial misconduct; (iii) insufficient evidence to convict; and (iv) denial of the right to self-representation. This Court will not consider claims

of ineffective assistance of counsel for the first time on direct appeal.² Accordingly, we will not address Waples' ineffectiveness claim here. We consider his remaining claims *seriatim*.

(4) Waples' claims of prosecutorial misconduct all relate to the State's alleged failure to present medical evidence corroborating Megee's testimony that Waples knocked out his tooth. Waples alleges that the State committed a discovery violation by failing to provide him with medical reports to support Megee's claim of losing a tooth, that the State improperly vouched for Megee's testimony by arguing to the jury that Megee's tooth had been knocked out without providing any supporting medical documentation, and that the State suborned perjury by allowing Megee to testify that his tooth had been knocked out without corroborating medical evidence.

(5) Waples made no objections to this alleged prosecutorial misconduct at trial. Accordingly, we review his claim on appeal under the plain error standard.³ Under the plain error standard of review, the matter complained of must be plain on the face of the record, fundamental in nature, clearly prejudicial and one which places into jeopardy the fairness

² *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

³ *Grace v. State*, 658 A.2d 1011, 1014 (Del. 1995).

and integrity of the trial process.⁴ We find no plain error in this case because, contrary to Waples' assertion, the State was *not* required to present medical documentation to corroborate Megee's testimony that Waples knocked out his tooth.⁵ A victim's testimony is sufficient to prove physical injury.⁶ Accordingly, we find nothing to support Waples' assertion that the State engaged in misconduct in this case.

(6) Similarly, Waples' argument that the evidence was insufficient to sustain his conviction due to the lack of corroborating medical evidence also is without merit. In reviewing a sufficiency of the evidence claim, this Court must determine whether, viewing the evidence in the light most favorable to the State, *any* rational trier of fact could find the defendant guilty beyond a reasonable doubt.⁷ In doing so, the Court does not distinguish between direct and circumstantial evidence.⁸ As we already noted, the State was not required to present medical evidence to corroborate Megee's testimony regarding his injuries.⁹ The State's evidence in this case

⁴ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

⁵ *See Raymond v. State*, 2007 WL 666778 (Del. Mar. 6, 2007).

⁶ *Id.*

⁷ *Word v. State*, 801 A.2d 927, 929 (Del. 2002) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

⁸ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

⁹ *Raymond v. State*, 2007 WL 666778 (Del. Mar. 6, 2007).

was sufficient for a rational trier of fact to conclude that Waples, while incarcerated, intentionally caused physical injury to a correctional officer.¹⁰

(7) Waples' final claim is that the Superior Court erred in denying him the right to represent himself at trial. While the right to represent oneself is protected by the Sixth Amendment to the United States Constitution, the right to have counsel appointed to represent oneself also is a protected constitutional right.¹¹ In Waples' case, he exercised his right to have counsel appointed to represent him, and, despite complaints about his counsel's performance, the record does not reflect that he ever requested to waive his right to appointed counsel. In the absence of a request to exercise his constitutional right to self-representation, we find no error in the Superior Court's failure, *sua sponte*, to determine that Waples had knowingly and voluntarily waived his right to counsel.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹⁰ See 11 Del. C. § 1254(a) (setting forth the statutory elements of assault in a detention facility).

¹¹ *Hartman v. State*, 918 A.2d 1138, 1140-41 (Del. 2007).