

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA DRYDEN,	§	
	§	No. 10, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0603024135
Appellee.	§	

Submitted: November 13, 2007

Decided: March 3, 2008

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of March 2008, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) The defendant, Joshua Dryden, was charged in the March 28, 2006 shooting of Raymond Mills. Dryden and Mills lived near each other in a subdivision in Newark and were casual acquaintances.

(2) Following a jury trial in the Superior Court, Dryden was found guilty of Assault in the Second Degree (a lesser included offense of Assault in the First Degree) and Possession of a Firearm During the Commission of

a Felony. Dryden's defense at trial was that the State had not proven beyond a reasonable doubt that he had shot Mills. This is Dryden's direct appeal.

(3) Dryden's counsel on appeal ("Counsel") has filed a brief and motion to withdraw pursuant to Rule 26(c).¹ Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.

(4) When considering a brief filed pursuant to Rule 26(c), this Court must be satisfied that defense counsel made a conscientious examination of the record and the law for claims that could arguably support the appeal.² The Court must also conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(5) Counsel represents that he informed Dryden of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the Rule 26(c) brief and the appendix to the brief.⁴ Dryden also was informed that he had a right to respond to the motion to withdraw and to supplement the Rule 26(c) brief.

¹ Dryden was represented by different counsel in the Superior Court.

² *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

³ *Id.*

⁴ The appendix includes a copy of the trial transcript.

(6) Dryden's supplement to the opening brief challenges the sufficiency of the evidence. Specifically, Dryden claims that Mills was not a credible witness and that Mills' trial testimony was inconsistent. The State has responded to Dryden's claims as well as the position taken by Counsel and has moved to affirm the Superior Court's judgment.

(7) When reviewing a claim of insufficient evidence, this Court must determine whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁵ When making that determination the Court makes no distinction between direct and circumstantial evidence.⁶ Moreover, when the determination of facts turns on a question of credibility of a witness, this Court will not substitute its opinion for that of the trier of fact.⁷

(8) In this case, the evidence adduced at trial clearly was sufficient to sustain Dryden's conviction of Assault in the Second Degree and Possession of a Firearm During the Commission of a Felony.⁸ The jury was solely responsible for judging the credibility of the witnesses and resolving

⁵ *Williams v. State*, 2005 WL 2414375 (Del. Supr.) (citing *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997)).

⁶ *Id.* (citing *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990)).

⁷ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁸ See Del. Code Ann. tit. 11, § 612 (2007) (governing Assault in the Second Degree); Del. Code Ann. tit. 11, § 1447A (2007) (governing Possession of a Firearm During the Commission of a Felony).

conflicts in the testimony.⁹ It was entirely within the jury's purview to credit Mills' testimony at trial.¹⁰

(9) After carefully reviewing the record, the Court has concluded that Dryden's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Dryden could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁹ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

¹⁰ *Kelly v. State*, 2005 WL 940899 (Del. Supr.) (citing *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980)).