

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMAR ROGERS	§
	§ No. 520, 2007
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0608006421
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 3, 2008
Decided: March 14, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 14th day of March 2008, upon consideration of the appellant’s opening brief pursuant to Supreme Court Rule 26(c), his attorney’s motion to withdraw, and the State’s response thereto, it appears to the Court that:

(1) The defendant-appellant, Lamar Rogers, was found guilty by a Superior Court jury of Robbery in the First Degree, Burglary in the Second Degree, Assault in the Second Degree, Conspiracy in the Second Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced to a total of 14 years of Level V incarceration, to be suspended after 11 years for decreasing levels of supervision. This is Rogers’ direct appeal.

(2) Rogers' trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must 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.¹

(3) Rogers' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Rogers' counsel informed Rogers of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Rogers also was informed of his right to supplement his attorney's presentation. Rogers has raised two issues for this Court's consideration. The State has responded to the position taken by Rogers' counsel and has moved to affirm the Superior Court's judgment.

(4) Rogers raises two issues for this Court's consideration. He claims that a) there was insufficient evidence presented at trial concerning

¹ *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).

whether the complainant suffered physical injury; and b) the testimony of the investigating officer was not credible because it conflicted with his testimony at the preliminary hearing.

(5) The following evidence was presented at trial. On the morning of Sunday, August 6, 2006, Alisa Wilson, who was seven months pregnant, was sleeping in her fourth floor apartment at 225 W. 4th Street in Wilmington, Delaware. At around 10:15 or 10:30 a.m., Wilson heard someone knocking on her apartment door. Looking out the window, she saw a young woman run down the building's exterior staircase and get into a dark colored Cadillac with a white top, which was parked on the street.

(6) Wilson then heard loud banging on her apartment door and saw the door bulging inward as two men forced themselves inside. The first man was thin and carried a gun. The second man was bald, heavy, and had a dark complexion. He pushed Wilson down to the floor with a crowbar he was carrying. Wilson recognized him and he appeared to recognize Wilson. The man with the gun pointed it at Wilson's head and demanded to know where the drugs and money were. After turning over her mattress and grabbing her cell phone and pocketbook, the men left the apartment. Wilson then telephoned Denise Rogers, a close friend, and the police.

(7) After the police arrived, Wilson told them that she recognized one of the intruders and that his name was “Mar.” She later identified Lamar Rogers from an array of photographs shown to her by a police detective. Wilson also identified a photograph of Shaneeka Broomer, Rogers’ girlfriend, as the young woman she saw running down the exterior staircase of her building. Thomas Curley, a detective with the Wilmington Police Department, testified that the Cadillac was located after the robbery and contained personal mail, documents and sports equipment belonging to Rogers. A crowbar similar to the one described by Wilson also was found in the vehicle. Detective Curley later took the crowbar to Wilson’s apartment, where he was able to match the crowbar with the damage to the front door.

(8) Wilson testified that she experienced significant pain after being pushed to the floor with the crowbar. She stated that she visited the hospital due to continuing chest pains and also because she was concerned she was having contractions brought on by the assault.

(9) Several witnesses, including a nurse who was caring for Rogers’ bedridden grandfather, Rogers’ grandmother, and Rogers’ cousin, testified that Rogers was at his grandmother’s house at the time Wilson was robbed. Two neighbors also testified that they saw Rogers in front of his grandmother’s house at the time of the robbery.

(10) Rogers testified that he spent the morning of August 6, 2006 at his grandmother's house installing audio equipment in his car. He stated that he knew Wilson because she had lived with his aunt and uncle for a while, but denied being involved in the robbery. His aunt, Denise Rogers, testified that Wilson called her after the robbery, but did not seem very upset. On rebuttal, Detective Curley testified that Wilson was upset when he spoke with her right after the robbery, but calmed down as other people arrived on the scene.

(11) Rogers' first claim is that there was insufficient evidence presented at trial concerning whether Alisa Wilson sustained physical injury. In reviewing a claim of insufficiency of the evidence, the relevant inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.² Under Delaware law, "physical injury" is defined as "impairment of physical condition or substantial pain."³ Evidence presented by a victim is sufficient to prove physical injury for purposes of the crime of second-degree assault.⁴ It is clear under these standards that Wilson's testimony was sufficient to establish that she

² *Hardin v. State*, 844 A.2d 982, 990 (Del. 2004).

³ Del. Code Ann. tit. 11, § 222(23).

⁴ *Davis v. State*, Del. Supr., No. 119, 1998, Berger, J. (Jan. 20, 1999); Del. Code Ann. tit. 11, § 612(a).

sustained physical injury for purposes of the charge of second-degree assault. We, therefore, conclude that Rogers' first claim is without merit.

(12) Rogers' second claim is that Detective Curley's trial testimony was not credible because it conflicted with his testimony at the preliminary hearing. Inconsistencies in testimony go to the weight of the testimony, not to its admissibility.⁵ The jury is the sole judge of a witness' credibility and is responsible for resolving any conflicts in the testimony.⁶ In fulfilling its duty, the jury must consider all of the evidence, but is free to accept part of a witness' testimony while rejecting other parts.⁷ To the extent that there were discrepancies in any of Detective Curley's testimony, it was for the jury to resolve any such discrepancies. In the absence of any evidence that the jury in Rogers' case did not properly carry out its duty to resolve any conflicts in Detective Curley's testimony, we conclude that Rogers' second claim is also without merit.

(13) This Court has reviewed the record carefully and has concluded that Rogers' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Rogers' counsel has made a

⁵ *Jeffers v. State*, 934 A.2d 908, 911 (Del. 2007).

⁶ *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

⁷ *Id.*

conscientious effort to examine the record and has properly determined that Rogers 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/ Jack B. Jacobs
Justice