

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RODERICK DAVIS,	§
	§
Defendant Below-	§ No. 380, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0607000922
Plaintiff Below-	§
Appellee.	§

Submitted: January 14, 2008  
Decided: April 1, 2008

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

**ORDER**

This first day of April 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 defendant-appellant, Roderick Davis (Davis), of two counts of assault in a detention facility and two counts of possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Davis to a total period of nine years at Level V incarceration, to be suspended after serving eight years for probation. This is Davis' direct appeal.

(2) Davis' counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Davis' counsel asserts that, based upon a

complete and careful examination of the record, there are no arguably appealable issues. By letter, Davis' attorney informed him of the provisions of Rule 26(c) and provided Davis with a copy of the motion to withdraw and the accompanying brief. Davis also was informed of his right to supplement his attorney's presentation. Davis has raised several issues for the Court's consideration. The State has responded to Davis' points, as well as the position taken by Davis' counsel, and has moved to affirm the Superior Court's judgment.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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.<sup>1</sup>

(4) Davis has raised six arguments in response to his counsel's brief. He contends that: (i) his arrest was illegal; (ii) his convictions violate double jeopardy principles; (iii) his counsel was ineffective; (iv) the State

---

<sup>1</sup> *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).

committed a discovery violation; (v) the evidence was insufficient to sustain his convictions; and (vi) the prosecutor violated the Superior Court's sequestration order. The Court will address these claims in order.

(5) Davis' first claim is that his arrest was illegal because the investigator who arrested him was not a police officer and thus was not authorized to arrest him. There is no merit to this claim. Davis was arrested by a Department of Correction internal affairs investigator, Investigator Richardson, who was investigating the alleged assaults on two correctional officers. Pursuant to 11 Del. C. § 6561(c)(1), any internal affairs investigator for the Department of Corrections has the full power of a State police officer when acting in the scope of the investigator's duties.<sup>2</sup> Accordingly, we reject Davis' first argument.

(6) Davis next claims that his convictions for both assault in a detention facility and possession of a deadly weapon during the commission of a felony violate principles of double jeopardy. It is well-settled Delaware law, however, that a defendant's conviction for both assault and possession of a deadly weapon during the commission of a felony does not violate principles of double jeopardy.<sup>3</sup> Thus, there is no merit to this claim.

---

<sup>2</sup> Del. Code Ann. tit. 11, § 6561(c)(1).

<sup>3</sup> *Hunter v. State*, 430 A.2d 476 (Del. 1981).

(7) Davis' third argument is that his trial counsel was ineffective. This Court, however, will not consider claims of ineffective assistance of trial counsel for the first time on direct appeal.<sup>4</sup> Accordingly, we will not address this claim.

(8) Davis next argues that the evidence was insufficient to support his convictions. He contends that a mop handle is not a deadly weapon. He also contends that there was insufficient evidence to prove he struck both Correctional Officer Hansen and Correctional Officer Drace. Because Davis did not move for a judgment of acquittal, the Court reviews this claim for plain error.<sup>5</sup>

(9) Davis contends that a mop handle is not a deadly weapon because it is not specifically included in the list of deadly weapons enumerated in 11 Del. C. § 222(5). The list in Section 222(5) is illustrative and not exhaustive, however. As this Court noted in *Taylor v. State*, the General Assembly's amendment of the definition of the term "deadly weapon" in 1992 imparted a "use" test to the definition such that any instrument could be found to be a deadly weapon if, under the circumstances in which it is used, the instrument has the potential to cause serious physical

---

<sup>4</sup> *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

<sup>5</sup> Del. Supr. Ct. R. 8.

injury or death.<sup>6</sup> In this case, the record reflects that the mop wringer, as wielded by Davis, clearly constituted a deadly weapon under the circumstances.

(10) Moreover, Davis' argument that the evidence was insufficient to prove that he struck both Hansen and Drace 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.<sup>7</sup> In doing so, the Court does not distinguish between direct and circumstantial evidence.<sup>8</sup> In this case, Drace testified that an inmate walked past him and struck Hansen on top of the head with a mop wringer. Drace sprayed the inmate with mace. Other correctional officers testified to seeing Hansen bleeding on the floor and Davis, holding a mop wringer, advancing toward Drace. As Drace backed away, Davis hit Drace in the arm with the mop wringer. In light of this testimony, the State's evidence in this case was sufficient for a rational trier of fact to conclude that Davis assaulted both Hansen and Drace.

---

<sup>6</sup> *Id.* at 454.

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

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

(11) Davis next contends that the State failed to produce potentially exculpatory evidence. Davis contends that the lack of blood on the clothing he was wearing at the time of the alleged assaults would have proven that someone else had struck Hansen. The Court already has held, however, that the eyewitness testimony at trial was more than sufficient to establish that Davis struck both Hansen and Drace. Accordingly, even assuming that Davis' clothing did not have Hansen's blood on it, that fact would not have exculpated Davis in the assault on Hansen.

(12) Davis' final argument is that the State violated the sequestration order when it allowed Investigator Richardson to remain in the courtroom during trial. Delaware Rule of Evidence 615, however, allows an exemption from sequestration of any "officer or employee of a party which is not a natural person designated as its representative by its attorney."<sup>9</sup> This Court has held that this exemption is not discretionary with the trial court and that the State's lead investigating officer cannot be excluded from the trial.<sup>10</sup> Accordingly, there is no merit to this claim.

(13) This Court has reviewed the record carefully and has concluded that Davis' appeal is wholly without merit and devoid of any arguably

---

<sup>9</sup> Del. Unif. R. Evid. 615(2).

<sup>10</sup> *Hamman v. State*, 565 A.2d 924, 929-30 (Del. 1989).

appealable issue. We also are satisfied that Davis' counsel has made a conscientious effort to examine the record and the law and has properly determined that Davis could not raise a meritorious claim in this appeal.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice