

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GRACE L. TRAYNOR,	§	
	§	
Defendant Below-	§	No. 295, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN03-10-0693; 1406
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: February 14, 2005

Decided: March 22, 2005

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

ORDER

This 22nd day of March 2005, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), her attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Grace L. Traynor, was found guilty by a Superior Court jury of Felony Theft and Falsifying Business Records. She was sentenced to a total of 2 years incarceration at Level V, to be suspended immediately for decreasing levels of probation. The Superior Court also ordered restitution in the amount of \$10,000.00. This is Traynor's direct appeal.

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

(4) Traynor raises one issue for this Court's consideration. She claims that there was insufficient evidence presented at trial to support her convictions.²

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).

² This claim will be reviewed for plain error because it was not raised at trial in the form of a motion for acquittal. Supr. Ct. R. 8.

(5) The evidence at trial established that, in June 2003, Traynor, a licensed real estate agent, sold a residential property of which she was a joint owner. The buyers were represented by the Delaware law firm of DelCollo and Werb, P.A. The property had two liens against it and one of the lienholders had moved to foreclose on the property. In order to obtain the pay-out figure for the mortgage in foreclosure for purposes of settlement, Mr. Werb, one of the partners in DelCollo and Werb, contacted local counsel for the out-of-state law firm representing the lienholder. He was told that, due to the firm's privacy policy, no information on the lien could be divulged without the consent of Traynor. Traynor never gave her consent.

(6) Because he had a professional relationship with Traynor, Werb relied on information concerning the lien that she prepared and faxed to him. The information had been typed on the letterhead of the out-of-state law firm, but the pay-out calculations were smudged and illegible. Traynor had handwritten what purported to be the pay-out calculations to one side of the smudged calculations and had placed her signature on the document. At settlement, Werb sent checks to the lienholders that reflected Traynor's handwritten calculations and dispersed the remaining proceeds of the settlement to the other joint owner of the property, to the

buyers as reimbursement for having the pool cleaned, and to Traynor's father, whom Traynor stated was authorized to receive a portion of the proceeds.

(7) After Werb sent the check to the out-of-state law firm for payment of the mortgage lien, however, the law firm contacted Werb and informed him that the check was deficient by over \$9,000.00. DeCollo and Werb, P.A. immediately covered the deficiency by paying the out-of-state law firm from its operating budget. When Werb contacted Traynor about the discrepancy, she initially told him there had been a problem with the title insurance. Werb later learned that the pay-out to Traynor's father exceeded what was owed by over \$9,000.00 and that Traynor had cashed the check herself the day after settlement, thereby receiving over \$9,000.00 to which she was not entitled. Traynor never denied that she owed the money to DeCollo and Werb, P.A. and promised to repay it on several occasions. She never did, however.

(8) When reviewing a claim of insufficiency of the 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.³ When the determination of facts turns on a

³ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

question of credibility of the witnesses, this Court will not substitute its opinion for that of the trier of fact.⁴

(9) In this case, the evidence adduced at trial clearly was sufficient to sustain Traynor's convictions of Felony Theft and Falsifying Business Records. The prosecution proved beyond a reasonable doubt that Traynor "exercise[d] control over or obtain[ed] property of another person intending to deprive that person of it"⁵ and "with intent to defraud, . . . alter[ed], erase[d], obliterate[d] . . . a true entry in the business records of an enterprise."⁶ There was no error, plain or otherwise.

(10) This Court has reviewed the record carefully and has concluded that Traynor's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Traynor's counsel has made a conscientious effort to examine the record and has properly determined that Traynor could not raise a meritorious claim in this appeal.

⁴ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁵ Del. Code Ann. tit. 11, § 841(a) (2001).

⁶ Del. Code Ann. tit. 11, § 871(2) (2001).

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/ Randy J. Holland

Justice