

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWAYNE DAMION KELLY,	§
	§
Defendant Below-	§ No. 541, 2004
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0403012162
Plaintiff Below-	§
Appellee.	§

Submitted: April 6, 2005
Decided: April 22, 2005

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

ORDER

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

(1) A Superior Court jury convicted the defendant-appellant, Dwayne Kelly, of second degree robbery, as a lesser included offense to the indicted charge of first degree robbery. The Superior Court sentenced Kelly to five years at Level V incarceration, to be suspended after serving fifteen months for decreasing levels of supervision. This is Kelly's direct appeal.

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

complete and careful examination of the record, there are no arguably appealable issues. By letter, Kelly's attorney informed him of the provisions of Rule 26(c) and provided Kelly with a copy of the motion to withdraw and the accompanying brief. Kelly also was informed of his right to supplement his attorney's presentation. Kelly has raised one issue generally challenging the sufficiency of the evidence to support his conviction. The State has responded to Kelly's argument, as well as the position taken by Kelly's 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.¹

(4) At trial, the sixteen-year-old victim testified that he was accosted on his walk to work by a stranger who asked for five dollars. When the victim indicated he had no money and tried to walk away, the

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).

stranger blocked his path, put his hand in his own pocket and told the victim, “If you try to run or scream, you’re going to get capped.” The stranger then felt in the victim’s pockets and took the victim’s cell phone. The victim ran to his place of employment, where he called police and described the man who took his phone. Kelly, who met the victim’s description, was picked up several hours later in the same vicinity. He had the victim’s cell phone in his possession, and the victim positively identified Kelly as the man who robbed him. Kelly testified in his own defense. He acknowledged meeting the victim on the street but denied that he had asked the victim for money or had threatened him in any way. He testified that the victim gave him the cell phone and that Kelly tried to give it back to him, but the victim ran away.

(5) Kelly’s sole issue on appeal is a general claim that the evidence presented at trial was insufficient to support his conviction. When a defendant raises such a claim on appeal, the relevant question for this Court is 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.”² In this case, we find the State’s evidence sufficient to support Kelly’s conviction beyond a reasonable doubt.

² *William v. State*, 539 A.2d 164, 168 (Del. 1988) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Although Kelly disputed the victim's version of events, the jury is solely responsible for judging the credibility of the witnesses and resolving conflicts in the testimony.³ It was entirely within the jury's purview to credit the victim's testimony at trial.

(6) The Court has reviewed the record carefully and has concluded that Kelly's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Kelly's counsel has made a conscientious effort to examine the record and the law and has properly determined that Kelly 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

³ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).