IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO FLETCHER,	§	
	§	
Defendant Below-Appellant,	§	No. 445, 2004
	§	
	§	Court Below---Superior Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. A. Nos. S04-02-0067 thru
	§	0069
Plaintiff Below-Appellee.	§	
	§	

Submitted: March 7, 2005
Decided: May 19, 2005

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 19th day of May 2005, upon consideration of the appellant's brief filed 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, Antonio Fletcher, was found guilty by a Superior Court jury of Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony and Conspiracy in the Second Degree. He was sentenced to a total of 18 years incarceration at Level V, to be suspended after 8 years for decreasing levels of probation. This is Fletcher's direct appeal.

(2) Fletcher'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) Fletcher's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Fletcher's counsel informed Fletcher 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. Fletcher also was informed of his right to supplement his attorney's presentation. Fletcher has responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by Fletcher's counsel, as well

[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).

as to the issue raised by Fletcher, and has moved to affirm the Superior Court's judgment.

(4) Fletcher claims that there was insufficient evidence presented at trial to support his convictions.[2] The grounds for Fletcher's claim are that his fingerprints were not found on the telephone used in conjunction with the robbery and that his taped statement to the police regarding an earlier robbery was improperly introduced at trial to prove his involvement in the robbery with which he was charged.

(5) The evidence at trial established the following: On January 12, 2004, Fletcher drove with a group of people, including Sterling Anderson and Rodney Gladden, to Domino's Pizza in Harrington, Delaware. Anderson went inside the store to pick up a job application and, when he returned, told the group that he was going to rob the store. The group then drove to 1697 Butler Road in Harrington and, using a cell phone, ordered some food from Domino's to be delivered to that address. When the deliveryman showed up, Anderson met him in the roadway. The others remained in the car, except for Gladden, who stood outside the car with a

[2] Because Fletcher's claim was not raised at trial in the form of a motion for judgment of acquittal, we review it in this appeal for plain error. *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process).

firearm at his side. Anderson punched the deliveryman and the group fled with the food before obtaining the deliveryman's money.

(6) The next evening, after an aborted attempt by Fletcher and Gladden to rob a Domino's Pizza deliveryman at Fletcher's cousin's house in Harrington, Delaware, the group, at Fletcher's suggestion, drove to Mobile Gardens Trailer Park in Seaford, Delaware. Arthur Warren, a friend of Fletcher's, lived there. Once there, Fletcher used a cell phone to call Domino's Pizza in Seaford. When the deliveryman, whose name was James Spencer, arrived, he saw two men standing outside one of the trailers. As Spencer approached the two men, one of them pointed a handgun at him and the other man picked up a rifle or shotgun that resembled an assault weapon.

(7) The man with the handgun told Spencer to put the pizza box down and place his money on top of it. After he did so, the men took Spencer behind the trailer and forced him to lie face down on the ground. Spencer testified that the men threatened to kill him. After a time, Spencer heard a car pull up and drive away with the two men.

(8) On January 23, 2004, Fletcher was arrested at Gladden's residence in Maryland. Fletcher told the arresting officers that the weapons used in the Seaford robbery were behind Gladden's house. Fletcher also

stated that he had witnessed Spencer being robbed by Anderson and Gladden and believed they were going to kill him. The police searched the wooded area behind the house and located a BB gun and a rifle that had been modified to look like a machine gun. At trial, Spencer identified the weapons as those he had observed during the robbery.

(9) In reviewing a claim of insufficiency of the evidence, this Court determines 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.[3] In so doing, we make no distinction between direct and circumstantial evidence.[4] Moreover, it is for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.[5]

(10) The State was not required to prove that Fletcher's fingerprints were on the telephone in Warren's trailer in order to sustain its burden of proof at trial. The evidence presented at trial was more than sufficient to support Fletcher's conviction of Robbery in the First Degree[6] and Possession

[3] *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).
[4] *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).
[5] *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).
[6] Del. Code Ann. tit. 11, § 832(a) (2) (2001) ("A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and . . . displays what appears to be a deadly weapon . . . .")

of a Firearm During the Commission of a Felony[7] under an accomplice theory of liability,[8] and his conviction of Conspiracy in the Second Degree.[9] We, thus, find no error, plain or otherwise, on the part of the Superior Court with respect to this claim.

(11) Moreover, we find no error or abuse of discretion on the part of the Superior Court in permitting the State to present Fletcher's taped statement to the police concerning his role in the earlier Harrington robbery in order to prove Fletcher's knowledge, intent and lack of mistake with respect to the Seaford robbery. The record reflects that, before permitting the State to introduce the evidence, the Superior Court properly weighed the probative value of the evidence against the danger of unfair prejudice.[10] The Court also properly instructed the jury, both before the tape was played and at the close of the evidence, that they were to consider the evidence only for the limited purpose of determining Fletcher's knowledge, intent and lack of

[7] Del. Code Ann. tit. 11, § 1447A (2001).
[8] Del. Code Ann. tit. 11, § 271 (2) (2001) ("A person is guilty of an offense committed by another person when . . . [i]ntending to . . . facilitate the commission of the offense the person . . . [a]ids . . . the other person in planning or committing it . . . .)
[9] Del. Code Ann. tit. 11, § 512 (2) (2001) ("A person is guilty of conspiracy in the second degree when, intending to . . . facilitate the commission of a felony, the person . . . [a]grees to aid another person . . . in the planning or commission of the felony . . . .")
[10] D.R.E. 403.

mistake with respect to the Seaford robbery and not as proof of Fletcher's character generally.[11]

(12) This Court has reviewed the record carefully and has concluded that Fletcher's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Fletcher's counsel has made a conscientious effort to examine the record and has properly determined that Fletcher 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/ Carolyn Berger
Justice

[11] *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).