IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES J. LANDIS,	§	
	§	No. 523, 2004
Defendant Below,	§	
Appellant,	§	Court Below--Family Court of
	§	the State of Delaware, in and
v.	§	for Sussex County in File No.
	§	0408000084.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 13, 2005
Decided: August 18, 2005

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

O R D E R

This 18th day of August 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) On November 30, 2004, the appellant, seventeen-year old James J. Landis,[1] was adjudged delinquent on two counts of Reckless Endangering in the First Degree and one count of Conspiracy in the Second Degree. Landis was committed to the Department of Services for Children and Families for

[1]In this appeal from the Family Court's adjudication of juvenile delinquency, the Court has assigned pseudonyms to the appellant, his co-defendant and the witnesses. Supr. Ct. R. 7(d).

placement in Ferris School, a Level V youth facility, for an indeterminate period of time. This appeal followed.

(2) Landis' counsel ("defense counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court 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. First, 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.[2] Second, 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.[3]

(3) Defense counsel asserts that he "conscientiously reviewed the transcript and . . . the law in regard to issues raised at the trial and at sentencing" and concluded that the appeal is "wholly without merit." Defense counsel states that he informed Landis of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying

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[2]*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).

[3]*Id*.

brief. Defense counsel also advised Landis that he had a right to supplement the Rule 26(c) brief with any points that he wanted the Court to consider.

(4) Landis and his father submitted letters raising points for the Court's consideration. Those letters were included in the Rule 26(c) brief that defense counsel filed on March 24, 2005. Moreover, a week after filing the Rule 26(c) brief, defense counsel requested, and was granted, permission to further supplement the brief with a letter that he had received a few days earlier from Landis' mother.

(5) Landis' letter and the letters from his parents collectively raise the following cognizable claims: (1) improper denial of trial continuance, (2) insufficient evidence, (3) inconsistent witness testimony, and (4) witness violation of sequestration order. The State has responded to the position taken by defense counsel as well as to the points raised by Landis and his parents and has moved to affirm the Family Court's judgment.

(6) The charges against Landis and his co-defendant, Andrew Baker, arose from events on the afternoon of July 27, 2004, in Milton, Delaware. On that date, Landis and Baker went to visit their friend, seventeen-year old Karen Walton, at Walton's house in Milton. Landis and Baker drove to Walton's house in a car owned by Baker's mother. The two boys spent a couple of hours

there visiting Walton and her friend, Wendy Roberts, and Roberts' younger sister, fifteen-year old Susan Smith.

(7) When the boys were ready to leave, Walton spent a few minutes standing in her driveway talking to Baker, who was sitting in the driver's seat of his mother's car, and to Landis, who was sitting in the front passenger seat. As Walton stood talking to Baker, leaning slightly forward with her hands resting slightly inside Baker's open window, Landis unexpectedly leaned over from the passenger seat where he was sitting and grabbed Walton's wrist. Then, in what appeared to be a prank, Baker began driving slowly while Landis continued gripping Walton's wrist. After taking a few steps beside the moving vehicle, Walton became uneasy and concerned for her safety. Walton yelled at Landis several times to let her go, but Landis would not let go.

(8) Smith heard Walton's screams from where she was sitting on the front steps of Walton's house. Smith ran to help Walton, who was trying frantically to release herself from Landis' grip. After yelling at Landis to release Walton, Smith attempted to remove Landis' hand from Walton's wrist. Landis, however, grabbed Smith's wrist with his free hand and held both girls' wrists while Baker alternately accelerated and decelerated the vehicle, causing Walton and Smith to trip over each other. Finally, Landis abruptly released his

grip (or the girls' struggling broke his grip) which caused Walton, who had been pulled a total distance of about twenty-five feet, and Smith, who had been pulled a shorter distance, to stumble under the wheels of the moving vehicle. Smith remained upright and was run over, sustaining an injury to her foot that caused it to "bleed real bad."[4] Walker, on the other hand, lost her balance completely and landed on the ground underneath the vehicle where her left leg was pinned for a minute or more by the driver's rear wheel. Both girls were transported to the hospital. Walker sustained an injury to her left knee that left a scar and required physical therapy.

(9) In the first issue on appeal, Landis[5] complains that the Family Court refused to grant him a continuance to subpoena Baker as a witness.[6] Landis does not state how Baker's testimony would have benefitted his defense except to state generally that it would have "helped this case a whole lot."

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[4]Trial Tr. at 35 (Nov. 30, 2004).

[5]In this decision, the Court has not distinguished Landis' points from those raised by this parents.

[6]It appears from the record that Baker and Landis were tried separately and each were convicted. Baker's trial was on November 1, 2004, preceding Landis' trial by several weeks. *State v. Baker*, Del. Fam. Ct., File No. 0408000050, Millman, J. (Nov. 1, 2004).

(10) We review the denial of a continuance for an abuse of discretion.[7] This Court will not disturb a trial court's ruling on a motion for continuance unless the ruling was clearly unreasonable or capricious.[8]

(11) It appears from the record that defense counsel requested the continuance at the start of trial after admitting to the Family Court that he had neglected to issue a subpoena for Baker, who he described as a "necessary witness."[9] The prosecutor objected to the continuance on the basis that Smith had traveled from New Castle County with her foster mother for the trial, and that both Walton and Roberts had taken off time from work to come to court and would not be able to take off more time.

(12) Defense counsel did not specify the length of time that he needed to subpoena Baker nor did he address whether the inconvenience of a continuance was insubstantial in comparison to the prejudice that Landis would suffer if the continuance was denied.[10] When denying the continuance, the

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[7] *Bailey v. State*, 521 A.2d 1069, 1088 (Del. 1987).

[8] *Id*.

[9] *Cf. generally* Fam. Ct. Crim. R. 23(g) (governing motion for continuance upon ground of absence of material witness).

[10] *See Secrest v. State*, 679 A.2d 58, 66 (Del. 1996) (providing standards to assess motion for continuance).

Family Court found that Baker had received notice of Landis' trial, and that defense counsel had had sufficient time to subpoena Baker.

(13) Under the circumstances in this case, the Court concludes that the Family Court did not abuse its discretion when denying defense counsel's motion for a continuance to subpoena Baker. Landis has not articulated any specific prejudice to the defense as a result of the Family Court's denial, and no prejudice appears from the record. Where othere is sufficient time to marshal witnesses before trial begins, it is not an abuse of discretion for a trial court to refuse a continuance when a party simply seeks additional time to procure an absent witness, especially where that party has not availed herself, pretrial, of the opportunities to subpoena the absent witness..[11]

(14) Next, Landis challenges the sufficiency of the evidence presented against him at trial to prove Reckless Endangering in the First Degree. When reviewing the sufficiency of the evidence, this Court must decide whether any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the essential elements of the charged offense beyond a reasonable doubt.[12]

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[11]*Preston v. State*, 306 A.2d 712, 715 (Del. 1973)

[12]*Nicholson v. State,* 1998 WL 112533 (Del. Supr.) (citing *Morrisey v. State*, 620 A.2d 207, 213 (Del. 1992)).

(15) A conviction of Reckless Endangering in the First Degree requires that the State must prove beyond a reasonable doubt that the defendant "reckless[ly] engage[d] in conduct which create[d] a substantial risk of death to another person."[13] "A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct."[14]

(16) A review of the record clearly demonstrates that a rational trier of fact could have reasonably concluded beyond a reasonable doubt that Landis was guilty of two counts of Reckless Endangering in the First Degree. The evidence reflects that Landis recklessly created a substantial risk of death to Walton and Smith when he restrained the two girls by their wrists so that they were pulled alongside of a moving vehicle while he consciously disregarded their cries and efforts to be released.

(17) Landis contends that the witnesses did not tell "the whole truth," and that their trial testimony was inconsistent. Questions of witness credibility and the resolution of conflicts in witness testimony are all within the province

[13]Del. Code Ann. tit. 11, § 604.

[14]Del. Code Ann. tit. 11, § 231(c).

of the trier of fact, in this case the Family Court judge.[15] "[W]hen the determination of facts turns on a question of credibility and the acceptance or rejection of the testimony of witnesses appearing before [the trial judge], those findings of the trial judge will be approved upon review, and we will not substitute our opinion for that of the trier of fact."[16]

(18) In this case, the Family Court judge carefully explained on the record the factual bases for his decision that Landis had committed the crimes of which he was accused. Our review of the record reveals no error or abuse of discretion upon which to overrule the Family Court's decision.

(19) Finally, Landis contends that the witnesses talked about the case and told each other what to say in violation of the Family Court's sequestration order. Landis' claim is belied by the record.

(20) The record reflects that the Family Court sequestered the witnesses at the start of the trial. Walton testified first, followed by Smith and then Roberts. Upon the conclusion of Walton's testimony, Walton exited the

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[15] *Richards v. State*, 865 A.2d 1274, 1281 (Del. 2004) (citing *Knight v. State*, 690 A.2d 929, 932 (Del. 1996); *Quarles v. State*, 696 A.2d 1334, 1340 (Del. 1997); *Robertson v. State*, 630 A.2d 1084, 1095 (Del. 1993); *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982); *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980)).

[16] *Id.* at 1280 (quoting *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979)).

courtroom in the direction of the lobby. As Walton made her exit, the prosecutor heard a voice coming from the lobby, and defense counsel heard the bailiff instructing someone not to talk. When defense counsel alerted the Family Court to his concern that the witnesses were discussing their testimony outside of the courtroom, the Family Court immediately returned Walton to the courtroom and also brought in Smith and Roberts, who had been in the lobby. The Family Court instructed the three witnesses not to discuss their testimony or potential testimony with each other or with anyone else. In response to the Family Court's instructions, Walton informed the Family Court that she had, in fact, spoken to Smith, but only to tell her to "be calm."[17] The record does not support Landis' claim that the witnesses talked to each other about the case in violation of the Family Court's sequestration order.

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

[17]Trial Tr. at 29 (Nov. 30, 2004).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice