

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD LEWIS,	§
	§ No. 108, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0604021526
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 31, 2007  
Decided: December 14, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 14<sup>th</sup> day of December 2007, 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, Richard Lewis, was found guilty by a Superior Court jury of two counts of Robbery in the First Degree, one count of Attempted Robbery in the First Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony. On the robbery convictions, he was sentenced to a total of 8 years of Level V incarceration, to be suspended after 6 years for 2 years at Level III probation. On the attempted robbery conviction, he was sentenced to 3 years at Level V. On

the weapon convictions, he was sentenced to a total of 4 years at Level V. This is Lewis' direct appeal.

(2) Lewis' 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.<sup>1</sup>

(3) Lewis' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Lewis' counsel informed Lewis 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. Lewis also was informed of his right to supplement his attorney's presentation. Lewis responded with a brief that raises five issues for this Court's consideration. The State has responded to

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<sup>1</sup> *Person 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).

the position taken by Lewis' counsel as well as the issues raised by Lewis and has moved to affirm the Superior Court's judgment.

(4) Lewis raises five issues for this Court's consideration. He claims that a) there was insufficient evidence presented to support his first robbery conviction---specifically, there were no fingerprints to connect him with the crime and the witness testimony was not credible; b) there was no basis for his conviction of first degree attempted robbery; c) his second robbery conviction was invalid because he had no weapon; and d) his counsel provided ineffective assistance.

(5) The trial transcript reflects the following. On April 28, 2006, Christian Alonzo Torres, his girlfriend, his daughter, and his friend, Gustavo Quazada, arrived at the Admiral Club Apartments, New Castle County, Delaware, between 9:00 and 10:00 p.m. after shopping for cell phones. Torres' girlfriend and daughter went into their apartment, but Torres and Quazada remained in the car. Shortly thereafter, a man appeared outside and told Quazada to open his window. When he did, the man reached in, opened the door and demanded money. The man had his hand in his shirt as if he were hiding a weapon. When Quazada refused to cooperate, the man reached in and tried to pull Quazada out of the car. He also grabbed a steak knife that Torres' girlfriend had used to open the cell phone packages and

threatened Quazada with it. Finally, after Torres gave him a \$50 bill, the man left. Following the incident, the police lifted some latent fingerprints from the passenger door of the vehicle. Subsequent testing did not match the fingerprints with Lewis'. Approximately two weeks after the incident, a New Castle County police detective showed Torres a photo array that included a photo of Lewis. Torres identified Lewis as the robber.

(6) The next night, April 29, 2006, Mario Vargas left his apartment at the Admiral Club Apartments at about 4:00 a.m. to go to work. He walked past a man who was entering the building. The man then turned around and followed Vargas outside. He told Vargas that he had a gun and demanded money. The man had his hand under his shirt, and it appeared that he was hiding a weapon. Vargas turned over all his money---\$2.25---to the robber. Vargas' wife then opened the window of their apartment and called out to Vargas. Vargas yelled that he was being robbed and to call the police. The robber fled. Soon thereafter, a police officer brought a suspect to Vargas. Vargas told the officer that the man was not the robber. Another police officer then brought Lewis to Vargas. Lewis had been detained by the officer after being observed entering and exiting another building in the complex. Vargas identified Lewis as the robber with 100% certainty.

(7) Lewis' first claim is that there was insufficient evidence presented to support his first robbery conviction. In reviewing a claim of insufficiency of the evidence, the relevant inquiry is 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.<sup>2</sup> At trial, Torres testified that Lewis was the man who robbed him. The State was not required to present fingerprint evidence in order to obtain a conviction. While Lewis argues that Torres was not credible, credibility is an issue to be determined by the jury.<sup>3</sup> In this case, the jury believed Torres' testimony. We, therefore, conclude that Lewis' first claim is without merit.

(8) Lewis' second claim is that there was no basis for his conviction of first-degree attempted robbery. Delaware law provides that a defendant may be convicted of multiple robberies occurring during a single incident when there are multiple victims.<sup>4</sup> At trial, Torres testified that, while only he turned over his money, both he and Quazada were threatened by the robber. As such, there was sufficient evidence presented at trial to support both the robbery and the attempted robbery convictions.<sup>5</sup> To the extent that Lewis argues that he could not be convicted of the attempted

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<sup>2</sup> *Hardin v. State*, 844 A.2d 982, 990 (Del. 2004).

<sup>3</sup> *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

<sup>4</sup> *Harrigan v. State*, 447 A.2d 1191, 1192 (Del. 1982).

<sup>5</sup> Del. Code Ann. tit. 11, §§ 531 and 832(a) (2).

robbery of Quazada because only Torres testified, that argument is unavailing. Torres was an eyewitness to the event and was able to testify to all the elements of the attempted robbery of Quazada. We, therefore, conclude that Lewis' second claim is without merit.

(9) Lewis' third claim is that his conviction of first-degree robbery in the second incident is invalid because there was no weapon. At trial, however, Vargas testified that Lewis approached him, told him he had a gun, put his hand under his shirt as if he had a weapon, and demanded money. That testimony was more than sufficient to support Lewis' conviction of first-degree robbery.<sup>6</sup> We, therefore, conclude that Lewis' third claim is without merit.

(10) Lewis' fourth, and final, claim is that his attorney provided ineffective assistance. Ineffective assistance of counsel claims may not be considered for the first time on direct appeal.<sup>7</sup> Because Lewis' claim was not decided by the Superior Court in the first instance, we decline to address it in this appeal. Lewis' fourth claim is, thus, also unavailing.

(11) This Court has reviewed the record carefully and has concluded that Lewis' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Lewis' counsel has

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<sup>6</sup> *DeShields v. State*, 706 A.2d 502, 507 (Del. 1998); Del. Code Ann. tit. 11, § 832(a) (2).

<sup>7</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

made a conscientious effort to examine the record and has properly determined that Lewis 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/Henry duPont Ridgely  
Justice