

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINETTA SMITH,	§
	§
Defendant Below-	§ No. 482, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0702011319
Plaintiff Below-	§
Appellee.	§

Submitted: April 17, 2008

Decided: July 10, 2008

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

**ORDER**

This 10<sup>th</sup> day of July 2008, 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 found the defendant-appellant, Antoinetta Smith, guilty of one count each of second degree assault, possession of a deadly weapon during the commission of a felony, and offensive touching. The Superior Court sentenced Smith to a total period of seven years and thirty days at Level V imprisonment, to be suspended after serving two-and-a-half years for decreasing levels of supervision. This is Smith's direct appeal.

(2) Smith's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Smith's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Smith's attorney informed her of the provisions of Rule 26(c) and provided Smith with a copy of the motion to withdraw and the accompanying brief. Smith also was informed of her right to supplement her attorney's presentation. Smith has raised several issues for this Court's consideration. The State has responded to the points Smith raises, as well as to the position taken by Smith'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.<sup>1</sup>

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<sup>1</sup> *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).

(4) The record at trial fairly reflects that on February 8, 2007, the victim, Richard Davis, was playing pool and drinking beer at a bar in Dover. Smith also was at the bar with her boyfriend. Smith's boyfriend was physically removed from the bar following a dispute, which led to a melee in the parking lot of the bar. During the ensuing chaos, Davis was struck by a red Chevy Cavalier. He could not identify the driver, although two witnesses initially identified Smith. Despite refusing medical attention at the scene, Davis later went to Kent General Hospital. Davis testified that he suffered a dislocated jaw, bruised ribs and bruised lungs. Police arrested Smith five days later.

(5) In her letter written in response to defense counsel's Rule 26(c) brief, Smith raises several issues all challenging the credibility of witnesses and the sufficiency of the evidence presented against her at trial. When a defendant raises such claims 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."<sup>2</sup> In this case, we find the State's evidence sufficient to support Smith's convictions beyond a reasonable doubt. Although Smith challenges both the reliability and truthfulness of the

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

victim's trial testimony, as well as the testimony of the lead investigating officer, the jury is solely responsible for judging the credibility of the witnesses and resolving conflicts in the testimony.<sup>3</sup> It was entirely within the jury's purview to credit the evidence presented by the State at trial.

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

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