

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIONNE HINES,	§
	§ No. 112, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0903024556
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 21, 2010
Decided: August 24, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 24th day of August 2010, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c), her attorney’s motion to withdraw, and the State’s response thereto, it appears to the Court that:

(1) The defendant-appellant, Dionne Hines, was found guilty by a Superior Court jury of Robbery in the First Degree and Resisting Arrest.¹ On the robbery conviction, she was sentenced to seven years of Level V incarceration, to be suspended after three years for decreasing levels of supervision. On the conviction of resisting arrest, she was sentenced to one

¹ The jury acquitted Hines of the charge of Conspiracy in the Second Degree. During trial, the charge of Assault in the First Degree was reduced to Assault in the Third Degree. The jury also acquitted Hines of the charge of Assault in the Third Degree.

year of Level V incarceration, to be suspended for one year at Level III probation. This is Hines' direct appeal.

(2) Hines' 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.²

(3) Hines' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Hines' counsel informed Hines of the provisions of Rule 26(c) and provided her with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Hines also was informed of her right to supplement her attorney's presentation. Hines responded with a brief that raises one issue for this Court's consideration. The State has responded to

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).

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

(4) Hines raises one issue for this Court's consideration. She claims that there was insufficient evidence presented by the State to support her robbery conviction. Specifically, she argues that there was no evidence presented at trial that she used force on the victim or that the victim suffered serious physical injury. As such, she argues, the evidence presented at trial supports, at most, a finding of guilt on the lesser-included charge of theft.

(5) The evidence presented at trial was as follows. On March 30, 2009, at approximately 9:30 p.m., Steven Pagano was listening to his iPod and walking on Washington Street toward the bus stop at Rodney Square, Wilmington, Delaware, when he was attacked. The next thing he remembered was waking up on the sidewalk confused, his mouth bloodied, and being attended to by a police officer. At the time of the attack, Wilmington Police officers Moore and Humphrey were on routine patrol when they observed what they believed were two African American men struggling with Pagano as he lay on the ground. Officer Humphrey testified that he observed one of the suspects, later identified as Hines, trying to pull the backpack from Pagano as he lay on the ground. As the two suspects fled

the officers, Officer Humphrey pursued them on foot while yelling “Stop, Wilmington Police!” Officer Moore stayed with Pagano.

(6) Officer Humphrey lost sight of the second suspect, later identified as Gregory Cunningham, as he ran northbound on Washington Street and behind the Washington Street Ale House. Hines fell down in the 400 block of West 12th Street, then got up and continued to run northbound. She was apprehended in an alleyway. Officer Humphrey found Pagano’s IPod and his house key in the street where Hines had fallen. Pagano was taken to Christiana Hospital and released the next day. He had sustained a concussion with a brief loss of consciousness, a subarachnoid hemorrhage, and a small subdural hematoma with no neurologic deficits.

(7) At the close of the State’s case, defense counsel moved for judgment of acquittal on the charges of Robbery in the First Degree, Assault in the First Degree, and Conspiracy in the Second Degree. The Superior Court granted the motion on the first degree assault charge, ruling that the State had failed to prove the element of “serious physical injury,” and denied the motion on the other two charges. Defense counsel requested a jury instruction on Theft as a lesser-included offense of Robbery in the First Degree. The Superior Court granted the request.

(8) Hines claims that there was insufficient evidence presented at trial to support her conviction of Robbery in the First Degree.³ In reviewing a claim of insufficiency of the evidence, this Court will uphold a conviction as long as any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could find the defendant guilty beyond a reasonable doubt.⁴ In this case, the State presented evidence, through the testimony of the police officers, that Hines attempted to pull Pagano's backpack off of him as he lay on the ground after being attacked. Moreover, Pagano's missing iPod and house key were found in the spot where Hines tripped while running away from the police. Finally, the State presented evidence, through the testimony of hospital personnel, that Pagano suffered physical injury as a result of the attack. That evidence, taken as a whole, was sufficient to support the jury's finding of guilt on the first degree robbery charge.⁵ While Cunningham testified that only he was responsible for the attack, an earlier statement by Cunningham, which was overheard during proceedings in the Family Court and which was testified to at trial,

³ Del. Code Ann. tit. 11, §§ 831 and 832 (In order to sustain a conviction of first degree robbery, the State must prove that, while committing a theft, the defendant used or threatened to use immediate force upon the victim to prevent the victim's resistance to the taking of his property or to compel him to give up his property, and caused physical injury to the victim.)

⁴ *Word v. State*, 801 A.2d 927, 929 n. 7 (Del. 2002).

⁵ While Hines argues that the State failed to prove that Pagano had suffered "serious physical injury," the State only had to prove that he suffered "physical injury" to sustain a conviction of first degree robbery. Del. Code Ann. tit. 11, §832.

contradicted that testimony. The jury was free to disbelieve Cunningham's trial testimony in light of his earlier statement.⁶

(9) The Court has reviewed the record carefully and has concluded that Hines' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hines' counsel has made a conscientious effort to examine the record and the law and has properly determined that Hines 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/ Randy J. Holland
Justice

⁶ *Maddrey v. State*, 975 A.2d 772, 775 (Del. 2009) (The jury is the sole judge of the credibility of witnesses and is responsible for resolving any conflicts in the testimony.)