

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIGUEL ACOSTA-MARTINEZ,	§
	§
Defendant Below-	§ No. 306, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0808019298
Plaintiff Below-	§
Appellee.	§

Submitted: July 1, 2010
Decided: August 30, 2010

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

ORDER

This 30th day of August 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Miguel Acosta-Martinez, filed this appeal from the Superior Court's judgment, dated April 29, 2010, affirming his appeal from his criminal convictions following a jury trial in the Court of Common Pleas. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Acosta-Martinez's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Court of Common Pleas jury convicted Acosta-Martinez of driving with a suspended or revoked license, failure to have insurance identification, operating an unregistered vehicle, and having a fictitious or cancelled registration card. He appealed to the Superior Court, which affirmed his convictions for driving with a suspended or revoked license and failure to have insurance identification.¹

(3) In his two-page opening brief on appeal, Acosta-Martinez enumerates seven paragraphs asserting: (i) his arrest was the result of racial bias; (ii) the arresting officer should not have been present during jury selection; (iii) one of the jurors was improperly seated because she worked for the Attorney General’s office; (iv) he was improperly arraigned; (v) evidence was improperly admitted at trial that he was known by other names; (vi) the police officer did not tow his car or confiscate his tags; and (vii) his traffic ticket incorrectly identified his race as “Black, non-Hispanic.”² Several of these issues—alleged racial bias, an improperly seated juror, and improper arraignment—were not raised to the Superior Court in the first instance.

¹ The Court of Common Pleas sentenced Acosta-Martinez on his other two convictions by imposing fines of under \$100 each for operating an unregistered vehicle and for having a cancelled registration card. Those convictions did not meet the minimum threshold for filing an appeal to the Superior Court, nor can those convictions be appealed to this Court. *See* Del. Const. art. IV, §§ 11(1)(b), 28.

² To the extent that Acosta-Martinez raised other issues in his Superior Court appeal, his failure to reassert those issues in his opening brief constitutes a waiver of those claims in this appeal. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

Accordingly, this Court will not consider these claims for the first time in this appeal.³

(4) With respect to Acosta-Martinez's remaining four claims challenging the jury selection process, the admission of evidence of aliases, the officer's failure to tow his car, and the incorrect pedigree information on his traffic ticket, we find it manifest on the face of Acosta-Martinez's opening brief that these claims should be affirmed on the basis of, and for the reasons set forth in, the Superior Court's well-reasoned decision dated April 29, 2010. The Superior Court did not err in concluding that Acosta-Martinez failed to establish plain error with respect to the first two issues and that the other two issues were matters that went to the credibility of the arresting officer and were resolved against him by the jury.⁴

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ Del. Supr. Ct. R. 8 (2010).

⁴ See *Poon v. State*, 880 A.2d 236, 238 (Del. 2005) (holding that it is solely within the province of the jury to determine witness credibility and resolve conflicts in the testimony based on proven facts).