IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAZAAR CHATTIN,	§	
	§	No. 497, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0811000883[1]
Appellee.	§	

Submitted: January 7, 2011
Decided: March 21, 2011

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

O R D E R

This 21st day of March 2011, upon careful consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) On April 15, 2010, a Superior Court jury convicted the appellant, Lazaar Chattin, of Attempted Murder in the First Degree and other offenses. On July 23, 2010, Chattin was sentenced, after a presentence investigation, to a total of forty-four years at Level V suspended after twenty-five years mandatory for eight years at Level IV suspended after one year for probation. This is Chattin's direct appeal.

[1] Includes Cr. ID No. 0811001454.

(2) Chattin's appellate counsel ("Counsel")[2] has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").[3] Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Chattin has submitted eight claims for this Court's consideration. The State has responded to those claims and has requested that the Court affirm the Superior Court judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.[4] The Court must also 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.[5]

(4) The criminal charges against Chattin arose from two incidents that took place in Newark, Delaware, about a week apart in the fall of 2008. Both incidents involved acquaintances of Chattin – Tyrell Wilson and Shaun Holt.

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[2] Appellate counsel was not Chattin's trial counsel.
[3] *See* Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).
[4] *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).
[5] *Id.*

(5) On October 24, 2008, Wilson and Holt were hanging out at Wilson's house when Chattin came by at about 10:00 p.m. Shortly after Chattin arrived, Wilson noticed that the gun he kept in his bedroom was missing. Wilson suspected that Chattin had taken the gun.

Later that evening, Wilson confronted Chattin about taking the gun. Chattin denied it, but when Wilson threatened to pat him down Chattin drew the gun, pointed it at Wilson, and threatened to kill him if he didn't leave. As he left, Wilson heard a single gunshot.

(6) Wilson reported the gun as stolen to the police. A few days later, Wilson identified Chattin as the suspect from a six-photograph photo lineup, and a warrant issued for Chattin's arrest.

(7) In the second incident, Wilson and Holt were hanging out at Holt's house on November 8, 2008 when, shortly before 2 a.m., they saw Chattin and several other men hanging around Wilson's car, which was parked in front of the house. Holt went outside to smoke a cigarette and spoke briefly to Chattin.

Chattin asked Holt where Wilson was, and became irritated at Holt when he would not answer. As he turned to leave, Holt heard a gun firing, looked back, and saw that Chattin was shooting at him. Holt was struck once in the leg as he fled up the steps and into the front door of his house.

(8) Shortly after 2:00 a.m. on November 8, 2008, New Castle County Police received a 911 call of shots fired at Holt's house. When officers arrived, they found Holt in his bedroom with a gunshot wound to his right leg. Holt told the police that Chattin had shot him.

(9) The police found six bullet holes in the front door of Holt's house and a box of ammunition approximately fifty yards away. From the ammunition box, the police recovered a latent fingerprint that was matched to Chattin. At the hospital, police showed Holt a single photograph of Chattin. From the photo, Holt identified Chattin as the shooter.

(10) The jury convicted Chattin of Attempted Murder in the First Degree, Reckless Endangering in the First Degree, Possession of Ammunition by a Person Prohibited, Theft of a Firearm, two counts of Possession of a Firearm During the Commission of a Felony (PFDCF) and two counts of Possession of a Deadly Weapon by a Person Prohibited. The jury acquitted Chattin of Aggravated Menacing and one count of PFDCF.

(11) Chattin has submitted the following eight claims for this Court's consideration: (i) insufficient evidence to support attempted murder conviction; (ii) trial court error when omitting jury instruction; (iii) trial court abuse of discretion when granting continuance; (iv) trial court failure to record side-bar conference; (v) prejudicial out-of-court identification

procedure; (vi) prosecutorial misconduct; (vii) ineffective assistance of appellate counsel, and (viii) denial of access to law library. With the exception of the continuance claim, Chattin's claims of trial error were not raised in the Superior Court. The Court will review those claims for plain error.[6]

(12) Chattin claims that his attempted murder conviction must be reversed because the State failed to prove that he intended to kill Holt.[7] Chattin's claim is without merit. The record reflects that Chattin fired a gun six times directly at Holt who, at the time, was fleeing for his life. Under these facts, there is no doubt that a rational trier of fact could have found beyond a reasonable doubt that Chattin intended to kill Holt.[8]

(13) Next, Chattin claims that the Superior Court erred when deciding, *sua sponte*, not to give the jury a permissive inference instruction as to Chattin's state of mind.[9] According to Chattin, had the Superior Court

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[6] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

[7] *See* Del. Code Ann. tit. 11, § 636(a)(1) (2007 & Supp. 2010) (providing that a person is guilty of murder in the first degree when the person intentionally causes the death of another person).

[8] *See Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991) (providing that a conviction will stand if "any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt").

[9] *See* Del. Code Ann. tit. 11, § 307 (2007) (permitting jury to infer defendant's state of mind from surrounding circumstances).

given the permissive inference instruction, the jury would have found him not guilty of attempted murder.

(14) Chattin's claim is without merit. Delaware law provides that a defendant is not entitled to any particular instruction, only a correct statement of the substance of the law.[10] Here, the record reflects that the Superior Court properly instructed the jury on the intentional state of mind required for both Attempted Murder in the First Degree and the lesser-included offense of Assault in the First Degree as well as the reckless or intentional state of mind required for Assault in the Second Degree.

(15) Third, Chattin claims that the Superior Court abused its discretion when granting the State's request for a continuance. The claim is without merit. Neither Chattin nor the record suggests any basis to conclude that granting the continuance was an abuse of discretion. "It is well-settled that a trial judge is responsible for management of the trial and is vested with broad discretion to perform that function."[11]

(16) Next, Chattin claims that the Superior Court "failed to preserve key portions of the record" and thereby "frustrated [his] efforts to identify

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[10] *Barlow v. State*, 2004 WL 1874699 (Del. Supr.) (citing *Floray v. State*, 720 A.2d 1132, 1138 (Del. 1998)).

[11] *Czech v. State*, 945 A.2d 1088, 1095 (Del. 2008). *See Hicks v. State*, 434 A.2d 377, 381 (Del. 1981) (holding that "[u]nless it is based on clearly unreasonable or capricious grounds, a discretionary ruling on a motion for a continuance will not be disturbed by this Court.").

appealable issues." The claim appears to arise from an unreported side-bar conference. Having reviewed the record, we are satisfied that the omission of the side-bar conference did not result in prejudice to Chattin's rights.[12]

(17) Chattin claims that the identification procedure using a single photograph was unduly suggestive. Chattin's claim is without merit. Holt was an eyewitness to the November 8, 2008 shooting. He identified Chattin three times: in his initial statement to police, at the hospital when shown the photograph, and when testifying at trial. The record reflects little likelihood that the single photograph photo identification led to a misidentification.[13]

(18) Chattin claims that the prosecutor committed misconduct during closing argument when using the pronouns "I" and "we" and when stating, "Now, when I'm talking about the State's burden, it basically breaks down like this: State has to, one, prove that the crimes were committed; and, two, that it was the defendant who committed these crimes."[14] Chattin's prosecutorial misconduct claim is without merit. When using personal pronouns during closing argument, the prosecutor did not imply that he had

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[12] In Delaware, "prejudice must be shown, or perceived, to have resulted from a failure to record a portion of a trial proceeding for reversible error to be found." *Jensen v. State*, 482 A.2d 105, 119 (Del. 1984) (quoting *Ross v. State*, 482 A.2d 727, 734 (Del. 1984)).

[13] "A conviction 'based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" *Walls v. State*, 560 A.2d 1038, 1042 (Del. 1989) (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968)).

[14] Trial tr. at 32 (Apr. 15, 2010).

"superior knowledge, beyond that logically inferable from the evidence"[15] or express his personal belief or opinion as to Chattin's guilt.[16] Nor did the prosecutor mislead the jury as to the burden of proof and/or misstate the element of any offense as Chattin seems to suggest.[17]

(19) In his final two claims, Chattin asserts that he had inadequate access to the prison law library to do legal research for this appeal, and that his appellate counsel was ineffective when filing a brief under Rule 26(c). The Court has reviewed the record and determined that Chattin could not raise a meritorious argument on appeal. Chattin cannot demonstrate that he was prejudiced by his limited access to the law library or by Counsel proceeding under Rule 26(c).[18]

(20) The Court has reviewed the record carefully and has concluded that Chattin's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort

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[15] *See Quirico v. State*, 2004 WL 220328 (Del. Supr.) (citing *Saunders v. State*, 602 A.2d 623, 624 (Del. 1984)).
[16] *See Czech v. State*, 945 A.2d 1088, 1099 (Del. 2008) (citing *Trump v. State*, 753 A.2d 963, 966 (Del. 2000)).
[17] In a criminal trial the trial judge is charged with informing the jury of the burden of proof and the essential elements of an offense. *Taylor v. State*, 464 A.2d 897, 899 (Del. 1983).
[18] *See Franklin v. State*, 2004 WL 2419098 (Del. Supr.) (citing *Brittingham v. State*, 1995 WL 715837 (Del. Supr.) (rejecting, for lack of prejudice, defendant's claim of ineffective assistance of appellate counsel when review of record on direct appeal demonstrated no arguably appealable issue)).

to examine the record and the law and properly determined that Chattin 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/ Carolyn Berger
Justice