

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JESSICA LONG, ¹	§
	§
Defendant Below-	§ No. 685, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ File No. 02050-16-246
Plaintiff Below-	§
Appellee.	§

Submitted: June 13, 2003

Decided: July 3, 2003

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

ORDER

This 3rd day of July 2003, 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, Jessica Long, was charged with Assault in the Third Degree, a misdemeanor.² On October 23, 2002, she was

¹The Court sua sponte assigned a pseudonym to the appellant, who is a minor, pursuant to SUPR. CT. R. 7(d).

²DEL. CODE ANN. tit. 11, § 611(1) (“A person is guilty of assault in the third degree when: . . . [t]he person intentionally or recklessly causes physical injury to another person. . . .”)

adjudicated delinquent by a Family Court judge³ and sentenced to a period of commitment, to be suspended for 18 months of Level II supervision.⁴ This is Long's direct appeal.

(2) Long's 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.⁵

(3) Long's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Long's counsel informed Long of the provisions of Rule 26(c) and provided her

³DEL. CODE ANN. tit. 10, § 1009.

⁴Long also was required to undergo a psychological evaluation, pay restitution to the victim, submit a letter of apology to the victim, take all of her medications as prescribed, have no contact with the victim, and attend school.

⁵*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).

with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Long was also informed of her right to supplement her attorney's presentation. Long responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by Long's counsel as well as the issue raised by Long and has moved to affirm the Family Court's judgment.

(4) Long raises one issue for this Court's consideration. She claims that the Family Court improperly admitted hearsay medical evidence regarding the cause of the victim's herniated disc, which was prejudicial to her case. Long requests that the matter be remanded for a new trial.

(5) At the time of the incident, Long was a student at the Quest Academy in Newark, Delaware.⁶ Caroline Kurtz worked as a teacher at the school. On May 22, 2002, Kurtz and Long were in the principal's office on separate business. The principal asked Kurtz to remain with Long in the office while he stepped out. Soon thereafter, Long walked out of the office without permission, searching for a way out of the building. In accordance with school policy, Kurtz followed Long and verbally directed her to return to the office.

⁶The Quest Academy is an alternative school for troubled youth.

(6) At some point, there was some degree of physical contact between Long and Kurtz. Kurtz testified that she became alarmed when Long stated she was going outside with the intention of being hit by a car and positioned herself between Long and an exit door. She testified that Long then “put her elbow and her arm into my chest and forc[ed] me back into the wall to get past me and my shoulder and my back hit the wall.” Kurtz denied having any prior physical contact with Long, apart from placing her hand on Long’s shoulder to comfort her. After Kurtz hit the wall, the science instructor came out of his classroom and took control of the situation.

(7) Kurtz immediately went to the school nurse’s office where, she testified, she was “so much in pain I was crying.” The social studies assistant drove her to Omega Medical Center. Still in pain, Kurtz returned to Omega Medical Center the next day, where she had an x-ray and her arm was placed in a sling. As time went on, the pain increased and, on July 8, 2002, Kurtz went to the emergency room where she had an MRI. The MRI revealed a “severe herniated disk” in her back, which was removed during emergency surgery. Kurtz testified that, as of the date of the trial, she was still in pain and had been told she might have permanent nerve damage. At the end of her testimony, the

Family Court judge asked Long if the herniated disk had been caused by the force of being pushed into the wall. In response, Kurtz stated as follows:

From what I am told the syndrome that I have is called cauda equine syndrome and it's extremely rare . . . it's not a naturally occurring condition in a twenty-six year old. . . . So, it's my understanding that [the incident with Long is] what caused it and the letter from the Doctor . . . states that as well.

Defense counsel did not object to this testimony.

(8) A former student from the Quest Academy testified next. She stated that she witnessed the incident and that both Kurtz and Long fell into a door as Long was struggling to break free from Kurtz's grasp. She agreed that Long pushed Kurtz with her arm and that is why Kurtz hit the door.

(9) Long herself also testified. She admitted that she had left the school grounds on two previous occasions and had been disciplined for doing so. She admitted that she pushed Kurtz with her elbow, but stated that she did not harm Kurtz intentionally. She wanted only to "get away" from Kurtz, who had grabbed both of Long's arms and pulled them behind her and was trying to drag her back to the principal's office.

(10) In order to prove the elements of assault in the third degree the State was required to demonstrate that Long "intentionally or recklessly caused physical injury to another person." The testimony presented at trial, including

that from Long herself, clearly was sufficient to satisfy the State's burden, even without the specific testimony of which Long complains.⁷ Thus, even assuming it was erroneous for the Family Court to elicit statements from Kurtz concerning what her doctor told her about the cause of her injuries, any such error was harmless. Moreover, under a plain error analysis, we do not find that the alleged error was so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.⁸

(11) This Court has reviewed the record carefully and has concluded that Long's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Long's counsel has made a conscientious effort to examine the record and has properly determined that Long 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 Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁷*Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

⁸*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

