

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRENT KANE,	§
	§
Defendant Below-	§ No. 248, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1201007706
Plaintiff Below-	§
Appellee.	§

Submitted: September 18, 2013

Decided: October 2, 2013

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

ORDER

This 2nd day of October 2013, 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) Following a three-day jury trial and a one-day bifurcated bench trial in February 2013, the defendant-appellant, Brent Kane, was convicted of three counts of Sex Offender Unlawful Sexual Conduct Against a Child.¹ The Superior Court sentenced Kane to a total period of seventy years at Level V incarceration, with credit for time served, to be suspended after serving fifty years in prison for decreasing levels of supervision. This is Kane's direct appeal.

¹ DEL. CODE ANN. tit. 11, § 777A(a) (Supp. 2012).

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

(4) The testimony at trial fairly established that the two victims, Mary and Jane,³ were half-sisters. Between 2006 and 2009, they lived with their mother,

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).

³ The Court has assigned pseudonyms to the minor victims for purposes of this order.

step-father, and several siblings in Seaford, Delaware. Kane was a friend of the family. Jane, who was thirteen at the time of trial, testified that Kane molested her while she was in asleep in her bed one night by touching her breasts and vagina. She never told anyone about the incident until several years later when she was visiting her father in Georgia over Christmas break in 2011. Her father then contacted the Delaware State Police. Jane was approximately eight years old at the time of the incident.

(5) Mary, who was fifteen years old at the time of trial, testified that Kane molested her one evening after she had fallen asleep on the sofa in the family's living room. She testified that Kane carried her to her bedroom and then pulled off her pajama bottoms and attempted to put his penis in her vagina. He also fondled her breasts and buttocks. Mary resisted, and Kane stopped. She ran to her mother's room to tell her what happened but her mother was only half-awake and did not understand what Mary was trying to tell her. Mary was approximately ten years old at the time of the incident.

(6) The arresting officer testified that Kane would have been 19 or 20 years old at the time of the reported incidents. Kane was arrested on January 12, 2012. At the time, Kane gave a recorded statement saying that he did not remember the alleged incidents but that he may have rubbed one of the children. This recorded statement was played for the jury. Kane did not testify in his own

defense. After the jury found Kane guilty of the three charged offenses, the Superior Court judge held a bench trial to determine Kane's status as a prior sex offender and ultimately imposed an enhanced sentence based on Kane's status as a prior sex offender. This appeal followed.

(7) In response to his counsel's Rule 26(c) brief, Kane presented four handwritten pages of unnumbered paragraphs, which generally challenge alleged inconsistencies in the testimony at trial and also challenge the sufficiency of the evidence to support his convictions. Kane also asserts that the arresting officer lacked "any probable cause for questioning."

(8) In reviewing Kane's challenge to the credibility of the witnesses and the overall sufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt.⁴ A victim's testimony alone is sufficient evidence to support a guilty verdict concerning a sexual assault so long as the testimony establishes every element of the offense charged.⁵ The victims' testimony regarding Kane's actions in this case was sufficient to establish the elements of the charged offenses beyond a reasonable doubt. To the extent

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

⁵ *Farmer v. State*, 844 A.2d 297, 300 (Del. 2004).

Kane challenges the credibility of the witnesses' testimony, it was for the jury to determine the weight of the evidence and to resolve any conflicts in the testimony.⁶

(9) Kane's only other cognizable claim appears to be that the arrest warrant was defective and thus the police lacked "probable cause for questioning" him. To the extent Kane is arguing that the warrant issued in 2012 was invalid because it alleged conduct that occurred in 2008, there is no merit to this argument because there is no statute of limitations on the sexual offenses for which Kane was arrested.⁷ Any delay in the reporting of the incidents was an issue to be raised at trial as part of Kane's defense.⁸ In this case the initial report to police was made on December 31, 2011 by Jane's father, who was living in Georgia. On January 10, 2012, an interview was conducted with Mary who described Kane's assault. Hours after that interview, police swore out an affidavit of probable cause based on Mary's interview and obtained a warrant for Kane's arrest. Under the circumstances, there was sufficient probable cause for issuance of the arrest warrant based on Mary's allegations concerning Kane's conduct. Moreover, the grand jury's subsequent indictment of Kane for his assault on both victims was an independent determination of probable cause in this case.⁹

⁶ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

⁷ DEL. CODE ANN. tit. 11, § 205(e) (2007).

⁸ *See generally Wheat v. State*, 527 A.2d 269, 274-75 (Del. 1987).

⁹ *Joy v. Superior Court*, 298 A.2d 315, 316 (Del. 1972).

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