

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM R. MARSH,	§
	§
Defendant Below-	§ No. 253, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0011003868
Plaintiff Below-	§
Appellee.	§

Submitted: December 20, 2002
Decided: January 30, 2003

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

ORDER

This 30th day of January 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, William R. Marsh, was found guilty by a Superior Court jury of approximately 70 counts of burglary, theft, criminal mischief, conspiracy and several lesser-included misdemeanors in connection with burglaries at a number of small businesses in New Castle County, Delaware, between June and November, 2000. Marsh was sentenced to a total

of 15 years incarceration at Level V, to be followed by decreasing levels of probation. This is Marsh's direct appeal.

(2) Marsh'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.¹

(3) Marsh's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Marsh's counsel informed Marsh of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Marsh was also informed of his right to supplement his attorney's presentation. Marsh responded with a brief that raises three

¹*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).

issues for this Court's consideration. The State has responded to the position taken by Marsh's counsel as well as the issues raised by Marsh and has moved to affirm the Superior Court's judgment.

(4) Marsh raises three issues for this Court's consideration. He claims that: a) the uncorroborated testimony of a co-defendant was insufficient to support his convictions; b) the trial judge abused his discretion by failing to grant his motion for judgment of acquittal; and c) the evidence presented at trial was insufficient to support his convictions because some of the victims of the crimes did not testify.

(5) At trial, the State presented a number of witnesses. Detective Joseph D. Rose of the Delaware State Police testified that he responded personally to reports of burglaries at Domino's Pizza, Towne Hair Salon, Parkway Cleaners and Jokes are Wild and described in detail the property damage and losses he observed. The owners of Towne Hair Salon, Sub City, Precision Hair, Touch of Class, Touch of Tan, Romeo's Pizza and Hunan Inn testified concerning the burglaries of their businesses, including the damage done to their property and the items stolen.

(6) Detective Rose testified to fingerprint evidence collected from Towne Hair Salon and Precision Hair that matched the fingerprints of one of

Marsh's co-defendants, David Heuer, and testified to the execution of a search warrant at an apartment at Strawberry Run Apartments, New Castle County, Delaware. Marsh and Heuer were both in the apartment at the time of the search, which yielded, among other things, wigs and hair products like those stolen from Precision Hair and mirrors like those stolen from City of Mirrors. A search of two vehicles at the apartment yielded various tools, such as pry bars, bolt cutters and a hacksaw, and two-way radios. The soles of the shoes Marsh put on at the time of the search were consistent with photographs of sole prints taken at one of the crime scenes.

(7) Joshua Kessell, the second of Marsh's co-defendants, testified for the State. He described in detail how he, Marsh and Heuer would typically carry out one of their burglaries. They would "case" a business during the day before burglarizing it. One or the other of Marsh's two vehicles were the means of transportation to and from the burglaries. Two of the three would enter the business to burglarize it, while the third would remain outside in the vehicle. They would communicate with each other through two-way radios. Kessell implicated Marsh in approximately 9 separate burglaries. Kessell also testified about how he became aware that the police had placed them under surveillance and how he was able to sabotage the operation by removing the

tracking devices that the police had attached to their vehicles. This testimony was consistent with the testimony of Detectives Gary Kuhn and Dennis Bundens concerning the failed surveillance operation.

(8) Co-defendant David Heuer was called as a witness by the State. He recanted a statement he had made previously to Detective Rose implicating Marsh in the burglaries. Detective Rose was recalled to the stand to testify to the content of Heuer's statement, which had been videotaped and which was played for the jury. Heuer's videotaped statement implicated Marsh in approximately 15 burglaries.

(9) Marsh's first claim, which suggests that he was convicted solely on the basis of uncorroborated testimony from a co-defendant, is factually incorrect. Kessell's inculpatory testimony was supported by Detective Rose's testimony as well as by the physical evidence from the burglarized businesses and the apartment searched by the police. Even if Kessell's testimony had been uncorroborated, the jury could still have convicted Marsh on that basis alone.² While Marsh suggests that Kessell's testimony was not credible, it was for the jury, as the trier of fact, to determine the credibility of the witnesses and resolve

²*Brokenbrough v. State*, 522 A.2d 851, 853 (Del. 1987) (A defendant may be convicted solely on the basis of uncorroborated testimony by a co-defendant).

any conflicts in the testimony.³ There is no indication in this record that the jury did not properly carry out its charge.

(10) Marsh's second claim that the trial judge improperly failed to grant his motion for judgment of acquittal is meritless. When reviewing a trial judge's denial of a motion for judgment of acquittal, this Court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt.⁴ In this case, based upon the testimony of Detective Rose and Kessell as well as the physical evidence, the trial judge clearly did not abuse his discretion by denying Marsh's motion for judgment of acquittal.⁵

(11) Marsh's final claim that there was insufficient evidence to support his convictions in the absence of testimony from some of the crime victims is also meritless. There was testimony from several of the crime victims concerning their property damage and losses and additional testimony from Detective Rose concerning the property damage and losses he observed at a

³*Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

⁴*Morrissey v. State*, 620 A.2d 207, 213 (Del. 1993).

⁵The trial judge dismissed four counts in the indictment as to which there was insufficient evidence upon which to base a verdict of guilty.

number of the other burglarized businesses. Moreover, this evidence was consistent with the physical evidence obtained at the apartment during the execution of the search warrant. The transcript of the trial in this case reflects that the evidence presented by the State was more than sufficient to support the jury's verdict.⁶

(12) This Court has reviewed the record carefully and has concluded that Marsh's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Marsh's counsel has made a conscientious effort to examine the record and has properly determined that Marsh 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/ E. Norman Veasey
Chief Justice

⁶*Morrissey v. State*, 620 A.2d at 213.