

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHELDON OGLE,	§
	§
Defendant Below-	§ No. 112, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN01-08-1116
Plaintiff Below-	§ IN01-08-1117
Appellee.	§ IN01-08-1118

Submitted: September 30, 2002

Decided: November 1, 2002

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

**ORDER**

This 1<sup>st</sup> day of November 2002, 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, Sheldon Ogle, was found guilty by a Superior Court jury of Possession with Intent to Distribute Cocaine, Possession of Cocaine within 1,000 Feet of a School and Possession of Cocaine within 300 Feet of a Park. On the first conviction, Ogle was sentenced to 5 years mandatory incarceration at Level V. On the second conviction, Ogle was sentenced to 2

years incarceration at Level V, to be suspended for 2 years at decreasing levels of probation. On the third conviction, Ogle was sentenced to 1 year incarceration at Level V, to be suspended for 1 year at Level II. This is Ogle's direct appeal.

(2) Ogle'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.<sup>1</sup>

(3) Ogle's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Ogle's counsel informed Ogle of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete

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<sup>1</sup>*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).

trial transcript. Ogle was also informed of his right to supplement his attorney's presentation. Ogle responded with a brief that raises two issues for this Court's consideration. The State has responded to the position taken by Ogle's counsel as well as the issue raised by Ogle and has moved to affirm the Superior Court's judgment.

(4) Ogle raises two issues for this Court's consideration. He claims that there was insufficient evidence to support his convictions because the State did not present proof beyond a reasonable doubt either that he possessed crack cocaine or that he intended to sell it. He also claims that one of the police officers perjured himself at trial by testifying that Ogle had money crumpled up in his pocket, rather than in his wallet, when he was searched.

(5) At trial the State presented the testimony of Detective Vincent Jordan, an undercover officer with the Drug, Organized Crime and Vice Unit of the Wilmington Police Department. On August 2, 2001, Detective Jordan was doing surveillance at a concealed location on the 400 block of West 7<sup>th</sup> Street in the City of Wilmington. His attention was drawn to the porch of a vacant building where he observed a man, whom he identified as Ogle, remove a piece of brown paper from beneath the porch and then place it back beneath the

porch. He then watched as Ogle walked into the vacant building, walked back out again, reached beneath the porch and placed several items in the piece of brown paper, which he then replaced beneath the porch. Based upon his 5 years of experience as an undercover officer with the Drug, Organized Crime and Vice Unit of the Wilmington Police Department, Detective Jordan believed that he had witnessed a drug transaction.

(6) Detective Jordan testified that he then contacted Officers Silvers and Schifano, who were on patrol at the time, and told them he suspected drug activity on the 400 block of West 7<sup>th</sup> Street. During the time he waited for the officers to arrive, Detective Jordan witnessed Ogle engage in the same type of activity two more times with two separate individuals. As the officers entered the area in their patrol car eastbound on 7<sup>th</sup> Street, Ogle appeared to look in their direction and began to walk quickly away from the area. The officers caught up with Ogle, brought him back to the vacant building and recovered the piece of brown paper from under the porch. Officer Silvers showed it to Detective Jordan, who confirmed that it contained 13 small, clear Ziploc bags with black markings each of which contained a white chunky substance, which later tested

positive for crack cocaine. Detective Jordan testified that, based upon his experience, the drugs were packaged for sale.

(7) Detective Jordan also testified to the chain of custody of the drug evidence. He stated that when the drugs were seized they were placed in a drug envelope with the case number, the name of the arresting officer, the name and address of the arrested person, a description of the drug, the location where the drugs were obtained, the date and time of the arrest, and the names of any witnesses. The envelope was then sealed in accordance with standard procedures and placed in a locked drug safe in the police department where it remained until a narcotics control officer took it to the Medical Examiner's Office for testing. Detective Jordan testified that the initials and seal on the envelope containing the drug evidence showed that it had been opened and tested by the Medical Examiner's Office. Detective Jordan also identified the Medical Examiner's report and testified that the substance found at the crime scene was determined by the Medical Examiner's Office to be crack cocaine.

(8) The State next called Officer Ralph A. Schifano to testify. Officer Schifano stated that, on August 2, 2001, he was called to the 400 block of West 7<sup>th</sup> Street by Detective Jordan. Detective Jordan told him to locate a black man

with dread locks, a white tank top, baggy black jeans and brown Timberland boots. He and Officer Silvers found the man at the corner of 7<sup>th</sup> and West Streets and took him back to the vacant building in the 400 block of West 7<sup>th</sup> Street, where they found the piece of brown paper containing the drugs. He identified Ogle as the man taken into custody at the scene. Officer Schifano further testified that he had measured the distance between the porch where the drugs were found and St. Peter's School and that it was 538 feet and testified that the distance between the porch and Temple United Church was 268.4 feet. Finally, Officer Schifano stated that Ogle had \$276 in one, five, ten and twenty dollar bills crumpled up in his pocket when he was searched at the police station.

(9) The State next called Detective Jeffrey Silvers to testify. Detective Silvers testified that he was on duty with Officer Schifano on the date in question and had since joined the undercover unit as a detective. He stated that he was with Officer Schifano when Ogle was taken into custody and that he removed the piece of brown paper from beneath the porch at the vacant building. He also identified Ogle as the man taken into custody at the scene.

(10) At the close of the evidence, the defense made a motion for judgment of acquittal on the basis that the State had failed to prove beyond a

reasonable doubt that Ogle was guilty of possession with intent to deliver drugs. The Superior Court denied the motion based on the testimony concerning how the crack cocaine was packaged, Ogle's conduct during the time of the surveillance and the amount of money found on Ogle's person at the time he was searched. The Superior Court granted a request by the defense for a lesser included instruction on simple possession of cocaine and an instruction that possession of the cocaine entirely within a residence was an affirmative defense to possession within 1,000 feet of a school.

(11) In reviewing a claim of insufficiency of the evidence, the inquiry of this Court is “whether any rational trier of fact, viewing the evidence in the light most favorable to the [State], could have found the essential elements of the charged offense beyond a reasonable doubt.”<sup>2</sup> In making this determination, the Court does not distinguish between direct and circumstantial evidence.<sup>3</sup>

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<sup>2</sup>*Morrissey v. State*, 620 A.2d 207, 213 (Del. 1993).

<sup>3</sup>*Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

(12) Ogle’s claim that there was insufficient evidence presented at trial to sustain his convictions is without merit. The police officers’ testimony concerning how the crack cocaine was packaged, Ogle’s conduct during the time of the surveillance and the amount of money found on Ogle’s person at the time he was searched constituted more than sufficient evidence to satisfy the elements of “possession” and “intent to deliver.”<sup>4</sup> Moreover, Ogle has presented no record evidence to support his claim that Officer Schifano perjured himself when he testified that Ogle’s money was crumpled up in his pocket, rather than in his wallet, when he was searched. Even if this testimony was incorrect, there is no evidence that it was prejudicial, given the total amount of evidence supporting Ogle’s conviction.

(13) The Court has reviewed the record carefully and has concluded that Ogle’s appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Ogle’s counsel has made a conscientious effort to examine the record and has properly determined that Ogle could not raise a meritorious claim in this appeal.

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<sup>4</sup>DEL. CODE ANN. tit. 16, §§ 4751, 4767, and 4768; *Malloy v. State*, 462 A.2d 1088, 1091-92 (1983).



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/ Joseph T. Walsh  
Justice