IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEVAN MILLS,
 	
    Defendant Below-
    Appellant,
 	
    v.
 	
STATE OF DELAWARE,
 	
    Plaintiff Below-
    Appellee.
	No. 159, 1999
	
	Court BelowCSuperior Court
	of the State of Delaware,
	in and for Kent County
	Cr.A. Nos. IK98-09-0299 thru
	      IK98-09-0304

Submitted: June 6, 2000
Decided: July 7, 2000

Before VEASEY, Chief Justice, WALSH and BERGER, Justices

O R D E R

This 7th day of July 2000, 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, Devan Mills, was found guilty by a Superior Court jury of two counts of burglary in the second degree, stalking, lewdness, harassment and misdemeanor theft. He was declared an habitual offender and was sentenced to life in prison for one of his two burglary convictions. On appeal, Mills= counsel filed a brief pursuant to Supreme Court Rule 26(c) and a motion to withdraw. On January 24, 2000, this Court affirmed the Superior Court judgment as to all issues except for Mills= claim that a pair of

boots introduced into evidence at trial had been seized illegally.[1] Because the record did not clearly reflect the circumstances surrounding the seizure of the boots, this Court was unable to conclude that Mills= appeal of that issue was wholly without merit. Therefore, substitute counsel was appointed to brief the issue.

(2)   Mills= 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.[2]

(3)   Mills= counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter,

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[1]*Mills v. State*, **Del. Supr., No. 159, 1999, Hartnett, J. (Jan. 24, 2000) (ORDER).**

[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).**

Mills= counsel informed Mills 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. Mills was also informed of his right to supplement his attorney=s presentation. Mills responded with a submission that raises one issue for this Court=s consideration. The State has responded to the position taken by Mills= counsel as well as the issue raised by Mills and has moved to affirm the Superior Court=s judgment.

(4)   Mills raises one issue for this Court=s consideration. He claims that a pair of muddy boots observed by the police in the back seat of a car he had been driving was seized illegally and erroneously admitted into evidence at trial. Because the defense did not present a motion to suppress the evidence and did not object to the admission of the evidence at trial, we review this claim under a plain error standard.[3] AUnder 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.@[4] AFurthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which

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[3]*McDade v. State*, Del. Supr., 693 A.2d 1062, 1064 (1997); Supr. Ct. R. 8.

[4]*Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100, cert. denied 479 U.S. 869 (1986).

clearly deprive an accused of a substantial right, or which clearly show manifest

injustice.@[5]

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[5]*Id.*

(5)   While there was no trial testimony concerning the circumstances of the seizure, the police report reflects that Mills consented to the seizure of the boots from the car. It states that the officer Aobserved a pair of hightec boots in the rear seat of the vehicle and asked . . . Mills if he had a problem with [the officer] taking them. . . . Mills said that he did not mind.@ There is nothing in the record to suggest that, if questioned at trial concerning the circumstances of the seizure, the police officer would have deviated in any way from his written report. Mills does not contend that the boots were not in plain view or that he did not consent to the officer taking the boots.[6] Moreover, Mills contended at trial that he owned the boots. Under these circumstances, we find no plain error in the admission of the boots into evidence.

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

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[6]**It appears that Mills made the conclusory contention in his previous brief that Ano one bothered to ask the owner of the car for the boots.@ The police report indicates the car was owned by Mills= parents. However, nothing in the record indicates Mills had been driving the vehicle without permission and he, therefore, had the authority to consent to the seizure of the boots. *Liu v. State of Delaware*, Del. Supr., 628 A.2d 1376, 1383 (1993).**

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