

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEXTER MORRIS,	§	
	§	
Defendant Below-	§	No. 180, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN03-08-0821; 0823
	§	IN03-08-2029
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: September 13, 2004

Decided: November 24, 2004

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

**ORDER**

This 24th day of November 2004, 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, Dexter Morris, was found guilty in a Superior Court bench trial of Aggravated Menacing, Offensive Touching and one count of Terroristic Threatening.<sup>1</sup> Morris was sentenced as an habitual offender<sup>2</sup> to

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<sup>1</sup> The State dismissed the additional charges of Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon By a Person Prohibited in exchange for Morris' waiver of his right to a jury trial. Morris was found not guilty of a second count of Terroristic Threatening.

<sup>2</sup> Del. Code Ann. tit. 11, § 4214(a).

a total of 6 years incarceration at Level V, to be suspended after 5 years for decreasing levels of probation. This is Morris' direct appeal.

(2) Morris' 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>3</sup>

(3) Morris' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Morris' counsel informed Morris 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. Morris also was informed of his right to supplement his attorney's presentation. Morris responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by Morris'

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<sup>3</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).

counsel as well as the issues raised by Morris and has moved to affirm the Superior Court's judgment.

(4) Morris raises two issues for this Court's consideration. He claims, first, that there was insufficient evidence presented at trial to support his convictions and, second, that his conviction of aggravated menacing was invalid because he was not simultaneously convicted of a weapon charge.

(5) The following evidence was presented at trial. The victim, Yolanda Dantley, was involved in a romantic relationship with Morris. Morris moved into Dantley's apartment, where Dantley lived with her children. After about six months, the relationship between Morris and Dantley soured and Dantley insisted that Morris move out of the apartment. On July 18, 2003, the couple argued and Morris left the apartment.

(6) Not long thereafter, Dantley and Morris' cousin, Tonya, were driving in Wilmington when they observed Morris in a car with an unknown woman. Dantley drove up to the car and told Morris to take his belongings out of the apartment and return the key. After Dantley and Tonya returned to the apartment, Morris showed up. Morris threatened Dantley and began choking her. Tonya pulled Morris off of Dantley and helped her outside where they sat on the front steps of the apartment building. Morris appeared in the parking lot and again

threatened Dantley, this time with a pistol tucked into the waistband of his pants. Dantley testified that she feared for her life.

(7) Two days later, Morris telephoned Dantley and threatened to kill her. Later, Dantley and her cousin, who also was named Tonya, were in the parking lot of the apartment building when Morris drove up. Morris again verbally threatened Dantley. He then opened up his trunk, took out a handgun and drove off. Testifying in his own behalf, Morris admitted arguing with Dantley, but denied choking her, verbally threatening her or displaying a weapon.

(8) Morris' first claim is that there was insufficient evidence presented at trial to support his convictions. In reviewing a challenge to the sufficiency of the evidence, this Court must determine, viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.<sup>4</sup> While Morris denied choking and threatening Dantley, the judge, sitting as the trier of fact, chose to believe Dantley's version of events rather than Morris'. The trial transcript reflects that Dantley's testimony, taken together with that of Dantley's cousin Tonya, was more than sufficient to support Morris' convictions of Aggravated Menacing,<sup>5</sup>

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<sup>4</sup> *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

<sup>5</sup> Del. Code Ann. tit. 11, § 602 (2001) ("A person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury.")

Offensive Touching<sup>6</sup> and Terroristic Threatening.<sup>7</sup> Morris' first claim is, therefore, without merit.

(9) Morris' second claim is that his aggravated menacing conviction is invalid because he was not simultaneously convicted of a weapon charge. Prior to trial, the State dismissed the charges of Possession of a Weapon During the Commission of a Felony and Possession of a Weapon By a Person Prohibited in exchange for Morris' waiver of his right to a jury trial. A bench trial proceeded on the remaining charges, including Aggravated Menacing. Morris has failed to provide any legal support for the proposition that a conviction of a weapon charge is a necessary predicate for a conviction of aggravated menacing. Morris' second claim is, therefore, also without merit.

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

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<sup>6</sup> Del. Code Ann. tit. 11, § 601 (2001) (“A person is guilty of offensive touching when the person . . . [i]ntentionally touches another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person . . . .”)

<sup>7</sup> Del. Code Ann. tit. 11, § 621 (2002) (“A person is guilty of terroristic threatening when he or she . . . threatens to commit any crime likely to result in death or in serious injury to person or property . . . .”)

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/ Randy J. Holland  
Justice

No. 180, 2004

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