

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY GLANDING,	§	No. 236, 2002
	§	Court Below--Superior Court
Defendant Below,	§	of the State of Delaware, in
Appellant,	§	and for Kent County in Cr.
	§	ID No. 0105009486A.
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 7, 2002
Decided: December 13, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices.

ORDER

This 13th day of December 2002, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), counsel's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In October 2001, Glanding was reindicted by a grand jury for twenty-seven offenses. Sometime thereafter, the Superior Court granted Glanding's motion to sever sixteen charges: fifteen counts of Possession of a Deadly Weapon by a Person Prohibited and one count of Possession of

Ammunition by a Person Prohibited, from the other offenses. Glanding proceeded to trial on the sixteen severed charges.¹

(2) Prior to trial, the Superior Court held a suppression hearing on Glanding's motion to suppress. Glanding, in part, challenged the search of his Dodge Ram truck, contending that the warrantless search of the truck was impermissible, and that the search warrant, which included "any and all vehicles located on the property," did not include Glanding's truck because it was not "located on the property" at the time it was searched. The Superior Court denied the motion, finding that the search of the passenger compartment of Glanding's truck was contemporaneous with Glanding's arrest and was thus lawful. Moreover, the Superior Court found that the truck was a valid subject of the search warrant, even if was not "located on the property" at the time of the search, and that, in any event, the items found in the vehicle would have inevitably been discovered.

¹ Glanding is scheduled to go to trial on the remaining charges on December 16, 2002. *State v. Glanding*, Del. Super., Cr. ID No. 0105009486B.

(3) At the two-day jury trial in March 2002, Glanding stipulated that he was a convicted felon.² Glanding was convicted of fifteen counts of Possession of a Deadly Weapon by a Person Prohibited. The Superior Court dismissed the charge of Possession of Ammunition by a Person Prohibited. Glanding was sentenced to a total of thirty years at Level V imprisonment, suspended after fifteen years, for nine years of probation. This is Glanding's direct appeal.

4) The evidence at trial reflects that on May 11, 2001, the Delaware State Police set up surveillance on the appellant's residence on Lion Hope Road in Clayton, Delaware, to observe the actions of the appellant prior to the police executing a search warrant at the appellant's residence. Earlier in the day, the police had received information that the appellant, Henry Glanding, was wanted out of Maryland for several felony offenses, and that Glanding, who was a convicted felon with a reported violent history, was known to carry a firearm. The police observed Glanding's residence from approximately 1:00 p.m. until about 8:30 p.m. on May 11 and obtained the signed search warrant around 3:00 p.m. that day.

5) Between 5:00 p.m. and 8:30 p.m., the police observed a shirtless Glanding working around his yard with what appeared to be a

²Glanding pleaded guilty in 1980 to Possession with Intent to Deliver Methamphetamine. *State v. Glanding*, Del. Super., Cr. ID No. 80001340DI (Dec. 19, 1980).

revolver strapped to his waist. Out of concern for their safety, the police decided not to arrest Glanding at his residence, or to execute the search warrant, until Glanding was in his vehicle and away from the residence.

6) At around 8:30 p.m., Glanding left his residence in his Dodge Ram truck and headed south on Lion Hope Road. Approximately one-half mile away from the residence, the police stopped Glanding in a “felony car jam” in which the police used several vehicles to box in Glanding’s truck.³ Once Glanding’s truck was boxed in, the police extracted Glanding from the truck, placed him on the ground, handcuffed him and searched him. The police then searched the passenger compartment of Glanding’s truck. The police located a loaded .357 revolver in the console.

7) A few minutes after Glanding was stopped and was otherwise occupied with his arrest, the police executed the search warrant at his residence. The police located a number of firearms and ammunition in a safe in Glanding’s living room and more guns in Glanding’s laundry room.

8) Glanding’s defense counsel has filed a brief and a motion to withdraw pursuant to Supreme Court 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. First, the Court must be

³ The purpose of the “felony car jam” is to decrease any chance of a pursuit.

satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal. Second, 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.⁴

9) Glanding's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Glanding's counsel informed him of the provisions of Rule 26(c) and provided Glanding with a copy of the motion to withdraw and the accompanying brief. Glanding also was informed of his right to supplement his attorney's presentation. Glanding responded with a document that raises several issues for this Court's consideration. The State has responded to the position taken by Glanding's counsel as well as the points raised by Glanding and has moved to affirm the Superior Court's decision.

10) Glanding raises five issues for this Court's consideration: (i) the search of his Dodge Ram truck was improper; (ii) the affidavit of probable cause was unsigned; (iii) the prosecutor erred when he argued to the jury that it did not matter whether or not Glanding knew he was breaking a law; (iv) Glanding would not have agreed to sever the charges if he'd

⁴*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).

known beforehand that the analysis of suspected methamphetamine that was seized from his truck was negative; and (v) ineffective assistance of counsel. Glanding's claims are without merit.

11) Glanding's first arguably appealable issue is that the search of his truck was improper. Glanding's claim is without merit. The Superior Court correctly determined that the warrantless search of the passenger compartment area of Glanding's truck was contemporaneous with Glanding's lawful arrest and was thus clearly authorized.⁵ Having concluded that the warrantless search of the passenger compartment of Glanding's truck was valid as a search incident to his lawful arrest, the Court need not address Glanding's allegation that the search warrant did not authorize a search of Glanding's truck once it left the property.

12) Glanding's second arguably appealable issue is that the "affidavit of probable cause" is invalid because it was "unsigned." This claim was not presented in the Superior Court, and Glanding has not demonstrated plain error concerning the claim.⁶ Furthermore, at the suppression hearing, Glanding's counsel expressly conceded that he did not

⁵*Traylor v. State*, 458 A.2d 1170, 1173-74 (Del. 1983) (citing *New York v. Belton*, 453 U.S. 454 (1981)).

⁶Supr. Ct. R. 8; *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986). Plain error is error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Id.*

challenge the validity of the search warrant.⁷ In any event, the “affidavit of probable cause” that is Exhibit B to the Justice of the Peace Court arrest warrant, and the probable cause sheet that is attached to the search warrant, both are signed and both appear to have been properly executed. Glanding’s claim is without merit.

13) Glanding’s third arguably appealable issue is that the prosecutor erred when he allegedly told the jury that it was not necessary for the State to prove that Glanding knew that he was a person prohibited from possessing a deadly weapon. This claim is without merit. Under title 11, section 1448(b) of the Delaware Code, a defendant is guilty of Possession of a Deadly Weapon by a Person Prohibited when the defendant is a prohibited person who knowingly possesses a deadly weapon.⁸ Thus, to be guilty of the offense, the defendant need only know that he or she possessed the weapon. Section 1448 does not require the defendant to know, as Glanding suggests, that it was criminal to do so.⁹

14) Glanding’s fourth arguably appealable issue is that he would not have agreed to sever the charges if he had known beforehand that the substance that was seized from his truck would not test positive as

⁷ H’rg Tr., Mar. 4, 2002, at 95.

⁸ Del. Code Ann. tit. 11, § 1448 (2001).

⁹ *Kipp v. State*, 704 A.2d 839, 842 (Del. 1998).

methamphetamine, as was suspected. This claim was not presented in the Superior Court, and Glanding has not demonstrated plain error concerning the claim.¹⁰ A decision to sever charges is within the sound discretion of the trial court and is not disturbed on appeal absent a showing of actual prejudice by the defendant.¹¹ In this case, Glanding has not sustained his burden of demonstrating that severing his deadly weapon possession charges from his other charges prejudiced his defense on the deadly weapon charges.

15) In his fifth arguably appealable issue, Glanding raises claims of ineffective assistance of counsel. This Court will not consider claims of ineffective assistance of counsel that are raised for the first time on appeal.¹² In this case, Glanding did not raise his ineffective assistance of counsel claims in the Superior Court. Accordingly, we will not consider the claims in this appeal. Glanding, however, may raise his ineffective assistance of counsel claims in a motion for postconviction relief that is filed in the Superior Court.¹³

16) This Court has reviewed the record carefully and has concluded that Glanding's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Glanding's appellate counsel has

¹⁰ Supr. Ct. R. 8; *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

¹¹ *Coffield v. State*, 794 A.2d 588, 595 (Del. 2002).

¹² *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

¹³ Super. Crim. R. 61.

made a conscientious effort to examine the record and has properly determined that Glanding 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/ Randy J. Holland
Justice