

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL D. CHANNELS,	§	
	§	No. 225, 2004
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware, in and
v.	§	Sussex County in IS03-10-
	§	0241, 0242, 0247; IS03-11-
STATE OF DELAWARE,	§	0158.
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0308016813A

Submitted: December 13, 2004

Decided: March 15, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 15th day of March 2005, 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 appellant, Darnell D. Channels, was convicted by a Superior Court jury of two counts of Possession of a Firearm During the Commission of a Felony, Aggravated Menacing, and Assault in the Second Degree. He was sentenced on May 14, 2004, to a mandatory five years at Level V for each of the weapons offenses,¹ eight years at Level V suspended after one year for Assault in the Second Degree, and

¹See Del. Code Ann. tit. 11, § 1447A(b), (c) (regarding minimum mandatory sentences required for conviction of possession of a deadly weapon during the commission of a felony).

two years at Level V suspended for probation for Aggravated Menacing. This is Channels' direct appeal.

(2) Channels' trial 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 is twofold. First, this 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.² 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.³

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

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).

³*Id.*

(4) In an amended statement filed on November 19, 2004,⁴ Channels' counsel represents that Channels did not respond to the brief or motion to withdraw that counsel sent to him in October 2004. Counsel, however, submitted two letters from Channels that he had earlier received regarding the appeal. Those two letters submitted on behalf of Channels raise claims for our consideration. The State then responded to the position taken by Channels' counsel, as well as to the issues raised by Channels, and has moved to affirm the Superior Court's judgment.

(5) The relevant facts appear to be as follows: In August 2003, Channels was the sole proprietor of Hair Masters International Barbershop in Millsboro, Delaware. At that time, Thomas DeShields had been a weekly customer of the barbershop for about six months.

(6) In early August 2003, as a result of an argument between Channels and DeShields at the barbershop over the price of a haircut, Channels banned DeShields from the premises. Nonetheless, on the morning of August 23, 2003, DeShields returned to the barbershop and brought his three-year old son with him.

(7) Channels and two other barbers were working that morning. One of the other barbers began giving the little boy a haircut while DeShields sat in the reception area and, according to Channels, displayed a "threatening demeanor." Channels asked

⁴See Supr. Ct. R. 26(c)(ii) (providing requirements of attorney statement).

DeShields to leave, but he refused and dared Channels to accompany him “outside and handle it.” In response, Channels took out a handgun and fired a shot into the floor of the barbershop near DeShields’ feet.

(8) DeShields left the barbershop, but returned shortly thereafter to retrieve his son. After leaving the barbershop with the child, DeShields remained outside nearby the barbershop until Channels left a few minutes later. DeShields chased Channels down the street to a nearby parking lot where Channels’ car was parked.

(9) About a month later, on September 20, 2003, DeShields and a companion, Broderick Dunaway, and DeShields’ girlfriend, Patrice Ayers, stopped for gas at Bodie’s Market in Millsboro, Delaware. When DeShields entered the store to pay for the gas, he unexpectedly encountered Channels, who was in the store intending to play video games. DeShields testified that Channels immediately pulled a handgun, pointed it at DeShields, and backed him to the door at gunpoint. As DeShields was backing past the counter, he reached for a broom, a gesture that led Channels to shoot him in the abdomen.

(10) At trial, Channels argued self-defense, testifying that DeShields had threatened him at the barbershop in early August 2003, again on August 23, 2003, and at Bodie’s Market on September 20, 2003. Channels testified that he shot the gun into the floor of his barbershop on August 23, 2003, to prevent DeShields from attacking

him. Channels testified that when he fired the gun at Bodie's Market on September 20, 2003, he was trying to scare DeShields away from the doorway of the store where DeShields was blocking the exit and swinging a broom.

(11) Channels raises four claims on appeal: (a) ineffective assistance of counsel; (b) improper jury instruction on self-defense; (c) witness perjury; and (d) evidence tampering. The Court will not consider Channels' first claim, that his counsel was ineffective at trial,⁵ because that claim was not presented to the Superior Court in the first instance. We decline to decide that claim for the first time on this direct appeal.⁶

(12) Next, Channels claims that the Superior Court gave the jury an erroneous instruction on self-defense. Channels' claim is without merit.⁷ We have reviewed the trial judge's instruction on self-defense and have found no error.⁸

⁵Channels specifically contends that his counsel failed to: (a) prepare a defense; (b) subpoena witnesses or request a continuance until a witness could be subpoenaed; (c) properly instruct the jury on self-defense; (d) introduce evidence of DeShields' criminal history; (e) introduce evidence of the broom used by the victim; and (f) object to the perjured testimony of Broderick Dunaway.

⁶*Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

⁷*See Hamilton v. State*, 343 A.2d 594, 595 (Del. 1975) (concluding that defendant is no longer required to prove self-defense by a preponderance of the evidence but is required only to produce some credible evidence to support the defense, sufficient to create a reasonable doubt as to defendant's guilt).

⁸The jury instruction given by the trial judge essentially tracks the statutory language of Title 11, Section 464 of the Delaware Code that governs the justifiable use of force in self-protection.

(13) In his third claim, Channels contends that Broderick Dunaway committed perjury when he testified that he was a passenger in the vehicle driven by Patrice Ayers on September 20, 2003. Channels has presented no support for that claim, and none appears from the record.⁹

(14) Channels' fourth claim is that a witness tampered with evidence. The claim is also without merit. Channels has provided no factual support for that claim,¹⁰ and none appears from the record.

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

(16) Despite our conclusion that Channels' appeal is without merit, it appears that there may have been confusion at the sentencing hearing as to whether the Superior Court intended to impose a three year or a five year minimum mandatory

⁹Both DeShields and Patrice Ayers testified that Broderick Dunaway was in the car with them when they stopped to buy gas at Bodie's Market on September 20, 2003. Moreover, a Bodie's employee testified that he observed the car arrive at the store occupied by DeShields, another man, and a female.

¹⁰Channels has identified neither the alleged witness involved nor the alleged tampered evidence.

sentence for each of the two weapons offenses.¹¹ We have, therefore, determined that this matter must be remanded to the Superior Court for the limited purpose of reviewing the May 14, 2004 sentencing transcript and clarifying the written sentencing order.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for the limited purpose of reviewing Channels' sentence to the extent reflected in this Order. The Superior Court shall take any action that it deems

¹¹The sentencing transcript reflects the following:

THE COURT: Weapons offense, possession of a firearm during the commission of a felony, five years with credit for 64 days. First three years are mandatory, minimum mandatory.

The second firearm charge . . . five years. The first three are minimum mandatory.

* * *

JUDGE'S SECRETARY: It is five years for the first[,] three being minimum mandatory?

THE COURT: No[,] all five are minimum mandatory.

* * *

THE COURT: I have to give him three. Anything I give him is minimum mandatory.

JUDGE'S SECRETARY: So the entire sentence is minimum mandatory.

THE COURT: Both of them are five minimum mandatory.

Hearing Tr. at 7-11 (May 14, 2004).

necessary to clarify or correct the sentence. 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/ Jack B. Jacobs
Justice