

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRANCE CALDWELL,	§
	§
Defendant Below-	§ No. 308, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0509015878
Plaintiff Below-	§
Appellee.	§

Submitted: October 16, 2006
Decided: December 14, 2006

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

ORDER

This 14th day of December 2006, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) A Superior Court jury found the defendant-appellant, Terrance Caldwell (Caldwell), guilty of one count of possession of cocaine and one count of possession of drug paraphernalia. The Superior Court sentenced Caldwell to a total period of 18 months at Level V incarceration, to be suspended after serving six months for probation. This is Caldwell's direct appeal.

(2) Caldwell's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Caldwell's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Caldwell's attorney informed him of the provisions of Rule 26(c) and provided Caldwell with a copy of the motion to withdraw and the accompanying brief. Caldwell also was informed of his right to supplement his attorney's presentation. Caldwell has raised three issues for the Court's consideration. The State has responded to the position taken by Caldwell's counsel, as well as the issues raised by Caldwell, and has moved to affirm the Superior Court's judgment.

(3) 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) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this 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.¹

(4) Caldwell raises three issues for the Court's consideration. First, he contends that the police lacked reasonable suspicion to stop him. Second,

¹ *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).

he argues that the police lacked probable cause to arrest him. Finally, he argues that his trial counsel was constitutionally ineffective. Because the Court will not consider a claim of ineffective assistance of counsel for the first time on direct appeal,² the Court will only address Caldwell's first two arguments.

(5) Caldwell did not challenge the basis for the police officer's stop and eventual arrest of him prior to his trial. Thus, this Court can only review his first two claims on appeal for plain error.³ To be plain, the alleged error must have affected substantial rights, meaning that it must have affected the outcome of the trial.⁴

(6) The record in this case reflects Detective Stout testified at trial that, from his unmarked police vehicle, he observed Caldwell crouched down adjacent to a wooded area near the Fairview Inn on South Market Street at about 2 am. Caldwell appeared to be hiding from view of another Delaware State Trooper in a marked police vehicle who had made a traffic stop in the parking lot of the motel. As Detective Stout followed the individual from the wooded area back into the parking lot, he radioed other police units in the area. Detective Chris Popp testified that he saw the

² *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

³ Del. Supr. Ct. R. 8; *Chance v. State*, 685 A.2d 351, 354 (Del. 1996).

⁴ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

individual walking from the wooded area back into the motel parking lot. When the individual saw him approaching, he threw two small objects behind him into the wooded area. At that point, Detective Stout stopped the individual, later identified as Caldwell, and conducted a pat down search, recovering \$434 in cash. While Detective Stout talked to Caldwell, Detective Popp searched the area and found a box cutter with a blade and a small rock that appeared to be cocaine. Caldwell was then arrested.

(7) In determining whether there was reasonable suspicion to justify Caldwell's detention, the Court must examine the totality of the circumstances "as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts."⁵ In this case, we conclude that Caldwell's presence late at night in a high crime area, his suspicious and unprovoked behavior of hiding in the brush from the marked patrol vehicle, and his act of throwing objects behind him upon encountering Detective Popp, taken together, constituted reasonable suspicion for the officers to stop and frisk him. Furthermore, after Detective Stout's pat down search of Caldwell revealed a large sum of cash and Detective Caldwell's search of the immediate vicinity uncovered a box cutter and a large rock that

⁵ *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).

appeared to be crack cocaine, we conclude that the officers also had reasonable grounds to believe that Caldwell had committed a felony and thus had probable cause to arrest him without a warrant.⁶

(8) This Court has reviewed the record carefully and has concluded that Caldwell's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Caldwell's counsel has made a conscientious effort to examine the record and the law and has properly determined that Caldwell 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

⁶ See 11 Del. C. § 1904(b)(1); *Woody v. State*, 1257 A.2d at 1266-67.