

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONTAY L. SHORT,	§
	§ No. 118, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0605016207A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 7, 2007
Decided: September 19, 2007

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

ORDER

This 19th day of September 2007, 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, Rontay L. Short, was found guilty by a Superior Court jury of Possession of a Firearm During the Commission of a Felony, Aggravated Menacing, and Resisting Arrest. Short was sentenced to five years of Level V incarceration on the weapon conviction and six months of Level V incarceration on the conviction of resisting arrest. On the conviction of aggravated menacing, Short was sentenced to five years of

Level V incarceration, to be suspended after two years for decreasing levels of supervision. This is Short's direct appeal.

(2) Short's 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 arguably could 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.¹

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

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).

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

(4) Short raises five issues for this Court's consideration, which may fairly be summarized as follows. He claims that: a) the State improperly amended the indictment to charge him with a more serious weapon offense; b) the State improperly failed to call the police officer with direct knowledge of the facts of the case as a witness at trial; c) there was insufficient evidence to support the charge of resisting arrest; and d) the police officer who swore out the arrest warrant provided false information that was inconsistent with the testimony of another officer.

(5) The trial transcript reflects that, during the prayer conference, the Superior Court judge brought a clerical error in the indictment to the attention of the State and defense counsel. Specifically, Count 11 of the indictment was entitled "Possession of a Deadly Weapon During the Commission of a Felony,"² but the crime described in the text of Count 11 was "Possession of a Firearm During the Commission of a Felony."³ The prosecutor requested that the clerical error be corrected and defense counsel had no objection. The Superior Court noted that the only weapon that was

² Del. Code Ann. tit. 11, § 1447.

³ Del. Code Ann. tit. 11, § 1447A.

ever at issue in the case was a “firearm”, as reflected in the text of Count 11, so that the defendant was not prejudiced by the correction.

(6) The evidence presented at trial was as follows. On May 17, 2006, at approximately 9:00 a.m., Trooper Eric Glasco and Corporal Rickey Hargis of the Delaware State Police, along with Officer Calloway of the Laurel Police Department, were conducting a search for Short at the Hollybrook apartment complex in Laurel, Delaware.⁴ During the search, Trooper Glasco encountered Short on the second floor of one of the apartment buildings. As Trooper Glasco approached Short, Short pointed a gun at him. Corporal Hargis and Officer Calloway arrived on the scene and, confronting Short, ordered him to drop his weapon. Short did not comply with the order, but waved the gun around. Eventually Short dropped the gun and the officers brought him to the ground.

(7) Short’s first claim is that the State improperly amended the indictment to charge him with a more serious weapon offense. Because Short makes this claim for the first time in this appeal, we review it for plain error.⁵ The correction of the language in the indictment did not result in any

⁴ The police were searching for Short in connection with charges of stalking his ex-girlfriend. Those charges were severed from the charges tried in this case.

⁵ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (Under 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.).

prejudice to Short. As noted by the Superior Court judge during the prayer conference, Short was aware from the outset of the case that the only weapon at issue was a gun. The correction to the indictment altered only the title of the charge, not its substance. Short has failed to demonstrate that he was prejudiced in any way by the correction of the indictment,⁶ and has failed to demonstrate any error, plain or otherwise, on the part of the Superior Court with respect to his first claim.

(8) Short's second claim is that the State improperly failed to call Officer Calloway of the Laurel Police Department as a witness at trial. According to Short, Officer Calloway would have pointed out inconsistencies in the testimony of Trooper Glasco and Corporal Hargis. Because this claim was not presented to the Superior Court in the first instance, we review it, too, for plain error.⁷ Short has failed to demonstrate any factual basis for his claim. Moreover, the State was not required to call Officer Calloway to testify. It is reasonable to infer that, if Officer Calloway's testimony would have been beneficial to Short, defense counsel would have called him to testify. Short has, thus, failed to demonstrate any

⁶ *Robinson v. State*, 600 A.2d 356, 359 (Del. 1991); *Malloy v. State*, 462 A.2d 1088, 1092 (Del. 1983).

⁷ *Wainwright v. State*, 504 A.2d at 1100.

error, plain or otherwise, on the part of the Superior Court with respect to his second claim.

(9) Short's third claim is that the State presented insufficient evidence to support the conviction of resisting arrest. In reviewing a claim of insufficiency of the evidence, the relevant inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁸ A defendant is guilty of resisting arrest when he "intentionally prevents or attempts to prevent a peace officer from effecting an arrest"⁹ The evidence at trial was that the police encountered Short on a staircase where he pointed a gun at a police officer and did not immediately comply with the order to drop the gun. Trooper Glasco testified that, when Short finally complied, "all three of us grabbed Mr. Short and went down to the ground with him." The testimony presented at trial provided ample support for Short's conviction of resisting arrest. We, therefore, conclude that Short's third claim is without merit.

(10) Short's fourth claim is that Corporal Hargis provided false information when he swore out the arrest warrant and that the information he provided was not consistent with the testimony of Trooper Glasco. Short

⁸ *Hardin v. State*, 844 A.2d 982, 990 (Del. 2004).

⁹ Del. Code Ann. tit. 11, § 1257(b).

has provided no support for his claim that information in the arrest warrant was false. Moreover, inconsistencies in testimony go to the weight of the testimony, not to its admissibility.¹⁰ The jury is the sole judge of the credibility of witnesses and is responsible for resolving any conflicts in the testimony.¹¹ In fulfilling its duty, the jury must consider all of the evidence, but is free to accept part of a witness' testimony while rejecting other parts.¹² We, thus, conclude that Short's fourth claim also is without merit.

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

¹⁰ *Demby v. State*, 695 A.2d 1127, 1132-33 (Del. 1997).

¹¹ *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

¹² *Id.*