

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES HARRIS,	§
	§ No. 299, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0706020529
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 8, 2008

Decided: January 20, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 20th day of January 2009, 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, Charles Harris, was found guilty in a Superior Court bench trial of Resisting Arrest and Offensive Touching. He was acquitted of four additional drug possession charges. On the conviction of resisting arrest, he was sentenced as a habitual offender¹ to 2 years at Level V. On the conviction of offensive touching, he was sentenced to 1

¹ Del. Code Ann. tit. 11, § 4214(a).

year at Level V, to be suspended for 1 year at Level III probation. This is Harris' direct appeal.

(2) Harris' 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 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.²

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

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).

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

(4) Harris raises three issues for this Court's consideration. He claims that a) the police officers' testimony was inconsistent; b) the police officers were biased; and c) his stop by the police was unreasonable.

(5) The following evidence was presented at Harris' trial. On June 18, 2007, at approximately 12:30 a.m., City of Wilmington police officers Joseph Bucksner and David Hamrick were conducting a routine patrol around the 300 block of Townsend Street in Wilmington, Delaware. Both officers testified that they observed Harris bending down and placing two Ziploc bags beside the front tire of a parked car. The bags were later determined to contain marijuana and cocaine. The officers recognized Harris as he ran past their parked vehicle, but did not attempt to stop him.

(6) Subsequently, at approximately 2:30 a.m., the officers saw Harris again, this time walking along the sidewalk in the area of Elbert Place. They drove alongside him, confirmed his name and his birth date, and verified that he was on probation and was out past his curfew. As Officer Bucksner got out of the police car, Harris fled on foot. Officer Bucksner chased him and ultimately wrestled him to the ground. Harris was placed under arrest. During the struggle, Harris pushed Officer Bucksner

away with his hand. Harris denied that he had intentionally made physical contact with the officer.

(7) Harris' first claim is that the police officers' trial testimony was inconsistent, although he does not specify exactly how. When determining if the evidence at trial was sufficient to support a guilty verdict, the relevant question for this Court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.³ Any arguable inconsistencies in the testimony are properly left to the trier of fact as the sole judge of the credibility of the witnesses.⁴ The trial transcript reflects that any inconsistencies in the police officers' testimony was properly resolved by the judge as the trier of fact. We, therefore, conclude that Harris' first claim is without merit.

(8) Harris' second claim is that the police officers were biased, although, again, he does not specify exactly how. Under Delaware law, the potential bias of a witness is subject to exploration on cross-examination and is relevant to the issue of credibility and the weight to be given to the testimony.⁵ The trial transcript in this case does not reflect any bias on the

³ *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

⁴ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

⁵ *Weber v. State*, 457 A.2d 674, 680 (Del. 1983).

part of the police officers during their testimony. In the absence of any such evidence, we conclude that Harris' second claim is without merit.

(9) Harris' third, and final, claim is that his stop by the police was unreasonable, alleging, in essence, that the police lacked a reasonable and articulable suspicion that he was engaged in criminal activity when they stopped him.⁶ The trial transcript reflects that, when police stopped Harris at 2:30 a.m., they knew who he was, confirmed that he was on probation and out past his curfew, and had reason to believe that he had engaged in an illegal drug transaction earlier that evening. As such, the police officers had more than sufficient grounds to stop Harris and, under the totality of circumstances, there was no violation of Harris' constitutional rights.⁷

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

⁶ *Terry v. Ohio*, 392 U.S. 1 (1968); *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).

⁷ *Harris v. State*, 806 A.2d 119, 126-27 (Del. 2002).

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/ Jack B. Jacobs
Justice