IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN L. HUNT,	§	
	§	No. 66, 2013
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. 1207015770
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 19, 2013
Decided: October 21, 2013

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

O R D E R

This 21st day of October 2013, 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, Darren L. Hunt, was found guilty in a stipulated bench trial of Tier 2 Drug Dealing and Resisting Arrest.[1] He was sentenced to 8 years of Level V incarceration, to be suspended after 30 months for decreasing levels of supervision on the drug conviction. On the conviction of resisting arrest, he was sentenced to 1 year at Level V, to be suspended for 1 year at Level III probation. This is Hunt's direct appeal.

[1] Hunt was acquitted of Loitering.

(2) Hunt's counsel on appeal 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 could arguably support the appeal; and b) the Court must conduct its own review of the record in order to 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) Hunt's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Hunt's counsel informed Hunt 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. Hunt was informed of his right to supplement his attorney's presentation. Hunt responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by Hunt's counsel as well as the issue raised by Hunt and has moved to affirm the Superior Court's judgment.

(4) Hunt raises one issue for this Court's consideration. He claims that his Sixth Amendment right of confrontation was violated by the admission into

[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).

evidence of the Medical Examiner's report without the live testimony of the Medical Examiner.

(5) The evidence at trial established that, on July 18, 2012, two officers with the City of Wilmington Police Department were patrolling in the 1300 block of West Sixth Street. The officers heard someone yell, "Fire in the hole," a phrase familiar to the officers meaning that police have been seen in the area. The officers then observed a man later identified as Hunt and another man engaging in what they believed was a hand-to-hand drug transaction. As the officers drove closer to the location of the men, Hunt jumped on a bicycle and traveled east on Sixth Street.

(6) Following Hunt in their car, the officers observed him jump from his bicycle, place something in his pocket and run west on Sixth Street. Additional officers, who had been called to the scene to assist, caught up to Hunt. Hunt pushed one of them away. Another officer subdued Hunt and placed him under arrest. A search incident to Hunt's arrest yielded 13 bags of an off-white powdery substance, which was later identified as 3.20 grams of heroin. On August 13, 2012, Hunt was indicted on charges of Tier 4 Drug Dealing, Resisting Arrest and Loitering.

(7) Hunt subsequently filed a motion to suppress the drug evidence on the ground that the police lacked probable cause to arrest him. On January 14, 2013,

following a hearing, the Superior Court denied Hunt's motion to suppress. On January 15, 2013, at a stipulated bench trial in the Superior Court, the judge amended the indictment to change the charge of Tier 4 Drug Dealing to Tier 2 Drug Dealing. After hearing the evidence, the judge found Hunt guilty of Tier 2 Drug Dealing and Resisting Arrest and acquitted him of Loitering.

(8) The trial transcript in this case reflects that the Medical Examiner's report was admitted into evidence without objection by the defense because the identity and weight of the drugs was not in dispute at the trial. Hunt's sole defense at trial was that there was insufficient evidence to prove that he was dealing drugs at the time of his arrest. The Medical Examiner's report had no relevance to that issue. As such, Hunt's stipulation constituted a waiver of any objection to the admission of the Medical Examiner's report.[3] Moreover, because the report was not testimonial in nature, there was no violation of Hunt's Sixth Amendment right of confrontation.[4] We, therefore, conclude that Hunt's claim of error is without merit.

(9) The Court has reviewed the record carefully and has concluded that Hunt's appeal is wholly without merit and devoid of any arguably appealable issue.

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[3] *McDougal v. State*, Del. Supr., No. 20, 2012, Holland, J. (Sept. 5, 2012) (Medical Examiner's report was properly admitted into evidence without the Medical Examiner's live testimony where the purpose of the report was solely to establish the weight and identity of the drugs, an issue that was not in dispute at trial).

[4] *Martin v. State*, 60 A.3d 1100, 1107-08 (2013) (citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 (2009)).

We also are satisfied that Hunt's counsel has made a conscientious effort to examine the record and has properly determined that Hunt 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/ Henry duPont Ridgely
Justice