IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM A. LOPER,	§	
	§	No. 571, 2011
Defendant Below,	§	
Appellant,	§	Court Below-Superior Court
	§	of the State of Delaware in
v.	§	and for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1009006158
Appellee.	§	

Submitted: October 15, 2013 Decided: January 17, 2014

Before HOLLAND, JACOBS and RIDGELY, Justices.

ORDER

This 17th day of January 2014, 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, it appears to the Court that:

(1) Pursuant to a 2010 investigation in Kent County, Delaware, the appellant, William A. Loper, was charged with numerous drug and drug-related offenses. In July 2011, a Superior Court jury convicted Loper on single counts of Possession with Intent to Deliver Marijuana, Trafficking in Cocaine, Criminal Solicitation in the Second Degree, and Resisting Arrest, and on two counts of Possession of Drug Paraphernalia, and Possession of Marijuana. At sentencing, the Superior Court declared Loper a habitual

offender and sentenced him to life imprisonment plus an additional three years. This is Loper's direct appeal.

- (2) On appeal, Loper's appellate counsel¹ has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").² Loper's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues.
- (3) Loper has filed a written submission raising two issues concerning the State's use of a Global Positioning System tracking device ("GPS") to monitor the location of his vehicle. The appellee, State of Delaware, ("State"), has responded to the position taken by Loper's counsel as well as to Loper's submission and has moved to affirm the Superior Court's judgment.
- (4) Loper alleges that the State's warrantless use of the GPS was illegal under *United States v. Jones*,³ and that the State's failure to disclose two GPS downloads violated *Brady v. Maryland*.⁴ Because no objection

¹ Loper was represented by different counsel at trial.

² See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

³ See United States v. Jones, 132 S. Ct. 945 (2012) (holding that the attachment of a GPS to a vehicle is a search within the meaning of the Fourth Amendment of the United States Constitution).

⁴ See Brady v. Maryland, 373 U.S. 83 (1963) (holding that the prosecution must disclose to the defense evidence favorable to the defendant).

was made at trial to the State's use of the GPS, we review Loper's claims on appeal for plain error.⁵

- apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice." Moreover, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."
- (6) Loper has not demonstrated, and the record does not reflect, plain error arising from the State's warrantless use of the GPS. First, the record does not support Loper's claim that the State failed to disclose GPS downloads. The record reflects that the GPS downloads in question were disclosed and made available by the State for inspection by the defense in February 2011, five months before Loper's trial.
- (7) Second, Loper has not demonstrated that he was prejudiced by the State's use of the GPS. Surveillance reports in the record reflect that the charges against Loper that pertained to events alleged on May 26, 2010 were

⁵ Del. Supr. Ct. R. 8.

⁶ *Id*.

⁷ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

supported by wiretap evidence and police surveillance, not by GPS evidence. The four charges that were supported by GPS evidence, pertaining to events alleged on May 22, 2010, were *nolle prossed* by the State prior to trial.

(8) We are satisfied that Loper's counsel made a conscientious effort to examine the record and the law and properly determined that Loper could not raise a meritorious claim on direct appeal.⁸ Having carefully reviewed the record, we conclude that Loper's appeal is devoid of any arguably appealable issue and can be decided without an adversary presentation.⁹

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

4

⁸ 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).

⁹ *Id*.