

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN BRANCH,	§
	§
Defendant Below-	§ No. 8, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0903009061
Plaintiff Below-	§
Appellee.	§

Submitted: July 13, 2010

Decided: September 27, 2010

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

ORDER

This 27th day of September 2010, 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) In October 2009, a Superior Court jury found the defendant-appellant, John Branch (Branch), guilty of one count each of second degree assault and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Branch to a total period of ten years at Level V incarceration to be suspended after serving four years for eighteen months at Level III probation. This is Branch's direct appeal.

(2) Branch's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Branch's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Branch's attorney informed him of the provisions of Rule 26(c) and provided Branch with a copy of the motion to withdraw and the accompanying brief. Branch also was informed of his right to supplement his attorney's presentation. Branch has raised several issues for this Court's consideration. The State has responded to Branch's issues, as well as to the position taken by Branch's counsel, 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) The record at trial fairly supports the following facts: On March 12, 2009, Branch was at a party at a house on Jackson Street in

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).

Wilmington. The victim, Vickie Hand, also was at the party with her friend, Michele Petrucci. All three were drinking. Hand testified that as she left the house, Branch approached her and tried to punch her. She tried to walk away, but Branch picked up a board and hit her with it several times. Petrucci then appeared and Branch dropped the board and ran away. Hand went to the hospital by ambulance. She testified that she was in pain and had to wear a cast on her fractured arm for three months after the assault. Officer Purner of the Wilmington Police Department responded to the hospital to interview Hand. Officer Purner testified that Hand appeared to be intoxicated. Purner learned where Branch lived and went to his address. Branch admitted that he hit Hand but claimed that he did so in self-defense after Hand advanced toward him holding a box cutter. Branch testified to that effect at trial. He also denied drinking that day. Both Hand and Petrucci testified in rebuttal that they had observed Branch drinking before the assault. Hand also denied that she had a box cutter in her hand. The jury convicted Branch of all charges.

(5) Prior to trial, Branch had submitted two additional voir dire questions: (i) Have you ever been employed by a law enforcement agency? and (ii) Would you be more likely to believe a law enforcement officer's

testimony merely because of his or her status as a law enforcement officer?

The Superior Court declined to ask either question of potential jurors.

(6) In response to his counsel's motion to withdraw, Branch submitted a twenty-four page, disjointed letter setting forth the following discernible points for the Court's review: (i) the trial court abused its discretion in restricting voir dire of the jury; (ii) the trial court erred in allowing Michele Petrucci's hearsay testimony; and (iii) neither the testimony of Vicki Hand nor Officer Purner was credible. Branch also appears to argue that this counsel was ineffective for failing to challenge the witnesses' credibility. Claims of ineffective assistance of counsel, however, will not be considered by this Court for the first time on direct appeal.² Accordingly, we will not address this claim.

(7) The method of conducting voir dire examination is a matter within the sound discretion of the trial court.³ Accordingly, on appeal we review complaints about the trial court's refusal to ask proposed voir dire questions for abuse of discretion. The purpose of voir dire examination is to determine whether a prospective juror is qualified and able to render an

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

³ *Ortiz v. State*, 869 A.2d 285, 292 (Del. 2005).

impartial verdict upon the evidence and the law.⁴ In this case, the Superior Court denied Branch's request to ask the prospective jurors if they had ever been employed by a law enforcement agency because the question was duplicative of the juror questionnaire. The Superior Court denied Branch's second proposed question about whether the jurors would you be more likely to believe a law enforcement officer's testimony merely because of his or her status as a law enforcement officer because it was not a fair question to determine the juror's ability to render an impartial verdict in the case at hand. We find no abuse of discretion in the Superior Court's denial of Branch's requests in this case.

(8) Branch's second argument on appeal appears to be that the trial judge erred in allowing Michele Petrucci to testify at all in light of her prior convictions for acts of dishonesty. Despite Branch's contention, however, there is no rule in Delaware that prohibits a person convicted of crimes of dishonesty from testifying as a witness at trial. Instead, the witness' testimony may be impeached by such prior acts of dishonesty,⁵ and the Superior Court permitted defense counsel to cross-examine Petrucci about her prior convictions in this case. These prior convictions went to the

⁴ *Jacobs v. State*, 358 A.2d 725, 728 (Del. 1976).

⁵ See Del. R. Evid. 609(a)(2) (2010).

weight of Petrucci's testimony, not its admissibility, and the weight to be accorded her testimony in light of her prior convictions was a matter for the jury to decide.⁶ Moreover, to the extent Branch contends that Petrucci's testimony included hearsay statements about Hand's comments following the assault, we find no merit to this contention. The Superior Court ruled that Hand's statements following the assault fell within the "excited utterance" exception to the hearsay rule.⁷ We agree. Accordingly, we reject Branch's second argument on appeal.

(9) Finally, Branch appears to argue that the testimony of both Hand and Officer Purner was not credible and that the evidence therefore was insufficient to sustain his convictions. In reviewing a claim of insufficient evidence, this Court, viewing the record evidence in the light most favorable to the State, must determine whether any rational juror could have found the defendant guilty beyond a reasonable doubt.⁸ Branch's suggestion that the evidence was insufficient because the witnesses were not credible is unavailing. It is solely within the jury's responsibility to determine witness credibility, resolve conflicts in the testimony, and draw

⁶ *Hall v. State*, 788 A.2d 118, 124 (Del. 2001).

⁷ See Del. R. Evid. 803(2) (2010).

⁸ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988) (citing *Jackson v. Virginia*, 433 U.S. 307, 319 (1979)).

any inferences from the proven facts.⁹ In this case, we find that the evidence was more than sufficient to establish Branch's guilt beyond a reasonable doubt.

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

⁹ *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).