IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN L. BENNETT,	§	
	§	No. 523, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1112016743
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 7, 2013
Decided: April 23, 2013

Before **BERGER, JACOBS** and **RIDGELY,** Justices.

O R D E R

This 23rd day of April 2013, upon consideration of the briefs and motion to withdraw filed by the appellant's counsel pursuant to Supreme Court Rule 26(c), the appellant's written submission, and the appellee's response, it appears to the Court that:

(1) In January 2012, a Superior Court grand jury indicted the appellant, Steven L. Bennett ("Bennett"), on charges stemming from a December 15, 2011 burglary in Newark, Delaware. After a two-day jury trial, Bennett was convicted of Burglary in the Second Degree and Attempted Theft.

(2) Six days after Bennett was convicted, his trial counsel filed a motion for judgment of acquittal alleging that there was insufficient evidence to support the jury verdict. By opinion and order dated August 29, 2012, the Superior Court denied the motion. Thereafter, on September 14, 2012, the court sentenced Bennett to a total of six years at Level V suspended after one year mandatory minimum for decreasing levels of supervision. This is Bennett's direct appeal.

(3) Bennett's appellate counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").[1] Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.[2] Bennett disagrees with his counsel's assessment and argues in his submission that he was convicted on the basis of insufficient evidence.[3] The appellee, State of Delaware ("State"), moves to affirm the Superior Court judgment.

(4) The standard and scope of review for a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that defense counsel has made a conscientious examination of

[1] DEL. SUPR. CT. R. 26(c)(i) (governing appeals without merit).

[2] *See Id.*

[3] *See* DEL. SUPR. CT. R. 26(c)(iii).

the record and the law for claims that could arguably support the appeal.[4] Second, the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of arguably appealable issues that it can be decided without an adversary presentation.[5]

(5) At trial, Maurice Stanley ("Stanley") testified that he was at home taking a nap in his bedroom when he heard unusual "rumbling" noises coming from his sons' bedroom. When he went to investigate, Stanley observed a person with a sheet over his head coming out of his sons' bedroom. The person was carrying a Playstation video game console. Stanley observed the person put the console on the floor of the hallway and return to the bedroom.

(6) Thinking that the person was one of his sons, Stanley knocked on the bedroom door and attempted to open it. Stanley also called out and asked his son what he was doing. Someone from inside the bedroom pushed back on the door and an unfamiliar voice answered, "I'm getting dressed," and "I've got company." A few seconds after that, a person with a sheet over his head came out of the bedroom and headed toward the stairs.

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[4] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wis.*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

[5] *See supra* note 5.

(7) As the person ran past him, Stanley pulled the sheet off, revealing an adult black male underneath. Stanley did not know the man and caught only a glimpse of his face, but he estimated that the man was between six and six feet two inches tall and weighed between 180 and 190 pounds. Stanley chased the man down the stairs, but did not follow him out of the house. Stanley then called 911.

(8) Members of the New Castle County Police Department responded to the 911 call and investigated the case. At trial, Officer John-Paul Pizer testified about his interview with Stanley and the crime scene investigation. Officer Nicholas Heitzmann testified that he dusted the scene for fingerprints and successfully lifted a print from the Playstation game console. Detective Kevin Welch testified that he conducted the fingerprint analysis and determined that the print collected from the Playstation console matched Bennett's right thumbprint.

(9) In his written submission on appeal, Bennett challenges the sufficiency of the evidence, reiterating many of the same points that were raised in the unsuccessful post-trial motion for judgment of acquittal. This Court reviews the Superior Court's denial of a motion for judgment of acquittal *de novo* to determine "whether *any* rational trier of fact, viewing

the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."[6]

(10) In this case, the Superior Court accurately summarized the evidence against Bennett as follows:

> Here, the evidence is uncontradicted that an intruder was inside a private home; the intruder concealed his head and face with a blanket; the occupant observed the intruder in the upstairs hallway; the sons' electronic game was kept in the sons' bedroom and kept plugged in; the intruder moved the electronic game to the hallway from its normal place in the sons' bedroom; the occupant interrupted the intruder; the intruder, immediately upon detection, secreted himself in the sons' bedroom; the intruder, by deception, attempted to prevent the rightful occupant from entering that bedroom; the intruder abandoned the box cutter on the sons' bedroom floor; the intruder abandoned his plans for the electronic game as the occupant approached; the intruder fled down the stairs as the occupant yanked the blanket off of the intruder's head; and the intruder ran out of the house. The evidence also revealed that [Bennett's] thumbprint was found on the electronic game immediately after the intruder handled the electronic game, the game had been in the house for a while, and that the occupant testified that he did not know [Bennett] or why [Bennett's] print would be on the electronic game.

[6] *Seward v. State*, 723 A.2d 365, 369 (Del. 1999) (quoting *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991)).

(11) We have reviewed the record *de novo* and conclude that a rational trier of fact, viewing the evidence in a light most favorable to the State, could have found Bennett guilty beyond a reasonable doubt of entering or remaining in Stanley's house with the intent to steal the Playstation game console. Stanley observed the male intruder holding the Playstation console. Bennett's thumbprint was found on that console. It was not unreasonable for the jury to infer that Bennett left his thumbprint on the game console when he was attempting to steal it.

(12) The Court concludes that Bennett's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Bennett's appellate counsel made a conscientious effort to examine the record and the law and properly determined that Bennett could not raise a meritorious claim on 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/ Jack B. Jacobs
Justice