

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CRAIG REEVES,	§	
	§	No. 444, 2013
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. 1206007479A
Appellee.	§	

Submitted: January 15, 2014
Decided: February 27, 2014

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

ORDER

This 27th day of February 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) On August 6, 2012, the appellant, Craig Reeves, was indicted on several offenses, including Aggravated Menacing and Possession of a Firearm During the Commission of a Felony. The charges arose from Reeves’ confrontation with another man, Louis Williams, on June 9, 2012, near the East Lake Gardens apartments in Dover, Delaware. Reeves also was indicted on two counts of Endangering the Welfare of a Child because his two children were with him when he stopped to confront Williams.

(2) Williams' girlfriend, Ahjahfri Watson, testified at Reeves' jury trial that she and Williams were driving out of the parking lot of the East Lake Gardens apartments on June 9, 2012, when Reeves suddenly pulled his vehicle in front of hers and forced her to stop. Then, according to Watson, Reeves exited his vehicle with a gun in his hand and pointed the gun at Williams, who was sitting in the front passenger seat of Watson's vehicle. When Watson attempted to call 911 from her cell phone, Reeves told her to hang up the phone and get out of the vehicle. Watson then dropped the phone, got out of her vehicle, and ran to a nearby residence where she again called 911 using a neighbor's phone.

(3) Another witness to the confrontation, Dustin Howard, testified that he was outside cleaning up his backyard when he saw a silver Land Rover (later determined to be Reeves') pull in front of a gold-colored Mercedes SUV (later determined to be Watson's) and force it to stop. According to Howard, the driver of the silver Land Rover "got out of his vehicle, had a pistol in his hand, approached the passenger's side of the Mercedes and stuck the gun in the window."¹ Alarmed by what he saw, Howard ran into his house to retrieve his gun, but by the time he returned "the Land Rover was gone, the Mercedes was still

¹ Trial tr. at 53 (May 20, 2013).

there[,]” and “[t]he lady that was driving the Mercedes was out of her vehicle in the neighborhood, running.”²

(4) Williams testified in support of the defense about the incident. According to Williams, when Reeves approached Watson’s vehicle, Watson “immediately took off running out of the vehicle. She left it in park and just took off running.”³ Williams testified that he and Reeves “had heated words[,]” and that Reeves “had some keys in his hand” but did not have a gun.⁴

(5) Dover Police Officer Brian Wood responded to the 911 call and interviewed Reeves. Wood testified that Reeves denied having a gun and that when the police searched Reeves, Reeves’ vehicle, and Reeves’ brother’s apartment that was nearby, they did not find a gun.

(6) The jury convicted Reeves of Aggravated Menacing, two counts of Endangering the Welfare of a Child, and Disorderly Conduct. The jury could not reach a verdict on the charge of Possession of a Firearm During the Commission of a Felony. As a result, a hung jury was declared on that charge, and the charge was dismissed. After a presentence investigation, Reeves was sentenced on July 24, 2013. This is Reeves’ direct appeal.

² *Id.*

³ Trial tr. at 28 (May 21, 2013).

⁴ *Id.* at 28-29.

(7) On appeal, Reeves’ defense counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) (“Rule 26(c”).⁵ Reeves’ counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Reeves has filed a written submission raising issues for the Court’s consideration. The appellee, State of Delaware, (“State”), has responded to the position taken by Reeves’ counsel as well as to Reeves’ submission and has moved to affirm the Superior Court’s judgment.

(8) 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. First, this court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.⁶ Second, 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.⁷

(9) In his written submission, Reeves argues that the jury should have been instructed on Menacing, as a lesser-included offense to Aggravated Menacing, and was not. According to Reeves, the Superior Court’s failure to

⁵ See Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).

⁶ *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).

⁷ *Id.*

instruct the jury on Menacing, and his defense counsel's failure to request that instruction, violated his right to a fair trial and was ineffective assistance of counsel.

(10) Reeves' claim of Superior Court error is without merit.

Under Delaware's 'party autonomy' rule, a trial judge is required to provide a lesser-included offense instruction upon request by either party if the evidence presented at trial is such that a jury could rationally find the defendant guilty of the lesser-included offense and acquit the defendant of the greater offense.⁸

A trial judge "is not required to issue a lesser-included offense instruction *sua sponte*."⁹ In this case, because neither party requested a lesser-included offense jury instruction on Menacing, the trial judge was not required to give that instruction.

(11) Reeves' related claim of ineffective assistance of counsel is not reviewable on direct appeal.¹⁰ Reeves may raise that claim in a Superior Court postconviction motion.

(12) We are satisfied that Reeves' counsel made a conscientious effort to examine the record and the law and properly determined that Reeves could not

⁸ *Brown v. State*, 2013 WL 434054 (Del. Feb. 4, 2013) (citing *Wiggins v. State*, 902 A.2d 1110, 1113 (Del. 2006)).

⁹ *Hutt v. State*, 2012 WL 3525404 (Del. Aug. 15, 2012) (citing *State v. Brower*, 971 A.2d 102, 109-10 (Del. 2009)).

¹⁰ *Johnson v. State*, 962 A.2d 233, 234 (Del. 2008).

raise a meritorious claim on direct appeal. Having carefully reviewed the record, we conclude that Reeves' appeal is devoid of any arguably appealable issue and can be decided without an adversary presentation.

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