

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATIRIA HAZIM,	§	
	§	
Defendant Below-	§	No. 188, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. IN02-11-0661
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: November 17, 2004

Decided: January 14, 2005

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

ORDER

This 14th day of January 2005, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), her attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Katiria Hazim, was found guilty by a Superior Court jury of Conspiracy in the Second Degree.¹ She was sentenced to 9 months incarceration at Level V. This is Hazim's direct appeal.

(2) Hazim's trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the

¹ The jury was unable to reach a verdict on the additional charges of Trafficking in MDMA (or "Ecstasy") and Possession with Intent to Deliver MDMA. Hazim was later retried on these charges and found not guilty.

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 and 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) Hazim's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Hazim's counsel informed Hazim of the provisions of Rule 26(c) and provided her with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Hazim also was informed of her right to supplement her attorney's presentation. Hazim responded with a brief that raised one issue for this Court's consideration. The State has responded to the position taken by Hazim's counsel as well as the issues raised by Hazim and has moved to affirm the Superior Court's judgment.

(4) The one claim that Hazim raises for this Court is that there was insufficient evidence presented at trial to support her conspiracy conviction.

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).

(5) The testimony at trial established that, during the evening of October 30, 2002, Hazim and three other persons, Hector Beltre, Juan Castro and Edwin DePaula, were driving in a white 1995 Lincoln Town Car south on Interstate 95 towards Wilmington, Delaware.³ DePaula was driving and the other three were in the back seat, with Hazim in the middle. All four were residents of New York City. At about 9:30 p.m., Lieutenant Albert J. Homiak of the Delaware State Police stopped the car adjacent to the Newark, Delaware rest area, near Route 273, for speeding.

(6) After stopping the car, Lieutenant Homiak asked DePaula for permission to conduct a search of the car and DePaula said yes. A few minutes later, Lieutenant Homiak located a loose back door panel on the driver's side of the car. After he pulled the loose panel away from the door, Lieutenant Homiak saw a large, clear plastic bag containing numerous pills, later determined to be approximately 2,400 tablets of Ecstasy. Lieutenant Homiak took the occupants of the car into custody, and then called a tow truck, which towed the car back to the Drug Enforcement Building where the bag was removed and processed before being sent to the police lab for analysis.

³ Beltre, Castro and DePaula all entered into plea agreements with the State and testified at Hazim's trial.

(7) Beltre testified that all four people in the car knew that the drugs were there and were being delivered to a customer in Delaware. Beltre stated that he, Castro and Hazim all talked to the customer by cell phone and that all four persons in the car expected to be paid for their role in the transaction. He also stated that Hazim herself took a couple of Ecstasy pills before the trip started. Detective Donald R. Pope of the Delaware State Police testified that Beltre told him that it was Hazim who obtained the drugs through a friend and also used the cell phone in the car to confirm the transaction with the customer in Delaware.

(8) Hazim testified on her own behalf at trial, as follows: she was at her mother's apartment with her children, the younger of whom was sick, and accepted a ride with DePaula, Beltre and Castro because she needed to go home to get school supplies for the older child. Beltre told her they were going to take a short trip to New Jersey first. After riding in the car for awhile, Hazim realized they were not going to New Jersey and became anxious. She called her mother on a cell phone to say she would be late. When the car was pulled over by the police in Delaware, Beltre told Hazim they were in trouble because there were drugs in the car. Hazim testified that she had no knowledge they were transporting drugs until that moment.

(9) Hazim's mother, Mira Jopa, also testified. Ms. Jopa stated that Hazim left her children with her on October 30, 2002 and accepted a ride with the other defendants in order to get the older child's school supplies. The younger child was sick with a fever. Jopa also stated that, about a week after Hazim's arrest, she invited Beltre, who was out on bail, to her apartment and secretly tape-recorded their conversation. Hazim, also was out on bail and participated in the conversation. Hazim previously had told her mother she knew nothing about the plan to transport the drugs to Delaware. After the tape was played for the jury, Jopa testified that the tape supported her daughter's story. Beltre testified that, to the contrary, the tape showed Hazim was well aware of the plan to transport the drugs.

(10) In reviewing a claim of insufficiency of the evidence, this Court determines whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁴ In doing so, we do not distinguish between direct and circumstantial evidence.⁵ A conviction of second degree conspiracy requires the State to prove that the defendant acted with the intention to promote or facilitate

⁴ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

⁵ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

the commission of the offense.⁶ Utilizing these standards, there clearly was sufficient evidence presented at trial to support Hazim's conviction for second degree conspiracy.⁷ Moreover, it was for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.⁸

(11) This Court has reviewed the record carefully and has concluded that Hazim's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Hazim's counsel has made a conscientious effort to examine the record and has properly determined that Hazim 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/ Jack B. Jacobs
Justice

⁶ *Leasure v. State*, 385 A.2d 730, 731 (Del. 1978).

⁷ Del. Code Ann. tit. 11, §§ 271, 512 (2001).

⁸ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).