

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE DRUMMOND,	§
	§ No. 18, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0606022334
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 31, 2007

Decided: July 19, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 19th day of July 2007, 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 thereto, it appears to the Court that:

(1) The defendant-appellant, Tyrone Drummond, was found guilty by a Superior Court jury of Delivery of Cocaine and Possession of Drug Paraphernalia. On the delivery of cocaine conviction, Drummond was sentenced to 10 years at Level V, with credit for 159 days previously served, to be suspended after 4 years and successful completion of the Key Program for decreasing levels of supervision. On the conviction of possession of drug paraphernalia, he was sentenced to 1 year at Level V, to be suspended

for 1 year at Level III. This is Drummond's direct appeal of his convictions and sentences.

(2) Drummond's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). 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) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that arguably could 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.¹

(3) Drummond's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Drummond's counsel informed Drummond of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete hearing transcript. Drummond also was informed of his right to supplement his attorney's presentation. Drummond responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by

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).

Drummond's counsel as well as the issues raised by Drummond and has moved to affirm the Superior Court's judgment.

(4) Drummond raises several issues for this Court's consideration that may fairly be summarized as follows: a) the jury was biased in favor of the State's witnesses because they are State troopers; b) there was insufficient evidence presented at trial to support his convictions; c) an unidentified informant's failure to appear at trial violated his constitutional right of confrontation; d) the chain of custody of the physical evidence was broken; and e) the Superior Court imposed an excessive sentence.

(5) Prior to trial in this case, defense counsel filed a motion to compel the disclosure of a confidential informant. Following an in camera hearing before the Superior Court judge, the motion was denied. The grounds for the denial were that, while the informant was in the car when the drug transaction took place, he was not a direct participant in the transaction and any testimony he might give would not materially aid the defense.²

(6) The evidence presented at trial was as follows. Lance Skinner, a detective with the Delaware State Police, testified that he received an informant's tip, which led to the investigation of Drummond as a suspect in drug activity along Blueberry Lane, Frankford, Sussex County, Delaware.

² *Flowers v. State*, 316 A.2d 564 (Del. Super. 1973).

He testified that Drummond's nickname is "Reds." Shawn Wright, also a detective with the Delaware State Police, testified that, relying on information from Detective Skinner, including a photograph of Drummond, the police developed a plan for an undercover drug buy from Drummond.

(7) At about 5:30 p.m. on May 31, 2006, Detective Wright drove with Detective Skinner and an unidentified informant to Blueberry Lane, parked his car, made contact with Drummond, and arranged to purchase crack cocaine. Drummond got into the car and they drove to Drummond's cousin's house about a half-mile away where the transaction was completed. Drummond then was dropped off at another residence.

(8) The material obtained in the transaction, a plastic baggy containing a white, chunky substance, was field-tested by Detective Skinner, placed in an evidence bag for later testing, and given to Detective Wright. The package remained in Detective Wright's secured police vehicle while he engaged in a second drug operation. At approximately 2:00 a.m., Detective Wright dropped the evidence bag off at Troop 4 in Georgetown, Delaware, and placed it in the evidence locker.

(9) Detective Wright later viewed Drummond's photograph once again to confirm the identity of the individual from whom he had purchased the drugs. At trial, Wright identified Drummond as the individual from

whom the drugs were purchased. He testified that, sometime after the drug transaction, he learned that Drummond's nickname is "Reds."

(10) Farnam Daneshgar, a forensic chemist with the Office of the Chief Medical Examiner in Wilmington, Delaware, testified that the evidence bag was received in his office on June 16, 2006, and was properly sealed. He tested the contents of the bag and determined that it was crack cocaine.

(11) Drummond's first claim is that the jury was biased in favor of the State's witnesses because they are State troopers. Our review of the trial transcript provides no support for this conclusory allegation and we, therefore, conclude that it is without merit.

(12) Drummond's second claim is that there was insufficient evidence presented at trial to support his convictions. He also takes issue with the testimony of Detectives Skinner and Wright that his nickname is "Reds." Again, we find no support in the trial transcript for Drummond's claim of insufficiency of the evidence. It was for the jury to determine whether the testimony about the drug transaction was credible and what weight to assign the testimony concerning Drummond's nickname.³ Moreover, there is no question that a rational trier of fact, considering the

³ *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

evidence in the light most favorable to the prosecution, could have found the essential elements of the charges against Drummond beyond a reasonable doubt.⁴ Drummond's second claim is, therefore, without merit.

(13) Drummond's third claim is that his constitutional right of confrontation was violated when the unidentified informant did not appear to testify at trial. Drummond's constitutional right of confrontation is not implicated here. He had the opportunity to cross-examine both Detective Skinner and Detective Wright.⁵ The informant was not present at trial because the Superior Court had ruled at the *Flowers* hearing that the informant's testimony would not materially aid the defense because he/she was not in a position to offer exculpatory evidence. We find no error or abuse of discretion on the part of the Superior Court in so determining. On all of the above grounds, we conclude that Drummond's third claim is without merit.

(14) Drummond's fourth claim is that the chain of custody with respect to the drug evidence was broken when it remained in Detective Wright's car during a second drug operation until it was taken to the evidence locker at Troop 4. Detective Wright testified that his vehicle was secure and that the intact evidence bag was placed in the evidence locker.

⁴ *Poon v. State*, 880 A.2d 236, 238 (Del. 2005); Del. Code Ann. tit. 16, § 4751(a).

⁵ *Quintero v. State*, Del. Supr., No. 196, 2006, Holland, J. (Nov. 22, 2006).

The forensic chemist, in turn, testified that the evidence bag delivered to him was intact. In the absence of any evidence to support Drummond's fourth claim, we conclude that it is without merit.

(15) Drummond's fifth, and final, claim is that the sentence imposed by the Superior Court is excessive. Appellate review of a criminal sentence is limited to a determination of whether the sentence is within the statutory limits.⁶ Because Delivery of Cocaine is a Class C felony,⁷ Drummond faced a possible sentence of 15 years at Level V.⁸ As such, Drummond's sentence is within the statutory limits and his final claim is without merit.

(16) This Court has reviewed the record carefully and has concluded that Drummond's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Drummond's counsel has made a conscientious effort to examine the record and has properly determined that Drummond could not raise a meritorious claim in this appeal.

⁶ *Mayer v. State*, 604 A.2d 839, 842 (Del. 1992).

⁷ Del. Code Ann. tit. 16, § 4751(a).

⁸ Del. Code Ann. tit. 11, § 4205(b) (3).

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