

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY JEFFREY SIMS,	§	
	§	No. 80, 2007
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0512021058
	§	
Plaintiff Below-	§	
Appellee.	§	
	§	

Submitted: June 13, 2007
Decided: July 25, 2007

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

ORDER

This 25th day of July 2007, it appears to the Court that:

(1) Appellant Leroy Sims appeals his Superior Court convictions of Resisting Arrest, Tampering with Physical Evidence, Maintaining a Vehicle for keeping Controlled Substances and two counts of Possession of Cocaine. Sims argues that the State failed to present sufficient evidence to support his convictions. We find no merit to his argument and affirm.

(2) On December 31, 2005, Officers Fritz Feldmann and Joseph Wyka of the New Castle County Police Department noticed a suspicious vehicle parked with its lights off and motor running at the Spring Run Apartment complex. The officers approached the vehicle and saw two men sitting inside. Officer Feldmann went to the passenger's side and asked the passenger for his name. The passenger, later identified as Sims, indicated by pointing at a soda can that he could not answer because his mouth was full. Officer Feldmann allowed Sims a few seconds to swallow and respond, but when Sims refused, Officer Feldmann ordered him to open his mouth. Sims complied, and Officer Feldmann saw a "whitish liquid."

(3) The two men were then asked to exit the vehicle and were patted down for officer safety. During the pat down, Officer Feldmann felt, and subsequently removed, a small bag of white powder from Sims' pant pocket and placed it on the trunk of the vehicle. Officer Feldmann then turned away as another officer was arriving at the scene. When he looked back, the bag was gone. Officer Feldmann testified that his attention was diverted for no longer than a minute.

(4) Sims initially denied taking the bag, but then told the officers that he thought he was going to vomit. Sims proceeded to spit a white foamy substance on the ground and then admitted that he swallowed the contents of the bag: one-half

grams of cocaine. Officers Welch and Wyka also testified that Sims admitted to consuming one-half gram of cocaine.

(5) Officer Welch conducted a field test on the white foamy substance Sims had spit on the ground. Welch testified that it tested positive for cocaine. Welch, however, did not keep the reagent kit used to test the substance.

(6) Sims was indicted on February 6, 2006 and a jury trial began on September 7, 2006. The jury found Sims guilty of all charges except for Possession of Drug Paraphernalia. Sims moved for judgment of acquittal, but the motion was denied.

(7) Sims argues that the State failed to present sufficient evidence from which the jury could find him guilty beyond a reasonable doubt because it failed to show both when the cocaine was consumed and that the substance in the bag was indeed cocaine. We review challenges to the sufficiency of evidence to determine “whether a rational trier of fact, considering the evidence in the light most favorable to the prosecution, could find the essential elements of the offense beyond a reasonable doubt.”¹ In doing so, the Court does not distinguish between direct and circumstantial evidence.²

¹ *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

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

(8) This Court held in *Seward v. State*³ that scientific testing is not required to support a drug conviction. The Court explained, “[i]n view of the limitations that [requiring scientific evidence] would place on prosecutors, and in accordance with general evidentiary principles . . . the [State] may establish the identity of a drug through cumulative circumstantial evidence.”⁴ Thus, circumstantial evidence is sufficient to support such a conviction. “Under our process the trier of fact takes into consideration all of the circumstances surrounding an alleged crime to determine if there is sufficient evidence to support the conviction.”⁵

(9) The evidence, viewed in the light most favorable to the prosecution, showed that Sims consumed cocaine as the police approached his car. Sims had a “whitish liquid” in his mouth. In addition, Officer Feldmann found a small bag containing a white powder substance. That bag was packaged the same way cocaine is often packaged. That package quickly disappeared from the top of the truck when Officer Feldmann diverted his attention. Most damaging to Sims, however, is his confession, heard by three officers, that he consumed the contents of that bag, a half gram of cocaine, in order to avoid further trouble. Based upon

³ 723 A.2d 365 (Del. 1999).

⁴ *Id.* at 370 (quoting *United States v. Schrock*, 855 F.2d 327, 334 (1988)).

⁵ *Id.*

the evidence presented, a rational trier of fact could find the essential elements of each offense charged beyond a reasonable doubt.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely
Justice