

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KHALID HORNE, )  
 ) No. 363, 2002  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for New Castle County  
 )  
 STATE OF DELAWARE, ) Cr. ID. No. 0107022453  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: January 14, 2003  
Decided: February 5, 2003

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

***ORDER***

This 5<sup>th</sup> day of February 2003, upon consideration of the briefs of the parties it appears to the Court that:

1. In February 2002, a Superior Court jury convicted appellant, Khalid Horne of Trafficking in Cocaine,<sup>1</sup> Possession With the Intent to Deliver a Narcotic Schedule II Controlled Substance (cocaine),<sup>2</sup> Possession With Intent to Deliver a Non-Narcotic Schedule I Controlled Substance (MDMA, also known as “Ecstasy”),<sup>3</sup> Possession With Intent to Deliver a Non-Narcotic Schedule I

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<sup>1</sup> 16 Del. C. 4753A(a)(2)(a).

<sup>2</sup> 16 Del. C. § 4751.

<sup>3</sup> 16 Del. C. § 4752.

Controlled Substance (marijuana),<sup>4</sup> Possession of Drug Paraphernalia,<sup>5</sup> and Resisting Arrest.<sup>6</sup> In this appeal, Horne presents one claim: the evidence presented at trial was insufficient to establish that the cocaine weighed in excess of 5 grams.

2. The standard of review in assessing an insufficiency of evidence claim is 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.<sup>7</sup>

3. To be convicted of Trafficking in Cocaine, a defendant must have possessed five or more grams of a mixture containing cocaine. Horne argues that the trial judge erred because of failing to properly consider the margin of error of the scale used to weigh the drugs. The State chemist testified he weighed the cocaine on three separate occasions. Each time the cocaine mixture weighed 5.01 grams – just enough to receive the mandatory minimum of three years imprisonment. The State chemist also testified that: (i) the scale had a potential margin of error of 1% to 5%; (ii) the scale was working properly; and (iii) the scale is calibrated twice per year.

4. The trial judge concluded in a written order denying Horne’s motion for judgment of acquittal that “it was entirely unclear whether the “error rate” to which [the State chemist] referred represented the percentage of all the scale’s

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<sup>4</sup> 16 *Del. C.* § 4752.

<sup>5</sup> 16 *Del. C.* § 4771.

<sup>6</sup> 11 *Del. C.* § 1257.

<sup>7</sup> *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

readings which might be incorrect or the percentage or error (or variance) inherent in each individual reading. This was not clarified on cross-examination or otherwise.”<sup>8</sup> The trial judge further concluded that defense counsel explored various means to question the accuracy of the State chemist’s determination with respect to the weight of the cocaine during cross-examination and the jury was free to either accept or reject the chemist’s testimony.<sup>9</sup> We agree with the sound reasoning of the trial judge and conclude that there was sufficient evidence to support the jury’s conclusion that the cocaine mixture weighed in excess of 5 grams. Accordingly, the defendant’s appeal is without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>8</sup> *Horne v. State*, Del. Super., No. 0107022453, 2001, Slights, J. (March 4, 2001).

<sup>9</sup> *Id.*