

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 0420

STATE OF LOUISIANA

VERSUS

JAMES C. SYLVE, JR.

Judgment Rendered: September 15, 2006.

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 381276

Honorable Martin E. Coady, Judge Presiding

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Walter P. Reed
Covington, LA

Attorney for the State of Louisiana

Kathryn Landry
Baton Rouge, LA

Holli Herrle-Castillo
Marrero, LA

Attorney for Defendant/Appellant,
James C. Sylve, Jr.

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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Handwritten signatures of the attorneys listed in the case: Walter P. Reed, Kathryn Landry, and Holli Herrle-Castillo.

CARTER, C. J.

In the process of arresting the defendant, James C. Sylve, Jr., on outstanding warrants, the arresting officer conducted a protective search and discovered a clear glass tube that contained wire mesh and burned, white residue, in the defendant's pants pocket. Testing by the St. Tammany Parish Sheriff's Office Crime Laboratory confirmed that the residue in the tube was cocaine.

The defendant was charged by bill of information with possession of a schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967C. A jury found the defendant guilty as charged and the trial court sentenced the defendant to five years imprisonment at hard labor. After admitting the allegations of the habitual offender bill of information filed by the State, the defendant was adjudicated a third felony habitual offender. The trial court vacated the previous sentence and re-sentenced the defendant to nine years imprisonment at hard labor without the benefit of probation or suspension of sentence.

The defendant now appeals, arguing that the sole evidence in this case, a crack pipe containing cocaine residue, is insufficient to support a conviction for possession of cocaine. Specifically, he contends that the State failed to prove that he knowingly or intentionally possessed cocaine.

We have reviewed the record herein under the standard enunciated in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Under that standard, the appellate court must determine whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. **State v. Brown**, 03-0897 (La. 4/12/05), 907 So.2d 1, 18. Viewing the evidence in the light most favorable to the prosecution, we find the

evidence is sufficient to support the defendant's conviction for possession of cocaine.

The question of whether drug paraphernalia containing trace amounts of cocaine can sufficiently prove beyond a reasonable doubt that a defendant knowingly possessed cocaine was squarely addressed by the supreme court in **State v. Sylvia**, 01-1406 (La. 4/9/03), 845 So.2d 358. Therein, the supreme court determined that "[i]t was entirely reasonable for a jury to conclude that by the defendant's possessing an obviously used pipe he must have realized, in the ordinary course of human experience, that it was also reasonably certain that he was possessing the residue contained in that pipe and, therefore, possessing the cocaine." **State v. Sylvia**, 845 So.2d at 364. Thus, it was reasonable for the jury to reach the same conclusion in this case.¹

This court has additionally reviewed the record for patent error and found none. Accordingly, we affirm the defendant's conviction, as well as the habitual offender adjudication and sentence. This memorandum opinion is issued in compliance with URCA Rule 2-16.1.B.

**CONVICTION AFFIRMED; HABITUAL OFFENDER
ADJUDICATION AND SENTENCE AFFIRMED.**

¹ The defendant's arguments regarding the correctness of the **State v. Sylvia** opinion are better addressed to the Louisiana Supreme Court.