

IN THE COURT OF APPEALS OF IOWA

No. 6-735 / 05-1296
Filed December 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DERRICK LAMONT COLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Derrick Cole appeals his judgment and sentence for possession of simulated controlled substances with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VAITHESWARAN, J.

Derrick Lamont Cole appeals his judgment and sentence for two counts of possession of simulated controlled substances with intent to deliver. Iowa Code §§ 124.401(1)(c) (2003) (cocaine base), 124.401(1)(d) (marijuana). He raises (1) a challenge to the sufficiency of the evidence and (2) an ineffective assistance of counsel claim.

I. Sufficiency of the Evidence

Cole maintains the district court erred in denying his motion for judgment of acquittal. Specifically, he contends there was insufficient evidence to show that he intended to deliver the substances that he was charged with possessing. See *State v. Shanahan*, 712 N.W.2d 121, 134 (Iowa 2006) (setting forth standard of review).

The jury was instructed that, to find Cole guilty of the two crimes, the State would have to prove the following:

- (1) That on or about the 7th day of September, 2004, the defendant possessed a simulated controlled substance with the intent to deliver.
- (2) That the defendant knew that the substance he possessed was a simulated controlled substance.

A jury could have found the following facts. A Waterloo police officer received a report that a person matching the description of a robbery suspect was just seen in a store. The officer located the suspect, whom he recognized as Cole, talking to another individual near a car. Cole told the officer that he was speaking to his cousin. The person he was speaking to, however, said he did not know Cole and Cole was not his cousin. See *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) (“A

false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt and the false story is relevant to show that the defendant fabricated evidence to aid his defense.”). The person testified that Cole asked him whether he was “looking for anything.” He took this to mean that Cole was trying to sell him drugs. An officer experienced in investigating drug-related crimes testified that the question “are you looking for anything” is a way of soliciting interest in buying drugs. See *State v. Grant*, ___ N.W.2d ___, ___ (Iowa 2006) (“[I]n controlled-substance prosecutions opinion testimony by law enforcement personnel experienced in the area of buying and selling drugs may be offered as evidence for purposes of aiding the trier of fact in determining intent.”).

Cole consented to a search of his person. The officer discovered a plastic baggie in his pocket containing what looked like marijuana. There was testimony that the packaging was consistent with the way marijuana is normally sold on the streets. According to an officer it “would be referred to probably common in the street as a dime bag of marijuana.” See *id.* at ___ (“[T]he intent to deliver a controlled substance may be inferred from the manner of packaging drugs . . .”).

During the search, another plastic baggie fell out of Cole’s pocket. This baggie contained a white substance that the officer believed to be crack cocaine. There was testimony that dosage units of crack cocaine are normally packaged for sale in this fashion. *Id.*

Cole was arrested. In a videotaped statement, he told an officer that the drugs found on him were fake and he was selling them to support his drug habit.

A jury reasonably could have found from these facts that Cole intended to deliver the simulated substances he had in his possession. Accordingly, the district court did not err in denying Cole's motion for judgment of acquittal.

II. Ineffective Assistance of Counsel

Cole argues "combined errors of counsel in this case resulted in a speedy trial violation." He points to the untimely filing of a motion to suppress, the filing of "two frivolous motions" that were later withdrawn, and counsel's failure to move for a mistrial "when the court improperly continued the trial dates."

We preserve this claim for postconviction relief to "allow full development of the facts surrounding counsel's conduct." *State v. Stewart*, 691 N.W.2d 747, 750 (Iowa Ct. App. 2004).

AFFIRMED.