

IN THE COURT OF APPEALS OF IOWA

No. 6-897 / 05-1624
Filed December 13, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NICK JOSEPH CIPALE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals his conviction and sentence for possession of methamphetamine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury found Nick Cipale guilty of possession of methamphetamine with intent to deliver. On appeal, Cipale contends the State presented insufficient evidence of his specific intent to deliver the methamphetamine and, accordingly, the district court erred in denying his motion for judgment of acquittal.

In considering this argument, we must view the evidence in a light most favorable to the State. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). Viewed in this fashion, the jury could have found the following facts. Des Moines police officers had a woman under surveillance for possible drug activity. They saw a car pull up to the woman. A man, later identified as Cipale, approached her and engaged her in a short conversation. The officers observed something change hands. The exchange appeared to be consistent with a narcotics transaction. Cipale returned to the passenger side of his vehicle and the car left. Officers followed the car, stopped it, and seized \$402 from Cipale, 2.72 grams of crystal methamphetamine that he threw beneath the car, and some marijuana. Cipale admitted the drugs were his. One of the officers testified that the amount of methamphetamine found near Cipale was inconsistent with personal use.

A jury could have found from this evidence that Cipale had the specific intent to deliver the methamphetamine. While there was other evidence suggesting that the woman Cipale approached was the drug dealer and Cipale was simply the buyer, it was up to the jury to sort out this evidence. See *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). As there was substantial evidence to support the jury's finding that Cipale had the intent to deliver, we will not disturb that finding.

We affirm Cipale's judgment and sentence for possession of methamphetamine with intent to deliver.

AFFIRMED.