

**IN THE COURT OF APPEALS OF IOWA**

No. 7-397 / 06-0578  
Filed July 12, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ANTONIO VINCENT GRAY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark J. Smith,  
Judge.

Antonio Vincent Gray appeals from his convictions of possession of more than ten grams of cocaine base with intent to deliver, a drug tax stamp violation, and possession of marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, William E. Davis, County Attorney, and Robert E. Weinberg, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Antonio Vincent Gray appeals from the judgment and sentence entered by the district court after a jury returned verdicts finding him guilty of possession of more than ten grams of cocaine base with intent to deliver in violation of Iowa Code section 124.401(1)(b), a drug tax stamp violation under section 453B.12, and possession of marijuana in violation of section 124.401(5) (2005). Gray contends there was insufficient evidence to prove he was guilty of possession of more than ten grams of cocaine base with intent to deliver. We affirm.

***I. Background Facts & Proceedings***

Davenport Police Officers Shawn Roth and Geoffrey Peiffer were patrolling the downtown area of Davenport at approximately 8:00 p.m. on March 2, 2005, when they observed a vehicle with two occupants. Because the passenger in the vehicle was not wearing a seat belt, Officer Roth initiated a traffic stop. Officer Roth approached the driver's side of the vehicle while Officer Peiffer approached the passenger's side. Antonio Gray opened the driver's-side door, and Officer Roth immediately smelled a strong odor of burnt marijuana emanating from the vehicle. The officer removed Gray from the vehicle and patted him down, discovering \$3800 in cash and a \$50 money order in his front pockets. The officer then placed Gray in the back of the patrol car.

While standing outside of Gray's vehicle, Officer Peiffer observed a plastic bag of marijuana on the floorboard of the front driver's side of the vehicle. The officers discovered another plastic bag of marijuana and a crack pipe under the back seat of the patrol car after they had removed Gray from their vehicle for booking.

Gray provided the officers with conflicting stories in response to their questions regarding the source of the money. First, Gray told the officers the money came from an employer; however, he was unable to recall his employer's name. Gray then altered his story and told the officers the money came from his grandmother. The officers received information that Gray might be carrying contraband. At the jail, Gray was strip searched, and officers discovered a plastic bag containing sixteen grams of crack cocaine between his buttocks. Gray responded to the discovery of the drugs by offering to "work with" law enforcement officers. He told an officer that he could make individual purchases of at least an ounce of crack cocaine from his suppliers.

The State filed a trial information charging Gray with possession of more than ten grams of cocaine base with intent to deliver as a habitual offender (count I) <sup>1</sup>, a drug tax stamp violation (count II), and possession of marijuana (count III). On January 19, 2006, a jury returned guilty verdicts on all three counts. The court sentenced Gray to a term of imprisonment of thirty years on count I, fifteen years on count II, and six months on count III. The sentences were ordered to run concurrently, and fines of \$5000, \$1000, and \$250 plus surcharges were also assessed. Gray now appeals.

## ***II. Scope & Standards of Review***

We review Gray's claim that the record contains insufficient evidence to support his convictions for the correction of errors at law, and we will uphold the jury's verdict if substantial evidence supports it. *State v. Williams*, 695 N.W.2d

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<sup>1</sup> Gray stipulated to prior felony convictions of robbery, unlawful possession of a controlled substance, and obstructing justice.

23, 27 (Iowa 2005). Substantial evidence is defined as evidence that “could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt.” *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980). We consider all the evidence in the record, not just the evidence supporting guilt. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). We also consider legitimate inferences and presumptions that may reasonably be deduced from the evidence in the record, and we view the evidence in the light most favorable to the State. *Id.* Circumstantial and direct evidence are equally probative. Iowa R. App. P. 6.14(6)(p).

### **III. Discussion**

Gray argues the State failed to prove beyond a reasonable doubt that he possessed the crack cocaine with the intent to deliver. He maintains that because there were no scales, packaging materials, drug notes, weapons, or other items normally associated with drug dealers in his vehicle, he was a drug user rather than a drug dealer. Gray contends the discovery of the crack pipe in the patrol car supports his contention that he intended to use the drugs discovered on his person. Gray also notes there was no trial testimony that he delivered crack to anyone, and while he was cooperating with the police, he provided the names of several drug suppliers, but no drug buyers.

In order to prove Gray possessed crack cocaine with the intent to deliver as defined in jury instruction eleven, the State had to establish:

1. On or about the 2<sup>nd</sup> day of March, 2005, the defendant knowingly possessed crack cocaine.
2. The defendant knew that the substance he possessed was crack cocaine.

3. The defendant possessed the substance with the intent to deliver a controlled substance.

Gray concedes he had possession of the crack cocaine, but he challenges the sufficiency of the evidence supporting the intent to deliver element of the charge. Evidence of intent is rarely capable of direct proof. *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982). Proof of intent usually arises from circumstantial evidence and inferences that are drawn from that evidence. *State v. Adams*, 554 N.W.2d 686, 692 (Iowa 1996). The quantity and packaging of a controlled substance may indicate an intent to deliver. *State v. See*, 532 N.W.2d 166, 169 (Iowa Ct. App. 1995).

Davenport Police Sergeant Kevin Smull, who had worked for the department for eleven years and had extensive training and experience with drug trafficking, testified crack cocaine is generally sold in twenty-dollar or fifty-dollar rocks. According to Smull, the twenty-dollar rocks generally weigh between one-tenth and two tenths of a gram, and the fifty-dollar rocks generally weigh between three-tenths and one-half of a gram. Sergeant Smull testified users usually possess only one or two twenty-dollar or fifty-dollar rocks. The sergeant also said it is rare for a user to purchase even one or two grams of crack cocaine. Sergeant Smull explained that experienced dealers do not need a scale to sell crack cocaine because they are able to pinch off fairly accurate amounts with their fingers. Based on his training and experience, the sergeant concluded that possession of crack cocaine weighing sixteen grams together with \$3850 in increments of twenty \$100 bills, thirteen \$50 bills, fifty-six \$20 bills, one \$10 bill, two \$5 bills, and ten \$1 bills indicated an intent to distribute rather than an intent

to hold the drugs for personal use.<sup>2</sup> As we have already mentioned, Gray gave conflicting stories to explain the source of the money found in his pocket.

Davenport Police Corporal Michael Parker testified that Gray's offers to assist law enforcement with undercover drug purchases by purchasing one ounce of crack cocaine at a time indicated Gray was a drug dealer. Corporal Parker explained the amounts Gray offered to buy were much larger than a user would generally purchase, and they were indicative of a drug dealer.

Upon our review of all the evidence presented at trial, we conclude the jury could have rationally concluded Gray possessed crack cocaine with the intent to deliver. The officers' expert testimony regarding the significance of the amount of cocaine found on Gray, the amount and denominations of the money found on the defendant, Gray's inconsistent explanations for the source of the money, and Gray's obvious familiarity with crack dealers support the jury's verdict. We conclude there was substantial evidence to support Gray's convictions.

#### **IV. Conclusion**

Because we find sufficient evidence supports the jury's conclusion that Gray possessed crack cocaine with the intent to deliver, we affirm his convictions.

**AFFIRMED.**

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<sup>2</sup> See *State v. Grant*, 722 N.W.2d 645, 648 (Iowa 2006) (holding testimony by law enforcement officers who are experienced in drug trafficking may be offered as evidence for the purpose of aiding the trier of fact to determine intent).