

**IN THE COURT OF APPEALS OF IOWA**

No. 9-373 / 08-0709  
Filed June 17, 2009

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

**vs.**

**JAVERIOUS TAVON HENDERSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Javerious Henderson appeals his conviction for possession of cocaine base with intent to deliver. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Bradley Walz, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**DOYLE, J.**

Javerious Henderson appeals his conviction for possession of cocaine base with intent to deliver. He contends there was insufficient evidence to support his conviction. We affirm.

***I. Background Facts and Proceedings.***

Shortly after midnight on January 9, 2008, Waterloo Police Officers Ritter and McGeough stopped a minivan with a broken tail light. Officer Ritter went to the driver's side front window and Officer McGeough went to the passenger's side front window. When the windows of the van were rolled down, the officers smelled a strong odor of marijuana coming from inside. Henderson was the driver of the van, and three passengers were with him. Officer McGeough observed that the top of Henderson's pants were pulled down below his thighs and almost all of his boxer shorts were exposed. Officer McGeough testified that in his experience, the state of Henderson's pants indicated the possible concealment of drugs. The officers then requested backup.

Officer Bovy arrived shortly thereafter and asked Henderson to step out of the van. Officer Bovy patted Henderson down and shook the legs of his pants. An object fell out of Henderson's right pant leg. Henderson moved his foot over the object in an attempt to conceal it, and the officers restrained him. Officer Bovy picked up the object, and observed it was a small plastic bag appearing to contain individually wrapped crack cocaine rocks. Officer McGeough observed there were more than ten wrapped rocks in the small plastic bag.

The officers searched the van and did not find any devices or paraphernalia used for smoking crack cocaine rocks or any other indications that

crack cocaine had been or was to be personally used. Additionally, no scales for weighing the crack cocaine rocks were found in the van.

Henderson was transported to the police station and strip searched. Nine dollars were found in his left sock, and a wrapped crack cocaine rock was found in his left shoe. Nothing further was found on Henderson's person.

The plastic bag that had fallen from Henderson's pants at the scene was sent to the Iowa Department of Criminal Investigations (DCI) for testing. The DCI determined the plastic bag contained sixteen wrapped rocks of cocaine base (crack cocaine). The net weight of each of the rocks was 0.05 to 0.12 grams.

On January 18, 2008, Henderson was charged by trial information with, among other things, possession of cocaine case with the intent to deliver in violation of Iowa Code section 124.401(1)(c) (2007). At trial, Officers McGeough and Bovy both testified that in their experience, the number of crack cocaine rocks found on Henderson was not consistent with personal use of the drug. Officer McGeough testified that based upon his experience and training, generally people who personally use crack buy a rock or two and smoke it up right away, and that very small amounts of crack cocaine are found upon persons who personally use crack cocaine. Officer Bovy also testified that the way the crack cocaine rocks were packaged in the plastic bag was the common way of packaging drugs for sale. Officer Galbraith, a Waterloo police officer assigned to the Tri-County Drug Enforcement Task Force, testified that the packaging of the rocks in the small plastic bag from Henderson's pants was consistent with crack cocaine that was packaged for sale and distribution. Officer Galbraith testified that street value of the rocks was approximately \$160—\$10 per rock. Officer

Galbraith testified that although the rocks found in the plastic bag were smaller dosage units of crack cocaine, it was his opinion the rocks were for sale and distribution and not for personal use, and testified he believed his opinion was further substantiated by the fact that there were no smoking devices found on Henderson or in the vehicle. The jury ultimately found Henderson guilty of possession with intent to deliver.

Henderson now appeals.

### ***II. Scope and Standard of Review.***

We review challenges to the sufficiency of the evidence for errors at law. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). We will uphold a verdict if substantial evidence supports it. *Id.* Evidence is considered substantial if it would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *Id.* We review the evidence, including legitimate inferences and presumptions that may fairly be deduced from the evidence, in the light most favorable to the State. *Id.* The State has the burden to prove every fact necessary to constitute the crimes with which the defendant is charged. *Id.* The evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *Id.*

### ***III. Discussion.***

On appeal, Henderson argues there was insufficient evidence to convict him of possession with intent to deliver. Henderson points out that he was not in possession of substantial amounts of currency, there had been no controlled buys and no items associated with drug sales were found, and the total amount of crack cocaine found was only 0.68 grams, a small amount. The State

counters that error was not preserved. We will bypass the State's error preservation concerns and proceed to the merits. *State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

Because it is difficult to prove intent by direct evidence, proof of intent usually consists of circumstantial evidence and the inferences that can be drawn from that evidence. We have also recognized that in 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. . . . We have also recognized that the intent to deliver a controlled substance may be inferred from the manner of packaging drugs, large amounts of unexplained cash, and the quantity of drugs possessed.

*State v. Grant*, 722 N.W.2d 645, 647-48 (Iowa 2006) (citations and quotations omitted).

Here, Henderson was found in possession of a large quantity of crack cocaine rocks, and no devices for his personal use of the drug were found on his person or in the van. These facts, coupled with the packaging of the drugs and the expert testimony of experienced police officers, were sufficient evidence for a reasonable fact finder to conclude Henderson possessed the drugs with the intent to deliver them. See *id.* at 648. We therefore conclude substantial evidence supports the jury's finding that Henderson possessed the drugs with the intent to deliver them in violation of Iowa Code section 124.401(1)(c). Accordingly, we affirm Henderson's conviction.

**AFFIRMED.**