IN THE COURT OF APPEALS OF IOWA

No. 6-533 / 95-1845

STATE OF IOWA,

Appellee,

vs.

JOHNNEY NOOTENBOOM,

Appellant.

FILED
SEP 30 1996
CLERK SUPREME COURT

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

Johnney Nootenboom appeals from his conviction, following a jury trial, for possession of crack cocaine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Dan Voogt and Nan Horvat, Assistant County Attorneys. for appellee.

Considered by Habhab, P.J., Huitink, and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant claiming his conviction for possession of crack cocaine with intent to deliver should be overturned. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On January 13, 1995, police officers stopped a car driven by Johnney Nootenboom. As Nootenboom was exiting the car, officer Daniel Good of the Des Moines Police Department saw a baggie on the driver's seat. Later testing showed the substance in the baggie was 4.96 grams of crack cocaine. Nootenboom was charged with possession of crack cocaine with intent to deliver, in violation of Iowa Code section 124.401(1)(c).

At the trial, officer Michael Moody testified the amount of crack cocaine in the baggie was more than that normally held by a user. Also, the size and number of rocks of crack cocaine were consistent with possession for sale. Nootenboom argued the drugs belonged to Ronzel Brown, who was a passenger in the car and who owned the car. Nootenboom was convicted of the crime charged. He now appeals.

I. Nootenboom first claims there was insufficient evidence he was in possession of the crack cocaine. On appellate review, we will uphold the verdict if there is substantial evidence to support it. *State v. Conyers*, 506 N.W.2d 442, 444 (Iowa 1993). We find there was substantial evidence Nootenboom was in possession of the illegal drugs. The drugs were found on the driver's seat, where Nootenboom

had just been sitting. Officer Good saw Nootenboom exit the car and he stated he would have seen if anyone had thrown something onto the driver's seat.

II. Nootenboom also claims there was insufficient evidence he possessed the crack cocaine with the intent to deliver. Intent to deliver may be inferred from the quantity of the substance and from the manner in which the substance is wrapped or packaged. *State v. Ramirez*, 485 N.W.2d 857, 860 (Iowa App. 1992). Here, the State presented expert testimony from officer Moody that the quantity of crack cocaine was inconsistent with personal use. Also, the manner in which it was packaged was consistent with sales. We conclude there was sufficient evidence Nootenboom possessed the drugs with an intent to deliver.

III. Nootenboom contends he received ineffective assistance of trial counsel because his counsel failed to tell him that the charge he faced was a class C felony with a possible punishment of ten years' imprisonment. The trial information provided the charge was a class D felony. We find there is insufficient record to address this issue, and we determine it should be preserved for postconviction proceedings.

We affirm defendant's conviction for possession of crack cocaine with intent to deliver. Costs of this appeal are assessed to defendant.

AFFIRMED.