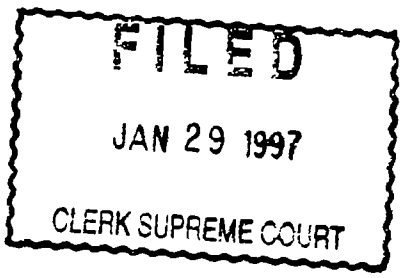
IN THE COURT OF APPEALS OF IOWA 000405

No. 6-631 / 95-2186



ATE OF IOWA,
Appellant,

ITHONY GARDNER,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. ;ler, Judge.

Defendant appeals his convictions for possession with intent to deliver a ulated controlled substance in violation of Iowa Code sections 124.401(1)(c), .411 (1995), failure to affix a drug tax stamp in violation of section 453B.12, and rference with official acts in violation of section 719.1. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, mas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County rney, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

I. Background facts. On July 27, 1995, an arrest warrant was outstanding for defendant, Anthony Gardner. After being informed by a confidential informant that defendant was mowing his lawn, two police officers were dispatched to defendant's home. When defendant observed one of the officers coming out of his vehicle, defendant ran. The officer caught up to the defendant, they wrestled, and defendant was arrested.

While defendant was being booked on the outstanding arrest warrant, a film canister was found in his sweatpants. The canister contained thirteen rock-like items, appearing to be a cocaine-based substance. Subsequent testing revealed the substance was soap. Defendant was charged with possession with intent to deliver a simulated controlled substance, failure to affix a drug tax stamp, and interference with official acts.

Defendant's case was tried to the court and his motion for directed verdict was denied. The court found him guilty on all three counts. Defendant then filed combined motions in arrest of judgment and for a new trial. The motions were denied during defendant's sentencing hearing on December 5, 1995.

Defendant appeals.

II. Sufficiency of the evidence. On appeal, defendant contends there was insufficient evidence to prove he expressly or impliedly represented the substance found on his person was a controlled substance. Our scope of review on a sufficiency

of evidence challenge is whether the verdict was supported by substantial evidence wherein a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980); *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994).

The defendant alleges the State did not sufficiently prove that he possessed the simulated controlled substance with the intent to deliver in violation of Iowa Code sections 124.401(1)(c) and 124.401(25) (1995). The elements of this offense are:

> 1. Defendant knowingly possessed a substance that was not a controlled substance;
>
> 2. Defendant possessed the substance with the specific intent to deliver it;
>
> 3. Defendant either:
>
> > (a) expressly represented the substance as a controlled substance; or
> >
> > (b) impliedly represented the substance as a controlled substance and the substance, because of its nature, packaging or appearance, would lead a reasonable person to believe it to be a controlled substance.

See State v. Henderson, 478 N.W.2d 626, 629-30 (Iowa 1991).

Defendant argues the State presented no evidence of the defendant's representations under either option of the third element. In reviewing the record, we find that the State presented substantial evidence. Nine of the thirteen rock-like substances were individually packaged in tied off ends of plastic baggies. Intent to deliver may be inferred from the manner in which the substance is wrapped and

packaged. *State v. Ramirez*, 485 N.W.2d 857, 860 (Iowa App. 1992). We find that this evidence "could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." *Robinson*, 288 N.W.2d at 339.

III. Admission of evidence. Defendant also argues the trial court erred in admitting evidence of his conviction in April 1991 for delivery of crack cocaine. He contends admission of this prior bad act was prohibited under Iowa R. Evid. 404(b), was irrelevant to any material issue at trial, and its prejudicial effect substantially outweighed any probative value. Our scope of review is for errors at law; we will overturn the trial court's judgment only if it abused its discretion. *State v. Webb*, 309 N.W.2d 404, 411 (Iowa 1981); *State v. Holland*, 389 N.W.2d 375, 382 (Iowa 1986). We find that evidence of defendant's prior conviction was properly admitted by the trial court under the exceptions to Iowa Rule of Evidence 404(b). The evidence of defendant's prior arrest was relevant to show defendant intended to deliver the substance, had knowledge of packaging a controlled substance, and did not possess the substance because of mistake or accident. We further find that the defendant was not unfairly prejudiced. There was less danger of prejudice associated with the admission of this evidence since the case was tried to the court and not to a jury. *State v. Casady*, 491 N.W.2d 782, 786 (Iowa 1992). The court did not abuse its discretion and we accordingly affirm.

AFFIRMED.