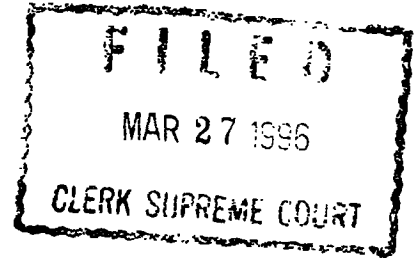


IN THE COURT OF APPEALS OF IOWA

No. 6-035 / 95-0789



STATE OF IOWA,

Appellee,

000313

vs.

TERRANCE L. LEVANT,

Appellant.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge.

Defendant appeals judgment and sentence, following jury trial, entered upon his conviction of possession of cocaine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland and Angelina M. Smith, Assistant Attorneys General, William E. Davis, County Attorney, and H.J. Pries, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., Huitink, J., and McCartney, S.J.*

*Senior judge from the second judicial district serving on this court by order of the Iowa Supreme Court.

HUITINK, J.

Terrance Levant appeals judgment and sentence, following jury trial, entered upon his conviction of possession of cocaine with intent to deliver. We affirm.

Terrance Levant was walking down a Davenport street in the early morning hours of December 18, 1994, when he was stopped by a Davenport police officer responding to a disturbance call from someone in the area. While patting Levant down, the officer felt a hard object near Levant's crotch. Levant told the officer the object was crack cocaine. The officer then arrested Levant and took him to the police station where he was searched. The search revealed Levant was storing four plastic bags in his underwear containing .80 grams of cocaine base, .64 grams of cocaine salt, and a small amount of marijuana.

Levant was charged with possession of marijuana and possession of cocaine with intent to deliver. At trial, an experienced narcotics officer testified that a typical user would not possess the amount of cocaine found on Levant and that the quantity and packaging of the drugs were consistent with drug-dealing. Levant, however, denied his intent to deliver the cocaine, claiming that the drugs found on him were solely for his personal use. Levant's girlfriend also testified that while Levant had a drug problem, he did not deal drugs and used money she had given him to purchase the cocaine in his possession at the time of his arrest.

At the close of the evidence, Levant moved for a judgment of acquittal alleging the evidence of his intent to deliver the cocaine was insufficient to submit this offense to the jury. The district court denied the motion, and the jury convicted Levant of both the marijuana charge and the cocaine charge. Levant appeals his conviction of possession of cocaine with intent to deliver.

Our review is for correction of errors of law. Iowa R. App. P. 4. Denial of a motion for judgment of acquittal is proper if there is substantial evidence in the record to support the charge. *State v. Weaver*, 405 N.W.2d 852, 853 (Iowa 1987). Substantial evidence is evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). This evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). When reviewing the district court's ruling on a motion for judgment of acquittal, we consider all of the evidence in the light most favorable to the State. Iowa R. App. P. 14(f)(2).

On appeal, Levant contends the district court erred in refusing his motion for judgment of acquittal. He claims the evidence that he intended to deliver the cocaine found on him was insufficient to generate a jury question. We disagree.

Intent to deliver narcotics may be proven by either direct or circumstantial evidence. *State v. Boyd*, 224 N.W.2d 609, 612 (Iowa 1974). Relevant considerations include the quantity of the substance, the manner of packaging, the presence of

weighing devices, and the existence of other paraphernalia commonly used in drug dealing. *State v. Simpson*, 528 N.W.2d 627, 633 (Iowa 1995); *State v. Luter*, 346 N.W.2d 802, 809 (Iowa 1984). While quantity alone is rarely sufficient to support a finding of intent to deliver narcotics, other circumstances coupled with quantity are sufficient support for such a finding. *See State v. Birkestrand*, 239 N.W.2d 353, 362 (Iowa 1976).

Here, Levant was in possession of four separate plastic bags containing narcotics, three of which held cocaine. One bag contained the equivalent of four to eight single doses of crack cocaine while two others contained powder cocaine weighing .36 grams and .28 grams respectively. At trial, the State presented evidence that cocaine in this quantity was more consistent with drug-dealing than mere personal use. Specifically, a State's expert witness testified that the typical user only possesses one rock of crack cocaine at one time while dealers typically carry between three to five rocks. Moreover, because the powder cocaine was packaged in two separate plastic bags containing sellable quarter-gram units, the jury could reasonably infer that Levant had packaged the drugs for distribution. Finally, the record indicates Levant was not under the influence of cocaine at the time of his arrest.

We find the quantity and packaging of the drugs found on Levant, along with his condition at the time of the arrest, provided sufficient evidence to create a jury

question on the possession with intent to deliver charge. The district court did not err in denying Levant's motion for judgment of acquittal. We affirm.

AFFIRMED.