

IN THE COURT OF APPEALS OF IOWA

No. 9-767 / 09-0463
Filed October 21, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

NAPOLEAN HARTSFIELD,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Judge.

Napolean Hartsfield appeals the district court's dismissal of his request for DNA testing of evidence from his 2002 conviction for possession with intent to deliver. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa Wilson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, and Michael Walton and Connie Ricklefs, County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

Napolean Hartsfield appeals the district court's dismissal of his pro se motion requesting DNA testing of evidence from his 2002 conviction for possession of crack cocaine with intent to deliver. He contends the record indicates the rocks of crack cocaine were wet with saliva, which could be tested for DNA pursuant to Iowa Code section 81.10 (2009) (allowing DNA profiling after conviction).

Upon our review, we find no error in the district court's dismissal of Hartsfield's motion for DNA testing. The record contains overwhelming evidence supporting Hartsfield's conviction in this case, including testimony from the arresting officer that Hartsfield admitted at the time of his arrest that the drugs were his, that he was just getting ready to smoke the crack with his girlfriend in a motel, and that the rocks of crack cocaine were wet because they had been in his mouth.¹ Iowa Code § 81.10(7)(e)²; see also Iowa Code § 81.10(2)(f). We further note that although we ultimately agree with the district court's conclusion, we make this ruling upon our specific conclusion that the requirement under section 81.10(7)(e) was not met. We affirm.

AFFIRMED.

¹ The State further notes that Hartsfield has previously refused DNA testing out of "apparent concern" that it would incriminate him in other crimes. See *Hartsfield v. Iowa Dist. Ct.*, No. 08-0562 (Iowa Ct. App. June 17, 2009) (upholding district court order finding Hartsfield in contempt of court for not providing oral swab for DNA databanking). The State argues Hartsfield is now trying to "game" the system by attempting to use DNA testing to his benefit in order to re-try the instant case with regard to his conviction for possession with intent to deliver.

² Under section 81.10, a motion requesting DNA profiling should not be granted unless the court determines the following factor (as well as several others) are applicable:

e. DNA analysis of the evidence would raise a reasonable probability that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction.