

IN THE COURT OF APPEALS OF IOWA

No. 2-795 / 11-1610
Filed October 31, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TOMMY DEAN SANDERS JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Paul R. Huscher,
Judge.

Tommy Dean Sanders appeals his convictions for conspiracy to manufacture methamphetamine, manufacturing methamphetamine, possession of a precursor (lithium), and possession of a precursor (ephedrine). **AFFIRMED.**

Colin McCormack of Van Cleef & McCormack Law Firm, L.L.P., Des Moines, for appellant.

Tommy Sanders, Newton, appellant pro se.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Michael K. Jacobsen, County Attorney, and Scott Nicholson, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Tommy Dean Sanders appeals his convictions for conspiracy to manufacture methamphetamine, manufacturing methamphetamine, possession of a precursor (lithium), and possession of a precursor (ephedrine). He contends there was insufficient evidence to support his convictions for conspiracy to manufacture methamphetamine, possession of a precursor (lithium), and possession of a precursor (ephedrine). Because Sanders failed to preserve his sufficiency-of-the-evidence claim on the conspiracy charge and the possession of a precursor (ephedrine) charge, and substantial evidence supports the jury's verdict of guilt on the possession of a precursor (lithium) charge, we affirm.

I. Background Facts and Proceedings.

On April 22, 2011, an officer investigating another matter discovered Tommy Sanders in his bedroom in a house that contained many supplies used for the manufacture of methamphetamine. The items found in his room included water packs removed from instant cold packs, lithium batteries and peelings from lithium batteries, coffee filters, empty pseudoephedrine packaging, an unopened package of pseudoephedrine, pickling salt, lantern fuel, camp fuel, and bottles with holes cut in the caps. An investigation revealed that Sanders signed for and purchased a box of generic pseudoephedrine at Wal-Mart on April 20, 2011.

Sanders was charged with conspiracy to manufacture methamphetamine and/or manufacturing methamphetamine,¹ making available ephedrine with intent

¹ The charges alleging violations of Iowa Code sections 124.401(1) and 124.413 (2011).

to use as a precursor,² and making available lithium with intent to use as a precursor.³

At trial officers testified the items found indicated that methamphetamine manufacturing occurred, and that the materials found were sufficient to produce more methamphetamine. Gene Lund, the owner of the home and housemate of Sanders, testified he purchased one of the two packages of pseudoephedrine with money Sanders gave him as part of an agreement to allow Sanders and a third man to manufacture methamphetamine in his home. Lund testified that Sanders also purchased camp fuel on April 20, 2011. A receipt established that Sanders purchased coffee filters that same night.

Lund further testified that Sanders and the other man proceeded to manufacture methamphetamine in his living room. He described Sanders crushing pseudoephedrine pills in a plastic bag, cutting open an instant cold pack to retrieve ammonium nitrate, and cutting open multiple lithium batteries. Sanders and the other man combined the ingredients in a bottle and took turns shaking it before pouring the liquid through a coffee filter. All three men then smoked the resulting methamphetamine product.

After a trial by jury, Sanders was convicted on all counts. On appeal, Sanders contends there was insufficient evidence to support his convictions.

² This charge alleges a violation of section 124.401(4)(a).

³ This charge alleges a violation of section 124.401(f). Additional charges against Sanders are not relevant to this appeal.

II. Standard of Review.

We review challenges to the sufficiency of evidence for errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We review the evidence in the light most favorable to the State, including all reasonable inferences that may be deduced from the record, to determine whether the finding of guilt is supported by substantial evidence. *Id.* Evidence is substantial if it would convince a rational fact-finder of the defendant's guilt beyond a reasonable doubt. *Id.* "In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct." *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

III. Discussion.

A. *Conspiracy to manufacture methamphetamine.*

On appeal, Sanders argues the record lacks substantial evidence to support his conviction of conspiracy to manufacture methamphetamine. He specifically urges that he was convicted on the basis of accomplice testimony without corroborating evidence.

Sanders' counsel made a motion in arrest of judgment at the close of the State's case with respect to the manufacturing charge. He stated

I would make a motion in arrest of judgment at this time or for a directed verdict as to count I, conspiracy to manufacture methamphetamine and/or manufacture methamphetamine. I think the evidence from the lab technician shows that he couldn't say whether any manufacturing of methamphetamine took place. There might have been an attempt, which would probably be conspiracy to manufacture, but I would ask for a directed verdict on the manufacturing part.

Sanders re-asserted that argument at the close of his case. There was no mention of insufficient evidence to support the conspiracy charge or accomplice corroboration. Sanders' motion was denied. He made no motion for enlargement of the court's findings. Because we do not consider issues raised for the first time on appeal, Sanders has failed to preserve this claim for our review. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Sanders also claims he preserved error by filing a notice of appeal. However, “[w]hile this is a common statement in briefs, it is erroneous, for the notice of appeal has nothing to do with error preservation.” Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (Fall 2006) (internal footnote omitted) (explaining that “[a]s a general rule, the error preservation rules require a party to raise an issue in the trial court and obtain a ruling from the trial court”).

B. Possession of a precursor (ephedrine).

On appeal, Sanders argues the record lacks substantial evidence to support his conviction of possession of a precursor (ephedrine). While Sanders' counsel made a motion for judgment of acquittal as to the charge, he did not assert a challenge to the issue of possession of ephedrine. Because the claim made here was not made in his motion for judgment of acquittal, it was not preserved for our review. *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004) (“To preserve error on a claim of insufficient evidence for appellate review

in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal.”).

C. Possession of a precursor (lithium).

Finally, Sanders argues the record lacks substantial evidence to support his conviction of possession of a precursor (lithium).

In order to prove unlawful possession of a precursor product with the intent to manufacture methamphetamine, the State must prove beyond a reasonable doubt: (1) the person exercised dominion and control over the precursor product, (2) the person had knowledge of the precursor product’s presence and nature, and (3) the person possessed the precursor product with the intent that the product be used to manufacture methamphetamine. . . . Actual possession may be shown by direct or circumstantial evidence.

State v. Vance, 790 N.W.2d 775, 784 (Iowa 2010) (citations omitted).

Gene Lund testified that Sanders handled the lithium batteries and cut them open in the process of manufacturing methamphetamine. Police found peeled-open batteries in the area where Lund testified Sanders manipulated them. Thus, both direct and circumstantial evidence supports the jury’s conclusion that Sanders had direct physical control over the lithium batteries, with knowledge of the nature of the lithium and intent that the product be used to manufacture methamphetamine.

IV. Conclusion.

Sanders failed to preserve his claims of insufficient evidence to support his convictions for conspiracy to manufacture methamphetamine and possession of a precursor (ephedrine). Substantial evidence supports Sanders’ conviction for possession of a precursor (lithium).

AFFIRMED.