

**IN THE COURT OF APPEALS OF IOWA**

No. 7-232 / 06-0986  
Filed April 25, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DENISE DEE GANDER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Jon Fister and  
Monica Ackley, Judges.

Denise Gander appeals from the sentence imposed following the entry of  
her guilty pleas to the crimes of conspiracy to manufacture methamphetamine  
and two counts of possession of a precursor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, Thomas J. Ferguson, County Attorney, Joel Dalrymple and Jack  
Lammers, Assistant County Attorneys, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**BAKER, J.**

Denise Gander appeals from the judgment entered following her guilty pleas to the crimes of conspiracy to manufacture methamphetamine and possession of ephedrine and lithium. We affirm.

**I. Background and Facts**

On April 23, 2004, Waterloo police officers were called to a local motel in connection with suspected drug activity. Police gained entry to a motel room and seized pills and paraphernalia associated with the manufacture of methamphetamine. Denise Gander was present in the room. She admitted involvement in manufacturing methamphetamine.

On April 30, 2004, the State charged Gander with conspiracy to manufacture more than five grams of methamphetamine in violation of Iowa Code section 124.401(1)(b) (2003), possession of ephedrine and/or pseudoephedrine in violation of section 124.401(4), and possession of lithium in violation of section 124.401(4). On December 16, 2005, Gander entered a plea of guilty to conspiracy to manufacture less than five grams of methamphetamine in violation of section 124.401(1)(c) and two counts of possession of ephedrine and lithium in violation of section 124.401(4). The trial court imposed sentences of ten, five, and five years, then suspended the sentences in full and placed Gander on probation for two to five years. Gander appeals.

**II. Merits**

Gander contends the district court erred in entering judgment and sentence for both conspiracy to manufacture methamphetamine and possession of ephedrine and lithium. This issue involves statutory interpretation. Review of

the district court's interpretation of a statute is for errors at law. Iowa R. App. P. 6.4; *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000). "Our ultimate goal is to determine legislative intent." *State v. Smothers*, 590 N.W.2d 721, 722 (Iowa 1999). An illegal sentence may be raised at any time. Iowa R. Crim. P. 2.24(5); *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000).

Gander contends that, because possession of ephedrine and lithium are public offenses which might be committed pursuant to a conspiracy to manufacture methamphetamine, she cannot be convicted and sentenced for both the conspiracy and the public offenses. Gander argues that the conspiracy should be merged with the possession counts or, in the alternative, the possession counts should be merged into the conspiracy.

The State contends that, "to require a merger, the object offense of the conspiracy and the substantive offense of which the defendant is convicted must be the *same* offense." The State argues that offenses that constitute overt acts of the same conspiracy do not merge.

Gander's claim of merger raises an issue of statutory construction. "Statutory construction is properly invoked when a statute contains such ambiguities or obscurities that reasonable minds may disagree or be uncertain as to their meaning." *State v. O'Malley*, 593 N.W.2d 517, 518 (Iowa 1999) (quoting *State v. Schlemme*, 301 N.W.2d 721, 723 (Iowa 1981)). The ultimate goal is "a reasonable interpretation and construction which will best effect the purpose of the statute, seeking to avoid absurd results." *State v. Link*, 341 N.W.2d 738, 740 (Iowa 1983).

“A conspiracy to commit a public offense is an offense separate and distinct from any public offense which might be committed pursuant to such conspiracy.” Iowa Code § 706.4. “A person may not be convicted and sentenced for both the conspiracy and for the public offense.” *State v. Smith*, 476 N.W.2d 86, 91 (Iowa Ct. App. 1991). We have previously held that, when it enacted section 706.4, “the legislature at least implicitly assumed that the public offense of which the defendant was convicted would be the same public offense of which the defendant had been convicted of conspiring to commit.” *Id.*

Gander was convicted of conspiracy to manufacture methamphetamine and possession of precursors - ephedrine and lithium. The public offenses of which Gander was convicted were not the same public offenses of which she was convicted of conspiring to commit. Moreover, possession of a precursor is not a lesser-included offense of conspiracy to manufacture methamphetamine. See *State v. Finnel*, 515 N.W.2d 41, 43 (Iowa 1994) (holding lesser offense is only included in greater offense if it is impossible to commit the greater offense without also committing the lesser offense).

Iowa Code section 706.4 is inapplicable because possession of precursors is not the offense underlying a conviction of conspiracy to manufacture methamphetamine. See *Smith*, 476 N.W.2d at 91 (holding convictions do not merge pursuant to section 706.4 where offense conspired to commit is not the same as offense committed). Although possession of ephedrine and lithium are public offenses which might be committed pursuant to a conspiracy to manufacture methamphetamine, possession of precursors is not

necessary to the offense of manufacturing methamphetamine. Section 706.4 does not apply to Gander's convictions and sentences.

We have carefully considered all issues raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the trial court is affirmed.

**AFFIRMED.**