

IN THE COURT OF APPEALS OF IOWA

No. 9-1019 / 09-0874
Filed December 30, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEREMY LEE McATEE,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Jeremy Lee McAtee appeals his convictions for violating pseudoephedrine purchasing restrictions and for possessing pseudoephedrine with intent that it be used to manufacture a controlled substance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Harold Denton, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Jeremy Lee McAtee appeals his convictions following a bench trial for violating the restrictions on purchasing pseudoephedrine set forth in Iowa Code sections 124.212(4) and 124.213 (2007), and for possessing pseudoephedrine with intent that it be used to manufacture a controlled substance as prohibited by section 124.401(4). McAtee contends the evidence is insufficient to support his convictions. Specifically, he maintains that no one personally identified him as making the purchases shown in the State's exhibits and no one testified he was involved with the manufacture of methamphetamine or was associated with anyone who was. Upon our review, we reject McAtee's sufficiency arguments and affirm the carefully reasoned decision of the district court.

The trial evidence showed numerous purchases of pseudoephedrine were made from pharmacies in Cedar Rapids under McAtee's name during the second half of 2007 and the first half of 2008. In summary, these purchases were as follows:

Target: 13 separate purchases of 2.4 grams each between 8/25/07 and 6/19/08 – total 31.2 grams

Wal-Mart: 8 separate purchases of 2.4 grams each between 12/22/07 and 5/19/08 – total 19.2 grams

Hy-Vee: 6 separate purchases of 2.4 grams each between 10/31/07 and 3/8/08 – total 14.4 grams

CVS: 1 purchase of 2.4 grams and 1 purchase of 1.2 grams between 1/14/08 and 2/7/08 – total 3.6 grams

It was explained that 2.4 grams is a ten-day supply when pseudoephedrine is used for medical purposes. However, in many cases, these purchases under McAtee's name occurred within less than ten days of each other; in two instances, they occurred on the same day.

A pharmacy manager from each store appeared at trial. Each testified that a government-issued photo identification must be shown before a purchase of pseudoephedrine is made, and the customer generally must look like the person on the identification. The customer's name, address, birth date, and identification number are recorded, and the customer must sign a log. Here, the records from each pharmacy showed that McAtee's driver's license had been presented on each occasion when a purchase was made.

Brian Freeberg, a Cedar Rapids police officer with extensive experience in methamphetamine investigations, also testified. He explained that over ninety-nine percent of the methamphetamine produced in the Cedar Rapids area is made by the "Nazi method" using pseudoephedrine as a precursor. Typically, ten grams of pseudoephedrine will yield nine grams of methamphetamine. Freeberg testified that he first became involved in the case when he was contacted by the Target pharmacist who reported McAtee had exceeded his legal limit. Freeberg also testified the pattern of purchases under McAtee's name was consistent with pseudoephedrine being used to manufacture methamphetamine. Multiple purchases were made within a month, and the pseudoephedrine was sourced at multiple pharmacies. For example, on March 8, 2007, the person who identified himself as McAtee purchased 2.4 grams at Hy-Vee and less than thirty minutes later purchased another 2.4 grams at Target.

In a thorough opinion, the district court found McAtee had purchased more than 7.5 grams of pseudoephedrine within a thirty-day period, in violation of Iowa

Code sections 124.212(4) and 124.213,¹ and that he had possessed pseudoephedrine with the intent to manufacture a controlled substance, namely methamphetamine, in violation of section 124.401(4).² McAtee now appeals, arguing there was insufficient evidence to support either conviction.

We review sufficiency of evidence claims for correction of errors at law. If the court's findings are supported by substantial evidence, we will not disturb the findings on appeal. Evidence is substantial if, when viewed in the light most favorable to the State, it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.

State v. Johnson, 770 N.W.2d 814, 819 (Iowa 2009).

McAtee argues first that there is no proof he was actually the person who appeared at the various pharmacies and purchased pseudoephedrine. He points out that none of the trial witnesses identified him personally. We do not accept McAtee's contention that the evidence connecting him to the purchases was insufficient. There was overwhelming, un rebutted evidence that someone displaying McAtee's driver's license had purchased large quantities of

¹ During the relevant time period, section 124.212(4)(c) provided:

A person shall present a government-issued photo identification card when purchasing a pseudoephedrine product from a pharmacy. A person shall not purchase more than seven thousand five hundred milligrams of pseudoephedrine, either separately or collectively, within a thirty-day period from a pharmacy, unless the person has a prescription for a pseudoephedrine product in excess of that quantity.

During the relevant time period, section 124.213 provided:

A person who purchases more than seven thousand five hundred milligrams of pseudoephedrine from a pharmacy in violation of section 124.212, either separately or collectively, within a thirty-day period commits a serious misdemeanor.

² Section 124.401(4) provides:

A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent that the product be used to manufacture any controlled substance:

. . . .
 b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.

pseudoephedrine. There was also considerable evidence that the pharmacies checked this purchaser's appearance against the identification he presented. The district court was entitled to draw the inference that the person using and displaying McAtee's driver's license was, indeed, McAtee.

McAtee next argues there is no proof he possessed pseudoephedrine with the requisite intent that it be used to manufacture methamphetamine. We disagree. As the district court noted, Officer Freeberg testified persuasively that the "purchases of pseudoephedrine made by Defendant are consistent with an individual purchasing pseudoephedrine not for a medical purpose, but for the purpose of manufacturing methamphetamine." As we have observed, section 124.401(4) no longer requires the defendant intend to use the precursor himself to make the controlled substance. It merely requires the product be possessed with the intent that "someone, *not necessarily [himself]*, would manufacture methamphetamine." *State v. Milom*, 744 N.W.2d 117, 122 (Iowa Ct. App. 2007). Given the volume and frequency of purchases, and the use of multiple purchase sites within the same time period, the district court was entitled to conclude McAtee was not buying pseudoephedrine for its own inherent qualities, but so it could be used to make methamphetamine. *See State v. Heuser*, 661 N.W.2d 157, 166 (Iowa 2003) (spreading out the purchases among different merchants "is consistent with a person trying to avoid suspicion by buying the necessary methamphetamine precursors from a number of different stores").

For the foregoing reasons, we affirm McAtee's convictions and sentence.

AFFIRMED.