IN THE COURT OF APPEALS OF IOWA

No. 2-1112 / 11-1518
Filed January 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TONY RICHARD MEYERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Guthrie County, Randy Hefner, Judge.

Defendant appeals his conviction for possession of a precursor (lithium) with intent to manufacture a controlled substance. **AFFIRMED.**

James S. Nelsen, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Mary Benton, County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

SCHECHTMAN, S.J.

I. Background Facts & Proceedings

Viewing the evidence in the light most favorable toward the State, we conclude the trial jury could have found the following facts: Whiterock Conservancy is a non-profit land trust, consisting of more than 4300 acres, lying directly southeast of Coon Rapids, with several miles of the Middle Raccoon River meandering through it. It sits amid a combination of prairie, river valley, and timbered landscape. There are multiple entrances and assorted trails, with conservation and outdoor recreation being its focus, together with affording a habitat for birds and wildlife. Snowmobiles and ATV's are prohibited.

At 1:30 p.m. on January 15, 2010, a snowmobile, with two adult male riders, was detected heading south into the property. The driver was later identified as its owner, the defendant, Tony Meyers. The passenger was his nephew, Tylor Meyers, each residents of Coon Rapids. Tony Meyers had been seen driving the snowmobile on the preserve previously, contrary to its posted rules.

Doug Ramsey, also a resident of Coon Rapids, arrived at the visitor parking lot, just off of State Highway 141, ten minutes later. Ramsey was a volunteer at Whiterock and a frequent user of its trails and amenities. Ramsey was the proud owner of a pair of new snowshoes and was anxious to try them out. There was more than a foot of snow blanketing the area, with two to three foot drifts in places, making it extremely difficult to traverse the terrain, absent a snowmobile, cross-country or snow skis, or snowshoes.

Ramsey used the one and only set of snowmobile tracks to trek south, as it made it easier for snowshoeing. After trodding a mile, where the trail turned east along the course of the river, he heard male voices. After walking another 100 feet, he saw two men, thirty feet above the trail, up a steep incline, near a bluff, in a cluster of cedar trees. The men saw him, lowered their voices, and hastened down the hill to their parked snowmobile. When Ramsey[1] was about 100 feet distant, he detected "a strong, pungent, chemical, acidic smell," further described by him as "an acidy smell"; "a strong chemical smell"; "what you would find in a meth production." It did not dissipate but remained a strong, enveloping stench.

The two men were beside the snowmobile suspiciously kicking into the snow with their boots. The man, later identified as the defendant,[2] stated they were looking for a cell phone. Directly in front of the snowmobile Ramsey saw an opened box of aluminum foil, about two feet from the men. He saw aluminum foil inside the box. Additionally, beside it were a "light metal, kind of coily, and bottle caps." The defendant offered Ramsey a drink, which was refused. The defendant got a bottle of Mountain Dew out of the hatch in the rear of the snowmobile, took a sip, but spit it out. They made small talk for a couple of minutes, with the defendant doing all the talking. No one mentioned the obvious presence of the odor, aluminum foil, or the metal strips. Ramsey stated he

[1] Ramsey, once an EMT, had been trained in detecting the presence of methamphetamine in rural locations. At this time, Ramsey worked at a biodiesel plant, and was acquainted with the smell of acid and anhydrous ammonia.

[2] Ramsey did not know or recognize the identity of either man when encountering them, but later identified each of them with law enforcement and at trial. In this factual narrative, we identify the actor as the defendant, as Ramsey later learned him to be.

needed to continue on and continued south on the trail, observing that there were no tracks or footprints entering or leaving the west entrance.

About 3:15 p.m., when out of earshot, Ramsey called a Whiterock board member, and advised her of the presence of the snowmobile, its occupants, and what he believed to be a clandestine methamphetamine manufacturing operation. The sheriff's office was called, and a deputy then arranged to meet Ramsey at the visitor's center.

Ramsey started back, circling around the site where he had encountered the defendant, then returned to the defendant's snowmobile track. His earlier snowshoe prints were obliterated by the snowmobile vacating the area and returning to Coon Rapids. Ramsey especially had looked for any other tracks of any kind, snowmobile, cross-country skis, snow skis, snowshoes, or boot prints, during his entire route, including on the river. He saw none, except those made by the subject snowmobile, the two men he confronted, and, his own. It had not snowed for five days prior to that day, nor did it snow for five days thereafter.

An employee of Whiterock, alerted to the entry of the snowmobile, waited at the north gate where he believed the snowmobile would exit. He saw Tony Meyers drive by on his snowmobile outside the gate. When asked, Tony Meyers denied being on the Whiterock property.

A deputy sheriff met Ramsey when he arrived back at the visitor's center about 4:30 p.m. From photographs, Ramsey identified Tony Meyers as the person he had met on the trail and Tylor Meyers as his passenger. There were no snowmobiles available for them to return to the site, and return to the site was abandoned as the sun was beginning to set.

The next day, Ramsey returned to Whiterock, following the same track with his snowshoes. No snow had fallen in the meantime. The aluminum foil, metal coiled strips, and bottle caps were gone. He saw multiple boot prints, back and forth, leading from where the snowmobile had been parked the previous day and up the steep incline to a more isolated site. Ramsey followed these footprints in the snow up the hill to where he had first seen the men standing. He found a beach towel, flexible and not yet frozen. When unfolded it revealed multiple coffee filters, tin snips, metal strips and shavings from lithium batteries, and an opened plastic package for eight lithium batteries, with only one such battery intact. Lying beside the towel, was a bottle with a label that indicated its contents to be muriatic acid.[3] Ramsey took photos of these discoveries with his digital camera, five of which were entered into evidence. He refolded the towel and left the items intact and in the location he had found them. He informed the deputy sheriff of their whereabouts. On February 14, 2010, Ramsey and a deputy sheriff went to the site, and the deputy seized the abandoned items. They were undisturbed, though the towel was then frozen stiff.

The state chemist, assigned to the identification section of the laboratory, testified that the most common method for manufacture of methamphetamine is the lithium ammonia reduction; that lithium batteries, readily available in retail stores and used in photography, are stripped and disassembled for use, as lithium, as the pure metal is not available for purchase; that there are five

[3] The writing on a product's label affixed to it is competent proof of its contents and self-authenticating. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003).

separate steps[4] in the process, the final four yielding a pungent, chemical odor; that due to safety considerations and the emission of a strong, easily detectable odor, it is common for some of the steps, particularly step two, to be carried out in remote areas; that step two, the mixing and stirring of the anhydrous ammonia, pseudoephedrine, and lithium requires a non-metallic mixing bowl, requiring but about ten-fifteen minutes; and, though some of the material and equipment required were not present (tubing, insulated container for the anhydrous ammonia, solvents), it is common to transport these items in a portable box, called a "boxed lab", which could be fully enclosed in a container as small as a tote or gym bag.

Analysis showed a nest of coffee filters, used in the third step, one containing a powdery substance, determined to be lithium in a nonmetallic form; metal strips, being components of lithium batteries, rolled up into tight coils; muriatic acid used in the fourth step, with aluminum foil, where the conversion to methamphetamine hydrochloride takes place, consuming about fifteen minutes; and, all of these items are used in the manufacture of methamphetamine.

Tony Meyers had been seen operating his snowmobile on the Whiterock land about two weeks prior. His snowmobile had a rear hatch capable of hauling and concealing items of moderate dimensions.

Meyers was charged with conspiracy to manufacture methamphetamine, in violation of Iowa Code section 124.401(1)(c)(6) (2009), and possession of a

[4] These steps are: (1) crushing the precursor, usually pseudoephedrine or ephedrine or its salts; (2) conversion of the precursors; (3) clean up the reaction mixture and separate solids from liquids; (4) convert methamphetamine to methamphetamine hydrochloride; and (5) recovery of the finished product and evaporation of the solvents.

precursor (lithium) with the intent to manufacture a controlled substance, in violation of section 124.401(4)(f).

After the State rested, Meyers moved for a judgment of acquittal, the court reserving its ruling. The jury found Meyers not guilty of the conspiracy charge, but found he was guilty of possession of a precursor with intent to manufacture a controlled substance.[5] The court then denied the motion for judgment of acquittal.

Meyers filed post-trial motions challenging the sufficiency of the evidence, which were overruled. Meyers was sentenced to a term of imprisonment not to exceed five years. He appeals his conviction, claiming there was insufficient evidence in the record to support his conviction.

II. Standard of Review

We will review a challenge to the sufficiency of the evidence for the correction of errors at law. *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010). The fact-finder's verdict will be upheld if it is supported by substantial evidence. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). Substantial evidence means evidence from which a rational fact finder could conceivably find the defendant guilty beyond a reasonable doubt. *State v. Heuser*, 661 N.W.2d 157, 165-66 (Iowa 2003). Evidence must raise a fair inference of guilt, not merely create suspicion, speculation, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). In reviewing challenges to the sufficiency of the evidence we give consideration to all the evidence, not just that supporting the verdict, and view

[5] The jury was given an instruction on aiding and abetting, pursuant to Iowa Code section 703.1.

the evidence in the light most favorable to the State. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000).

III. Merits

Meyers claims there is insufficient evidence in the record to show he possessed the precursor, lithium. Meyers asserts there is insufficient evidence that he had constructive possession of the precursor, and his motion for acquittal should have been sustained. He argues there was inadequate time to have completed the processes that produced the odors and an absence of critical components to manufacture methamphetamine. To prove the unlawful possession of a precursor with the intent to manufacture methamphetamine, the State must prove, beyond a reasonable doubt: (1) the defendant exercised dominion and control over the precursor product; (2) the defendant had knowledge of its presence and nature; and (3) the defendant possessed the precursor product with the intent that it be used to manufacture methamphetamine. *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010). A person intends a precursor product to be used to manufacture methamphetamine so long as that person, directly or indirectly, intends to engage in the manufacturing process. *Id.* Intent may be proven through circumstantial evidence and inferences drawn from the evidence. *State v. Nance*, 533 N.W.2d 557, 562 (Iowa 1995).

State v. Reeves, 209 N.W.2d 18, 21-22 Iowa 1973), our seminal case on the law of possession of controlled substances, determined that possession can be actual or constructive. Dominion and control, together with knowledge, may be inferred if the premises where the substances are found are in the exclusive

possession of the accused. *Reeves*, 209 N.W.2d at 23. But if not in exclusive possession, the ability to control and knowledge must be by proof. *Id.*

"A person has actual possession of a precursor product when the product is found on the person." *Vance*, 790 N.W.2d at 84. "A person has constructive possession of a controlled substance 'when the person has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it.'" *Maxwell*, 743 N.W.2d at 193 (citation omitted). Proximity alone is insufficient to prove dominion and control. *State v. Cashen*, 666 N.W.2d 566, 572 (Iowa 2003). A finding of constructive possession depends upon the particular facts of the case. *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002).

A number of factors may support a finding of knowledge, right to exercise control, as well as access and control of the premises, including "incriminating statements made by the defendant, incriminating actions of the defendant upon the police's discovery of drugs among or near the defendant's personal belongings, the defendant's fingerprints on the packages containing the drugs, and any other circumstances linking the defendant to the drugs." *Id.* These enumerated factors are used only as a guide, and, we are still required to determine whether all the facts and circumstances, including those not listed, allow a reasonable inference that the defendant knew of the presence of the precursor and had dominion and control over it. *Cashen*, 666 N.W.2d at 571.

It seems clear that Meyers did not have actual possession, so that knowledge and ability to control is not inferred. But the facts and circumstances strongly afford substantial evidence that Tony Meyers knew of the presence of the lithium and had the unfettered ability to assert and exercise dominion and

control over the precursor. Firstly, when considering the remoteness of the spot where the lithium battery, stripped components, and muriatic acid were found, a spot where snowmobiles were prohibited; and, considering the depth of the snow cover, together with the apparent need to transport the essentials to complete the process, the defendant alone, with his operating snowmobile, had the singular right to immediate access to control or reduce the precursor to his possession. All the components to utilize the precursors could not reasonably be carried that distance on one's person, to and fro, over that terrain and snow mass. Though snowmobiles were forbidden, Meyers violated the public trust, and, in reality, had sole access to its remote setting on that day. Ramsey made it that far on the trail, but had no intention or reason to traverse the steep incline to the bluff and timbered site. Meyers had something more than the raw physical ability to control, as he had the vehicle to reach it, to secure it, and to utilize it for his ends. *See State v. Bash*, 670 N.W.2d 135, 139 (Iowa 2003).

Aluminum foil, which is formed into balls and used with muriatic acid in the fourth step of the manufacture, was found directly in front of the snowmobile in its track (it had turned around at a point beyond where it was parked and used the same track to the point where the confrontation occurred), as were the "coily" metal strips. They had to have been deposited there after the defendant turned off the snowmobile. When lithium is extracted from the batteries, the strips form tightly coiled strips. When their presence is combined with the odor and the items found the next day, including the metal strips, coffee filters, wire clips, and virtually empty packaging, it is more than speculation to find an intent to manufacture, ability to control, and knowledge that it was a precursor.

The defendant and the other man were each kicking in the snow, allegedly looking for a cell phone, when the circumstances infer attempts to conceal other evidence linking them to the manufacture. There was a strong, lingering odor of chemicals and acid, reasoned to be a clandestine methamphetamine lab by a man who had received training in its detection, which forecloses any suggestion that the seized items were already there and the defendant merely stumbled upon them. If one was on a pleasure ride on the snowmobile, there would be little reason to leave a trail to venture up a steep hill to an occluded spot. And when seen, rather than staying where they were and to permit the hiker to visit their area, if he so chose, they hurriedly went to dig into the snow before encountering him on the trail.

In the location where defendant had been standing on the hill there were the nest of coffee filters, used in the filtering process of the third and fifth step, which contained a powder indicating a methamphetamine manufacture, as well as an Energizer lithium battery, containing lithium, wire snips used to sever the batteries, more metal strips from lithium batteries, packaging for lithium batteries, and a muriatic acid bottle, which is used with the aluminum foil in the manufacturing process. Though no anhydrous ammonia or pseudoephedrine were found, they would have been stirred up and blended in the process. There were a myriad of boot prints in the snow leading from the snowmobile, up and down the steep incline, to the isolated and occluded spot where the items were found and the defendant was first seen. It is uncontroverted that there were no other tracks of any kind in the entire area other that the defendants, whether on that day or the next day when the items were photographed and discovered.

Lithium was present not only in the intact battery found but in the coiled components. To make methamphetamine, lithium is stripped and removed from lithium batteries and is tightly coiled. The hatch to the rear of the snowmobile afforded a cache which could be used for the recipe's ingredients.

In addition to the proximity of the lithium to Meyers and its proximity to Meyers's snowmobile, there was other evidence linking the lithium to Meyers. Ramsey did not encounter anyone on his hike that day other than Meyers and his associate, nor did he observe any evidence of others. The strong chemical smell Ramsey encountered as he approached Meyers could lead the jury to conclude that some portion of the manufacturing process for methamphetamine had been or was occurring, which would show the lithium had not been abandoned by others. Furthermore, when asked if he had been on Whiterock land, Meyers denied it, although Ramsey clearly identified Meyers as the person he had seen while hiking on the property. "A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt." *State v. Odem*, 322 N.W.2d 43, 47 (Iowa 1982).

Meyers contends that sufficient time had not elapsed to allow the completion of any process that produced the odor. To the contrary, most of the steps can be done in fifteen to twenty minutes, if one proceeded to add the solvents without allowing the anhydrous ammonia to evaporate. Meyers was in the area for a period approximating two hours, sufficient time to effect the odor. That odor does not endure a long time and would not arise naturally from this pristine area. There was no other persons present or to have been present.

Lastly, Meyers lived in a city, where fumes from the methamphetamine manufacturing process can be easily detected by neighbors or passers-by. It's the norm to do one or more of the odor producing steps in abandoned farm buildings or other remote areas. The circumstances totally fit that criminal design.

We conclude there is sufficient evidence in the record to support a finding that Meyers possessed a precursor, lithium, with the intent to manufacture a controlled substance. We determine the district court properly denied Meyers' motion for judgment of acquittal.

We affirm defendant's conviction for possession of a precursor (lithium) with intent to manufacture a controlled substance.

AFFIRMED.