

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 12, 2013

v

EDDIE JAMES HAWKINS,

Defendant-Appellant.

No. 311476
Allegan Circuit Court
LC No. 11-017401-FH

Before: WILDER, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of attempt to possess a chemical he knew or had reason to know would be used to manufacture a controlled substance, MCL 333.7401c(1)(b), and conspiracy to possess a chemical he knew or had reason to know would be used to manufacture a controlled substance, MCL 333.7401c(1)(b).¹ Defendant was sentenced to concurrent sentences of 18 to 60 months and 4 to 20 years respectively. We affirm.

I. FACTUAL BACKGROUND

Defendant and his girlfriend, Monica Spencer, met with a mutual friend, Janet Walker, in Kalamazoo to smoke marijuana together. In the midst of their smoke session, Spencer offered to pay Walker gas money if she would drive defendant and Spencer to Plainwell so they could buy pseudoephedrine pills. Walker had heard that a box of pseudoephedrine pills had a street value of approximately \$40. According to Walker, defendant was a part of the conversation regarding the plan to purchase the pills and she agreed to drive defendant and Spencer to Plainwell.

After arriving in Plainwell, Walker dropped defendant and Spencer off at Walmart to buy the pills. Because the line was too long, Spencer and Walker went across the street to Walgreens and defendant remained in Walmart to buy the pseudoephedrine pills. While Walker and Spencer each purchased a box of pseudoephedrine pills at Walgreens, defendant was unsuccessful in his attempt to purchase pills because he only had an expired Indiana

¹ The statutory provision cited in the judgment of sentence is MCL 333.7401c(2)(f), which relates to the punishment for the convictions.

identification, and employees at Walmart would not let him complete the transaction. Walker and Spencer then returned to Walmart and each purchased another box of pseudoephedrine pills. In total, four boxes of pseudoephedrine pills were purchased.

After completing their purchases, they began the trip back to Kalamazoo. However, the police executed a traffic stop on the car because employees at the Walmart reported the suspicious behavior concerning the purchase of pseudoephedrine pills. The police conducted a search of the vehicle and located the four boxes of pseudoephedrine pills. Walker confessed to an officer that she knew the pills were to be given to an unknown third party for the purpose of making methamphetamine. Spencer likewise informed the police that she purchased the pseudoephedrine pills knowing that they would be used to make methamphetamine. All three occupants of the car were arrested.

At trial, Walker testified that Spencer “had put the word out that if” Walker came to court and testified against defendant, Spencer would hurt Walker. Spencer denied threatening Walker, although she testified that she had four biological children with defendant and saw him frequently. While Spencer admitted that she and Walker went to Plainwell to buy pseudoephedrine pills, knowing they would be used manufacture methamphetamines, she claimed that defendant was not privy to the plan. According to Spencer, she sent defendant into Walmart to buy bug bite medicine for their son and tried to conceal from him her true plan of buying pseudoephedrine pills. However, Spencer also testified that she and Walker discussed the plan to purchase the pills in defendant’s presence.

Consistent with Spencer’s account of the events, defendant testified that he only went with Spencer and Walker to buy bug bite medicine for his son. He testified that he did not know what Walker and Spencer were doing and was simply following Spencer. He explained that while he tried to buy his son’s medicine, he was unsuccessful because he did not have valid identification. A pharmacy technician from Walmart, however, testified that bug bite medicine was over the counter, and a customer did not have to show identification in order to buy such medication.

Defendant was convicted of attempted possession of a chemical he knew or had reason to know would be used to manufacture a controlled substance, MCL 333.7401c(1)(b), and conspiracy to possess a chemical he knew or had reason to know would be used to manufacture a controlled substance, MCL 333.7401c(1)(b). Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

On appeal, defendant argues there was insufficient evidence to support his convictions. Claims of insufficient evidence are reviewed de novo. *People v Harverson*, 291 Mich App 171, 175-177; 804 NW2d 757 (2010). In reviewing a sufficiency claim, “a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992) (citations omitted). Additionally, “[t]he standard of review is deferential: a reviewing court is required to draw all

reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

B. Attempt

Defendant was convicted of attempted possession of a chemical that he knew or had reason to know would be used to manufacture a controlled substance. MCL 333.7401c(1)(b), in relevant part, states:

(1) A person shall not do any of the following:

* * *

(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

To prove attempt, the prosecution must show that there was an “intention to commit an offense prohibited by law, coupled with conduct toward the commission of that offense.” *People v Thousand*, 465 Mich 149, 166; 631 NW2d 694 (2001). Thus, “it is inherent in the word ‘attempt’ that the illegal act intended is not accomplished.” *People v Williams*, 491 Mich 164, 174; 814 NW2d 270 (2012).

In the instant case, there was sufficient evidence that defendant attempted to own or possess a chemical he knew or had reason to know would be used to manufacture methamphetamine. According to Walker, the trio went to Plainwell purposely to buy pseudoephedrine pills. She explained that the initial plan was for her to drive and for defendant and Spencer to actually purchase the pills. Spencer testified that she and Walker discussed the plan in front of defendant while driving to Plainwell. Once arriving at the Walmart, Walker and Spencer left defendant waiting in line to buy the pseudoephedrine pills. Walker specifically testified that defendant informed her that he tried to buy the pills, but failed to do so because his identification was expired. When the police questioned Spencer and Walker, both confessed that they knew the pseudoephedrine pills would be used to make methamphetamine.

While certainly circumstantial, when considered in the light most favorable to the prosecution, a rational jury could have found beyond a reasonable doubt that defendant intended to buy pseudoephedrine pills, he took action to buy pseudoephedrine pills, and at least had a reason to know the pills would be used to make methamphetamine. Furthermore, a reasonable jury could have found that evidence of defendant’s alleged innocent behavior was not credible. Defendant claimed that he was trying to buy bug bite medication for his son and failed to do so because his identification expired. Yet, a pharmacy technician testified that the bug bite medication does not require identification before being purchased. As we have repeatedly stated, “this Court scrupulously leave[s] questions of credibility to the trier of fact to resolve[.]” *People v Ericksen*, 288 Mich App 192, 197; 793 NW2d 120 (2010). Therefore, defendant has failed to establish that he was denied his due process right to be convicted based on sufficient evidence.

C. Conspiracy

Defendant also challenges that there was insufficient evidence that he conspired to knowingly possess a chemical used to manufacture a controlled substance. “A criminal conspiracy is a partnership in criminal purposes, under which two or more individuals voluntarily agree to effectuate the commission of a criminal offense.” *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011). “The individuals must specifically intend to combine to pursue the criminal objective, and the offense is complete upon the formation of the agreement.” *Id.* “For intent to exist, the defendant must know of the conspiracy, must know of the objective of the conspiracy, and must intend to participate cooperatively to further that objective.” *People v Blume*, 443 Mich 476, 485; 505 NW2d 843 (1993). However, a conspiracy does not have to be proven with direct evidence, as “proof may be derived from the circumstances, acts, and conduct of the parties.” *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997).

Viewed in a light most favorable to the prosecution, there was sufficient evidence of conspiracy to possess a chemical that defendant knew or had reason to know would be used to manufacture a controlled substance. Walker testified that she, defendant, and Spencer agreed to go to Plainwell so that defendant and Spencer could buy pseudoephedrine pills. Walker was to be paid to drive, and she understood that defendant and Spencer planned to sell the pills. Walker also explained that defendant tried to buy the pills, but was unsuccessful. When viewed in a light most favorable to the prosecution, this evidence was sufficient for a rational jury to find beyond a reasonable doubt that defendant had the specific intent to combine with Spencer and Walker to purchase pseudoephedrine pills, which he knew or had reason to know would be used to manufacture methamphetamine.

III. CONCLUSION

There was sufficient evidence from which a rational jury could have found beyond a reasonable doubt that defendant was guilty of attempt to possess a chemical he knew or had reason to know would be used to manufacture a controlled substance and conspiracy to possess a chemical he knew or had reason to know would be used to manufacture a controlled substance. We affirm.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Michael J. Riordan