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**IN THE
COURT OF APPEALS OF INDIANA**

DOUGLAS QUINN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 57A03-0810-CR-506

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0804-FB-014

May 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Douglas Quinn appeals his convictions for Manufacturing Methamphetamine,¹ a class B felony; Possession of Anhydrous Ammonia with Intent to Manufacture while in Possession of a Firearm,² a class C felony; Possession of a Stolen Auto,³ a class D felony; and Possession of Methamphetamine,⁴ a class C felony. Specifically, Quinn argues that there was insufficient evidence to convict him. In addition, Quinn contends that possession of anhydrous ammonia with intent to manufacture is a lesser-included offense of manufacturing methamphetamine and, therefore, his convictions violate Indiana Code section 35-38-1-6. Finally, Quinn asserts that under the actual evidence test, his convictions for possession of anhydrous ammonia with intent to manufacture and manufacturing methamphetamine violate Article I, section 14 of the Indiana Constitution, which prohibits double jeopardy. Finding no error, we affirm the judgment of the trial court.

FACTS

On April 20, 2008, Officer Justin Curtis of the Syracuse Police Department was watching a house in Kosciusko County. After driving past the house several times, Officer Curtis saw a maroon vehicle parked in front of the residence that had not been there previously. Officer Curtis also recognized Quinn, whom he had never seen around the

¹ Ind. Code § 35-48-4-1.1.

² I.C. § 35-48-4-14.5(c)(1).

³ Ind. Code § 35-43-4-2.5(c).

⁴ I.C. § 35-48-4-6.1.

residence, wearing a white shirt and blue jeans and carrying a black bag.

Later that day, Officer Curtis saw Quinn driving the maroon vehicle and attempted to stop him after discovering that the vehicle's license plate was not registered to that vehicle. Quinn sped away and led Officer Curtis and Officer Joseph Williams of the Ligonier Police Department on an eighteen-minute chase through Kosciusko, Elkhart, and Noble counties. Throughout the chase, Quinn disregarded traffic signs and signals, passed other vehicles on double-yellow lines, nearly struck other vehicles, and, at times, was driving ninety miles per hour. The chase abruptly ended at Eagle Lake when Quinn abandoned the vehicle and ran into the woods. Officer Curtis secured the vehicle and called for a canine unit to help locate Quinn.

Quinn's black jacket was found about fifty yards into the woods. Inside the jacket were brass knuckles, pseudoephedrine pills, and cigarettes. Officers Fred Sumpter of the Ligonier Police Department and Craig Bear of the Albion Police Department, who were assisting Officer Curtis, saw a man walking eastbound out of the woods. He was wearing a white shirt, blue jeans, and boots. The man explained that he had been checking a deer stand, but the police officers took him into custody, and Officer Curtis identified him as Quinn.

After Quinn was placed under arrest, Officer Curtis turned his attention back to the vehicle. The vehicle's VIN number matched the one of a vehicle that had been stolen in Mishawaka in 2004. The smell of anhydrous ammonia drew Officer Curtis's attention to the trunk of the vehicle, where he saw a large propane tank. Officer Curtis immediately backed away from the vehicle, suspecting that it was unsafe, and called the Indiana State Police for

assistance.

Indiana State Trooper Rob Smith, an investigator with the methamphetamine lab team, arrived to process the vehicle. Trooper Smith smelled anhydrous ammonia and saw a propane tank in the trunk with a blue, oxidized valve, indicating the presence of anhydrous ammonia.

Trooper Smith recovered numerous items that are commonly used to manufacture methamphetamine. In the backseat, there was a glass mason jar containing materials which tested positive for ephedrine and pseudoephedrine. In addition, there was salt, drain cleaner, and unused coffee filters. Batteries that had been stripped of their lithium were found, along with a pop bottle cap with tubing extended from the top. Empty pseudoephedrine pill packs were also recovered.

On the front seat of the vehicle, Trooper Smith found a folded coffee filter containing methamphetamine. Wet coffee filters were also found on the front seat, which, according to Trooper Smith, “would indicate that they’ve already been used . . . to filter the ephedrine/pseudoephedrine from the liquid.” Tr. p. 224.

Once Trooper Smith was finished processing the vehicle, it was turned back over to the Syracuse Police Department, where additional items were recovered. On the front passenger seat, there was a black address book containing Quinn’s checkbook and insurance card. In addition, there was a twelve-gauge shotgun and a black bag on the backseat.

On April 28, 2008, Quinn was charged with Count I, possession of a firearm by a serious violent felon, a class B felony; Count II, manufacturing methamphetamine, a class B

felony; Count III, possession of anhydrous ammonia with intent to manufacture while in possession of a firearm, a class C felony; Count IV, possession of a stolen auto, a class D felony; Count V, possession of a sawed-off shotgun, a class D felony; and Count VI, resisting law enforcement, a class D felony. On August 29, 2008, the State added Count VII, possession of methamphetamine, a class C felony, and dismissed Counts I and V.

Following a jury trial that concluded on September 3, 2008, the jury found Quinn guilty of Count II, manufacturing methamphetamine, Count III, possession of anhydrous ammonia with intent to manufacture while in possession of a firearm, Count IV, possession of a stolen auto, Count VI, resisting law enforcement, and Count VII, possession of methamphetamine.

On September 25, 2008, the trial court sentenced Quinn to fifteen years on Count II, four years on Count III, four years on Count IV, and four years on Count VII. These terms were to run concurrently with each other, but consecutively to Count VI, for which Quinn was sentenced to three years, for a total aggregate term of eighteen years imprisonment. Quinn now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Quinn argues that there was insufficient evidence to convict him of manufacturing methamphetamine, possession of anhydrous ammonia with intent to manufacture while in possession of a firearm, possession of methamphetamine, and possession of a stolen auto. In reviewing a challenge to the sufficiency of the evidence, we will not reweigh the evidence or

assess the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). This court considers only the evidence favorable to the verdict and all reasonable inferences to be drawn therefrom. Id. We will affirm the conviction unless “no rational fact finder could have found the defendant guilty beyond a reasonable doubt.” Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000). However, it is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quoting Moore v. State, 652 N.E.2d 53, 55 (Ind. 1995)).

A. Drug-Related Offenses

With respect to the drug-related convictions, Quinn argues that there was insufficient evidence to show that he possessed the anhydrous ammonia, methamphetamine, shotgun, and other contraband used to manufacture methamphetamine (collectively, “the contraband”).

When the prosecution must show that the defendant possessed contraband, it may satisfy this burden by showing either actual or constructive possession. Deshazier v. State, 877 N.E.2d 200, 204 (Ind. Ct. App. 2007). Here, the prosecution proceeded under the theory of constructive possession.

Constructive possession can be shown by establishing that the defendant had the intent and capability to maintain dominion and control over the contraband. Id. at 205. To establish the intent element, the prosecution must show that the defendant had knowledge of the presence of the contraband. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). A defendant’s “exclusive possession of [a] vehicle [is] sufficient to raise a reasonable inference of intent” to maintain dominion and control over the contraband inside the vehicle. Id.

A defendant's capability to maintain dominion and control is established by evidence that the defendant is able to reduce the contraband to his personal possession. Id. Evidence of a possessory interest in the premises in which the contraband is found is sufficient to show the capability to maintain dominion and control. Id.

Here, Quinn was in exclusive possession of the vehicle when he abandoned it at Eagle Lake and proceeded into the woods. In Goliday, our Supreme Court held that the defendant's exclusive possession of the vehicle when the police stopped it was sufficient to raise an inference of intent. 708 N.E.2d at 6. Furthermore, although Quinn did not own the vehicle, the "issue . . . is not ownership but possession." Id. Thus, Quinn's exclusive possession of the vehicle is sufficient to support an inference that Quinn had the intent to maintain dominion and control over the contraband.

As to Quinn's capability to maintain dominion and control, we again emphasize that Quinn was in exclusive possession of the vehicle when Officer Curtis attempted to stop him and when Quinn finally abandoned the vehicle. Therefore, Quinn's possession of the vehicle shows that he had the capability to maintain dominion and control over the contraband inside.

Nevertheless, Quinn contends that there was no evidence regarding how long he had had exclusive possession of the vehicle and, therefore, his exclusive possession of the vehicle is insufficient to show that he had constructive possession of the vehicle and the contraband inside. Even assuming solely for argument's sake that Quinn did not have exclusive possession of the vehicle, there were other factors that prove Quinn's intent and capability to maintain dominion and control over the contraband.

First, Quinn led the police on a chase that lasted eighteen minutes and spanned three counties. In addition, much of the contraband was in plain view. For instance, the shotgun was visible in the backseat and the coffee filter with methamphetamine was in the passenger's seat next to Quinn. Finally, some of the contraband was intermingled with Quinn's possessions, including his checkbook, address book, and insurance card. Our Supreme Court has recognized that these factors are relevant in determining a defendant's constructive possession of contraband. See Henderson v. State, 715 N.E.2d 833, 836 (Ind. 1999) (recognizing that attempted flight, location of contraband within the defendant's plain view, the presence of drugs in a setting suggesting manufacturing, and the mingling of the contraband with other items owned by the defendant can be used to show dominion and control when the defendant was not in exclusive possession of the vehicle). Thus, Quinn's argument that there was insufficient evidence to convict him of the drug-related offenses fails.

B. The Stolen Vehicle

In a related argument, Quinn argues that there was insufficient evidence to prove that he knowingly possessed a stolen vehicle. Indiana Code section 35-43-4-2.5(c) provides, in relevant part, that:

A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts.

Our Supreme Court has held that "[t]he test of knowledge is not whether a reasonable person would have known that the [vehicle] had been the subject of theft but whether, from

the circumstances surrounding his possession of [the vehicle, the defendant] knew that it had been the subject of theft.” Gibson v. State, 643 N.E.2d 885, 888 (Ind. 1994). When reviewing whether there was sufficient evidence of knowledge, we look at “whether reasonable minds could reach the inferences drawn by the jury.” Id.

Here, the record indicates, and Quinn does not dispute, that the vehicle had been stolen in 2004. State’s Ex. 1. In addition, Quinn led police on a lengthy chase and remained in possession of the vehicle until he abandoned it. Moreover, contraband associated with the manufacture of methamphetamine was discovered in the vehicle intermingled with Quinn’s personal items such as his checkbook and insurance card. Finally, because the vehicle had been stolen for four years, Quinn would have been unable to properly plate or register the vehicle. Although any one of these circumstances, when viewed in isolation, may be insufficient to support the verdict, the totality of the circumstances support a reasonable inference that Quinn knew the vehicle had been stolen.

II. Lesser-Included Offense

Quinn argues that possession of anhydrous ammonia with intent to manufacture is a lesser-included offense of manufacturing methamphetamine because it is established by proof of the same material elements, except that the prosecution did not have to prove that the manufacturing process had begun to convict Quinn of possession of anhydrous ammonia.

When a defendant is charged with an offense that is an included offense in a separate count and is found guilty on both counts, judgment may not be entered for the included offense. Ind. Code § 35-38-1-6. Indiana Code section 35-41-1-16 defines an “included

offense” as an offense that:

- (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
- (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
- (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

If each offense is established by proof of an element not contained in the other, then the trial court is not precluded from convicting and sentencing the defendant for both offenses.

Ingram v. State, 718 N.E.2d 379, 381 (Ind. 1999).

Indiana Code section 35-48-4-1.1 provides that a person who knowingly or intentionally manufactures methamphetamine commits dealing in methamphetamine. Indiana Code section 35-48-4-14.5(c) states that “[a] person who possesses anhydrous ammonia . . . with the intent to manufacture methamphetamine . . . commits a Class D felony.” We have recognized that:

[t]he sole practical difference between these two offenses is that one may be guilty of possessing the chemical precursors with intent to manufacture without actually beginning the manufacturing process, whereas the manufacturing process must, at the very least, have been started by a defendant in order to be found guilty of manufacturing methamphetamine.

Scott v. State, 803 N.E.2d 1231, 1239 (Ind. Ct. App. 2004).

In Bush v. State, a panel of this court held that the defendant’s conviction for possessing methamphetamine precursors with intent to manufacture was a lesser-included

offense of manufacturing methamphetamine. 772 N.E.2d 1020, 1025 (Ind. Ct. App. 2002). We reasoned that the defendant's "conviction for manufacturing methamphetamine was based exclusively on his possession of the precursors of that drug in circumstances suggesting that he was in the process of manufacturing it," and, therefore, the "same evidence establishing [the defendant] was knowingly or intentionally manufacturing methamphetamine also establishes that he possessed methamphetamine precursors with intent to manufacture the drug and vice versa." Id. at 1024.

By contrast, in Scott v. State, this court held that possession of chemical precursors with intent to manufacture methamphetamine was not a lesser-included offense of manufacturing methamphetamine. 803 N.E.2d at 1240. We reasoned that contraband associated with the production of methamphetamine had been discovered on the defendant's property in a condition suggesting that the manufacturing process had occurred. Id. In addition, pseudoephedrine pills, anhydrous ammonia, lithium batteries, salt, coffee filters, and tubing were also found, indicating that the defendant intended to manufacture more methamphetamine. Id. Therefore, this court concluded that the "evidence [supported] the inference that two independent offenses occurred," and, therefore, possession of chemical precursors with intent to manufacture was not a lesser included offense of manufacturing methamphetamine. Id.

As discussed above, the police in this case recovered wet coffee filters, stripped out lithium batteries, and empty packs that had contained pseudoephedrine pills. As Trooper Smith explained in his testimony, these items indicate that the manufacturing process had

occurred.

Similarly, pseudoephedrine pills were recovered from Quinn's jacket, and anhydrous ammonia was found in the vehicle. In addition, police recovered unused salt, drain cleaner, and coffee filters from the backseat of the vehicle. This indicates that Quinn possessed the anhydrous ammonia with the intent to manufacture more methamphetamine.

These circumstances are analogous to those in Scott and, consequently, Quinn's conviction for possession of anhydrous ammonia with intent to manufacture is not a lesser-included offense of manufacturing methamphetamine.

III. Double Jeopardy

Finally, Quinn argues that his convictions for possession of anhydrous ammonia with intent to manufacture and manufacturing methamphetamine violate Indiana's Double Jeopardy Clause. Specifically, Quinn contends that both convictions arise from the same factual evidence, and requests that this court vacate his conviction for possession of anhydrous ammonia with intent to manufacture.

Article I, section 14 of the Indiana Constitution provides that "[n]o person shall be put in jeopardy twice for the same offense." Under the actual evidence test, multiple convictions constitute double jeopardy if there is "a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense." Richardson v. State, 717 N.E.2d 32, 53 (Ind. 1999). Our Supreme Court has stated that "the possibility must be reasonable, not speculative or remote." Griffin v. State, 717 N.E.2d 73, 89 (Ind. 1999).

Moreover, the Indiana Double Jeopardy Clause “is not violated when the evidentiary facts establishing the essential elements of one offense also establish only one or even several, but not all, of the essential elements of a second offense.” Spivey v. State, 761 N.E.2d 831, 833 (Ind. 2002) (emphasis added). To determine which facts were used by the jury, a reviewing court will examine the charging information, evidence, arguments, and jury instructions. Davis v. State, 770 N.E.2d 319, 324 (Ind. 2002).

As previously discussed, the jury was informed that wet coffee filters, stripped out lithium batteries, and empty packs that had contained pseudoephedrine pills were found in Quinn’s vehicle. This indicates that the manufacturing of methamphetamine had already occurred. In addition, the State provided the jury with testimony that pseudoephedrine pills, anhydrous ammonia, unused salt, drain cleaner, and coffee filters were recovered from Quinn’s jacket or vehicle, indicating that Quinn possessed anhydrous ammonia with the intent of manufacturing more methamphetamine. Consequently, we cannot conclude that the evidence indicates that there is a reasonable possibility that the jury relied on the same evidentiary facts to establish the essential elements of both offenses. See also Goffinet v. State, 775 N.E.2d 1227, 1233 (Ind. Ct. App. 2002) (holding that the defendant’s convictions for manufacturing methamphetamine and possession of precursors with the intent to manufacture did not violate Indiana’s Double Jeopardy Clause, where the State presented ample evidence that manufacturing had occurred and that the defendant possessed precursors that had not been incorporated into the manufacturing process).

Notwithstanding the above, Quinn directs us to the prosecutor’s closing argument in

which he stated, “the glass jar that was found with the liquid and the granular substance at the bottom did test positive, uh, for anhydrous ammonia in that, in that solution, which is further evidence that that’s what the anhydrous ammonia was being possessed for.” Tr. p. 249. Quinn asserts that the prosecutor was “essentially arguing Quinn was guilty in Count 3 [possessing anhydrous ammonia] because the anhydrous ammonia was being used to manufacture methamphetamine, which is the offense charged in Count 2.” Appellant’s Br. p. 15.

Although the prosecutor highlighted that the substance in the glass jar contained anhydrous ammonia to illustrate that it would be used to manufacture methamphetamine, the prosecutor also pointed out that there was an eighty-pound cylinder in the trunk of the vehicle containing additional anhydrous ammonia and other precursors that had not been incorporated into the manufacturing process, which supported the charge of possession of anhydrous ammonia with intent to manufacture. In addition, the prosecutor discussed the evidence indicating that the manufacturing process had occurred, thereby supporting the manufacturing charge. Thus, we cannot conclude that the prosecutor’s closing argument indicates that the jury relied on the same evidentiary facts to find Quinn guilty of both offenses.

Finally, we note that the jury was instructed as to the material elements of each offense, including a very expansive definition of “manufacture.” Therefore, in light of the evidence, the prosecutor’s closing argument, and the jury instructions, we find Quinn’s argument unavailing. Thus, we conclude that no double jeopardy violation occurred.

The judgment of the trial court is affirmed.

MAY, J. and BARNES, J., concur.