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IN THE
COURT OF APPEALS OF INDIANA

JUSTIN MAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 28A04-0904-CR-227
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0809-FA-159

October 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Justin May ("May") was convicted in Greene Superior Court of Class A felony attempted dealing in methamphetamine. The trial court sentenced May to a term of thirty years with five years suspended to probation. May appeals and argues that there is insufficient evidence to support his conviction for Class A felony attempted dealing in methamphetamine.

We affirm.

Facts and Procedural History

On September 16, 2008, May and Donald Weaver ("Weaver") planned to manufacture methamphetamine. At a Wal-Mart in Greene County, May purchased camp fuel and instructed another friend to purchase lithium batteries. Separately, Weaver purchased a box of Sudafed pills. Police were notified of the purchase and began surveillance on Weaver's residence.

May went to Weaver's residence and crushed one of five boxes of Sudafed pills at the residence. He then took the fuel and batteries from his car and placed them in Weaver's vehicle. Weaver and May drove out into the country to mix the materials. Once at the location, Weaver poured anhydrous ammonia into a pitcher. May added the lithium strips from the batteries to the pitcher. Weaver poured in the crushed pills as May stirred. May told Weaver that they did not have enough anhydrous ammonia to complete the process. Weaver added the camp fuel to the mixture until May told him that he had added enough. They then placed a towel over the mixture, intending to complete the process after procuring more anhydrous ammonia later that night.

Weaver and May returned to Weaver's house. When they left the house, they were driving May's vehicle. All of the items used in the manufacturing process were left in Weaver's vehicle and residence. A patrolman stopped Weaver and May in May's vehicle and a search, pursuant to a search warrant, of Weaver's residence and his vehicle began. In Weaver's residence, the police found methamphetamine in a container, a hot plate, a blender, a cooking dish, coffee filters, salt, paper towels, and a jar with residue. In Weaver's vehicle, the police found a pitcher containing a small amount of anhydrous ammonia, camp fuel, a lithium battery, an oxygen tank that tested positive for anhydrous ammonia, chemical gloves, a funnel, camouflage clothing, a jar containing 9.09 grams of methamphetamine and pseudoephedrine, a jar containing 18.24 grams of pseudoephedrine. All of the items are commonly used in the methamphetamine manufacturing process.

On September 18, 2008, the State charged May with Class A felony attempted dealing in methamphetamine, Class D felony possession of chemical reagents or precursors with intent to manufacture, Class D felony possession of more than ten grams of ephedrine or pseudoephedrine, and Class A misdemeanor possession of anhydrous ammonia in an improper container. The State also filed a habitual substance offender enhancement. On February 27, 2009, the State filed an amended information for the Class A felony attempted dealing in methamphetamine and dismissed the remaining charges.

On March 12, 2009, the jury found May guilty of Class A felony attempted dealing in methamphetamine but did not find that he was a habitual substance offender.

On April 8, 2009, the trial court sentenced May to a term of thirty years with five years suspended to probation. May now appeals.

Discussion and Decision

May argues that there was insufficient evidence to support his conviction for Class A felony attempted dealing in methamphetamine, and more specifically, that the State did not provide sufficient evidence to show that May took a substantial step to manufacture three or more grams of methamphetamine. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-48-4-1.1(a)(1)(A) (2009), "[a]person who knowingly or intentionally manufactures . . . methamphetamine, pure or adulterated, commits dealing in methamphetamine, a Class B felony[.]" However, subsection (b) states that "[t]he offense is a Class A felony if the amount of the drugs involved weighs three (3) grams or more[.]" Indiana Code section 35-41-5-1(a) (2004) provides that "[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward

commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted."

In this case, Weaver testified that he and May intended to and began the process of manufacturing methamphetamine. Tr. p. 192. Weaver also testified that the two vials of crushed Sudafed pills found by police in Weaver's vehicle would make about four or five grams of methamphetamine. Tr. p. 190. Although May did not have enough anhydrous ammonia to complete the manufacturing of the methamphetamine, his other actions, from the purchase of the ingredients sufficient to produce more than three grams of methamphetamine to actually combining the ingredients he had, constitute a substantial step towards the production of at least three grams of methamphetamine. This evidence is sufficient to support May's conviction for Class A felony attempted dealing in methamphetamine.

Affirmed.

DARDEN, J., and ROBB, J., concur.