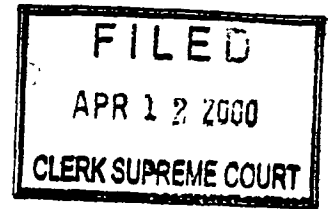


IN THE COURT OF APPEALS OF IOWA

No. 0-086 / 99-0232
Filed April 12, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

RANDY GENE FRY,
Defendant-Appellant.

Appeal from the Iowa District Court for Warren County, Dale B. Hagen,
Judge.

Defendant appeals from his convictions for conspiracy to manufacture
methamphetamine, possession of pseudoephedrine with intent to use as a
precursor, and possession of methamphetamine. **AFFIRMED.**

Paul Rosenberg of Paul Rosenberg & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Kevin Parker, County Attorney, and Gary W. Kendell, Assistant County
Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

000535

HECHT, J.

On appeal from his convictions for conspiracy to manufacture methamphetamine, possession of pseudoephedrine with intent to use as a precursor, and possession of methamphetamine, Randy G. Fry contends the evidence was insufficient to prove the conspiracy. He also asserts the court erred in failing to state on the record the reasons for imposing consecutive sentences. We affirm.

I. Factual Background and Proceedings. On June 22, 1998, State Trooper Jerad Dreeszen pulled over a 1972 Chevrolet Monte Carlo going eighty-three miles per hour in a sixty-five mile per hour zone in Warren County. Ronald Scarberry ("Scarberry") was the driver of the car and Randy Fry ("Fry") was the passenger and owner of the car. After the trooper issued a speeding ticket to Scarberry, both Scarberry and Fry consented to a search of the vehicle. The search of the vehicle produced the following items: 2042 tablets of pseudoephedrine, twenty lithium batteries, a bottle of muriatic acid, two five gallon plastic fuel tanks, plastic tubing, a brass ball valve, vice grip pliers, rubber gloves, and one welder's glove. The search of Scarberry revealed he had \$1690 in cash and .9 grams of methamphetamine on his person. When Trooper Dreeszen searched Fry, he found \$399 in cash, a digital scale, 100 baggies, and .89 grams of methamphetamine.

Upon Fry's motion, the district court severed Fry's trial from Scarberry's. Fry's jury trial commenced on December 8, 1998. On December 9, 1998, the jury returned verdicts of guilty against Fry for: (1) conspiracy to manufacture

000536

methamphetamine in violation of Iowa Code § 124.401(1)(b)(7) (1997); (2) possession of pseudoephedrine with intent to use as a precursor in violation of Iowa Code § 124.401(4); and (3) possession of methamphetamine in violation of Iowa Code § 124.401(5).

On February 9, 1999, the district court sentenced Fry to concurrent terms of imprisonment of twenty-five years for the conspiracy charge, five years on the possession of a precursor charge, and one year on the possession of methamphetamine charge. The district court ordered these sentences to run consecutively to a sentence Fry received on a charge in Polk County. Fry appeals.

II. Standard of Review. We review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4; *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). This court reviews a district court's decision to impose consecutive sentences for abuse of discretion. *State v. August*, 589 N.W.2d 740, 744 (Iowa 1999). "An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Privitt*, 571 N.W.2d 484, 486 (Iowa 1997).

III. Sufficiency of the Evidence. Fry contends there is insufficient evidence to support the conspiracy charge. We will uphold a jury verdict under a sufficiency of the evidence challenge if it is supported by substantial evidence. *State v. Chang*, 587 N.W.2d 459, 461-62 (Iowa 1998). If a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt, the evidence is substantial. *Thomas*, 561 N.W.2d at 39. We review the evidence in the light

000-137

most favorable to the State, and this includes all legitimate inferences that may fairly and reasonably be deduced from the evidence. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999).

Iowa Code section 124.401(1) provides, in relevant part:

[I]t is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance or act with, enter into a common scheme or design with, or *conspire with one or more other persons* to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

Iowa Code § 124.401(1) (emphasis added). The State charged Fry with conspiracy to distribute methamphetamine under this section. A conspiracy is an agreement between two or more persons to do or accomplish a criminal or unlawful act, or do a lawful act in an unlawful manner. *State v. Ross*, 573 N.W.2d 906, 914 (Iowa 1998).

Fry specifically argues the State failed to show an agreement between himself and Scarberry to manufacture methamphetamine. The State is not required to prove an agreement by direct evidence; it may do so through circumstantial evidence. *Casady*, 597 N.W.2d at 805. The agreement may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the alleged conspirators. *State v. Mapp*, 585 N.W.2d 746, 748 (Iowa 1998) (citations omitted). The record contains substantial circumstantial evidence to support Fry's conspiracy conviction.

The trooper stopped Fry and Scarberry in Fry's car. A consent search of the vehicle revealed many items that the State's experts testified are commonly

000538

associated with the "Nazi method" of making methamphetamine. The search of Fry's person revealed baggies, a digital scale, and a small amount of methamphetamine. He later admitted ownership of the large quantity of pseudoephedrine found in the car. Scarberry, the driver, was found in possession of methamphetamine and a substantial amount of cash.

Fry argues because the vehicle contained some of the materials needed to make methamphetamine but not other essential materials such as anhydrous ammonia, ether, filters, funnels, and stirrers, the State failed to show an agreement to manufacture methamphetamine because manufacture could not have been imminent. However, the State need not prove production of methamphetamine is imminent to establish a conspiracy. The existence of a conspiracy does not depend on the imminency of the accomplishment of the purpose of the agreement. The State need only establish the existence of the agreement. See *State v. Ross*, 573 N.W.2d 906, 914 (Iowa 1998) (citing *State v. Blyth*, 226 N.W.2d 250, 263 (Iowa 1975)). The fact Scarberry and Fry did not have all of the necessary materials for manufacture with them when the trooper stopped them does not preclude a jury finding they had agreed to manufacture methamphetamine.

Fry argues his mere association with Scarberry does not prove an agreement. However, the evidence presented at trial allows an inference of more than mere association between Scarberry and Fry. At the time of their arrest, they were found in possession of several items commonly used to manufacture methamphetamine. Fry admitted knowledge of the presence in his

car of some of these items. The jury could properly infer from their possession of 2042 tablets of pseudoephedrine, twenty lithium batteries, a bottle of muriatic acid, two five gallon plastic fuel tanks, plastic tubing, a brass ball valve, vice grip pliers, rubber gloves, and a welder's glove, that Fry and Scarberry had entered into an agreement to manufacture methamphetamine. Thus, under the circumstances of this case, a reasonable jury could find beyond a reasonable doubt Fry engaged in a conspiracy with Scarberry to manufacture the drug. We affirm Fry's conviction for conspiracy to manufacture methamphetamine.

IV. Consecutive Sentences. Fry contends the district court abused its discretion by failing to adequately state on the record its reasons for imposing consecutive sentences. Pursuant to Iowa Code section 901.8, a sentencing judge may impose consecutive sentences for two or more separate offenses. Iowa Code § 901.8; *State v. Johnson*, 476 N.W.2d 330, 335 (Iowa 1991). The sentencing court must also state on the record its reasons for selecting a particular sentence. Iowa R. Crim. P. 22(3)(d). The reasons are not required to be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed in the overall sentencing plan. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa App. 1994). Thus, we look to all parts of the record to find reasons supporting the sentence imposed by the district court. *Id.*

At the time of the sentencing hearing, the district court stated:

The Court has read the presentence investigation report in this matter. I see that you do have a history of criminal involvement, although as your attorney has pointed out, they would not have risen to the level of felonies until this time, but they nonetheless do

indicates a long history and a pattern of violating the laws and a pattern of offenses involving both alcohol and illicit drugs.

I note that you have been sentenced already from Polk County District Court to a term of incarceration and you are here before me for sentencing on . . . two felonies and a serious misdemeanor in Warren County, as well as a felony from Wayne County District Court. That makes a total of four felonies for which you are going to be sentenced.

After the district court pronounced sentence on the present charges, it stated:

It will be the further order of the Court that these sentences run concurrent. These offenses all did occur in one incident, so the Court feels that a concurrent sentence would be appropriate. However, these are offenses separate and apart from the offenses committed in Polk County, and the Court will order that these sentences run consecutive to the sentences imposed in Polk County District Court.

Taking the record as a whole, the district court's statement delineates several reasons for designating the Warren County and Polk County sentences to run consecutively. The court pointed out Fry's extensive criminal history, especially with relation to alcohol and illicit drugs. The court also noted Fry had been recently charged with four felonies. Finally, the district court indicated it was sentencing Fry to consecutive terms of imprisonment because the charges in Warren County stemmed from different offenses than the charges in Polk County. The district court's statement on the record combined with the written judgment record contains satisfactory reasons for Fry's sentence. We cannot say the district court abused its discretion by sentencing Fry to consecutive sentences.

AFFIRMED.

000541