FILED
JUL 2 6 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-261 / 88-252

STATE OF IOWA,

Appellee,

777

vs.

STEVEN ALLEN EVANS,

Appellant.

Appeal from the Iowa District Court for Washington County, Richard J. Vogel, Dan Morrison and Phillip R. Collett, Judges.

Defendant appeals his conviction on three counts of prohibited acts after a jury trial in district court. **AFFIRMED.**

William L. Wegman, State Public Defender, and Raymond E. Rogers, Assistant State Public Defender, for appellant.

Thomas J. Miller, Attorney General of Iowa, and Mark Joel Zbieroski, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

HAYDEN, J.

The defendant, Steven Allen Evans, appeals his conviction and sentence following a jury trial for attempting to obtain a prescription drug which is a controlled substance by uttering a false or forged prescription. We affirm.

On February 17, 1987, defendant presented a prescription for the drug Dilaudid to pharmacists in three different drugstores in Washington, Iowa. The prescription was made out to Dick Colby. The pharmacist at the first drug store knew Dick Colby and became suspicious when defendant wanted to fill the prescription. After telling defendant he didn't have any Dilaudid, the pharmacist called the doctor whose forged signature was on the prescription. When the doctor told him he hadn't prescribed Dilaudid recently, the pharmacist called the police and the other two pharmacists in town to alert them.

A jury returned a verdict of guilty on three counts of prohibited acts in violation of Iowa Code sections 155.29(4) and 155.30 (1987). Defendant was guilty of a class "C" felony and admitted he was a habitual offender pursuant to section 902.8. He was sentenced to a term of imprisonment not to exceed fifteen years on each of three counts, to run concurrently. Defendant now appeals.

As grounds for his appeal, defendant claims the State failed to prove beyond a reasonable doubt that he violated Iowa Code section 155.29(4).

Defendant asserts the legislature intended subsections 155.29(2)-(5) to apply to those who have the authority to issue a genuine prescription, in other words, health care professionals. A violation of any of these subsections, if a controlled substance is involved, would be punished according to Iowa Code sections 204.401(1) and 204.411.

Defendant maintains the code section most applicable to him as a "would-be patient" is section 155.29(1). This section would require punishment under sections 204.403 and 204.411 when a controlled substance is involved. Under this section, defendant would receive a lesser penalty.

On appeal, defendant for the first time asserts he was charged under the wrong statute.

Iowa Rule of Criminal Procedure 10(3) requires defenses and objections to be timely raised. Failure to do so constitutes a waiver unless good cause is shown. Because defendant has not shown good cause, he has waived his right to raise this issue.

The general rule is matters which have not been raised in the trial court cannot be raised on appeal. State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983). "The orderly, fair and efficient administration of the adversary system requires that litigants not be permitted to present one case at trial and a different one on appeal." Id., citing to State v. Buckner, 214 N.W.2d 164, 167-68 (Iowa 1974).

We do not depart from the general rule here.

AFFIRMED.