

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LEE JONES,

Defendant-Appellant.

UNPUBLISHED

August 4, 2005

No. 252934

Allegan Circuit Court

LC No. 02-012804-FH

Before: Zahra, P.J., and Gage and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction of possession of chemicals or laboratory equipment that he knew or had reason to know were to be used for the purpose of manufacturing methamphetamine within five hundred feet of a residence, MCL 333.7401c(2)(d). Defendant was sentenced as a habitual offender, third offense, MCL 769.11, to incarceration for a minimum of eighty-four months and a maximum of forty years. We affirm.

Defendant contends on appeal that the evidence was insufficient to establish beyond a reasonable doubt the element of proximity within five hundred feet of a residence, business establishment, school or house of worship. In a challenge to the sufficiency of the evidence to support a criminal conviction, we view the evidence de novo in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In the instant case, two police officers testified that chemicals and equipment used in the manufacture of methamphetamine, as well as scales containing methamphetamine residue, were found within fifty feet of the residence of defendant and his fiancée, and within 170 feet of a neighboring residence. One of the officers testified that people lived at the neighboring residence, he had seen them there, and the last known residents were the Byrds. Defendant's fiancée testified that Cindy Byrd was a neighbor. This evidence, viewed in the requisite favorable light, was clearly sufficient to establish proximity within five hundred feet of a residence beyond a reasonable doubt.

Defendant also urges this Court to adopt a rule whereby custodial interrogations that are not preserved by audio or video recording may not be admitted at trial. Defendant relies on *Stephan v State*, 711 P2d 1156 (Alaska, 1985), in which the Alaska Supreme Court held that an unexcused failure to electronically record a custodial interrogation in a place of detention

violated the suspect's due process rights under the Alaska constitution. *Id.* at 1158. This issue was considered by this Court and rejected in *People v Fike*, 228 Mich App 178, 183-187; 577 NW2d 903 (1998). The Court found that the Michigan constitution did not require such a practice, and declined to declare a constitutional mandate when the Legislature had not spoken on the subject. *Id.* at 184. The issue was again presented, and the *Fike* decision was approved and followed, in *People v Geno*, 261 Mich App 624, 627-628; 683 NW2d 687 (2004). Since defendant did not raise this issue in the trial court, our review is limited to plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). The trial court's admission of defendant's unrecorded confession in the instant case was consistent with existing law and neither error nor plain error. *Id.*

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray