STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 16, 2009
v	No. 283062 Cass Circuit Court
THOMAS ARTHUR ROUTLEY, Defendant-Appellant.	LC No. 07-010218-FH

Before: Beckering, P.J., and Wilder and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of operating or maintaining a methamphetamine laboratory or equipment for the manufacture of methamphetamine, involving the unlawful generation, treatment, storage, or disposal of a hazardous waste, MCL 333.7401c(2)(c) (Count 1); operating or maintaining a laboratory or equipment for the purpose of manufacturing methamphetamine, MCL 333.7401c(2)(f) (Count 2); possession of a controlled substance, narcotics less than 25 grams, MCL 333.7403(2)(a)(v) (Count 3); and operating or maintaining a methamphetamine laboratory within 500 feet of a residence, MCL 333.7401c(2)(d) (Count 4). We affirm.

Defendant's convictions arise from an incident that occurred on July 21, 2007, when residents of a trailer in Edwardsburg telephoned police after discovering a backpack in their auxiliary shed, which contained items they suspected were being used to manufacture methamphetamine. Debra Short, the owner of the trailer, had given defendant permission to use the shed as a makeshift residence for several days. Following his arrest, defendant confessed to police that he helped two other people finish manufacturing methamphetamine at the shed and had then smoked the drugs at the shed. At trial, an expert in the manufacture and use of methamphetamine described the backpack and its contents as a "little rolling mobile meth lab." Short's daughter testified at trial that, several days before the incident, she saw defendant with a backpack similar to the one found in the shed.

The only issue on appeal is whether there was sufficient evidence to prove defendant committed all four charged offenses when he purportedly had no knowledge that criminal activity was taking place in the shed, when police did not find any methamphetamine on defendant's person or at the shed, and the materials found at the scene were not tested to determine if they were "hazardous."

We review a sufficiency of the evidence claim de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). All facts are construed in a light most favorable to the prosecution to determine whether any rational trier of fact could have concluded that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). "Circumstantial evidence and reasonable inferences arising therefrom can sufficiently establish the elements of a crime." *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

Defendant was convicted of three counts pursuant to MCL 333.7401c,[1] which prohibits the manufacture of a controlled substance. MCL 333.7401c(1)(a) prohibits, in part, the ownership or use of a building or structure with knowledge that it is being used to manufacture a controlled substance. MCL 333.7401c(1)(b) prohibits, in part, the ownership or possession of a chemical or laboratory equipment with knowledge the item will be used to manufacture a controlled substance. MCL 333.7401c(2) states in relevant part:

> (2) A person who violates this section is guilty of a felony punishable as follows:
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> ***
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> (c) If the violation involves the unlawful generation, treatment, storage, or disposal of a hazardous waste by imprisonment…
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> (d) If the violation occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship, by imprisonment…
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> ***
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> (f) If the violation involves or is intended to involve the manufacture of a substance described in section [MCL 333.7214(c)(ii) (methamphetamine)], by imprisonment…

With respect to all three counts prosecuted under MCL 333.7401c, there was sufficient evidence introduced at trial to allow a reasonable juror to conclude that defendant possessed or used a building and/or possessed a chemical or laboratory equipment and that he knew or had reason to know that the building, chemical or laboratory equipment was to be involved in the manufacturing of methamphetamine on either a direct theory or as an aider and abettor. MCL 333.7401c(1)(a), (b). See *People v Izarraras-Placante*, 246 Mich App 490, 495; 633 NW2d 18 (2001) (setting forth requisite elements for finding a defendant guilty of aiding and abetting). Evidence showed that defendant was staying in a shed at lot 34 in the Edwardsburg trailer community and he acknowledged to police that he and two other individuals finished manufacturing methamphetamine at the shed and then smoked the drug there. According to witness Lisa Segundo, who was with defendant the night before his arrest, defendant informed her he was "cooking" methamphetamine and asked her if she wanted to "smoke meth" with him.

[1] The charging information and the judgment of sentence indicate defendant was charged and convicted pursuant to MCL 333.7401c(2), which is the sentencing provision of the statute.

Segundo testified defendant instructed another individual to "make dope" and he became upset and went into the shed when the initial attempts to manufacture the drug failed. Expert testimony established that a chemical mixture found at the scene was indicative of a common method of manufacturing methamphetamine, and police also found numerous other items that the expert testified are commonly used to manufacture the drug.

In addition, with respect to the count under MCL 333.7401c(2)(c), the count involving hazardous waste, the expert testified that the chemical mixture found at the scene posed a deadly hazard because toxic gasses emitted from the mixture can burn exposed human skin, can cause serious injury or death if inhaled, and can spontaneously ignite if exposed to heat. The statutory definition of "hazardous materials" does not require that a material be scientifically tested in order to qualify as "hazardous" under the statute. See MCL 324.11103(3). A rational trier of fact could have found beyond a reasonable doubt that defendant generated hazardous waste, i.e. a pill wash made with chemicals and/or treated, disposed of, or stored hazardous waste.

With respect to the count under MCL 333.7401c(2)(d), the evidence revealed that Short's trailer was 12 feet from the shed where defendant's backpack and equipment were found. Thus, the violation occurred within 500 feet of the residence.

Finally, although the police did not discover defendant in the possession of methamphetamine, the statute does not require actual possession and circumstantial evidence can constitute satisfactory proof of an offense. *Schultz, supra*. Under MCL 333.7401c(2)(f), the violation involved the manufacture of methamphetamine. Reviewing this evidence in a light most favorable to the prosecution, we hold that a reasonable juror could have found defendant guilty of all three offenses related to the manufacture of methamphetamine.

Similarly, we hold there was sufficient evidence to allow a reasonable juror to conclude beyond a reasonable doubt that defendant possessed less than 25 grams of the controlled substance amphetamine at the time he was arrested (Count 3). MCL 333.7403 prohibits the knowing or intentional possession of schedule 1 and schedule 2 controlled substances. Amphetamine is a schedule 2 narcotic pursuant to MCL 333.7214(c)(i). In this case, testimony at trial established that defendant requested and took an Adderall pill from Short's teenage daughter. When defendant was being booked at the county jail, a pill fell from his pocket and laboratory testing determined that the pill was amphetamine. Reviewing this evidence in a light most favorable to the prosecution, we find there was sufficient evidence to allow a rational trier of fact to find defendant knowingly or intentionally possessed less than 25 grams of the controlled substance amphetamine.

Affirmed.

/s/ Jane M. Beckering
/s/ Kurtis T. Wilder
/s/ Alton T. Davis