

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALMYRON GORDON DOBSON,

Defendant-Appellant.

UNPUBLISHED
February 12, 2009

No. 280598
St. Clair Circuit Court
LC No. 07-000139-FH

Before: Saad, C.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of manufacturing methamphetamine, MCL 333.7401(2)(b)(i), possession of methamphetamine with intent to deliver, MCL 333.7401(2)(b)(i), maintaining a drug lab, MCL 333.7401c(1)(a), maintaining a drug house, MCL 333.7405(1)(d), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent terms of five to 20 years on the first three counts, and to a concurrent term of one to two years on the drug house count. The court also sentenced defendant to a consecutive two-year term on the felony-firearm count. For the reasons set forth below, we affirm.

Defendant was arrested after police officers executed a search warrant on a barn and an adjacent residence in St. Clair County. In the barn, police found firearms, a large laboratory, raw materials for manufacturing methamphetamine, packaging materials, and a drug ledger. Police discovered defendant in the house and he had four “bindles” of methamphetamine in his pocket. A police officer testified that methamphetamine is packaged in bindles for distribution.

Contrary to defendant’s assertions on appeal, the jury correctly convicted defendant of maintaining a drug house. Section 7405 of the controlled substances act (CSA), MCL 333.7101 *et seq.*, reads in pertinent part as follows:

(1) A person:

* * *

(d) Shall not knowingly keep or maintain a . . . building . . . or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is

used for keeping or selling controlled substances in violation of this article.
[MCL 333.7405(1)(d).]

While police officers found no methamphetamine in the barn on the day of his arrest, ample evidence established that defendant necessarily used the barn for keeping or selling drugs. Defendant admitted to police that he lived in the barn and that he started manufacturing methamphetamine in the barn approximately six months before his arrest. According to defendant, he manufactured 15 to 20 grams of methamphetamine approximately three to five times each month. Defendant also admitted that he sold some of the drugs. Further, police found a scale, drug ledger, and packaging materials in the barn. This evidence is sufficient for the jury to have found that, for at least some length of time, defendant necessarily kept drugs in the barn. The ample evidence of drug selling paraphernalia is also sufficient for the jury to have found that defendant used the barn for selling the drugs. Accordingly, the prosecutor presented sufficient evidence to sustain defendant's conviction of maintaining a drug house.¹

Defendant claims that his convictions for manufacturing methamphetamine and maintaining a drug house violate his constitutional double jeopardy protections. However, the elements of the two crimes are different and, therefore, the two convictions do not violate double jeopardy protections. See *People v Ream*, 481 Mich 223; 750 NW2d 536 (2008). We also reject defendant's contention that the trial court should have instructed the jury that it could find that defendant was preparing the methamphetamine for his own use. The evidence did not support the instruction and the trial court properly denied defendant's request. See *People v Pearson*, 157 Mich App 68; 403 NW2d 498 (1987).

Defendant also says that the trial court erroneously instructed the jury on the felony-firearm charge by referring to constructive possession, which is not part of the Michigan Criminal Jury Instructions, CJI2d 11.34. We hold that the trial court correctly instructed the jury according to the law and the evidence adduced at trial. While the Criminal Jury Instruction does not refer to constructive possession, it is well-settled that constructive possession is sufficient for purposes of a felony-firearm conviction, and the trial court in no way communicated any particular view of the evidence to the jury. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). We also reiterate that the Michigan Criminal Jury Instructions are not sanctioned by our courts and that trial judges should use them only if they are accurate and appropriate for the case. *People v Petrella*, 424 Mich 221, 277; 380 NW2d 11 (1985).²

¹ Defendant also maintains that the trial judge erred when he instructed the jurors that they could find defendant guilty of maintaining a drug house if they found that defendant knowingly kept or maintained a building "used for illegally keeping controlled substances or used for illegally selling controlled substances or used for illegally *manufacturing* controlled substances." While, based on the language of the statute, the court's reference to manufacturing was arguably erroneous, any error was harmless in light of the ample evidence that defendant used the barn for keeping or selling methamphetamine.

² Defendant suggests that the jury expressed an interest in acquitting him of the felony-firearm charge because they asked in a note to the trial judge whether they must follow the "letter of the law" when deciding the charge. Were we to agree with defendant's characterization of the inquiry, the fact remains that the trial court correctly instructed the jury on the felony-firearm

(continued...)

Here, the trial court correctly instructed the jury on the felony-firearm charge and no error occurred.

Affirmed.

/s/ Henry William Saad

/s/ Alton T. Davis

/s/ Deborah A. Servitto

(...continued)

count and the instructions as a whole informed the jury of their duty to decide the facts of the case and apply the law as given by the court. See *Burgenmeyer, supra* at 438. Thus, defendant's claim is without merit.