

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY DALE FUTRELL,

Defendant-Appellant.

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UNPUBLISHED

August 19, 2010

No. 291686

Cass Circuit Court

LC No. 08-010366-FH

Before: M. J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of operating or maintaining a laboratory involving methamphetamine, MCL 333.7401c(1), (2)(f), possession of methamphetamine, MCL 333.7403(2)(b)(i), and maintaining a drug house, MCL 333.7405(d).<sup>1</sup> The trial court sentenced defendant as a second habitual offender, see MCL 769.10, to concurrent prison terms of five to 30 years for operating or maintaining a laboratory involving methamphetamine and two to 15 years for possession of methamphetamine, with credit for 141 days, and to 141 days in jail for maintaining a drug house, with credit for time served. Because we conclude that there were no errors warranting relief, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

Police officers investigated a tip that Diane Swope had been burned during the production of methamphetamine at defendant's residence, and obtained a warrant to search defendant's residence. Defendant spoke with the police during the search. A detective indicated that defendant admitted that he was addicted to cocaine and methamphetamine, and that he had cocaine on the premises. Defendant stated that a fire had occurred, either locally or in Elkhart, Indiana, and that a woman named Diane was burned; he denied that he had been involved in manufacturing methamphetamine when the fire occurred. Defendant displayed burned hands, and indicated that he had attempted to extinguish the fire.

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<sup>1</sup> Defendant does not challenge his conviction of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v).

The search of defendant's residence revealed shredded cold medicine boxes, small ziplock baggies of the size commonly used to package narcotics, coffee filters containing traces of ephedrine or pseudoephedrine, a large ziplock baggie with the bottom torn in a fashion that indicated to the police that it had been used in the manufacturing process, rubber gloves, tin foil folded in a way that indicated that it had been used to smoke methamphetamine, a wire scrubber known as a Chore Boy, a material commonly used in connection with smoking narcotics, lithium batteries, and a receipt for Coleman lantern fuel, two components used in the manufacture of methamphetamine. Residue in two ziplock baggies found at defendant's residence was identified as methamphetamine.

Defendant testified that the evening before the police searched his home he went to a party where Swope was burned by a bonfire. Defendant stated that he sustained burns on his hands when he assisted Swope. Defendant testified that he admitted to the police that he had cocaine on the premises, but said he did not recall admitting that he used methamphetamine. He stated that he and his brother used ziplock baggies to store tied flies. Defendant denied that he ever shredded cold medicine boxes, and said that he did not know who had used his shredder to do so. Defendant stated that he used lithium batteries in electronic equipment and used a Chore Boy to clean his grill.

On appeal, defendant challenges the sufficiency of the evidence used to convict him. In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

Defendant was charged with operating or maintaining a laboratory involving methamphetamine, contrary to MCL 333.7401c(1). That statute reads:

(1) A person shall not do any of the following:

(a) Own, possess, or use a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance in violation of [MCL 333.7401] or a counterfeit substance or a controlled substance analogue in violation of [MCL 333.7402].

(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of [MCL 333.7401] or a counterfeit substance or a controlled substance analogue in violation of [MCL 333.7402].

(c) Provide any laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or laboratory equipment for the purpose of manufacturing a controlled substance in violation of [MCL 333.7401] or a counterfeit substance or a controlled substance analogue in violation of [MCL 333.7402].

With regard to his conviction of operating or maintaining a laboratory involving methamphetamine, defendant argues that the evidence was insufficient to support his convictions because certain equipment and ingredients needed for the manufacture of methamphetamine, such as gas generator tubing, ammonium nitrate, anhydrous ammonia, muriatic acid, and Coleman lantern fuel, were not found at his residence. However, no authority holds that every piece of equipment and every ingredient necessary to manufacture methamphetamine must be found in the same location at the same time in order to convict a person of operating or maintaining a laboratory involving methamphetamine. Various materials and ingredients needed for the manufacture of methamphetamine were found at defendant's residence. These included shredded boxes that had held cold medicines containing pseudoephedrine, a key ingredient in the manufacture of methamphetamine; coffee filters containing traces of ephedrine or pseudoephedrine, indicating that the filters had been used in the manufacturing process; a ziplock baggie torn in a way that indicated that it had been used in the manufacturing process; and lithium batteries, a part of which is used in the manufacturing process. Defendant did not deny that these items were found at his residence, but maintained that he did not know how the cold medicine boxes became shredded, and that the other items were used for legitimate purposes. Police witnesses testified that it was not common to find all the equipment and ingredients necessary to manufacture methamphetamine in the same location at the same time, and opined that a methamphetamine laboratory had existed at defendant's residence. The evidence that various pieces of equipment and several ingredients needed to manufacture methamphetamine, coupled with the testimony given by the police witnesses regarding the manufacturing process, was sufficient to allow the jury to conclude that, contrary to defendant's testimony, defendant operated or maintained a laboratory involving methamphetamine on his property. *Vaughn*, 186 Mich App at 379-380. The evidence produced at trial was sufficient to support defendant's conviction of operating or maintaining a laboratory involving methamphetamine.

Defendant was also charged with possession of methamphetamine, contrary to MCL 333.7403(2)(b)(i). Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Possession of a controlled substance may be actual or constructive. The critical question is whether the defendant had dominion or control over the substance. Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Sufficient evidence supported defendant's conviction of possession of methamphetamine. Two baggies found in defendant's home contained traces of what a drug analyst for the Michigan State Police identified as methamphetamine. This evidence, coupled with the evidence that allowed the jury to find that defendant operated or maintained a laboratory involving methamphetamine, was sufficient to allow the jury to conclude that defendant possessed methamphetamine. *Nunez*, 242 Mich App at 615.

Defendant was also charged with maintaining a drug house, contrary to MCL 333.7405(1)(d), which provides that a person shall "not knowingly keep or maintain a . . . dwelling, 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." Defendant was

charged under the theory that his residence was used for keeping or selling controlled substances and there was sufficient evidence to support that theory.

The residence at which defendant was arrested was defendant's own home. See *People v Bartlett*, 231 Mich App 139, 152; 585 NW2d 341 (1998) (stating that a person can be deemed to keep and maintain a drug house if the person has the ability to exercise control over the house). A police witness testified that defendant admitted that he was addicted to cocaine and that he had cocaine on the premises; cocaine was found on the premises. Moreover, the search of defendant's residence revealed tin foil folded in a specific manner to facilitate the smoking of methamphetamine. The evidence that allowed the jury to conclude that defendant operated or maintained a laboratory involving methamphetamine, along with the evidence that methamphetamine was found in defendant's home, was sufficient to allow the jury to conclude that defendant maintained a drug house used for keeping controlled substances. *Id.*; *Vaughn*, 186 Mich App at 379-380.

The evidence produced at trial was sufficient to support the convictions challenged by defendant.

Affirmed.

/s/ Michael J. Kelly

/s/ Jane E. Markey

/s/ Donald S. Owens