

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY NICHOLAS COHEE,

Defendant-Appellant.

---

UNPUBLISHED

March 21, 2006

No. 258738

Kent Circuit Court

LC No. 03-008180-FH

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Defendant appeals a jury trial conviction of operating and maintaining a methamphetamine laboratory, MCL 333.7401c. The court sentenced defendant to six months in jail. We affirm.

Defendant says that the trial court erred when it refused to instruct the jury that more than mere knowledge of methamphetamine production is required to convict defendant under the statute. We disagree.

Jury instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is evidence in support. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

MCL 333.7401c(1) states the following.

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 section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

The plain language of MCL 333.7401c(1)(a), states that knowledge of methamphetamine production is sufficient to support a conviction if the other elements of the statute are satisfied. As the trial court correctly stated, the statute prohibits a person from possessing a structure that he knows is being used to manufacture methamphetamine. Defendant does not dispute that he

possessed the structure in question or that methamphetamine was being produced; therefore, knowledge is the only other element required to satisfy the requirements of the statute.

Defendant relies on *People v Burrell*, 253 Mich 321; 235 NW 170 (1931), *People v Davenport*, 122 Mich App 159; 332 NW2d 443 (1982), and *People v Turner*, 125 Mich App 8; 336 NW2d 217 (1983), to support his position that mere knowledge of methamphetamine production is not enough to support his conviction. However, those cases are inapplicable. In *Burrell* and *Davenport*, the defendants were convicted of the crime charged under the aiding and abetting statute set forth in MCL 767.39. To be convicted of a crime as an aider and abetter it has long been held that mere presence and knowledge is insufficient. *Turner, supra*, at 11. However, here, defendant was not convicted of manufacturing methamphetamine as an aider and abetter; thus, these cases are inapplicable.

Here, the trial court properly instructed the jury that in order to convict defendant under the statute, the following three elements must be proven beyond a reasonable doubt: 1) defendant was in possession of a building or structure; 2) methamphetamine was being manufactured; and 3) defendant knew that methamphetamine was being manufactured. Thus, the instructions are an accurate statement of the law.

Affirmed.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra