

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IAN MICHAEL ENGLE,

Defendant-Appellant.

---

UNPUBLISHED

August 19, 2008

No. 277066

Emmet Circuit Court

LC No. 05-002533-FH

Before: Murray, P.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Defendant Ian Engle appeals as of right from his jury convictions for delivering marijuana,<sup>1</sup> delivering methadone,<sup>2</sup> and maintaining a drug vehicle.<sup>3</sup> We affirm Engle's delivery convictions and sentences, but vacate his conviction and sentence for maintaining a drug vehicle.

I. Basic Facts And Procedural History

In 2005, Emmet County Sheriff's Department Detective Rich Bankey was working as part of the Straights Area Narcotics Enforcement (SANE) Team, which investigates drug crimes in various counties in the northern portion of Michigan's lower peninsula. In February 2005, Detective Bankey was involved in a controlled purchase of methadone and marijuana. Detective Bankey testified that, on this occasion, a confidential informant named Cole Swiss was involved in the transaction.

Detective Bankey stated that Swiss contacted him to let him know that he had arranged for the purchase of marijuana and methadone at Boyne Highlands in Emmet County from Engle on February 15, 2005. Swiss was equipped with surveillance equipment, including a live-feed transmitter and digital recording device, and \$70 of marked money. Detective Bankey testified that once Swiss was equipped, the two drove to the Boyne Highlands Motel parking lot. Detective Bankey said that Swiss exited his vehicle and then entered the passenger side of a

---

<sup>1</sup> MCL 333.7401(2)(d)(iii).

<sup>2</sup> MCL 333.7401(2)(a)(iv).

<sup>3</sup> MCL 333.7405(1)(d).

Yukon truck that had pulled into the parking lot. After approximately one to two minutes, Swiss got out of the Yukon and came back to Detective Bankey's vehicle with a baggie of marijuana and a methadone pill.

Swiss identified Engle as the person that sold him the drugs, and he said that he could not confuse Engle with anyone else because Swiss had known Engle since Swiss was 15 years old. Swiss testified that when he entered the Yukon on February 15, 2005, he knew that it was Engle's vehicle based on past history and seeing Engle drive it. Swiss said that Engle gave him the marijuana and the methadone, and he gave Engle \$60.

Michigan State Police Detective Sergeant Scott Schlahoover testified that he was present on February 15, 2005, when the drug transaction took place. Sergeant Schlahoover stated that he was less than ten feet from Engle and that he was able to look at Engle and identify his facial features. On February 22, 2005, Sergeant Schlahoover identified Engle from a Secretary of the State driver's license image as being the individual driving the Yukon; he also identified Engle in court on the day of trial.

Engle denied being at Boyne Highlands on February 15, 2005. Engle alleged that on that date he was staying at a neighbor's house because the pipes at his house had frozen, but he left his vehicle parked in his driveway. Engle recalled that he would go back to his house in the evening to check on the repairs, but he stayed at his neighbor's house during the day. Engle stated that his "only explanation" for his vehicle being involved in the drug transaction was "that someone else drove [the] vehicle there." He explained that he always left the keys in his vehicle so that other people could use it to run errands for him. (Engle had been paralyzed from the waist down since he was 21 years old; he was confined to a wheelchair, but he was able to drive his vehicle himself using hand controls). Engle claimed that sometimes he did not even know that his vehicle was gone.

In February 2007, Engle was convicted for delivering marijuana,<sup>4</sup> delivering methadone,<sup>5</sup> and maintaining a drug vehicle.<sup>6</sup> The trial court sentenced Engle to 36 months probation and the following jail terms: eight months for the delivery of methadone conviction followed by concurrent two-month jail terms for both delivery of marijuana and maintaining a drug vehicle. Engle now appeals as of right.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

Engle argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that Engle maintained a drug vehicle because there was no evidence that Engle sold drugs from his vehicle more than once. We review de novo sufficiency of the evidence

---

<sup>4</sup> MCL 333.7401(2)(d)(iii).

<sup>5</sup> MCL 333.7401(2)(a)(iv).

<sup>6</sup> MCL 333.7405(1)(d).

claims,<sup>7</sup> viewing all evidence in the light most favorable to prosecution in order to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>8</sup>

## B. Analysis

MCL 333.7405(1)(d) states that a person:

Shall not knowingly keep or maintain a . . . vehicle . . . 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.

In *People v Thompson*, the Michigan Supreme Court held that “if the evidence only shows that defendant used a vehicle to keep or deliver drugs on one occasion, and there is no other evidence of continuity, the evidence is insufficient to establish that defendant kept or maintained a drug vehicle in violation of MCL 333.7405(1)(d).”<sup>9</sup> The Court reasoned that “keep or maintain” as stated in MCL 333.7405(1)(d) is not synonymous with use, but rather requires more than a single, isolated instance of activity.<sup>10</sup> *Thompson* did not create a new rule, but rather interpreted the existing statute.<sup>11</sup> Therefore, given the lack of evidence establishing the requisite continuity of use, Engle’s conviction for maintaining a drug vehicle will be vacated.<sup>12</sup> Double jeopardy protections prohibit retrial on this charge.<sup>13</sup>

## III. Admissibility of Evidence

### A. Standard of Review

Engle argues that the trial court abused its discretion when it failed to admit into evidence a photograph of Engle and his brothers, violating his constitutional right to present a defense. A trial court has discretion concerning whether evidence is admissible, and its decision should be reversed only when the trial court clearly abused its discretion.<sup>14</sup> “A trial court abuses its

---

<sup>7</sup> *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

<sup>8</sup> *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

<sup>9</sup> *People v Thompson*, 477 Mich 146, 157-158; 730 NW2d 708 (2007).

<sup>10</sup> *Id.* at 156-158.

<sup>11</sup> See *People v Head*, 480 Mich 866, 866; 737 NW2d 763 (2007) (in a prosecution for maintaining a drug house, remanding to this Court an insufficiency claim based on continuity in light of *Thompson*).

<sup>12</sup> *People v Watson*, 245 Mich App 572, 596; 629 NW2d 411 (2001).

<sup>13</sup> *Id.*

<sup>14</sup> *People v Bahoda*, 448 Mich 261, 263; 531 NW2d 659 (1995).

discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes.”<sup>15</sup>

#### B. Analysis

Before any evidence is admitted at trial, the proponent must authenticate the evidence to establish that it is what the proponent claims.<sup>16</sup> Here, Engle attempted to introduce a photograph into evidence that had not been properly authenticated and for which Engle had no personal knowledge of when it was taken. Therefore, the trial court did not abuse its discretion in refusing to admit the photograph.<sup>17</sup>

#### IV. Conclusion

We affirm Engle’s delivery of marijuana and methadone convictions and sentences. However, we vacate his conviction and sentence for maintaining a drug vehicle.

Affirmed in part, and vacated in part.

/s/ Christopher M. Murray

/s/ William C. Whitbeck

/s/ Michael J. Talbot

---

<sup>15</sup> *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

<sup>16</sup> MRE 901.

<sup>17</sup> *People v Flowers*, 222 Mich App 732, 736, 565 NW2d 12 (1997), citing *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995).