

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL JONES, JR.,

Defendant-Appellant.

UNPUBLISHED

March 2, 2004

No. 243959

Oakland Circuit Court

LC No. 02-182680-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Defendant's conviction arose out of a traffic stop that took place on January 26, 2002. Farmington Hills Police Officer Daniel Rodriguez testified that he was parked in the median of northbound M-5 when an S-10 pickup, with a cracked windshield, drove by. As it passed, he could not read the license plate because it was dirty and unlit, and he decided to make a traffic stop for those civil infractions.

Defendant was driving the truck. When Officer Rodriguez asked him a few questions, defendant was trembling, sweating, and appeared very nervous and agitated. He asked defendant to step out of the car. Defendant denied having anything illegal on his person and agreed to allow a search. The officer felt a bulge in defendant's coat and defendant reached into the pocket. Officer Rodriguez reached in the pocket, too, and found two baggies of cocaine.

The issues in this case are whether the trial court clearly erred in finding that the police officer had reasonable suspicion to make the traffic stop and in denying defendant's motion to suppress and whether the trial court erred in admitting improper drug profile evidence. We find that the trial court did not err on either issue.

II. STANDARD OF REVIEW

On appeal, defendant first argues that the trial court erred in denying his motion to suppress. This Court will review a lower court's factual findings in a suppression hearing for clear error and those findings will be affirmed unless the Court is left with a definite and firm conviction that a mistake has been made. *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). The lower court's ultimate ruling on the motion is reviewed de novo. *Id.*

III. ANALYSIS

Brief investigative stops short of arrest are permitted where police officers have a reasonable suspicion of ongoing criminal activity. *People v Faucett*, 442 Mich 153, 168; 499 NW2d 764 (1993). The totality of the circumstances test is to be used in determining the reasonableness of the action. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). Fewer foundational circumstances are necessary to support a finding of reasonableness when moving vehicles are involved. *Id.*, 308-309.

Where a police officer has probable cause to believe the defendant was in violation of a traffic law, a stop is permissible. *Id.* While defendant argues that there were no equipment violations on his vehicle, the trial court found otherwise, and there is no basis for finding the court's decision clearly erroneous. There is no showing that defendant's consent to the search was involuntary. *People v Shaw*, 188 Mich App 520, 525; 470 NW2d 90 (1991).

Defendant also argues that the court erred in admitting improper drug profile evidence. While defendant did object to portions of the testimony as hearsay and questioned the expert testimony regarding the likely use of the quantity of cocaine found, he did not argue that improper drug profile evidence was used. Expert police testimony regarding the quantity of drugs found, the packaging, and price of the drugs is permitted to show that the defendant intended to sell the drugs and not simply use them for personal consumption. *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). No improper drug profile evidence was presented in this case. *People v Murray*, 234 Mich App 46; 593 NW2d 690 (1999).

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens