

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY CHARLES HUYSER,

Defendant-Appellant.

UNPUBLISHED

December 14, 2006

No. 264058

Allegan Circuit Court

LC No. 04-013948-FH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possessing chemical or laboratory equipment that he knew or had reason to know was to be used for the purpose of manufacturing methamphetamine, MCL 333.7401c(2)(f). He was sentenced to six to twenty years' imprisonment and appeals as of right. We affirm.

Officer Steven Gibbs received a dispatch regarding a suspicious purchase of large quantities of pseudophedrine from a Family Dollar Store in the City of Allegan. Officer Gibbs observed defendant's vehicle, which matched the description of the suspects' vehicle, and initiated a traffic stop based upon the fact that the passenger side-view mirror was broken. At the time of the stop, Officer Gibbs believed that a broken passenger side-view mirror gave him the legal authority to initiate a traffic stop; however, he later learned that a broken passenger side-view mirror is not illegal and, therefore, not a reason to initiate a traffic stop in Michigan.

During a pat-down search of defendant, Officer Gibbs found a "tooter," which is a white plastic tube used for smoking methamphetamine off tin foil. Defendant admitted to Officer Gibbs that he used the tooter to smoke methamphetamine and that he had last used methamphetamine two days previously.

Upon searching defendant's vehicle, Officer Gibbs found six open packages of Family Dollar brand pseudophedrine. Inside the packages, Officer Gibbs found empty blister packs but no pills. Other items found inside the vehicle included a canister of butane fuel, five small aluminum foil balls, two coffee filters, and a roll of Reynolds Wrap.

Defendant confessed to Officer Gibbs that he was using the pseudophedrine to manufacture methamphetamine. Defendant stated that he had crushed the pills he bought from Family Dollar and then dropped them off down the street. It was defendant's intention to

purchase relatively small amounts of pseudophedrine tablets at several different locations in Allegan County throughout the day, crush them up, and store them at one location. After he had a pre-set amount, he planned to take the drug to an abandoned building and leave them for some unnamed third party. The next day, defendant would pick up one gram of methamphetamine at this location as payment. Officer Gibbs then placed defendant under arrest for possession of methamphetamine components.

At trial, defendant testified that he went to the Dollar Store to buy Actifed to treat his chronic sinus problem. However, out of love for his friend “grandma,” whom he had known for approximately one month, defendant opened the blister packs and gave the pills to her because she has arthritis in her hands. Defendant also asserted that he used the “tooter” to smoke hand rolled tobacco so that the tobacco would not irritate his lip.

Defendant contended that he confessed to purchasing the Actifed to make methamphetamine because he was uncomfortably hot while sitting in the back seat of the police cruiser and because the officer told him that if he told a good enough story, he could go free. Defendant also contended that in his confession, he was referring to pills in general and not the specific pills from Family Dollar. Further, defendant stated that he does not smoke methamphetamine and that the coffee filters and aluminum foil balls found by Officer Duncan were actually not in the vehicle. Additionally, defendant stated he did not tell the officer that the pills were for grandma because he was afraid she might get in trouble for having pills containing pseudophedrine.

Defendant first argues on appeal that the trial court erred when it denied his motion to suppress the evidence seized from his vehicle. Defendant asserts that the police did not have reasonable suspicion or probable cause to initiate the traffic stop and, therefore, the evidence must be suppressed.

When a defendant challenges the trial court’s suppression ruling, we review for clear error the trial court’s findings of fact. *People v Oliver*, 464 Mich 184, 191-192; 627 NW2d 297 (2001). Clear error exists if some evidence supports the trial court’s finding, but a review of the entire record leaves this Court with the definite and firm conviction that the trial court made a mistake. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003). This Court reviews legal questions de novo. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005).

The Fourth Amendment permits the police to stop and briefly detain a person based on reasonable suspicion that criminal activity may be afoot. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Dunbar*, 264 Mich App 240, 247; 690 NW2d 476 (2004). For law enforcement officers to make a constitutionally proper investigative stop, the totality of the circumstances as understood and interpreted by law enforcement officers, not legal scholars, must yield a particular suspicion that the individual being investigated has been, is, or is about to be engaged in criminal activity. *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993). In addition, that particular suspicion must be reasonable and articulable. *Terry*, *supra* at 21. For conduct to support a finding of a reasonable suspicion, it need be merely evasive. *Oliver*, *supra* at 197.

In this case, Officer Gibbs received a call from dispatch stating that a suspicious purchase of large quantities of pseudophedrine had been made at the Family Dollar Store. Officer Gibbs

made several observations before he initiated the traffic stop, which under the totality of the circumstances, established reasonable suspicion of criminal activity. First, the suspects' white mini-van with wood grain panels matched the description of the suspect vehicle given to Officer Gibbs by dispatch. Second, Officer Gibbs observed the suspects' vehicle in the driveway of the Family Dollar Store where the suspicious purchase of pseudophedrine was previously made. And third, upon making eye contact with the passenger in the mini-van, the van made an evasive U-turn and headed away from the police cruiser. The totality of the circumstances observed by Officer Gibbs established a reasonable suspicion of criminal activity that justified the stop of the vehicle and the ensuing search.

In addition, the fact that the officer does not have the state of mind that provides the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, when viewed objectively, justify that action. *Oliver, supra* at 200. Here, even though Officer Gibbs pulled defendant over for a broken passenger side-view mirror, which is not a legally permissible reason to initiate a traffic stop, Officer Gibbs also initiated the traffic stop based on his reasonable suspicion that defendant had committed a crime. The trial court did not err in allowing the evidence seized from defendant's vehicle to be admitted into evidence.

Defendant next argues on appeal that the prosecution failed to present sufficient evidence to support his conviction. This Court reviews sufficiency of the evidence challenges in a criminal trial de novo. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005).

In reviewing the sufficiency of the evidence presented in a criminal trial, we review the evidence to determine whether the evidence, when viewed in the light most favorable to the prosecution, would warrant a trier of fact in finding that all the elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of a crime. *People v Wilkens*, 267 Mich App 728; 705 NW2d 728 (2005). All evidentiary conflicts must be resolved in favor of the prosecution. *Id.*

Officer Gibbs testified that he found a tooter, which is often used to smoke methamphetamine, on defendant's person and six pseudophedrine pill boxes in defendant's vehicle. The prosecution also presented expert testimony that pseudophedrine is the main ingredient needed to make methamphetamine. In his confession to Officer Gibbs, defendant admitted that he bought the boxes of pseudophedrine to give them to someone else to make methamphetamine. Defendant further admitted to already dropping off the pills at a different site so they could be made into methamphetamine. Additionally, Officer Gibbs testified that defendant confessed he was a methamphetamine user and had last smoked methamphetamine two days before the traffic stop. When viewed in a light most favorable to the prosecution, the evidence would warrant a reasonable trier of fact in finding beyond a reasonable doubt that defendant possessed the pseudophedrine with knowledge that it was to be used to manufacture methamphetamine.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly