

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 14, 2012

v

ELKA MARIE CHAMBERLAIN,

Defendant-Appellant.

No. 305406
Washtenaw Circuit Court
LC No. 09-002074-FH

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Elka Marie Chamberlain appeals as of right her bench trial conviction of possession of less than 25 grams of cocaine,¹ and operating a motor vehicle with the presence of a controlled substance.² Chamberlain was sentenced as an habitual offender, second offense,³ to 45 days in jail for both the possession of cocaine and operating a motor vehicle with the presence of a controlled substance convictions, and was placed on 18 months' probation. We affirm.

Chamberlain's convictions arise from a traffic stop that was initiated when a police officer observed that the minivan Chamberlain was driving had a defective license plate light. After an initial discussion with Chamberlain, the officer asked her to get out of the vehicle. When she did, the officer observed a white powdery substance that he suspected was cocaine on the driver's seat. The officer administered field sobriety tests and suspected that Chamberlain was under the influence of a controlled substance or an intoxicant. The officer then obtained a sample of the white substance and performed a field test on it, which indicated that the substance was cocaine. A subsequent search of the vehicle uncovered a stamp-size clear plastic bag containing a white powdery substance that was later determined to be cocaine.

On appeal, Chamberlain contends that the trial court erred in denying her motion to suppress the evidence because the officer lacked probable cause to believe that the white

¹ MCL 333.7403(2)(a)(v).

² MCL 257.625(8).

³ MCL 769.10.

substance on the driver's seat was cocaine. We disagree. We review the trial court's factual findings regarding a motion to suppress evidence for clear error.⁴ "Questions of law relevant to the suppression issue," including the trial court's decision on a motion to suppress, are reviewed de novo.⁵

The right to be free from unreasonable searches and seizures is guaranteed by both the United States and the Michigan constitutions.⁶ Warrantless searches and seizures are per se unreasonable unless they fall within one of several specifically established exceptions.⁷ Two of these exceptions are the plain view exception and the automobile exception. "The plain view doctrine allows police officers to seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent."⁸ In the context of the plain view doctrine, the "immediately apparent" requirement "means that without further search the officers have 'probable cause to believe' the items are seizable."⁹ The automobile exception "provides that a search without a warrant of an automobile is reasonable if probable cause exists to believe it contains contraband."¹⁰ Probable cause exists where "the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband[.]"¹¹ "The determination whether probable cause exists . . . should be made in a commonsense manner in light of the totality of the circumstances."¹²

We find that under the totality of the circumstances, the officer had probable cause to believe that the white substance on the driver's seat was cocaine. When the officer activated his overhead lights and initiated the traffic stop, Chamberlain did not pull over immediately. When she did stop, Chamberlain appeared to be nervous, her hands were shaking, and she avoided eye contact with the officer. The officer detected an odor of intoxicants and Chamberlain admitted that she had been drinking. During field sobriety tests, Chamberlain continued to appear nervous and was unable to focus and comply with the officer's instructions. The officer had experience with the appearance of cocaine and had previously seen loose powder cocaine on vehicle seats.

⁴ *People v Custer*, 465 Mich 319, 325-326; 630 NW2d 870 (2001).

⁵ *Id.* at 326; *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009).

⁶ US Const, Am IV; Const 1963, art 1, § 11; see also *People v Champion*, 452 Mich 92, 97; 549 NW2d 849 (1996).

⁷ *Champion*, 452 Mich at 98, citing *Katz v United States*, 389 US 347, 357; 88 S Ct 507; 19 L Ed 2d 576 (1967).

⁸ *Champion*, 452 Mich at 101.

⁹ *Id.* at 102.

¹⁰ *People v Clark*, 220 Mich App 240, 242; 559 NW2d 78 (1996).

¹¹ *Texas v Brown*, 460 US 730, 742; 103 S Ct 1535; 75 L Ed 2d 502 (1983) (internal quotation marks and citation omitted).

¹² *People v Garvin*, 235 Mich App 90, 102; 597 NW2d 194 (1999).

Under the totality of the circumstances, the available facts would warrant a man of reasonable caution to believe that the white powdery substance on Chamberlain's vehicle seat was cocaine.¹³ Although Chamberlain contends that a man of reasonable caution could have believed the alternative explanations that Chamberlain gave the officer for the presence of the white powder, this argument ignores the relevant inquiry, which is as the trial court noted, "whether a person of reasonable caution could believe that it was cocaine." Thus, there was no error by the trial court.

Contrary to Chamberlain's assertion, the facts of this case are distinguishable from those of *Arizona v Hicks*.¹⁴ There, the officer had no reason, other than the appearance of the stereo equipment itself, to suspect that the equipment was stolen, and the State conceded that the officer lacked probable cause to believe that it was stolen.¹⁵ Here, the officer had probable cause to believe that the substance was cocaine based on other circumstances, including Chamberlain's behavior and demeanor. The officer's post-seizure investigation of the cocaine did not violate Chamberlain's constitutional rights.¹⁶ Although the officer did not definitively know that the substance was cocaine until after the field test, such knowledge is not required to establish probable cause.¹⁷

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan

¹³ *Brown*, 460 US at 742.

¹⁴ *Arizona v Hicks*, 480 US 321; 107 S Ct 1149; 94 L Ed 2d 347 (1987).

¹⁵ *Id.* at 323, 326.

¹⁶ *Custer*, 465 Mich at 336.

¹⁷ *Id.* at 332, quoting *Brown*, 460 US at 741.