

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs July 08, 2014

STATE OF TENNESSEE v. GENE LUIGI ATKINS

Appeal from the Circuit Court for Dyer County
No. 12CR172 R. Lee Moore, Jr., Judge

No. W2013-02544-CCA-R3-CD - Filed September 25, 2014

The defendant, Gene Luigi Atkins, was convicted of one count of initiation of methamphetamine manufacture process, a Class B felony. On appeal, he contends that the evidence is insufficient to support his conviction; that the trial court erred by permitting a police officer to testify as an expert beyond the scope of Tennessee Code Annotated section 39-17-435(d) (2010); that the trial court erred by not subjecting the officer's testimony to the requirements of Tennessee Rules of Evidence 702 and 703; and that the failure to specify the parameters in which an officer was treated as an expert amounted to plain error because the trial court found that the expert testimony was sufficient corroboration to support a co-defendant's testimony. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the Court, in which CAMILLE R. MCMULLEN, J., joined and JERRY L. SMITH, J., not participating.

Timothy Boxx, Dyersburg, Tennessee, for the appellant, Gene Luigi Atkins.

Robert E. Cooper, Jr., Attorney General and Reporter; Ahmed A. Safeeullah, Assistant Attorney General; Phillip Bivens, District Attorney General; and Karen Burns, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

This case arises out of an incident that occurred on the evening June 10, 2012. Officers from the Dyersburg Police Department received a tip regarding the existence of a potential methamphetamine laboratory. Officers learned that the laboratory was on First Street and that there would be a grey van at the residence. An officer witnessed a grey van pull into the defendant's driveway, and the officer asked for permission to search the property. The defendant agreed, and officers discovered three bottles that they believed were used to manufacture methamphetamine.

At trial, Officer Chris Clements testified that a reliable confidential informant gave him the information about the potential methamphetamine laboratory on First Street. Officer Clements contacted Officer Lynn Waller and provided him with this information.

Officer Lynn Waller was trained in the detection of illegal drugs and the identification of methamphetamine and methamphetamine labs. After speaking with Officer Clements, Officer Waller went to First Street, and he saw a grey van pull into the defendant's driveway. Officer Waller approached the van and observed that Sherron Evans was driving and that the defendant was a passenger. Officer Waller spoke with the two and explained to the defendant that he was there to investigate a report of a methamphetamine laboratory. The defendant told Officer Waller that he had methamphetamine in his system but had not used methamphetamine that day. While speaking with Ms. Evans, Officer Waller noted that she was "tweaking[,] " which meant that she was "wired up," gritting her teeth, and was "under the influence of meth or some kind of hard drug like that." The defendant gave Officer Waller permission to search his property.

Officer Waller searched the defendant's van and saw bags of groceries in the vehicle. He saw an empty box of Sudafed but did not find any empty blister packs or strips. Officer Waller searched the defendant's residence, but he had difficulty conducting a thorough search because the house was filled with trash. Officer Waller did not discover any split-open batteries, coffee filters with methamphetamine residue, or Coleman camping fuel, all common ingredients in the manufacture of methamphetamine, during his search of the defendant's van or residence.

Officer Waller next began a search of the defendant's yard. During the search, Officer Waller discovered a clear plastic bottle on the southeast back corner of the house with a "white[,] sludgy looking substance" and a clear tube coming through a hole in the bottle cap. Officer Waller identified this bottle as a "shake and bake one container cook." He testified that the tube was used to "release the pressure during the chemical process." He noted that the tube looked similar to a tube from a oxygen machine. Based upon his training and

experience, he had “no doubt [the bottle] was definitely a one container cook” that had been recently used. Officer Waller discovered two similar bottles underneath the front porch. He observed that these bottles appeared to be older and “not as active looking” as the first bottle. Officer Waller believed that the defendant and Ms. Evans were working together to manufacture methamphetamine, with the defendant purchasing the ingredients for methamphetamine and providing a place for Ms. Evans to cook methamphetamine.

Officer Waller called in methamphetamine-certified Officer Brent Hill to safely dispose of the bottles. Officer Hill testified that he was a certified technician to disassemble clandestine drug labs. He received his certification by attending two different training sessions. Periodic recertification was required, and Officer Hill testified that his certification was up-to-date. He stated that his training allowed him to disassemble a methamphetamine laboratory and safely dispose of the trash remaining from the laboratory. The State moved to have Officer Hill qualified as an expert on the identification and dismantling of clandestine methamphetamine labs, and the defense requested to *voir dire* Officer Hill.

During *voir dire*, Officer Hill testified that each training session that he attended lasted for one week. He agreed that he did not have scientific training to analyze the contents of methamphetamine laboratories and stated that he identified clandestine methamphetamine laboratories using non-scientific methods. He testified that he was trained to identify the ingredients of methamphetamine and to recognize how certain ingredients appeared after they were mixed together. He was able to identify which parts of the laboratory needed to be neutralized and knew how the ingredients of methamphetamine were combined to create a manufactured product. At the conclusion of *voir dire*, the trial court accepted Officer Hill as an expert witness.

Officer Hill testified that a methamphetamine lab was “a mixture of various chemicals along with medication that you obtain over the counter.” Pseudoephedrine pills are held together by a binder, and the ephedrine is separated from the binder by a solvent, usually a type of gas or Coleman camping fuel. These items, along with strips of lithium batteries, are placed most commonly in two-liter or twenty ounce plastic bottles, which begins to generate heat and gas. In order to release the gases, a hole may be poked through the bottle cap and a tube placed inside, which is called a gas generator. Methamphetamine results from this chemical reaction and settles at the top of the bottle. Officer Hill testified that one of the most common forms of manufacturing methamphetamine was through “a shake and bake[,]” where the ingredients are placed inside of a plastic bottle. He testified that the bottles at the defendant’s residence were “shake and bake meth lab bottles.”

Officer Hill observed the bottle with a tube placed on the cap located on the southeast corner of the defendant’s house. He believed that the bottle was “fresh[,]” as the contents

of the bottle were wet, and the bottle was expelling gases and smoke. He testified that, based upon his professional experience and training, “sludge” was inside of the bottle. “Sludge” was the remaining substance when the binder was separated from the pseudoephedrine pill, and the substance was still wet from salt. The sludge also contains small lithium strips, and Officer Hill observed these strips in the bottle. Officer Hill opined that the methamphetamine had already been removed from this bottle. He agreed that the remaining two bottles appeared older than the first bottle.

Sherron Evans testified that she was charged as a co-defendant in this case. She admitted that she knew how to make methamphetamine and that she had previously made methamphetamine using plastic bottles. She testified that the defendant helped her make methamphetamine two days prior to his arrest and that they used a bottle from the refrigerator in the defendant’s house. The defendant helped Ms. Evans to dry out the bottle so as to prevent an explosion. Ms. Evans testified that the defendant knew why he was drying out the bottle and that they had discussed making methamphetamine a “[b]unch of times.” The defendant then helped Ms. Evans measure out the ingredients, such as lye and a cold pack, and placed salt into a bag. The defendant also “[g]ot the hose ready . . . [to] where [Ms. Evans] could make the generator bottle with [it].” The hose was an oxygen hose that came from the defendant’s “breathing treatment.” The defendant helped Ms. Evans put “camp fuel” into the bottle, as the process required one person to pour the fuel through a funnel and the other person to hold the bottle. Ms. Evans stripped down the batteries and placed the lithium strips into the bottle, along with the camp fuel, and then she and the defendant left his residence.

The defendant drove Ms. Evans down a road near the garbage dump, and she cooked the methamphetamine while he drove. She was in the passenger’s seat of the van while cooking the methamphetamine, and nothing was obscuring the defendant’s view of her actions. Ms. Evans estimated that this cook produced “about two and a half grams” of methamphetamine and that she and the defendant consumed it in half of a day. Ms. Evans and the defendant manufactured the methamphetamine “for [their] own personal high[,]” and Ms. Evans testified that the methamphetamine from the bottle that police discovered was manufactured for her and the defendant’s personal use. Ms. Evans asked the defendant to dispose of the “generator bottle,” and she initially did not know how the defendant disposed of the bottle. However, after the defendant was released from jail on bond, he told her that he had thrown the bottle out by a tree in his backyard. She agreed that the bottle she asked the defendant to throw away was the same bottle that Officers Waller and Hill discovered near the back of the defendant’s house.

Ms. Evans testified that she and the defendant “cooked every day almost[,]” although they did not cook methamphetamine on the day of their arrest. She recalled telling Officer

Waller that she was cooking methamphetamine for herself and the defendant to use and that the defendant “knew what she was doing.”

At the conclusion of the State’s proof, the defense moved for a judgment of acquittal, arguing that the only proof of the defendant’s guilt was the uncorroborated testimony of Ms. Evans. The trial court denied the motion, finding that the discovery of the bottle in the defendant’s backyard was sufficient to corroborate Ms. Evans’ testimony. The defendant did not testify. At the conclusion of the trial, the jury found the defendant guilty of initiation of methamphetamine manufacture process.

ANALYSIS

I. Sufficiency of the Evidence

When a defendant challenges the sufficiency of the evidence, the relevant question for this court is “whether, after reviewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). On appeal, “the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Elkins*, 102 S.W.3d 578, 581 (2003) (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)) . Therefore, this court will not re-weigh or reevaluate the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978) (superseded by rule). Instead, it is the trier of fact, not this court, who resolves any questions concerning “the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). The burden is then shifted to the defendant on appeal to demonstrate why the evidence is insufficient to support the conviction. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). This court applies the same standard of review regardless of whether the conviction was predicated on direct or circumstantial evidence. *State v. Dorantes*, 331 S.W.3d 370, 381 (Tenn. 2011).

Tennessee Code Annotated section 39-17-435(a) provides that “[i]t is an offense for a person to knowingly initiate a process intended to result in the manufacture of any amount of methamphetamine.” The code further states that “‘initiates’ means to begin the extraction of an immediate methamphetamine precursor from a commercial product, to begin the active modification of a commercial product for use in methamphetamine creation, or to heat or combine any substance or substances that can be used in methamphetamine creation.” T.C.A. § 39-17-435(c).

Viewed in the light most favorable to the State, the proof at trial showed that the defendant and Ms. Evans engaged in a partnership to manufacture methamphetamine. Ms. Evans testified that two days before the defendant's arrest, the defendant removed a bottle from his refrigerator, helped Ms. Evans pour camp fuel and other methamphetamine ingredients into the bottle, and attached a hose from his oxygen machine to the cap of the bottle. He and Ms. Evans then began driving down a gravel road, and Ms. Evans cooked methamphetamine while in the passenger's seat of the defendant's van. Ms. Evans and the defendant consumed the methamphetamine in half of a day, and Ms. Evans later asked the defendant to dispose of the generator bottle that they used to make methamphetamine. The defendant threw the bottle out into his yard, and Ms. Evans testified that this bottle was the same bottle found by Officer Waller.

The testimony of Officers Waller and Hill corroborated Ms. Evans' testimony. Both officers were trained in the discovery and identification of methamphetamine. Officer Waller discovered an empty box of Sudafed in the defendant's van, and he found a bottle with white sludge and a hose attached to the bottle cap beside the defendant's residence. He identified the bottle as a recently used one container cook. He also discovered two similar bottles under the defendant's porch that he believed were used to cook methamphetamine. Officer Hill was a methamphetamine-certified officer trained to identify and disassemble clandestine methamphetamine laboratories. He testified that "shake and bake" was a common method for producing methamphetamine in the area, and he explained how to construct a "shake and bake" laboratory and how methamphetamine was produced utilizing this method. In his expert opinion, the bottle with the hose attached to the cap contained sludge, which was the remnant of the chemical process to produce methamphetamine. Officer Hill believed that this bottle had recently been used, as the contents of the bottle were still wet, and he observed the bottle expelling gaseous smoke. The smoke indicated that there had been a chemical reaction in the bottle. He identified the three bottles as "shake and bake meth lab bottles." The jury was presented with sufficient evidence to find the defendant guilty of initiation of a process to manufacture methamphetamine. The defendant is not entitled to any relief on this claim.

II. Expert Testimony

The defendant argues that the trial court erred in allowing Officer Brent Hill to testify as an expert because Officer Hill's testimony exceeded the scope of statutory authority of Tennessee Code Annotated section 39-17-435(d), and its admissibility should have been governed by Tennessee Rules of Evidence 702 and 703. He then contends that Rules 702 and 703 should have precluded Officer Hill's testimony because the testimony was speculative.

The trial court possesses the sound discretion to determine the admissibility of expert testimony, and this court will not disturb that decision absent a clear showing that the trial court abused its discretion. *State v. Scott*, 275 S.W.3d 395, 404 (Tenn. 2010). Tennessee Code Annotated section 39-17-435(d) provides that “[e]xpert testimony of a qualified law enforcement officer shall be admissible for the proposition that a particular process can be used to manufacture methamphetamine.” Here, the State established that Officer Hill was an expert in the identification and disassembly of clandestine methamphetamine labs. He testified that he completed two one-week training seminars that fully certified him to work as a technician to disassemble clandestine drug laboratories. He agreed that he did not have scientific training to analyze the contents of a methamphetamine laboratory but indicated that his job was to identify methamphetamine laboratories rather than analyze the substance in the bottle. He further stated that he was able to identify the ingredients of methamphetamine and how they appeared after being combined, and he could identify which ingredients within the mixture required neutralization. Officer Hill testified that the “shake and bake” method was a method used to manufacture methamphetamine, and he explained how the process was utilized to manufacture methamphetamine. He also testified that it was his opinion that the bottles found in the defendant’s yard were “shake and bake” methamphetamine laboratories and that the sludge in the bottles was the remnant of the manufacture of methamphetamine.

We conclude that the admissibility of Officer Hill’s testimony is governed both by Tennessee Code Annotated section 39-17-435(d) and Tennessee Rule of Evidence 702. The portions of Officer Hill’s testimony regarding the use of “shake and bake” laboratories to manufacture methamphetamine were admissible pursuant to the statute, as the testimony was offered for the proposition that the “shake and bake” process could be used to manufacture methamphetamine. *See* T.C.A. § 39-17-435(d). His testimony that the particular bottles found in the defendant’s yard were “shake and bake” laboratories and contained remnants of methamphetamine must be analyzed under Tennessee Rule of Evidence 702, as it exceeds the statutory scope of expert testimony offered “for the proposition that a particular purpose can be used to manufacture methamphetamine.” *Id.*

Tennessee Rules of Evidence 702 and 703 govern the admissibility of expert testimony. *See McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn. 1997). Rule 702 states that “[i]f scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.” This court has previously held that “[w]hen the State establishes that an officer possesses the necessary training, experience, and familiarity with the illicit drug trade, the officer may testify about matters related to the business of buying, selling, trading, and use of illegal drugs pursuant to Rule 702 of the Tennessee Rules of Evidence.” *State v. Elliot*, 366 S.W.3d 139, 147 (Tenn. Crim. App. 2010). Further, an

officer may testify as to the identity of an illegal substance based upon his own experiences. *See State v. Anderson*, 644 S.W.2d 423, 424 (Tenn. Crim. App. 1982). Here, the State established that Officer Hill possessed the necessary training, experience, and familiarity with methamphetamine to testify about matters relating to the manufacture of methamphetamine and the identity of methamphetamine, and the trial court accepted Officer Hill as an expert witness. Therefore, we conclude that it was not error for the trial court to permit Officer Hill to testify that the bottles in the defendant's backyard were "shake and bake" methamphetamine laboratories and that the sludge in the bottles was the remnants of the manufacture of methamphetamine. Because Officer Hill's testimony was admissible, we also conclude that it provided sufficient corroboration of the testimony of Ms. Evans. Therefore, the trial court did not err in denying the defendant's motion for acquittal based upon Officer Hill's corroborating testimony, and the defendant's claim that the failure to specify the parameters in which Officer Hill was treated as an expert does not constitute plain error and is without merit. The defendant is not entitled to any relief as to these issues.

The defendant also argues that the failure to specify the parameters in which Officer Hill would be treated as an expert constitute plain error because the trial court denied the defendant's motion for acquittal after finding that Officer Hill's testimony provided sufficient corroboration of the testimony of Ms. Evans. Because the testimony of Officer Hill was admissible, we also conclude that it provided sufficient corroboration of Ms. Evans' testimony. Therefore, the defendant's claim of plain error is without merit, and we need not address it.

CONCLUSION

For the above-mentioned reasons, we affirm the judgment of the trial court.

JOHN EVERETT WILLIAMS, JUDGE