

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED96746
)	
vs.)	Appeal from the Circuit Court of
)	Marion County
RICKY EUGENE MORGAN, Appellant.)	Filed: April 10, 2012

Ricky Eugene Morgan appeals the judgment entered on a jury verdict finding him guilty of attempt to commit the offense of stealing anhydrous ammonia, Section 570.030 RSMo 2000. Defendant advances five points of trial-court error. He first challenges the sufficiency of the evidence to support his conviction. Defendant claims the State presented insufficient evidence to prove that he possessed the equipment to steal anhydrous ammonia, or that he had taken a substantial step towards stealing the anhydrous ammonia. In his four remaining points, Defendant contends that trial court erroneously admitted certain evidence at trial. He first takes issue with the testimony of the law-enforcement officer, in which the officer stated he knew defendant's "past" and that he "should have asked" defendant if he had used methamphetamine. Defendant contends this testimony constituted inadmissible evidence of uncharged misconduct. He next alleges that testimony regarding text messages in his cell phone lacked foundation. He further maintains the evidence seized from the car he was driving was the product of an unlawful stop, in that no reasonable suspicion justified the stop of the vehicle. And finally, he asserts that his statement that he had used drugs earlier in the day was the result of an unlawful, pre-*Miranda* custodial interrogation.

JUDGMENT AFFIRMED

DIVISION TWO HOLDS: The State presented sufficient evidence from which the jury could find that defendant possessed the equipment to steal anhydrous ammonia. The State also adduced sufficient evidence from which the jury could find that defendant had taken a substantial step toward the theft of anhydrous ammonia. Accordingly, the trial court correctly overruled defendant's motion for judgment of acquittal. We additionally hold that the trial court did not plainly err in overruling defendant's belated request for a mistrial based on the law-enforcement officer's testimony that he knew defendant's "past" and that he "should have asked" defendant if he had used methamphetamine. Defendant failed to demonstrate manifest injustice. Defendant failed to preserve his best-evidence and hearsay claims regarding evidence of the text messages in his cell phone; and the trial court granted all the relief requested regarding defendant's foundational objection to that evidence. Thus, there is nothing for our review. As to defendant's claim of an unlawful stop, we hold that the law-enforcement officers were justified in suspecting that defendant was involved in criminal activity, and, therefore, in investigating further. The stop was constitutionally valid and thus the trial court did not

err in denying defendant's motion to suppress, or in overruling defendant's trial objection to the admission of the evidence seized as a result of that stop. Finally, we hold that the defendant did not preserve the issue of a *Miranda* violation for our review.

Opinion by: Lawrence E. Mooney, J. Kathianne Knaup Crane, P.J., and
Kenneth M. Romines, J., concur.

Attorney for Appellant: Emily N. Kaiser

Attorneys for Respondent: Chris Koster and Karen L. Kramer

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