

2012 IL App (1st) 111326-U

FOURTH DIVISION
November 21, 2012

No. 1-11-1326

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 10 CR 21484 |
| |) | |
| JAMAL WILLIAMS, |) | Honorable |
| |) | James B. Linn, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* No abuse of discretion by the court regarding its ruling on the sufficiency of the chain of custody, despite a single-packet disparity, and no complete breakdown in that chain to create a reasonable doubt of the identity of the narcotics.
- ¶ 2 Following a bench trial, defendant Jamal Williams was found guilty of possession of a controlled substance and sentenced to 30 months' imprisonment. On appeal, he contends that we must reverse his conviction due to a complete breakdown in the chain of custody for the narcotics evidence used to obtain his conviction.

¶ 3 At trial, the State relied on the testimony of three Chicago police officers and a forensic chemist. Officer Louie testified that at 12:25 p.m. on October 12, 2010, he was in a covert vehicle on surveillance for possible narcotics transactions when he observed defendant standing on the northwest corner of West Iowa Street and North Lamon Avenue, wearing a tan hoody, white T-shirt, and blue jeans. Moments later, an unknown individual engaged in a brief conversation with defendant, who then retrieved a small item from a garbage can in a nearby alley and handed it to the individual in exchange for money. The enforcement team, which consisted of Officers Kuykendall and Dukes, was directed to detain defendant for identification and to search the garbage can in the alley. On cross-examination, Louie maintained that he saw defendant engage in a narcotics transaction even though he did not see how the item was packaged or the denomination of the money that was tendered in exchange for it.

¶ 4 Officer Kuykendall testified that he and his partner, Officer Dukes, were in plain clothes in an unmarked car when they received a radio call from Officer Louie that a possible drug transaction involving defendant had occurred. Defendant was found in the vicinity of 4902 West Iowa Street based on the physical description and location given in the radio broadcast. After defendant gave his contact information, he was sent on his way due to the ongoing nature of the investigation. Defendant was subsequently arrested in the same vicinity when the investigation concluded.

¶ 5 Kuykendall further testified that he inspected the garbage can and recovered a plastic bag hanging from its lid. Inside the plastic bag were tinfoil packets laminated with red tape. His partner placed the plastic bag with its contents into a drug inventory bag. He identified People's Exhibit Number Two as the drug inventory bag and testified that the contents were in the same condition as when he recovered them.

¶ 6 On cross-examination, Kuykendall acknowledged that he had reviewed a supplementary police report which indicated that three tinfoil packets were recovered, but stated that he did not count them himself. The contraband nonetheless remained in his continuous care and custody until he handed it to his partner, who promptly inventoried the evidence. Kuykendall identified Defendant's Exhibit Number Two as the corresponding inventory report, numbered 12149977, dated October 12, 2010, and describing three "tinfoil packs laminated in red tape each containing a white powder substance." Although he did not inventory that particular evidence, Kuykendall described the standard inventory procedures observed by the police department.

¶ 7 Officer Dukes testified that the "three tinfoil packets closed with red tape," which his partner recovered from the garbage can, remained in his continuous care and custody until he inventoried them at the police station. There, he cut open one of three tinfoil packets and observed a white powder which he suspected to be heroin. He placed the opened tinfoil packet back inside the drug inventory bag which he signed and heat-sealed. Using the E-track system, he generated a unique inventory number, 12149977, stapled it to the drug inventory bag and placed the bag inside the narcotics safe.

¶ 8 Dukes identified People's Exhibit Number Two as the narcotics that he inventoried under number 12149977. The exhibit was then opened in court and Dukes noted the contents: "Clear ziploc bag. I see one tinfoil [packet] in red tape, with 1A by it. I see three tinfoil packets of [*sic*] red tape, with 1B, with a plastic bag." Although he indicated, in his inventory report, that there were three tinfoil packets, the crime lab reported four tinfoil packets upon their receipt. He did not know where that discrepancy arose from. Aside from this variation, the narcotics were in the same condition as when he received them from his partner. Dukes acknowledged on cross-examination that he did not include in his inventory report that he had opened one of the tinfoil packets.

¶ 9 After the parties stipulated to Penny Evans' qualifications as an expert in the field of forensic chemistry, Evans identified People's Exhibit Number Two as the items she received under inventory number 12149977 on October 14, 2010, which remained in a completely sealed condition under lock and key until October 22, 2010, when she retrieved the items from storage and discovered a fourth tinfoil packet. She documented the discrepancy, then performed tests for ascertaining the presence of a controlled substance on one randomly selected packet and found it contained less than 0.1 gram of heroin. She estimated the weight of the three untested packets to be 0.1 gram. The diagnostic instruments used were calibrated, checked, and functioning properly when the items were analyzed.

¶ 10 On cross-examination, Evans clarified that she tested only the tinfoil packet labeled "1A" for the presence of a controlled substance. Following lab protocol, she also sent a copy of her discrepancy report to the Chicago police department but did not receive a response.

¶ 11 People's Exhibit Number Two, the heroin, was admitted into evidence over defendant's objection, and the State rested. Defendant made a motion for a directed finding based on the discrepancy between the number of tinfoil packets recovered by police and that received by the crime lab. The trial court denied the motion finding the testimony of the officers to be credible. The trial court stated it understood "how three items seized became four in light of what the police did to it at the time" and was "confident that they inventoried and heat sealed items that they recovered with all the proper documentation, the name of [defendant] and proper RD number, inventory number."

¶ 12 Defendant rested without testifying or presenting any witnesses on his behalf, and the trial court found him guilty of possession of a controlled substance. Defendant then challenged the admission of the heroin in a motion for a new trial, but the trial court denied the motion.

¶ 13 In this court, defendant contends that his conviction must be reversed because of a complete breakdown in the chain of custody for the narcotics. The trial court's ruling on the sufficiency of the chain of custody will be reversed only upon a finding of abuse of discretion. *People v. Blankenship*, 406 Ill. App. 3d 578, 588 (2010).

¶ 14 Although defendant frames this issue as whether the unexplained discrepancy in the number of tinfoil packets renders the chain of custody evidence so deficient that his conviction must be reversed, we note, as does the State, that there are two parts to defendant's argument regarding the identity of the substance at issue. *People v. Besz*, 345 Ill. App. 3d 50, 53 (2003). First, defendant claims that the State failed to establish a sufficient chain of custody foundation for the heroin and, second, given this complete breakdown in the chain of custody, the State failed to prove beyond a reasonable doubt the element of the identity of the substance. These are separate, albeit related, considerations because a foundation can be formally insufficient, yet not necessarily create reasonable doubt. *People v. Johnson*, 361 Ill. App. 3d 430, 436-37 (2005). We therefore address each claim in turn.

¶ 15 To support a conviction for unlawful possession of a controlled substance, the State must prove that the substance recovered was in fact a controlled substance. *People v. Britton*, 2012 IL App (1st) 102322, ¶ 18. Where the physical evidence is not readily identifiable or may be susceptible to tampering, contamination, or exchange, the State must establish a chain of custody for the narcotics. *Britton*, 2012 IL App (1st) 102322, ¶ 18. A *prima facie* showing of a sufficient chain of custody is established when the State demonstrates that reasonable protective measures were taken to ensure that the evidence has not been tampered with, substituted, or altered between the time of seizure and forensic testing. *Britton*, 2012 IL App (1st) 102322, ¶ 18. "Tampering with," or "altering," the evidence means causing it, to defendant's legal detriment, to be a substance different from that which police recovered from him. *People v. Coleman*, 391 Ill.

App. 3d 963, 973 (2009). Proof of delivery, presence, and safekeeping demonstrate that reasonable measures were taken to protect the integrity of the evidence. *People v. Durgan*, 346 Ill. App. 3d 1121, 1135-36 (2004). Upon a *prima facie* showing, the burden shifts to defendant to produce evidence of actual tampering, alteration, or substitution. *Britton*, 2012 IL App (1st) 102322, ¶ 18.

¶ 16 Here, the record shows that Officers Kuykendall and Dukes identified People's Exhibit Number Two as the clear plastic bag of tinfoil packets laminated with red tape, recovered from the garbage can and assigned the unique inventory number 12149977. Both officers also testified that People's Exhibit Number Two remained in his continuous care and custody at the relevant times. Dukes further testified that he cut open one of three tinfoil packets, observed a white powder that he suspected to be heroin, and returned the opened packet to the drug inventory bag which he signed and heat-sealed. He then placed the drug inventory bag inside the narcotics safe where it remained until being sent to the crime lab for analysis. Both officers acknowledged the single-packet discrepancy, and Evans testified that she received People's Exhibit Number Two in a heat-sealed condition under the same inventory number identified by the officers.

¶ 17 Despite the single-packet disparity, we find that the State made a *prima facie* showing of a sufficient chain of custody despite the single-packet disparity. *Britton*, 2012 IL App (1st) 102322, ¶ 19. "Showing that evidence remained in official hands and in a sealed container and was tracked under a consistent identifying number or code effectively excludes the possibility of anything but deliberate tampering." *Johnson*, 361 Ill. App. 3d at 442-43. That was the case here where the evidence was sufficient to establish a reasonable probability that the evidence was not tampered with, substituted, or altered.

¶ 18 Once the State established its *prima facie* case, the burden shifted to defendant to show actual tampering. *People v. Alsup*, 241 Ill. 2d 266, 279 (2011). Defendant, however, did not do

so given his position that the State failed to satisfy its initial burden. Absent actual evidence of a compromising event, the existence of such an event is nothing more than a reasonable hypothesis, which is not sufficient to necessarily create a reasonable doubt of defendant's guilt. *Johnson*, 361 Ill. App. 3d at 437. To create an issue of reasonable doubt, a flaw in a chain of custody foundation must do more than provide an opportunity for speculation about events in which the integrity of the evidence could possibly have been compromised. *Johnson*, 361 Ill. App. 3d at 437.

¶ 19 Here, the circumstances regarding the handling of the tinfoil packets do not prevent the State from having proved defendant's guilt beyond a reasonable doubt because they raise no significant possibility that any even compromised the integrity of the evidence. *Johnson*, 361 Ill. App. 3d at 438. In view of the record before us, the lack of testimony regarding the custody of the evidence after Officer Dukes placed it in the narcotics safe and before Evans retrieved it from storage does not destroy the chain of custody. *People v. Irpino*, 122 Ill. App. 3d 767, 775 (1984); *Johnson*, 361 Ill. App. 3d at 441-42. Likewise, the inability of Officer Dukes to explain the single-packet discrepancy did not change the substance so as to increase defendant's criminal liability and suggest actual tampering. *Coleman*, 391 Ill. App. 3d at 974. Moreover, because the undisputed testimony established that the evidence was received in a heat-sealed condition under a unique, matching inventory number, a detailed matching description was unnecessary to establish that the integrity of the evidence had not been compromised. *People v. Paige*, 378 Ill. App. 3d 95, 99 (2007). The record, therefore, does not reveal a complete breakdown in the chain of custody necessary to create a reasonable doubt of the identity of the substance which was the basis of his conviction.

¶ 20 In so concluding, we have examined the cases relied upon by defendant to support his argument that there was nonetheless a complete breakdown in the chain of custody, and find that

they do not require a different result. Unlike *People v. Terry*, 211 Ill. App. 3d 968, 970-71 (1991), and *People v. Gibson*, 287 Ill. App. 3d 878, 882 (1997), where defendants presented substantial evidence of tampering or substitution, defendant here failed to present any evidence that the heroin recovered by police had been tampered with or substituted. Additionally, unlike the evidence of handling and safekeeping between the officers and the forensic chemist in this case, there was no evidence regarding the same in *Gibson*, nor was there evidence of the procedures the inventorying officer used to ensure the safekeeping of the narcotics. *Britton*, 2012 IL App (1st) 102322, ¶ 22.

¶ 21 Accordingly, we find no abuse of discretion by the circuit court in its ruling on the chain of custody, and we affirm its judgment.

¶ 22 Affirmed.