

Chicago police officer Edward Daniels testified that on January 19, 2011, the first day of what was to be an ongoing, undercover narcotics investigation in the area of Lavergne Avenue and Van Buren Street, he and a team of officers began conducting surveillance from his covert vehicle at about 9:45 a.m.

¶ 4 On arriving at Lavergne and Van Buren, Officer Daniels saw a man, who he identified in court as Townsel, standing in the intersection about 40 feet away and wearing a white jacket with turquoise sleeves, light blue jeans, a turquoise hat and turquoise and gray boots. He then saw Townsel engage in what he believed to be a drug transaction, whereby a person approached and spoke briefly with Townsel, who then walked toward a nearby gangway, disappeared briefly, returned and tendered an item in exchange for money from that person. After Daniels saw Townsel engage in five transactions, he contacted the team's "buy officer," Officer McCann, via radio, and gave her Townsel's location and description.

¶ 5 Shortly thereafter, Daniels saw Officer McCann arrive in her covert vehicle, engage in conversation with Townsel, and move her car a short distance away on Van Buren. He then saw Townsel walk toward the same gangway, disappear briefly, and return and reach into the passenger side of McCann's car, after which she left the area. Officer McCann then advised the team via radio that she had purchased heroin from Townsel, and gave them his description. Daniels continued his surveillance, and saw Townsel engage in about five additional narcotics transactions similar to the previous ones.

¶ 6 Ten minutes after Officer McCann left the area, Townsel went into the gangway for about five minutes, and emerged wearing a gray hooded sweatshirt instead of the white and turquoise jacket, but all of his other clothing was the same. Daniels radioed for enforcement officers to stop Townsel at 405 South Lavergne Avenue and obtain his contact information for

future use, as it was not the intention of the team to make any arrests at that point in the investigation.

¶ 7 Chicago police officer Defonda Louie testified that she conducted surveillance on the day of the incident from a separate covert vehicle, maintaining radio contact with Officer Daniels and the rest of the team. She corroborated Officer Daniels' description of events, and made an in court identification of Townsel.

¶ 8 Chicago police officer Kathleen McCann testified that she was part of the narcotics investigation team, and made the undercover narcotics purchase. At 10:05 a.m., she was directed to Lavergne and Van Buren, and given the description of a black male wearing a turquoise and white jacket, turquoise hat, blue jeans, and turquoise and gray boots. Once there, in her covert vehicle, she drove up to a man, who she identified in court as Townsel, who was standing at the intersection and matched the description given to her. She asked Townsel for "three blows," which is street terminology for heroin, and parked down the block, as Townsel directed. Townsel began to walk toward a gangway when he turned and said "you want three," and she said "yes." Townsel went into the gangway briefly, then returned and reached into the passenger side of her car and handed her three items, which, based on her training and experience, McCann believed to be heroin. She gave Townsel \$30 in prerecorded bills, then drove away.

¶ 9 McCann called her team via radio and notified them that she had purchased narcotics from Townsel, and gave his location and description. She then drove to the police station, where she placed the items she purchased from Townsel into an inventory bag, and gave it to Officer Dukes, the evidence officer. Those items remained in her constant care, custody and control from the time Townsel sold them to her to the time she gave them to Officer Dukes. McCann further testified that at 1 p.m. that afternoon, she viewed a photo array that was generated by

Officer Dukes, and identified a photograph of Townsel as the person who sold the narcotics to her. McCann identified People's Exhibit 1 as the narcotics she purchased from Townsel, and stated that aside from having been opened, they were in substantially the same condition as on the day Townsel sold them to her.

¶ 10 Chicago police officer Reginald Dukes testified that he served as an enforcement officer on the narcotics investigation team that day. At 11:55 a.m., he and Officer Kukendall were directed via radio to 405 South Lavergne to stop and identify the person who sold narcotics to Officer McCann. When they arrived in their unmarked squad car, they saw a man, who he identified in court as Townsel, wearing a turquoise baseball cap, gray hooded sweatshirt, blue jeans, and gray and turquoise boots. Dukes got out of his vehicle, approached Townsel, and conducted a protective pat down search. He then obtained Townsel's name and contact information, which he wrote on a contact card, along with other identifying information, then told Townsel to leave the area.

¶ 11 Officer Dukes further testified that he returned to the police station, where Officer McCann gave him the narcotics she had purchased from Townsel. He described the inventory process in general. He inventoried the narcotics McCann purchased from Townsel under inventory number 12224845, and placed them in a safe. Dukes was asked if the items "are heat sealed when you put them in there," and he stated, "yes." He further testified that he kept the narcotics in his constant care and control from the time McCann gave them to him until he inventoried them. He identified People's Exhibit 1 as the narcotics McCann purchased from Townsel and stated that they were in substantially the same condition as when he inventoried them, aside from the writing placed on the bag by crime lab personnel. Dukes further testified

that he generated a photo array and showed it to McCann, who identified the photograph of Townsel as the man who sold narcotics to her.

¶ 12 Jason George, a forensic scientist with the Illinois State Police, identified People's Exhibit 1 as evidence that he analyzed in this case, which he received on January 21, 2011, in a properly sealed and labeled condition from an evidence technician at the drug chemistry vault in the drug chemistry section. On receiving this evidence, he confirmed that it was properly sealed and labeled, took custody of it, and locked it at his work station until he began analyzing it later in the day. At that time, he confirmed that the contents of the bag, three foil packets, matched the description on the inventory sheet. He described the process he used to analyze the evidence, and testified that those tests revealed that People's Exhibit 1 contained .9 grams of powder from three items which was confirmed to be heroin. He testified that Exhibit 1 was in substantially the same condition as when he last saw it.

¶ 13 The parties stipulated that if called, Chicago police officer Eng would testify that he arrested Townsel on April 1, 2011, in relation to this case. The State then rested its case-in-chief.

¶ 14 Townsel testified that on the morning of January 19, 2011, he was visiting his girlfriend, who lived at 4918 West Congress, near Van Buren. Around noon, he walked to a nearby grocery store, on Lavergne between Congress and Van Buren, wearing a gray hoody, dark blue jeans, and black shoes. On arriving at the store, he noticed that officers were parked outside. One of those officers instructed Townsel to approach him and he complied. The officer then searched him and asked his name and address, which he provided. The officers let him go, and he made his purchase at the store and returned to his girlfriend's house. He denied being near a gangway

around 4927 or 4929 West Van Buren that day, having any drugs on his person or selling drugs to anyone that day.

¶ 15 The jury found Townsel guilty of delivery of a controlled substance. In this appeal from that judgment, Townsel contends that his conviction should be reversed because, due to a "complete breakdown" in the chain of custody, the State failed to provide a sufficient evidentiary link between the packets that were purchased by Officer McCann and the packets that were analyzed by George and submitted into evidence. Townsel does not overtly acknowledge that he forfeited this issue by failing to object at trial and include it in his post-trial motion, but merely states that challenges to the chain of custody may be brought under the plain error doctrine where a complete breakdown in the chain of custody occurs, and further, if the error rises to the level of plain error, the issue becomes one of reasonable doubt.

Analysis

¶ 16 Claiming the chain of custody for evidence is deficient assigns error to the State for failing to establish an adequate foundation for admitting that evidence. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). This attack goes to the admissibility of the evidence, not to proof of the existence of an element of the crime, and is subject to the ordinary rules of forfeiture. *People v. Alsup*, 241 Ill. 2d 266, 275 (2011), citing *Woods*, 214 Ill. 2d at 473.

Townsel failed to object at trial or raise the issue in his motion for a new trial, and, thus, forfeited his claim. Accordingly, we may review it only if he established plain error. *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). The plain error doctrine is a narrow exception to the waiver rule which allows a reviewing court to consider unpreserved claims of error where defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of his or her trial and challenged the integrity of the judicial process. *People v.*

Naylor, 229 Ill. 2d 584, 593 (2008). Defendant has the burden of persuasion under both prongs of the plain error doctrine, and if he or she fails to meet this burden, the procedural default will be honored. *Hillier*, 237 Ill. 2d at 545. Townsel failed to present an argument on how either of the two prongs of plain error is satisfied. *People v. Nieves*, 192 Ill. 2d 487, 502-03 (2000).

Instead, Townsel merely states that a challenge to the chain of custody may be brought under the plain error doctrine, then argues the breakdown in the chain of custody. Townsel thereby cannot meet his burden of persuasion and has forfeited plain error review. *Hillier*, 237 Ill. 2d at 545-46.

¶ 19 Notwithstanding, the first step of plain error analysis is to determine whether a clear or obvious error occurred. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). In cases involving controlled substances, the State has the burden of establishing a chain of custody as a foundation for the admission of that evidence, whereby the State must establish that the police took reasonable protective measures to ensure that the substance recovered from the defendant was the same substance tested by the forensic chemist, and that it is improbable that the evidence was subject to tampering or accidental substitution. *Woods*, 214 Ill. 2d at 466-67; see also *Alsup*, 241 Ill. 2d at 274.

¶ 20 Unless defendant produces evidence of actual tampering, the State need not present testimony from every person in the chain to satisfy its burden, nor must it exclude every possibility of tampering or contamination. *Woods*, 214 Ill. 2d at 467. Additionally, evidence is admissible even where there is a missing link in the chain of custody, so long as testimony was presented which sufficiently described the condition of the evidence when delivered which matched the description of the evidence upon examination. *Alsup*, 241 Ill. 2d at 275. At that point, any deficiencies in the chain of custody go to the weight, not the admissibility, of the evidence. *Alsup*, 241 Ill. 2d at 275.

¶ 21 Townsel maintains that because of the "complete breakdown" in the chain of custody, the State failed to link the packets Officer McCann purchased during the undercover operation with the evidence that was tested and presented at trial. In support, Townsel argues that: (i) no testimony was presented that the evidence bag was heat sealed; (ii) no testimony was provided regarding how, when and by whom the evidence bag was transported to the drug chemistry vault; and (iii) no testimony was presented that the evidence George received had an inventory number matching that of the evidence bag Officer Dukes placed in the safe.

¶ 22 The record shows that the evidence at issue in this case consisted of three packets of suspect heroin. Officer McCann testified that she purchased these items from Townsel, then tendered them to Officer Dukes at the police station. Dukes testified that he inventoried the evidence under inventory number 12224845 and placed it in a safe. Regarding how the evidence was sealed and safeguarded, the transcript reveals,

"Q. Officer, what did you do with the items after you inventoried them? What happens to them?

A. They are placed in a safe at the unit until the evidence people from evidence property come and recover it.

Q. And they are heat sealed when you put them in there?

A. Yes.

¶ 23 Additionally, Officers McCann and Dukes both testified that the evidence remained in their constant custody, care, and control throughout recovery, transport to the police station, and inventory process. Both officers identified People's Exhibit 1 as the narcotics which McCann purchased from Townsel and Officer Dukes inventoried, and testified that the evidence was in substantially the same condition as when they last saw it, aside from writing placed on the bag at the crime lab and the packets having been opened there. George, in turn, identified People's Exhibit 1 as the evidence he received in a properly sealed and labeled condition, and testified

that the contents of the evidence bag, which consisted of three packets, matched the description on the inventory sheet.

¶ 24 Townsel argues that Dukes' testimony regarding heat sealing pertained to evidence protocol in general, and not to what occurred with the evidence. His argument appears to rest on the officer's use of the word "are" instead of "were" in the above quoted testimony. We find the argument to be specious. Officer Dukes was asked what he did with the evidence he inventoried, not with evidence in general, and he responded, accordingly, regarding the specific evidence.

¶ 25 Townsel's contention that George should have specifically testified on whether the evidence was heat sealed is unpersuasive. Townsel has not cited, nor are we aware of, any authority stating that where a forensic scientist testifies that evidence was properly sealed, he must specify that the evidence was heat sealed for the chain of custody to be proper. The evidence presented at trial shows that McCann heat sealed the evidence and that the evidence remained in a properly sealed condition when George received it.

¶ 26 This court has found that testimony regarding the receipt of evidence in a sealed condition with a matching inventory number suffices to establish that the integrity of the evidence had not been compromised, even when the description of the contents of the evidence bag did not match the substance tested. *People v. Paige*, 378 Ill. App. 3d 95, 99 (2007). Our finding applies even more here because the description of the contents of the evidence bag matched the substance tested. Officers McCann and Dukes, along with George, all testified that the evidence was handled with reasonable protective measures making tampering highly improbable. *Woods*, 214 Ill. 2d at 466-67. Although George did not pronounce the inventory number on the evidence bag, still, the Officers and George each identified the contents of People's Exhibit 1 as the evidence they, collectively, recovered, transported, inventoried,

received, and analyzed; an exhibit which Officer Dukes testified had received a unique identifying number.

¶ 27 We hold that the State made a *prima facie* showing of a sufficient chain of custody of the evidence at issue, particularly where there was no disparity between the evidence that was purchased by Officer McCann and inventoried by Officer Dukes, and the evidence that George received and analyzed. *People v. Britton*, 2012 IL App (1st) 102322, ¶¶ 19-20. In reaching our conclusion, we considered *In re R.F.*, 298 Ill. App. 3d 13, 14-15 (1998), on which Townsel relies. Given that the State there conceded the impropriety of the chain of custody, *In re R. F.* has no bearing on this case.

¶ 28 Townsel also points to the lack of testimony establishing the maintenance and transportation of the narcotics to the drug chemistry vault after being placed in the safe. But, under the circumstances, the State is under no obligation to present testimony from every person in the chain. *Woods*, 214 Ill. 2d at 467. Hence, the lack of this testimony does not impair the chain of custody. *People v. Irpino*, 122 Ill. App. 3d 767, 775 (1984); *People v. Johnson*, 361 Ill. App. 3d 430, 441-42 (2005).

¶ 29 We conclude that the State met its burden in producing a *prima facie* case of the chain of custody of People's Exhibit 1. Because no error occurred in the admission of this evidence, there can be no plain error. *People v. Bair*, 379 Ill. App. 3d 51, 60 (2008) (and cases cited there). We honor Townsel's procedural default of this issue (*Woods*, 214 Ill. 2d at 473).

¶ 30 We affirm the judgment of the Circuit Court of Cook County.

¶ 31 Affirmed.