

THIRD DIVISION  
April 20, 2011

No. 1-10-0076

**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).

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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
	)	Cook County, Illinois.
Plaintiff-Appellee,	)	
v.	)	No. 09 CR 639
PIERRE WYNN,	)	Honorable John T. Doody,
	)	Judge Presiding.
Defendant-Appellant.	)	

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JUSTICE MURPHY delivered the judgment of the court.  
Quinn, P.J., and Steele, J., concurred in the judgment.

**ORDER**

*Held:* Judgment entered on defendant's conviction for delivery of a controlled substance affirmed over defendant's challenges to chain of custody and assessment of fees; mittimus modified to reflect time spent in presentence custody.

Following a jury trial, defendant Pierre Wynn was found guilty of delivery of a controlled substance (crack-cocaine), then sentenced to six years' imprisonment. He was also assessed fines and fees of \$810. On appeal, defendant contends that: (1) the State did not prove him guilty beyond a reasonable doubt because it failed to prove a proper chain of custody for the contraband; (2) his mittimus should be amended to reflect the correct number of days he served

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in presentence custody; and (3) the circuit court improperly assessed him a \$200 DNA fee and a \$25 court services fee.

The record shows, in relevant part, that about 7 p.m. on December 6, 2008, Chicago police officers Spradley, Survillion, and Blakely were in plainclothes and on assignment with the 21st District Gang Team in an unmarked police car. They drove to the Chicago Housing Authority building at 2731 South Dearborn Street, where they had previously made multiple narcotics arrests, to follow up on those arrests and investigate new narcotics complaints.

After exiting their vehicle, Officer Spradley approached the main entrance to the building where he saw defendant inside, and looking out a small window in the door. While Officer Survillion observed from about six to ten feet away, Officer Spradley entered the building through that door and approached defendant. Defendant asked Officer Spradley if he was "shopping," a common street term for "are you in the area looking to purchase narcotics." Officer Spradley responded, "Yeah, what y'all got[?]" Defendant told him that he had "rocks" (crack-cocaine), then motioned to a group of five to six individuals in the area who had "blows" (heroin). Officer Spradley told defendant that he would take rocks.

Defendant opened the fingers of his left hand, in which Officer Spradley saw five to seven small, yellow-tinted ziploc bags, each containing suspect crack-cocaine. Defendant pulled one of these items out with his right hand and gave it to Officer Spradley, who placed it in his pocket. Defendant then instructed him, "Hurry up with your ten dollars." Officer Spradley stalled, looking to see that his partners were nearby, then, assured that they were, announced "police." After a short struggle, the officers were able to handcuff defendant and take him into custody. Officers Spradley and Survillion then searched the area for about 20 minutes, but were unable to find the items that were in defendant's left hand.

At the police station, Officer Spradley handed Officer Survillion the bag of suspect crack-cocaine, which had been in his constant care, custody, and control from the moment he obtained

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it from defendant. Officer Survillion then placed it in an inventory bag which was assigned the unique inventory number 11522001, heat-sealed the bag, and dropped it into the narcotics bin.

At trial, Officer Spradley repeatedly referred to the bag of suspect crack-cocaine that he obtained from defendant as a ziploc bag, but he also indicated that it was a yellow-tinted, knotted plastic bag. Officer Survillion similarly described the bag as a small, twisted, plastic bag. Both officers made a positive, in-court identification of the bag, and testified that it was in the same condition they had last seen it, though Officer Survillion noted that it was missing the label and markings placed on it by the forensics lab.

Lenetta Watson, a forensic scientist in the area of drug chemistry at the Illinois State Police Forensic Science Center, initially received the evidence in a sealed condition from an evidence technician at the Chicago Forensic Science Center. She took custody of it by placing her initials on the bag, and also by an electronic method on the computer. She then removed the contents of the bag and verified that they were consistent with the inventory sheet, which described a knotted plastic bag.

Watson's tests revealed that the rock substance in the bag weighed .109 grams and contained cocaine. She then repackaged the remaining contents in a new bag, heat-sealed it, dated and initialed it, wrote the case number and exhibit number on the bag, and then put that bag in the original evidence bag, which she dated and initialed as well. At trial, she positively identified the bag of crack-cocaine, which was the same one identified by the officers, after observing that it contained her initials and the dates she placed on it. She further testified that, other than the new sticker placed on the bag, it was in the same condition she had last seen it in.

The jury returned a verdict of guilty to the charge of delivery of a controlled substance (720 ILCS 570/401(d)(I) (West 2008)), and on December 18, 2009, defendant was sentenced to six years' imprisonment, with 376 days of presentence credit.

In this appeal from that judgment, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt. He specifically claims that the State failed to establish a

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proper chain of custody for the contraband where it offered no evidence showing that the inventory number for the suspect crack-cocaine obtained by Officer Spradley matched that of the substance tested by the forensics lab. The State responds that defendant has forfeited this issue by failing to object at trial, or raise it in his motion for a new trial.

We initially note that a challenge to the chain of custody is not a sufficiency of the evidence question, but rather, an evidentiary issue that is subject to waiver on review if not properly preserved in the trial court. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). Because defendant did not raise this issue in his motion for a new trial, as required, the issue is forfeited. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant, nonetheless, claims that we may review for plain error, citing *Woods*, 214 Ill. 2d at 471-72, where the supreme court recognized that a challenge to the State's chain of custody can be reviewed for plain error in the rare case where there is a complete breakdown in the chain.

Defendant maintains there was such a breakdown here where the forensic chemist who tested the bag of crack-cocaine did not testify to its inventory number, and where the officers identified the bag in the absence of unique markings which would render it "readily identifiable."

It is axiomatic that when the State seeks to introduce the results of chemical testing of a purported controlled substance, it must provide a foundation for its admission by showing that the police took reasonable protective measures to ensure that the substance tested was the same one recovered from defendant. *People v. Alsup*, No. 108354, slip op. at 6 (Ill. S. Ct. Jan. 21, 2011). To establish a sufficiently complete chain of custody, the State must demonstrate that reasonable measures were employed to protect the evidence from the time of seizure and that it was unlikely that the evidence has been altered. *Woods*, 214 Ill. 2d at 467.

In this case, the State presented evidence showing that Officer Spradley recovered the bag of crack-cocaine from defendant and placed it in his pocket, where it remained in his constant care, custody, and control until he handed it to Officer Survillion at the police station. Once Officer Survillion took possession of it, he placed it into an inventory bag, obtained an inventory

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number for it, heat-sealed the bag, and dropped it into the narcotics bin. The forensic chemist received the evidence in a sealed condition, and before testing it, she initialed and dated the bag, and verified that its contents matched the inventory sheet. At trial, she identified the bag of crack-cocaine containing her initials, which was the same bag the officers identified as having been recovered from defendant and sent for testing. Under these circumstances, the State established that the police took reasonable protective measures to ensure that the bag of crack-cocaine tested by the forensic chemist was the same item recovered from defendant. *Alsup*, No. 108354, slip op. at 6.

Through this evidence, the State established its *prima facie* case, and the burden shifted to defendant to show actual evidence of tampering, alteration, or substitution. *Alsup*, No. 108354, slip op. at 10. The record is devoid of such evidence and shows, to the contrary, that the forensic chemist, Officer Spradley, and Officer Survillion each testified that the bag of crack-cocaine was in the same condition it was when they had last seen it. We, therefore, find that defendant failed to establish a complete breakdown in the chain of custody of the contraband seized and tested, and that he is therefore precluded from challenging the alleged discrepancy for the first time on appeal. *Alsup*, No. 108354, slip op. at 11.

In reaching this conclusion, we find defendant's attempt to analogize the case at bar to *In Re R.F.*, 298 Ill. App. 3d 13, 14-15 (1998), unpersuasive. In *R.F.*, the State conceded that it did not establish a proper chain of custody, and the only issue on appeal was whether the error warranted outright reversal, or reversal and remand. Here, on the other hand, the State has not made any such concession, and we have found defendant's claim wanting on the merits.

Defendant next contends that his mittimus should be corrected to reflect the proper amount of days that he served in presentence custody. Defendant claims that he served 378 days in presentence custody, but that his mittimus only reflects 376 days served. The State responds that defendant's mittimus should be amended to reflect only one additional day of presentence custody.

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The record shows that defendant was arrested on December 6, 2008, and sentenced on his delivery of a controlled substance conviction on December 18, 2009. He was thus entitled to credit for each day that he spent in custody as a result of that offense (730 ILCS 5/5-4.5-100(b) (West 2008)), but not for the day on which he was sentenced (*People v. Williams*, No. 109361, slip op. at 6 (Ill. S. Ct. Jan. 21, 2011)). Excluding the day of sentencing, defendant spent 377 days in custody, and pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999)), we direct the clerk to modify his mittimus to reflect that amount of presentence credit. *People v. Hill*, 402 Ill. App. 3d 920, 929 (2010).

Defendant finally challenges the propriety of certain of the pecuniary penalties imposed by the court. Although the State responds that defendant has forfeited this issue, a sentencing error may affect defendant's substantial rights, and thus can be reviewed for plain error. *People v. Black*, 394 Ill. App. 3d 935, 939 (2009), citing *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998). The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

Defendant contends that he was improperly assessed a \$200 DNA analysis fee because the Illinois State Police already had his DNA profile from a prior felony conviction. Under the Unified Code of Corrections any person convicted of a felony is required to submit a DNA sample to the Illinois Department of State Police and pay an analysis fee of \$200. 730 ILCS 5/5-4-3(a), (j) (West 2008). Defendant argues that the plain language of the statute indicates that the \$200 fee may only be imposed once, citing *People v. Willis*, 402 Ill. App. 3d 47 (2010) and *People v. Evangelista*, 393 Ill. App. 3d 395 (2009).

Although that conclusion was drawn in the cited cases, this court has since declined to follow *Willis* and *Evangelista*, and, after considering the statutory language, agreed with the reviewing court in *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), that nothing in the statutory language limits the taking of DNA samples or the assessment of the analysis fee to a single instance. *People v. Williams*, No. 1-09-1667, slip op. at 12 (Ill. App. Dec. 2, 2010);

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*People v. Hubbard*, 404 Ill. App. 3d 100, 102 (2010); *People v. Grayer*, 403 Ill. App. 3d 797, 801 (2010). In reaching that conclusion, we identified at least two reasons for collecting additional DNA samples, *i.e.*, to have new samples, and an ability to subject them to the latest, most sophisticated DNA tests (*Hubbard*, 404 Ill. App. 3d at 103; *Grayer*, 403 Ill. App. 3d at 801); and, the recognition that, under certain conditions, a defendant's DNA may be removed from the database, which would necessitate the taking of a second sample upon conviction of another felony (*Williams*, No. 1-09-1667, slip op. at 12). We find no basis for deviating from our holdings in *Williams*, *Hubbard* and *Grayer* and, likewise, conclude here that the trial court properly assessed a \$200 DNA analysis fee on defendant following his felony conviction in this case.

Defendant also contends that he was improperly assessed a \$25 court systems fee, claiming that the statute only authorizes assessment of the fee under certain criminal statutes, none of which include the offense of delivery of a controlled substance. The State responds that the statute authorizes assessment of the fee for any criminal case resulting in a judgment of conviction.

Under the County Code, the court may assess a \$25 court services fee against a defendant upon a finding of guilty resulting in a judgment of conviction, or for an order of supervision or probation without entry of judgment made under specific enumerated criminal provisions. 55 ILCS 5/5-1103 (West 2008); *Williams*, No. 1-09-1667, slip op. at 10. In this case, a judgment of conviction was entered against defendant, which, alone, made him eligible for the court services fee. *Williams*, No. 1-09-1667, slip op. at 10-11. We thus find that the trial court did not err in assessing him a \$25 court services fee.

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

Affirmed; mittimus modified.