

No. 1-10-0860

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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
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 14208
	)	
WILLIAM CLEMONS,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GARCIA delivered the judgment of the court.  
Presiding Justice R. E. Gordon and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment affirmed on conviction for possession of a controlled substance over defendant's challenge to the chain of custody.

¶ 2 Following a bench trial, defendant William Clemons was found guilty of possession of a controlled substance, then sentenced to 30 months' imprisonment. On appeal, he contends that the State failed to prove him guilty of that offense beyond a reasonable doubt where there was a complete breakdown in the chain of custody.

¶ 3 The record shows, in relevant part, that on the evening of July 6, 2009,<sup>1</sup> Chicago police officers Adamski and Bokuniewicz were on routine patrol traveling northbound on Cottage Grove Avenue near 64th Street, in Chicago, when they observed defendant traveling southbound in a gray, older-model Chevy mini-van with a cracked windshield. Officer Adamski made a U-turn at his earliest opportunity and curbed defendant. He then approached the driver's side of the vehicle, as his partner approached the passenger's side, and asked defendant if he had a valid driver's license. When defendant responded that he did not, Officer Adamski asked him to exit the vehicle, and the officers took him into custody.

¶ 4 Defendant was wearing a pair of drawstring sweat pants at the time which had numerous holes in the waistband area. During the ensuing search, Officer Adamski ran his fingers along the waistline and felt a plastic baggie inside one of the openings. He ultimately recovered 15 mini ziploc baggies from that area each of which contained white powder suspected to be heroin.

¶ 5 With respect to chain of custody, Officer Adamski testified that he kept the items he recovered from defendant in his constant care and control until he gave them to his partner, who inventoried them. Officer Bokuniewicz testified that Officer Adamski gave him the items that were recovered from defendant at the station, and that he kept them in his constant care and control. He inventoried the narcotics pursuant to Chicago Police Department inventory procedures by placing them in a plastic bag, typing a description of them into the computer, and bringing them to the desk sergeant who verified that the items in the bag matched what had been typed into the computer. He also obtained a unique inventory number for the evidence, and

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<sup>1</sup> Officer Adamski testified on direct examination that the events leading to defendant's arrest occurred on July 7, 2009, but the arrest report and direct testimony of Officer Bokuniewicz indicate that the date was actually July 6, 2009.

1-10-0860

when asked at trial, "[T]o the best of your knowledge, was that inventory number 11719784," he responded, "That's an inventory number, yes." The bag was heat-sealed and sent to the Illinois Forensic Science Lab, and Officer Bokuniewicz testified that after the inventory had been approved, the narcotics were put in a safe to which only the desk sergeant and the officer from the evidence and recovered property section have access.

¶ 6 On cross-examination, Officer Bokuniewicz stated that he personally put the narcotics in the safe. He assumed that after Officer Adamski recovered the items from defendant, he placed them on his person, but could not state where exactly Officer Adamski put them. He noted that, at the station, he went to get an inventory bag from the front desk, and by the time he came back with it, Officer Adamski had the drugs in his hand. Officer Bokuniewicz also stated that the drugs were not field tested, and that more than an hour probably elapsed between the time of defendant's arrest and when he put the narcotics in the evidence bag.

¶ 7 Jason George, a forensic chemist with the Illinois State Police, testified that on July 8, 2009, he received inventory number 11719784 from an evidence technician at the drug chemistry vault, and proceeded to check that it was properly sealed and that the information on the inventory sheet and evidence bag matched. Besides being properly labeled, the evidence was properly sealed in that there was a clear heat seal across the top with an ink signature through it and a factory seal at the bottom, both of which were intact, and the information on the inventory sheet and evidence bag matched. George then took custody of the evidence and locked it in his work station, to which only he and his immediate supervisor have access, until the next day when he began his analysis. At trial, he identified the evidence by its inventory number, his initials, and the date he received it, and testified that it was in substantially the same form as when he last saw it.

¶ 8 During his testing, George weighed "the 15 bags," and also repackaged the original evidence into two separate ziploc bags labeled 1-A and 1-B, both of which were sealed. The bag labeled 1-A contained 1.3 grams of powder from five of the items, and the substance was confirmed to be heroin. After completing his testing, he repackaged and resealed the evidence, then locked it in his work station until he could return it to the drug chemistry vaults. On cross-examination, George stated that the small ziploc baggies that he received for testing had a blue tint, but acknowledged that the color of the bags was not listed in his lab report.

¶ 9 At the conclusion of evidence, the court found that the officers testified credibly, that the testimony regarding chain of custody was "more than enough to establish the chain," and, ultimately, that defendant was found guilty of possession of a controlled substance.

¶ 10 In this appeal from that judgment, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. He specifically claims that the testimony of the State's witnesses did not establish that the items recovered from him were the same as those which tested positive for heroin. The State responds that defendant has forfeited this issue by failing to object to the admission of the narcotics into evidence at trial.

¶ 11 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 failed to specifically object to the admissibility of the narcotics at trial, as required, and thereby deprived the State of the opportunity to correct any alleged deficiencies in the foundational proof, the issue is forfeited. *Woods*, 214 Ill. 2d at 470. Notwithstanding, the supreme court has 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. *People v. Alsup*, 241 Ill. 2d 266, 277 (2011), citing *Woods*, 214 Ill. 2d at 471-72.

¶ 12 Defendant maintains that there was such a breakdown here where there was "no link" between the items recovered from defendant and the substance tested. In support of his claim, he specifically cites the failure of Officer Bokuniewicz to specify what he received from Officer Adamski at the station, what he placed in the inventory bag, or the inventory number he assigned to the bag; that the chemist did not describe the items he received from the evidence technician, and only identified the State's exhibit as his own repackaging of the evidence; and that Officers Adamski and Bokuniewicz did not specify the color of the original packaging, and the chemist did not note it in his report. The State responds that it established an adequate chain of custody where it was improbable that the evidence had been subject to tampering, substitution, or contamination.

¶ 13 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. *Alsup*, 241 Ill. 2d at 274. 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 its seizure and that it was unlikely that the evidence had been altered. *Woods*, 214 Ill. 2d at 467.

¶ 14 In this case, the State presented evidence showing that Officer Adamski recovered 15 mini ziploc baggies of suspect heroin from the drawstring area of defendant's sweat pants. He kept those items in his constant care and control until handing them over to Officer Bokuniewicz at the police station to be inventoried. Officer Bokuniewicz also kept those items in his constant care and control, and inventoried them pursuant to department procedure by placing them in an inventory bag, typing a description of them into the computer, and having the desk sergeant verify that the items in the bag matched those in the computer. He obtained an inventory number

for the evidence and placed the heat-sealed bag in a safe, to which access was limited, to be sent to the Illinois Forensic Science Lab.

¶ 15 The forensic chemist received inventory number 11719784, containing 15 bags, in a properly sealed condition from an evidence technician. He verified that the information on the inventory sheet and evidence bag matched, took custody of the evidence, and locked it in his workstation, which had limited access, until beginning his analysis. After completing his testing, he repackaged and resealed the evidence, and locked it in his work station until he could return it to the drug chemistry vaults.

¶ 16 These procedures indicate that the police officers took reasonable protective measures to ensure that the 15 baggies of white powder recovered from defendant were the same 15 bags from which the sample of heroin was drawn by the forensic chemist, and that it was improbable that the evidence had been subject to tampering, alteration, or substitution. *Alsup*, 241 Ill. 2d at 278-79. The State thus satisfied its *prima facie* case, and the burden shifted to defendant to show actual evidence of tampering, alteration, or substitution. *Alsup*, 241 Ill. 2d at 274-75. The record here is devoid of any such evidence, and, accordingly, any deficiencies in the chain, such as those now suggested by defendant, went to the weight rather than the admissibility of the evidence. *Alsup*, 241 Ill. 2d at 279, citing *Woods*, 214 Ill. 2d at 467. We thus 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*, 241 Ill. 2d at 280.

¶ 17 Defendant nonetheless claims that the "significant gaps" in the State's chain of custody "mirror" those in *People v. Lundy*, 334 Ill. App. 3d 819 (2002). We disagree. In that case, the only evidence offered by the State as to chain of custody was an officer's testimony that he recovered "*a clear plastic bag containing numerous multi-colored plastic bags and a shiny*

*metal object*" and inventoried it under number 1951630, and a stipulation between the parties that evidence with that inventory number was received by the forensic scientist and consisted of six packages of cocaine, one package of heroin, and two plastic bags with residue which were not analyzed. *Lundy*, 334 Ill. App. 3d at 827. In addition, the State did not dispute that it had failed to present specific evidence of the safekeeping procedures employed. *Lundy*, 334 Ill. App. 3d at 827. Here, to the contrary, and as set forth in detail above, the State presented specific evidence of the protective measures taken of the contraband from recovery through analysis, which, alone, readily distinguishes this case from *Lundy*.

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

¶ 19 Affirmed.