

No. 1-11-0890

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 2551
)	
RONNIE SIMMONS,)	Honorable
)	William H. Hooks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Where testimony established that inventory number on narcotics recovered from crime scene matched number on materials submitted to police lab for testing, State met its burden of showing chain of custody, and defendant therefore cannot establish plain error; the judgment of the circuit court was affirmed.

¶ 2 Following a jury trial, defendant Ronnie Simmons was convicted of possession of a controlled substance with intent to deliver. Due to his prior convictions, defendant was subject to mandatory Class X sentencing, and he was sentenced to eight years in prison, to be followed by three years of mandatory supervised release (MSR). On appeal, defendant contends a

"complete breakdown" occurred in the chain of custody of the package of narcotics presented at trial so as to cast a reasonable doubt on his conviction. Defendant also argues his three-year MSR term is void because it was imposed for the commission of a Class 1 felony which, by itself, would warrant a shorter MSR period of two years. We affirm but order the correction of the mittimus to accurately reflect defendant's conviction.

¶ 3 The following testimony is relevant to the issues raised on appeal. Chicago police officer John Wrigley testified that at about 8:45 p.m. on November 14, 2009, he was conducting surveillance near the corner of West Douglas Boulevard and Central Park in Chicago as part of a tactical team. Wrigley testified the area was well-lit and that he observed defendant and Anthony Leggins across the street. Defendant and Leggins were standing 30 to 40 feet away from each other.

¶ 4 Wrigley testified that a person walked by and shouted something to defendant or Leggins and spoke with them briefly. Leggins then walked to a nearby bench, retrieved an item from the ground, and walked back toward defendant and the individual who had approached them. About 10 seconds before Leggins returned, the person handed money to defendant, who put it in a pocket. Leggins handed the individual a small item. Wrigley observed the same series of events involving a second person who approached defendant. After that interaction, Wrigley heard defendant shout "blows, blows," a street term for heroin, to oncoming pedestrians. After Wrigley observed a third transaction, he contacted two enforcement officers on the tactical team and informed them of the location of the suspected narcotics. Defendant and Leggins were then arrested.

¶ 5 Chicago police officer Frank Sarabia testified that he recovered from under the bench a plastic bag containing nine foil packets surrounded by red duct tape and clear tape. Sarabia testified that bag was in his possession until he arrived at the police station, where he placed the

bag in a narcotics envelope and handed the envelope to Chicago police officer Jason Acevedo. The envelope and its contents were entered into evidence as People's Exhibit No. 2.

¶ 6 Acevedo testified he was the inventory officer at the time defendant was arrested and that Sarabia handed him an inventory bag containing a clear plastic bag of nine foil packets bearing red and clear tape. Acevedo marked the bag with inventory number 11848600. Acevedo was shown People's Exhibit No. 2 and identified it as the inventory bag that Sarabia had handed him. Acevedo testified that as he inventoried the items, the bag was in his constant care and control until he heat-sealed the bag. Acevedo stated that aside from markings made in the police laboratory, the bag that was People's Exhibit No. 2 was in substantially the same condition as when he last saw it.

¶ 7 Thomas Halloran testified that he was a forensic chemist with the Illinois State Police. He was shown People's Exhibit No. 2, which he described as a sealed Chicago Police Department evidence bag. Halloran stated he had seen the bag before because the bag bore his initials, the State Police case number and the dates he opened and closed the case. Halloran also said his name was written on the bottom of the bag.

¶ 8 Halloran testified he received that bag on November 23, 2009, from an evidence technician in a "properly sealed condition." At that point in Halloran's testimony, the assistant State's attorney asked Halloran to open People's Exhibit No. 2 and remove the contents of the sealed bag. Halloran said that when he had received the bag to be tested, he had verified that the "RD" number, or Chicago Police records division number, and the inventory number "matched between the inventory sheet and the evidence bag."

¶ 9 Halloran testified that he began analyzing the bag's contents on December 1, 2009, after he "verified the contents of the bag matched what was on the inventory sheet and the evidence bag." He stated the bag contained nine taped foil packets and that he removed powder from

seven of the nine packets. After performing various tests, he determined those seven packets contained 1.1 grams of heroin. People's Exhibit No. 2 was admitted into evidence without defense objection.

¶ 10 On cross-examination, Halloran was asked in what form he received the inventory, and he repeated that he received a sealed Chicago Police Department evidence bag. He stated that when a case is submitted to the lab it was "given" that the material would be tested for controlled substances. Defense counsel asked if directions were received to send the inventory in the case for fingerprint analysis, and Halloran said there were not. Halloran stated that the 1.1 grams of powder included a cutting agent. On redirect examination, Halloran stated that he was not qualified to test for fingerprints and received no order to do so. Halloran said that as part of his analysis, he estimated the weight of the two packets that he did not test at a total of .3 gram of an unknown substance.

¶ 11 The defense presented no evidence. The jury found defendant guilty of possession of between 1 and 15 grams of heroin with intent to deliver.

¶ 12 On appeal, defendant first contends his conviction should be reversed because the State did not establish that the bag recovered from under the bench had the same inventory number as the bag entered into evidence as People's Exhibit No. 2 that Halloran tested and found to contain heroin.

¶ 13 Defendant characterizes this appeal as a challenge to the sufficiency of the evidence, contending that due to the "complete breakdown" in the chain of custody, the State failed to prove beyond a reasonable doubt that he possessed a controlled substance. Defendant also acknowledges he failed to object to the chain of custody evidence presented in the State's case or include the issue in a post-trial motion; however, he argues his claim can be raised for the first time in this appeal under the plain error doctrine.

¶ 14 In support of those contentions, defendant relies on our supreme court's decision in *People v. Woods*, 214 Ill. 2d 455 (2005). However, as to defendant's first point, our analysis of *Woods* does not support the consideration of defendant's appeal under a sufficiency-of-the-evidence standard.

¶ 15 The defendant in *Woods* was charged with possession of a controlled substance and challenged the chain of custody of the suspected narcotics recovered from the crime scene for the first time on appeal. *Woods*, 241 Ill. 2d at 465-66. The supreme court noted that the defendant had waived his challenge to the chain of custody by failing to object at trial and by stipulating that the substance received by the forensic chemist was a narcotic. *Id.* at 469-70. The supreme court expressly rejected the position that the defendant's chain-of-custody argument constituted a dispute as to the sufficiency of the evidence, stating that his "assertion that the State has presented a deficient chain of custody for evidence is a claim that the State has failed to lay an adequate foundation for that evidence" and therefore "an attack on the admissibility of the evidence" subject to the normal rules of waiver. *Id.* at 471-73.

¶ 16 Since *Woods*, courts have addressed chain-of-custody questions in this context as foundational issues, as opposed to challenges to the sufficiency of the evidence, and have implemented a plain error analysis when the issue has not been preserved. See *People v. Alsup*, 241 Ill. 2d 266, 275 (2011); *People v. Muhammad*, 398 Ill. App. 3d 1013, 1016-17 (2010); *People v. Paige*, 378 Ill. App. 3d 95, 99 (2007). The plain error doctrine permits a reviewing court to consider an error that has been procedurally forfeited; however, a prerequisite to applying this rule is the existence of an error. *People v. Rinehart*, 2012 IL 111719, ¶ 15. This requires a substantive consideration of the issue. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

¶ 17 Where a case involves a controlled substance, the physical evidence is often not readily identifiable and may be susceptible to tampering, contamination or exchange. *Woods*, 214 Ill. 2d

at 466-67. In such instances, the State bears the burden of establishing a chain of custody as a foundation for the admission of that evidence; 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. *Id.*; see also *Alsup*, 241 Ill. 2d at 274. The trial court must determine whether the State has met its burden "to establish a custody chain that is sufficiently complete to make it improbable that the evidence has been subject to tampering or accidental substitution." *Woods*, 214 Ill. 2d at 467. Once the State has established its *prima facie* case, the burden then shifts to the defendant to show actual evidence of tampering, alteration or substitution. *Id.* at 468.

¶ 18 As to the State's burden, a "sufficiently complete chain of custody does not require that every person in the chain testify, nor must the State exclude every possibility of tampering or contamination." *Id.* at 467. Moreover, it is not erroneous to admit evidence "even where the chain of custody has a missing link if there was testimony which sufficiently described the condition of the evidence when delivered which matched the description of the evidence when examined." *Alsup*, 241 Ill. App. 3d at 274, citing *Woods*, 214 Ill. 2d at 467-68. At that point, any deficiencies in the chain of custody go to the weight of the evidence, and not to its admissibility. *Id.* at 275, citing *Woods*, 214 Ill. 2d at 467.

¶ 19 In the case at bar, defendant argues an irreparable breach occurred in the chain of custody because the State did not establish that the inventory number (11848600) assigned to the bag recovered from under the bench matched the inventory number on People's Exhibit No. 2. He points out that Halloran, the forensic chemist, failed to testify that exhibit, which he tested and found to contain heroin, bore the inventory number 11848600, and that therefore, no connection was made between the narcotics that were recovered and the substance that Halloran testified. The State responds that even without Halloran's testimony as to the inventory number, the

prosecution presented several other indicia of the reliability of the exhibit so as to establish a *prima facie* case.

¶ 20 Defendant contends the circumstances of this case constituted an automatic breakdown in the chain of custody. In making that assertion, defendant relies on the following passage from *Woods*:

"We acknowledge *** that under limited circumstances a challenge to the chain of custody may be properly raised for the first time on appeal if the alleged error rises to the level of plain error. *** For example, in those rare instances where a complete breakdown in the chain of custody occurs – *e.g.*, the inventory number or description of the recovered and tested items do not match – raising the probability the evidence sought to be introduced at trial was not the same substance recovered from defendant, a challenge to the chain of custody may be brought under the plain error doctrine. When there is a complete failure of proof, there is no link between the substance tested by the chemist and the substance recovered at the time of the defendant's arrest. In turn, no link is established between the defendant and the substance." *Woods*, 214 Ill. 2d at 471-72.

¶ 21 It is true that Illinois courts have described a police inventory number as the "one unique identifier" in a chain of custody. *People v. Blankenship*, 406 Ill. App. 3d 578, 588-89 (2010), citing *People v. Howard*, 387 Ill. App. 3d 997, 1004 (2009) (espousing the use of that number as the "most satisfactory" method of showing that each person handled the same evidence). Nevertheless, matching descriptions of the evidence obtained and the materials tested by a

forensic chemist have also been found to sufficient to establish a chain of custody. *Blankenship*, 406 Ill. App. 3d at 589-90; *People v. Pettis*, 184 Ill. App. 3d 743, 754 (1989).

¶ 22 Defendant acknowledges that the supreme court in *Alsup* specifically cautioned against an overbroad interpretation of the above-quoted passage from *Woods*. In *Alsup*, the arresting officer testified he recovered five packets of heroin, and he described the steps he took upon arriving at the police station; however, the parties stipulated that the forensic chemist tested nine items. *Alsup*, 241 Ill. 2d at 273. The State presented evidence that the arresting officer handed the items to the inventorying officer, the items were inventoried under number 10502687, and the signed and sealed bag was placed in a narcotics vault. *Id.* at 270-71. The parties stipulated a forensic scientist would testify he received the items under inventory number 10502687. *Id.* at 271.

¶ 23 The supreme court in *Alsup* determined the defendant had not established a "complete breakdown" in the chain of custody so as to allow him to raise that challenge for the first time on appeal and that the State had satisfied its *prima facie* case. *Id.* at 280-81. The court cautioned against an "overbroad interpretation" of *Woods*. *Id.* at 280. "Our statement in *Woods* regarding when a complete breakdown could conceivably occur – 'e.g., the inventory number or description of the recovered and tested items do not match' – cannot be understood without the context of the case." *Id.*

¶ 24 The *Alsup* court noted that although in *Woods* it had held the State made a *prima facie* showing as to the chain of custody, the record in *Woods* lacked details as to the police procedures in processing and delivering the alleged contraband. *Id.* The supreme court explained:

"It was in the context of this dearth of links in the chain of custody [in *Woods*] that a mismatch of inventory numbers or tested items could be hypothetically reviewable under plain error. Defendant's

reading that our 'e.g.' or *exempli gratia*, statement quoted above is instead a *per se* exception overstates our holding." *Id.*

¶ 25 Turning to the facts in the present case, Officer Sarabia testified that he recovered a plastic bag containing nine foil packets surrounded by red and clear tape from under a bench after Officer Wrigley observed Leggins retrieve items from that bag. Sarabia testified the bag was in his possession until he handed it to Officer Acevedo, who inventoried the contents and marked the bag with inventory number 11848600 and heat-sealed the bag. Halloran, the forensic chemist, testified the evidence bag was sealed when he received it, and he compared the inventory number on the bag and found that it matched the number listed on the inventory sheet. Halloran also verified that the contents of the bag matched the description on the inventory sheet.

¶ 26 This court has found that testimony as to the receipt of evidence in a sealed condition with a matching inventory number is sufficient to establish that the integrity of the evidence had not been compromised. *Paige*, 378 Ill. App. 3d at 99 (stipulations of bag's sealed condition and matching inventory number sufficient even when description of bag's contents did not match substance tested). The fact that Halloran did not pronounce in court the inventory number listed on the bag does not negate his testimony that the number on the bag corresponded with the number on the inventory sheet. We conclude that the State satisfied its burden of producing a *prima facie* case of the chain of custody of People's Exhibit No. 2. Because no error occurred in the admission of that evidence, there can be no plain error in this case. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 27 We disagree with defendant's contention that the case of *In re R.F.*, 298 Ill. App. 3d 13, 15 (1998), is analogous. There, the minor charged with delinquency based on drug possession asserted that no foundation was set for the admission of evidence of heroin because the officer who testified that he took the items from the minor could not recall inventorying the items under

the number given by the forensic analyst. *Id.* The court held that the absence of matching numbers between the seized items and the analyzed items was insufficient to establish a foundation for the connection between the minor and the drugs. *Id.* at 15-16. In contrast to *In re R.F.*, where no inventory envelope was entered into evidence (*Id.* at 15), the inventory numbers in the instant case were reconciled by Halloran.

¶ 28 Defendant next contends on appeal that his three-year MSR term is void because it was imposed for the commission for a Class 1 felony, which, by itself, would warrant a shorter MSR period of two years. However, this court has consistently rejected the argument raised by defendant that under *People v. Pullen*, 192 Ill. 2d 36, 43 (2000), a three-year MSR term imposed in a case involving Class X sentencing is void when the underlying offense would require only a two-year MSR period.

¶ 29 Defendant's position was most recently addressed in *People v. Davis*, 2012 IL App (5th) 100044, ¶ 34 (September 5, 2012), which analyzed several preceding cases and concluded that where, as here, a defendant is sentenced as a Class X offender, he is to receive the same MSR term as a defendant who is convicted of a Class X felony. See *People v. Lampley*, 2011 IL App (1st) 090661-B; *People v. Holman*, 402 Ill. App. 3d 645, 652-53 (2010); *People v. McKinney*, 399 Ill. App. 3d 77, 80-81 (2010). Under that precedent, sentencing as a Class X offender requires a term of three years to be served after the offender completes his prison term. 730 ILCS 5/5-8-1(d)(1) (West 2010). Accordingly, defendant's three-year MSR term is not void.

¶ 30 Defendant also asserts, and the State agrees, that the mittimus incorrectly indicates he was convicted of one count of manufacturing and delivering between 1 and 15 grams of heroin, when defendant in fact was found guilty of the possession of that substance with intent to deliver. Pursuant to Supreme Court Rule 615(b)(1), (eff. Aug. 27, 1999), we direct the clerk of the circuit

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court to correct the mittimus to indicate that defendant was convicted of one count of the possession of between 1 and 15 grams of heroin with intent to deliver.

¶ 31 Accordingly, defendant's conviction and sentence are affirmed. The court is instructed to correct the mittimus to accurately state defendant's conviction.

¶ 32 Affirmed; mittimus corrected.