

No. 1-11-1376

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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 16497
)	
DAVID PRICE,)	Honorable
)	Thomas M. Tucker,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on conviction for possession of a controlled substance affirmed where defendant forfeited chain of custody claim through stipulation.
- ¶ 2 Following a bench trial, defendant, David Price, was convicted of possession of a controlled substance and sentenced to 24 months' probation which included 30 hours of community service and three random drug tests. On appeal, defendant contends the evidence was insufficient to prove him guilty beyond a reasonable doubt where there was a breakdown in the chain of custody of the recovered substance. We affirm.
- ¶ 3 The record shows that on August 13, 2010, defendant and codefendants, Reginald Ducksworth and Larry Norwood, were arrested and charged with possession of a controlled substance. The three men elected to be tried together in a bench trial. However, this appeal involves only defendant Price.

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¶4 At trial, Maywood police Officer Diaz testified that on August 13, 2010, he received a signed search warrant for an apartment at 1725 Madison Street, in Maywood, Illinois. Mr. Ducksworth was named as a suspect in the warrant for drugs and drug paraphernalia. Officer Diaz and 10 other officers arrived at the address in question at about 5 a.m. and observed defendant standing in front of it. As the police approached, defendant began to run up the stairs of the residence in question. When defendant was 15 feet away from Officer Diaz, defendant was told by the police to put his hands up and lie down on the ground. As defendant complied and put up his hands, several objects fell from his right hand on to the ground next to where he was standing. Officer Diaz recovered the items defendant had dropped which included one glass pipe and a blue plastic bag containing .3 grams of cocaine. Defendant was then arrested.

¶5 Officer Diaz further testified that after he took defendant into custody, he entered the apartment and saw Mr. Ducksworth running from a bedroom. Mr. Ducksworth was quickly detained, and police entered the bedroom from which he had fled. There the police observed Mr. Norwood crouching in a corner. After the officers secured the three men, Officer Diaz searched the apartment and found in the closet four items of suspect narcotics: one clear plastic bag containing a light brown-colored substance; one clear plastic bag of a white powdery substance; one clear plastic bag that contained a white rock-like substance; and one clear plastic bag containing a green leafy substance. Officer Diaz also testified that a clear plastic bag containing a green leafy substance was recovered from Mr. Norwood.

¶6 Officer Diaz further testified that a total of six items, including the blue plastic bag recovered from defendant (People's exhibit number 2), had been placed and sealed in an inventory envelope and were sent to and returned from the Illinois State Police crime lab in a sealed and marked plastic bag. Officer Diaz further noted that other than the blue plastic bag (People's exhibit number 2) being broken down and examined by the lab, it was the same evidence that he had recovered after defendant had dropped it. Officer Diaz also noted that he had listed the names of all three offenders

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on the blue plastic bag (People's exhibit number 2) before it was inventoried.

¶ 7 The State asked Officer Diaz if all of the recovered items of suspect cannabis, cocaine, and heroin were sealed in an inventory envelope, under number 10-15758, and sent to the crime lab for testing at the completion of his investigation. Officer Diaz responded, "[y]es, they were."

¶ 8 The Assistant State's Attorney (ASA) read a stipulation as to the testimony of forensic chemist, Melissa McCann, if she had been called as a witness. It was stipulated that she was a forensic scientist employed by the Illinois State Police crime lab, and that she received items of suspect narcotics under inventory number 10-15758, which included two packets of suspect cannabis, a packet of suspect heroin, and two packets of suspect cocaine (five packets total). The parties further stipulated that all of the items (six items total) tested positive for either cannabis, heroin or cocaine. Chemist McCann stated that she performed tests commonly accepted in the area of forensic chemistry and that she would testify to a reasonable degree of scientific certainty. The parties also stipulated that chemist McCann would testify that all of the items she received that were recovered from the case were tested, and that the "chain of custody was proper and correct at all times." The stipulation was formally accepted by defense counsel for a codefendant. Counsel for defendant voiced no objection to the stipulation.

¶ 9 The court then stated:

"[COURT]: I want you to go back to one thing for me. The thing that was dropped [in] the front of the house.

[ASA ***]: Point three grams of cocaine tested positive.

[COURT]: Got you.

[ASA ***]: That's the particular packet, Judge.

[COURT]: Got you."

¶ 10 At the close of evidence, the court found defendant guilty of possession of a controlled substance. Defendant now challenges that judgment on appeal.

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¶ 11 Defendant argues on appeal that the State failed to prove him guilty of possession of a controlled substance beyond a reasonable doubt where there was a complete breakdown in the chain of custody of the item that defendant had dropped. Defendant maintains that there is no link between the item recovered at the time of defendant's arrest and the items tested by the forensic scientist where: there is no testimony about the contents of the bag or an inventory number assigned to the bag; no showing of the chain of custody for the bag; and no testimony regarding whether the contents of the bag were ever tested.

¶ 12 As an initial matter, we observe that defendant's argument overlooks the ruling of the supreme court in *People v. Woods*, 214 Ill. 2d 455 (2005), that chain of custody is an evidentiary issue which is subject to waiver if not properly preserved for review. *Id.* at 471. To preserve a chain of custody claim, defendant must make a specific objection at trial and include the issue in a posttrial motion. *Id.* Defendant has clearly failed to do so in this case, and his chain of custody claim is procedurally defaulted. *Id.* at 473.

¶ 13 Notwithstanding, the supreme court in *Woods* recognized that under limited circumstances, a defendant may attack the chain of custody, although waived, if the alleged error rose to the level of plain error, *i.e.*, where there is a complete breakdown in the chain of custody such that there was no link between the substance recovered by police and the substance tested. *Id.* at 471-72.

¶ 14 Defendant maintains that Officer Diaz's testimony regarding inventory number 10-15758 did not include the item he had dropped, and that the stipulation does not include the item defendant dropped because the inventory only listed the items inventoried under number 10-15758 that were recovered in the apartment and from Mr. Norwood. We disagree.

¶ 15 The initial part of stipulation as to the testimony of forensic chemist McCann described five items that were received in inventory number 10-15758. However, the stipulation further provided: "With respect to the items, [one] item tested positive for cannabis, [one item tested positive for] .3 grams [of] heroin[], [one item tested positive for] 2.0 grams [of] cocaine, [one item tested positive

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for] 1.2 grams [of cocaine], [one item tested positive for] .3 grams of cocaine and [one item tested positive for] .6 grams of cannabis." (Emphasis added.) This part of the stipulation lists a total of *six items* tested, as to inventory number 10-15758, that matched the number of suspect narcotics packages recovered, *i.e.*, the package of narcotics dropped by defendant, the four separate bags of narcotics recovered in the closet of the apartment, and the suspect bag of narcotics recovered from Mr. Norwood.

¶ 16 We further observe that just after the stipulation was entered, the trial court asked the State to "go back to one thing" for clarification, namely, the packet dropped by defendant in front of the apartment. The State responded that it was "[p]oint three grams of cocaine [that] tested positive," with no objection from defendant. In addition, Officer Diaz testified that all of the recovered items of suspect cannabis, cocaine, and heroin were sealed in an inventory envelope under number 10-15758, sent to the lab and returned. The parties stipulated that there was a proper chain of custody "at all times."

¶ 17 Our review, thus, shows defendant not only failed to challenge the sufficiency of the chain of custody at trial, but also took part in offering it into evidence by agreeing to the stipulation concerning it. *Id.* at 473. Our review of the record discloses no plain error where the record as a whole shows the stipulation, as to a proper chain of custody: that the items sent for testing under inventory number 10-15758 included the item defendant dropped; matched the item introduced in court (People's exhibit number 2); the material contained therein tested positive for cocaine; and there was no testimony suggesting tampering, mistake or compromise of the suspect drugs. *People v. Blankenship*, 406 Ill. App. 3d 578, 587-88 (2010).

¶ 18 Under these circumstances, where defendant entered a stipulation to the chain of custody which required no additional foundation (*People v. Peppers*, 352 Ill. App. 3d 1002, 1010 (2004)), thereby signifying his intent to remove this issue and the State's opportunity to correct or explain any "five versus six packets" discrepancy from consideration, we honor the forfeiture that resulted from

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defendant's failure to raise any challenge to it in the trial court. *People v. Alsup*, 241 Ill. 2d 266, 279-80 (2011).

¶ 19 In reaching this conclusion, we find defendant's reliance on *People v. Lundy*, 334 Ill. App. 3d 819 (2002), misplaced. In that case, unlike here, the stipulation entered by the parties did not mention the chain of custody, and the " 'combined testimony' " of the police officer who recovered the suspect contraband and the forensic scientist who performed the testing did not establish the chain of custody. *Id.* at 827. Here, the parties affirmatively stipulated that the chain of custody was maintained at all times, thus rendering *Lundy* inapposite.

¶ 20 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.