NOTICE
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2012 IL App (4th) 110684-U

Filed 9/21/12

NO. 4-11-0684

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | McLean County |
| RAYSHAUN M. ROACH, | ) | No. 10CF1005 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | James E. Souk |
| | ) | Judge Presiding. |

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JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court did not abuse its discretion by admitting certain exhibits, given that the State proved chain of custody.

¶ 2 In November 2010, the State charged defendant, Rayshaun M. Roach, with (1) unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2010)) (count I); (2) two counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2010)) (counts II and IV); and (3) unlawful delivery of a controlled substance within 1,000 feet of public park property (720 ILCS 570/407(b)(2) (West 2010)) (count III).

¶ 3 Following a March 2011 bench trial, the trial court found defendant guilty of counts I and III. In May 2011, the court sentenced defendant to 10 years in prison.

¶ 4 Defendant appeals, arguing that the trial court improperly admitted the purported cocaine into evidence, given that the State failed to make a *prima facie* showing of sufficient chain of custody. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 The evidence at defendant's March 2011 bench trial included the following. In September 2010, Kenneth Williams became a confidential informant (CI) for the Normal police department following his arrest for retail theft. The CI informed Normal police that he knew a man named "Rico" who was willing to sell him crack cocaine. The CI testified that Rico gave him his telephone number to facilitate the sale of crack cocaine. The CI identified defendant as the man he knew as Rico.

¶ 7 On October 18, 2010, the CI met with Detective Kevin Kreger for a controlled crack cocaine purchase. The CI called the telephone number defendant gave him and arranged a meeting place. Kreger provided the CI with $100 of prerecorded currency and drove the CI to the purchase site. At the prearranged purchase site, the CI handed defendant the $100, and defendant provided to the CI "two small plastic [Baggie] corners containing a chunky off-white substance." The CI returned with the purported cocaine, and Kreger placed it in a plastic glove and then into a pocket of his clothing before driving the CI to a debrief location. After speaking with the CI about the transaction, Kreger returned to the police station and secured the Baggie corners in a plastic sleeve, which he "heat-sealed" on each end. He assigned the plastic sleeve a property number, dated and initialed the sleeve, and secured the sleeve in an evidence locker in what he described as "Vice Secure Storage." Kreger explained that he placed the evidence in evidence locker No. six and placed the key to the locker in a secure lockbox. The State intro-

duced the purported cocaine into evidence as People's exhibit No. 2. Kreger identified for the trial court People's exhibit No. 2, relying upon the weight, the property number, and his initials on the sleeve.

¶ 8 On October 20, 2010, the CI and Kreger participated in second controlled crack cocaine purchase with defendant, similar to the purchase that took place on October 18, 2010. Following the controlled purchase, the CI provided Kreger "two small plastic [Baggie] corners containing an off-white chunky substance." Kreger took the purported cocaine back to the police station and placed it into a plastic evidence sleeve, heat-sealing both ends. Kreger assigned the plastic sleeve a property number, dated and initialed the sleeve, and secured the sleeve in an evidence locker in the "Vice Secure Storage." Kreger testified that he placed the evidence in the same evidence locker (locker No. six) that he had placed the evidence from the October 18, 2010, controlled buy, placing the key to the locker in the secure lockbox. The State introduced the purported cocaine into evidence as People's exhibit No. 4. Kreger identified exhibit No. 4 at trial by its marking.

¶ 9 Officer Brian Williams testified that he was responsible for evidence collection at the Normal police department. Williams explained that the evidence room is secure and that he is the only officer that has a key to remove evidence from the lockers. Williams further outlined the procedure for placing exhibits in the lockers as follows: "The officers come down to the lockers, which already have the key in it. They open the locker, stick the exhibits in there, close it, lock it, and drop the key in a secure lockbox that I then retrieve the key out of." On October 28, 2010, Williams removed People's exhibit No. 2 from an unspecified evidence locker and took the exhibit to the Illinois State Police Laboratory Services (Laboratory Services) for forensic

testing. On December 1, 2010, Williams removed People's exhibit No. 4 from an evidence locker, of which he could not recall the number, and took it to Laboratory Services for forensic testing. Williams could not recall whether People's exhibit Nos. 2 and 4 came from the same locker.

¶ 10 Michelle Dierker, a forensic scientist with Laboratory Services, testified that on November 9, 2010, she created People's exhibit No. 1, a lab report analyzing the contents of exhibit No. 2. Dierker identified exhibit No. 2 as the package she analyzed on November 9, 2010, and exhibit No. 1 as her lab report. Dierker testified that exhibit No. 2 had not been opened or tampered with when it arrived to her. After analyzing the package and determining it contained cocaine, Dierker returned the substance to its original container and placed it in the drug chemistry evidence vault.

¶ 11 On January 11, 2011, Dierker created People's exhibit No. 3, a lab report analyzing the contents of exhibit No. 4. Dierker testified that exhibit No. 4 was in a sealed condition when she received it. After analyzing the package and determining it contained cocaine, Dierker returned the substance to its original container and placed it in the drug chemistry evidence vault.

¶ 12 Defendant objected to the admission of People's exhibit Nos. 1, 2, 3, and 4 into evidence, arguing that the State failed to prove chain of custody. The trial court overruled defendant's objection.

¶ 13 On this evidence, the trial court found defendant guilty of (1) unlawful delivery of a controlled substance within 1,000 feet of a church and (2) unlawful delivery of a controlled substance within 1,000 feet of public park property. The court thereafter sentenced defendant to

10 years in prison.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant appeals, arguing that the trial court improperly admitted the purported cocaine into evidence, given that the State failed to make a *prima facie* showing of sufficient chain of custody. Specifically, defendant contends that the State did not show a sufficient chain of custody because (1) Williams' testimony contradicted Kreger's testimony and (2) the CI did not positively identify the Baggies as those purchased from defendant. The State responds that it established a sufficient chain of custody. We agree with the State.

¶ 17 We review a trial court's ruling on the sufficiency of a chain of custody for an abuse of discretion. *People v. Howard*, 387 Ill. App. 3d 997, 1004, 902 N.E.2d 720, 727 (2009). Our task then is "to decide whether the trial court's application of the rules for establishing a foundation based on a chain of custody was reasonable." *People v. Johnson*, 361 Ill. App. 3d 430, 440, 837 N.E.3d 467, 476 (2005).

¶ 18 The State establishes a *prima facie* case of sufficient chain of custody when it establishes that the police employed reasonable protective measures to ensure that the evidence has not been tampered with, substituted, or altered between seizure of the evidence and forensic testing. *People v. Woods*, 214 Ill. 2d 455, 468, 828 N.E.2d 247, 255 (2005). Every person involved in the chain of custody does not need to testify, and the State does not need to exclude all possibilities that the evidence may have been tampered with. *People v. Harris*, 352 Ill. App. 3d 63, 69, 815 N.E.2d 863, 869 (2004). If the State elicits testimony that sufficiently describes the condition of the evidence when it was delivered and when it was examined, and the testimony

concerning delivery and examination are in accord with each other, the "evidence may be properly admitted, even where there is a missing link in the chain of custody." *Harris*, 352 Ill. App. 3d at 69, 815 N.E.2d at 869. Further, any missing links in the chain of custody go to the weight of the evidence and not its admissibility. *People v. Blakenship*, 406 N.E.2d 578, 588, 943 N.E.2d 1111, 1119 (2010). Moreover, "[s]howing that evidence remained in official hands and in a sealed container and was tracked under a consistent identifying number or code effectively excludes the possibility of anything but deliberate tampering." *Johnson*, 361 Ill. App. 3d at 442-43, 837 N.E.3d at 478.

¶ 19 Defendant complains that the State did not make a *prima facie* showing of sufficient chain of custody because Williams' testimony contradicted Kreger's testimony. Williams testified that the normal procedure for storing evidence was as follows: "The officers come down to the lockers, which already have the key in it. They open the locker, stick the exhibits in there, close it, lock it, and drop the key in a secure lockbox that I then retrieve the key out of." Williams testified that he is the only person who has the key to reopen the lockers once the locker keys have been placed in a secure lockbox. Williams explained that he removed People's exhibit Nos. 2 and 4 from the secure lockers on October 28, 2010, and December 1, 2010, but he could not remember which locker he removed them from or whether they were in the same locker.

¶ 20 Kreger, however, testified that on October 18, 2010, he put the evidence marked as People's exhibit No. 2 into evidence locker No. 6 and placed the key in the secure lockbox after locking the locker. Then, according to Kreger, on October 20, 2010, Kreger put the evidence marked as People's exhibit No. 4 into the *same* evidence locker (locker No. 6).

¶ 21 Given this testimony, defendant posits that because Williams' testimony established that he was the only person with access to an evidence locker once it had been locked, Kreger could not have placed exhibit No. 4 into the same locker as exhibit No. 2. Defendant concludes that this contradictory testimony as to what is standard procedure and what Kreger actually did "cast[s] doubt on the security of the exhibit's storage and the veracity of the testimony regarding the chain of custody." The State, however, suggests it presented sufficient testimony to establish a sufficient chain of custody. We agree with the State.

¶ 22 As previously stated, Kreger testified that he placed the evidence from the October 18, 2010, and October 20, 2010, controlled buys in individual plastic sleeves, which he heat-sealed at both ends. He also assigned each sleeve a property number and initialed and dated each one. Kreger identified exhibit No. 2 by its markings and weight at trial and identified exhibit No. 4 by its markings. Kreger testified exhibit Nos. 2 and 4 were in the same condition as when he packaged them, aside from Laboratory Services' evidence tape and markings from forensic testing. He also noted that the property numbers he assigned exhibit Nos. 2 and 4 matched the property numbers on the corresponding lab reports—exhibit Nos. 1 and 3.

¶ 23 Williams identified exhibit Nos. 2 and 4 as suspected crack cocaine with weights of 0.75 and 0.65 grams, respectively. He testified that he took both exhibits to Laboratory Services, and the packaging was not opened or tampered with. When Williams collected packages from Laboratory Services, the packages were sealed and he did not open them or alter their contents before returning them to evidence storage.

¶ 24 Finally, Dierker identified exhibit Nos. 2 and 4 as those she tested for the presence of cocaine in November 2010 and January 2011. Dierker identified the exhibits by the bar code

stickers on the packages, which contained a laboratory case number and Dierker's personal markings. Dierker testified that the packages were in an unopened, sealed condition and had not been tampered with prior to her testing and analysis of the packages. After testing, Dierker returned the contents that she tested to a small plastic bag which she heat-sealed. She then returned the tested and untested contents to their original packaging, heat-sealing those packages. Dierker then placed the packages into the drug chemistry evidence vault.

¶ 25 The above testimony shows that the evidence remained in official hands, in a sealed condition, and was tracked under a consistent identifying number. The State also sufficiently described the condition of the cocaine when it was delivered and examined. Assuming *arguendo* that Kreger's testimony contradicted Williams', the discrepancy goes to the weight of the evidence, not its admissibility. The State thus made a *prima facie* showing of a sufficient chain of custody, and defendant did not present any evidence of deliberate tampering, substitution, or alteration. Accordingly, we conclude that the trial court did not abuse its discretion by admitting People's exhibit Nos. 2 and 4.

¶ 26 Defendant also contends that the State did not establish a sufficient chain of custody because the CI did not identify the drugs at trial. However, as already stated, every person in the chain of custody does not have to testify. See *Harris*, 352 Ill. App. 3d at 69, 815 N.E.2d at 869. Therefore, the CI's lack of testimony identifying the drugs he purchased from defendant did not undercut the State's chain of custody.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 29 Affirmed.