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2013 IL App (4th) 110606-U
NO. 4-11-0606
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
February 4, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
LEONARD WILLIAMS,)	No. 10CF859
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in admitting evidence where chain of custody was sufficiently established.

¶ 2 Defendant, Leonard Williams, was charged by indictment on September 8, 2010, with three Class X counts of unlawful delivery of between 1 and 15 grams of cocaine within 1,000 feet of a public park (counts I, III, and V) (720 ILCS 570/407(b)(1) (West 2008)), three Class 1 counts of delivery of cocaine (counts II, IV, and VI) (720 ILCS 570/401(c)(2) (West 2008)), one Class X count of possession with intent to deliver cocaine within 1,000 feet of a public park (count VII) (720 ILCS 570/407(b)(1) (West 2008)), and one Class 1 count of possession with intent to deliver cocaine (count VIII) (720 ILCS 570/401(c)(2) (West 2008)). Following an April 2011 bench trial, the trial court found defendant guilty of all eight counts. The court entered judgments of conviction on counts I, III, V, and VII, as counts II, IV, VI, and

VIII were lesser-included offenses. The court imposed a 12-year sentence on each of the four counts, to be served concurrently. Defendant filed a motion to reconsider sentence, which the court denied. Defendant filed a timely notice of appeal raising one issue. Defendant contends the State did not prove the chain of custody evidence concerning count VII was sufficient to ensure the substance was not tampered with, substituted, or altered between the time of seizure and forensic testing. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Because the parties are familiar with the facts and this appeal relates only to count VII, we limit our discussion to the facts relevant to the appeal.

¶ 5 Counts I through VI of the indictment related to three "buys" set up by Bloomington police officers between their confidential source, Theresa Pichon, and defendant on September 1 and 2, 2010. Counts VII and VIII related to cocaine found in defendant's apartment at 923 West Wood in Bloomington when police executed a search warrant following the "buys" on September 2, 2010.

¶ 6 Bloomington Detective Edward Shumaker testified he worked with the vice unit investigating narcotics violations. On September 2, 2010, he assisted in the execution of the search warrant at 923 West Wood. Defendant had earlier been observed entering and leaving that building prior to and after the controlled buys on September 1 and 2. In a bedroom, police found a pair of jeans with \$1,200 in cash in a pocket. Included in the bills was prerecorded currency used in the controlled buys.

¶ 7 In the same bedroom where the cash was found, police found a video game console. When Shumaker removed the back cover of the console, he found a small plastic bag

with a white powdery substance, together with some torn bags. He testified cocaine is typically stored in the corners of Baggies. A plate with a scale and razor blade was found under the bed in the bedroom where the jeans were found. Latex gloves, used sometimes when storing or packaging illegal narcotics, were found in the trash can in the bedroom. An envelope addressed to Leonard Williams, Jr., was also found in the bedroom.

¶ 8 Shumaker identified People's exhibit No. 4 as the cocaine from the video game console he stored in an evidence bag. He stated:

"After I weighed and field-tested it, I stuck it in the bag,
and there are two pieces of paper or light-colored plastic that you
pull out, and this red tape right here seals the top of the bag."

Shumaker testified after sealing the bag, he looked at the packaging to see if there were any other tears or openings on it and saw none. People's exhibit No. 4 was weighed with its packaging on a scale that had not been calibrated. After sealing the exhibit, it was stored in a police department locker, where only the "evidence lab" people had access to it. Shumaker testified the current condition of the exhibit was different than when he sealed it. There were other initials at the bottom of the exhibit and it had been heat-sealed. Shumaker testified he placed an "EJS" sticker on the bag and it was still in place. In addition, two blue stickers were on the bag but had not been there when he placed the bag in the evidence locker.

¶ 9 On cross-examination, Shumaker stated he sealed People's exhibit No. 4 back at his office, not at the apartment. He transported the plastic bag to the police station in a tub that stayed in his possession the entire time. Every piece of evidence taken from the apartment was transported in the tub. After consulting his evidence log, Shumaker said the weight of the

cocaine from the video game console was 1.6 grams. On redirect, Shumaker testified he placed People's exhibit No. 4, the bag of cocaine from the video game console, in a larger manilla envelope and then put the envelope in the tub. Other items of evidence were put in their own envelopes and then put in the tub. No one else had access to the tub while it was in his possession.

¶ 10 Scott Mathewson testified he had been employed with the Bloomington police department for 10 years. He was currently assigned to the crime scene unit. Some of his duties related to evidence management at the police station. He transported evidence to the Morton crime lab as part of his job. Mathewson identified People's exhibit No. 4 as an exhibit he transported to the Morton crime lab on September 9, 2010. He retrieved the exhibit from a secure locker at the police station, noting it was sealed and not opened in any way. He did not open it or alter it in anyway. Upon delivery to the Morton crime lab, he received a receipt for the exhibit and stated it would have been placed in an evidence locker to await analysis. While Mathewson made reports concerning the transportation and delivery of the evidence, he did not initial the bag himself. He testified he usually delivered multiple evidence items from multiple cases each week. If an item of evidence is open or appears to have been tampered with, Mathewson will not transport it to the lab for analysis.

¶ 11 Kerry Nielson, a forensic scientist with the Illinois State Police, testified People's exhibit No. 4 was submitted to the crime lab on September 9, 2010. Nielson retrieved it from a secure locker at the lab. The exhibit was intact, with no openings on the bag. Nielson determined the weight of the substance to be three grams without the packaging, and the substance was cocaine.

¶ 12 The State moved to admit People's exhibit No. 4. Defense counsel objected on the basis the State failed to make a *prima facie* case the evidence had not been substituted, altered, or tampered with. Counsel argued Shumaker testified People's exhibit No. 4 weighed 1.6 grams, while Nielson, the forensic scientist, testified it weighed 3 grams without the packaging. He argued Shumaker took the evidence from the bedroom, failed to seal it and threw it in a tub with everything else. Because of the weight discrepancy, counsel argued something had been added to the bag of evidence.

¶ 13 The trial judge asked for Shumaker to be recalled to clarify the issue. In looking at People's exhibit No. 4, Judge Souk pointed out to Shumaker the printed exhibit sticker (apparently what has been referred to as the "EJS" sticker) showed a weight of 3.3 grams. The following colloquy occurred.

"[THE COURT]: All right, and on your log, 15 [(People's exhibit No. 4)] is a small baggy [*sic*] of cocaine, and then in your narrative you say Exhibit 15 [(People's exhibit No. 4)] tested positive for cocaine and weighed approximately 1.6 grams, correct?

[DETECTIVE SHUMAKER]: Correct.

[THE COURT]: And the bag says 3.3 grams, correct?

[DETECTIVE SHUMAKER]: Correct.

[THE COURT]: One of those is incorrect, correct?

[DETECTIVE SHUMAKER]: That's incorrect. EJS is kind of finicky when you type something in, sometimes you can't

take it out after you put it in.

[THE COURT]: The bag as it appears here in court, you've already testified basically you took it to the—put it in your evidence locker, other people transported it, and then the lab person worked on it, and your involvement with this ended with you—

[DETECTIVE SHUMAKER]: When I turn it into the lab, I'm done with it. I didn't touch it again until today.

[THE COURT]: When you say you turned it into your lab, you mean you put it in the evidence locker at your lab?

[DETECTIVE SHUMAKER]: Correct."

¶ 14 The State then clarified further:

"[THE STATE]: When you placed People's Exhibit 4 into the envelope before placing it into the tub, did you place any other exhibits with it?

[DETECTIVE SHUMAKER]: No, each piece of evidence gets its own envelope."

¶ 15 Following argument on the admissibility of the exhibit, the trial court stated as follows:

"THE COURT: Well, it's apparent from the evidence that Detective Shumaker made an inadvertent mistake here.

The chain on this piece of evidence, however, is intact. He

seized the items and he testified where he seized it from, and he placed it in the plastic packaging, sealed it up and put a sticker on it and put it in the secured evidence locker, where it was removed and taken to the lab by—I think this was Mathewson who transported it, and Mr. Nielson analyzed it.

I think the detective not only made an inadvertent mistake by putting two weights down, it's apparent that he's inaccurate about which one of his weights is the correct one. It would appear that the bag actually has 3.3 grams on it, which, together with the baggy [*sic*], would be consistent with Mr. Nielson having weighed it out at three grams once he tested only the contents and not the baggy.

While these kinds of errors don't impress the Court, the chain of evidence is sufficient along with the markings and so forth to indicate that there's no tampering or problem here, simply an inadvertent error by the detective, and People's 4 will be admitted over objection."

¶ 16 The trial court found defendant guilty and sentenced him as stated above. A posttrial motion raising this same issue was filed and denied by the trial court.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Standard of Review

¶ 20 A defendant's claim the State presented a deficient chain of custody for the admission of evidence is a claim the State has failed to lay an adequate foundation for that evidence. *People v. Woods*, 214 Ill. 2d. 455, 471, 828 N.E.2d 247, 257 (2005). In *Woods*, our supreme court rejected the notion a challenge to the State's chain of custody is a question of the sufficiency of the evidence. *Id.* We review the trial court's decision to admit this evidence under an abuse of discretion standard, since the trial court based its ruling on the specific circumstances of this case and not on a broadly applicable rule. *People v. Hall*, 195 Ill. 2d 1, 20-21, 743 N.E.2d 126, 138 (2000).

¶ 21 B. Admissibility of People's Exhibit No. 4

¶ 22 The nub of the problem here is simply stated as follows. Detective Shumaker bagged his exhibit No. 15 (People's exhibit No. 4) and printed out an identifying label showing the substance weighed 3.3 grams, including the bag. In his search log, marked as defendant's exhibit A, Shumaker wrote his exhibit No. 15 tested positive for cocaine and weighed approximately 1.6 grams. When this same exhibit was weighed at the Morton crime lab, without the bag, it weighed 3.0 grams.

¶ 23 After questioning the detective, the trial court found the chain of evidence intact and further found Shumaker mistakenly wrote the weight as 1.6 grams in his report. We find the court did not abuse its discretion in admitting People's exhibit No. 4.

¶ 24 Not every flaw in a chain-of-custody foundation leads to reasonable doubt about the identity of the substance tested. *People v. Johnson*, 361 Ill. App. 3d 430, 437, 837 N.E.2d 467, 473 (2005). Where the evidence shows the police took reasonable protective measures to ensure the substance tested by the forensic chemist was the same substance recovered from the

defendant's residence, the evidence is admissible. *Woods*, 214 Ill. 2d at 467, 828 N.E.2d at 255.

The trial court here found a scrivener's error occurred when Shumaker stated in his report the substance weighed 1.6 grams. The "EJS" label Shumaker printed out showed the substance, with the bag, weighed 3.3 grams. The crime lab measured the weight at 3.0 grams, without the bag. We find no abuse of discretion on the part of the trial court in admitting this evidence. The State's evidence showed reasonable protective measures were taken to ensure the evidence had not been tampered with, altered, or substituted between the time of seizure and forensic testing. The defendant failed to produce any evidence of actual tampering, alteration, or substitution. See *Woods*, 214 Ill. 2d at 468, 828 N.E.2d at 255. Consequently, admission of the evidence was not error.

¶ 25

III. CONCLUSION

¶ 26 We affirm the trial court's judgment admitting People's exhibit No. 4. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.