2016 IL App (1st) 132807-U

SIXTH DIVISION
March 4, 2016

No. 1-13-2807

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. 13 CR 5033
	)	
ANTONIO RICHARDSON,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice HOFFMAN concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Where evidence was presented as to the handling and safekeeping of narcotics recovered from the crime scene and the inventory number of that package matched the material submitted for forensic testing, the State met its burden of proving the chain of custody, despite testimony as to differing weights of the contraband.

¶ 2 Following a bench trial, defendant Antonio Richardson was convicted of delivery of between 1 and 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2010)) and was sentenced to six years in prison. On appeal, defendant contends the State did not establish a sufficient chain of custody as to the narcotics evidence because the contraband submitted for testing weighed three times the amount that the undercover officer testified she purchased from defendant. We affirm.

¶ 3 Defendant and Charles Perkins were tried in a joint bench trial at which Perkins was acquitted. Chicago police officer Leveeta Merritt testified that at about 12:30 p.m. on December 18, 2012, she and other officers were conducting a narcotics investigation in the 2700 block of West Gladys in Chicago. Officer Merritt was driving an undercover vehicle and had marked funds to make a controlled drug purchase.

¶ 4 Upon seeing defendant and Perkins, Officer Merritt shouted "two blows" out her car window and held up two fingers, which indicated she wanted to purchase heroin. Defendant approached her car and confirmed her request to purchase drugs. Defendant walked back to Perkins, who was standing at 2714 Gladys, and was handed an item. Defendant then returned to the car and delivered two small zipper-top plastic bags "with red dice on them." Officer Merritt told defendant she had "an extra ten" and asked if he had "another one." Defendant walked back to Perkins and then returned to the car with another bag identical to the two bags already delivered and handed the third bag to Officer Merritt in exchange for $30.

¶ 5 After Officer Merritt drove away from defendant, she notified the narcotics team by radio that she had completed a buy and described defendant and Perkins. An officer detained defendant and Perkins on the 2700 block of West Gladys, and the marked funds were recovered.

Officer Merritt returned to the area where defendant and Perkins were being detained and reported via radio that they were the men involved in the transaction. On the day of the transaction, Officer Merritt also identified defendant in a police photo array as the person who sold her the suspect heroin.

¶ 6 Officer Merritt testified that she left the 2700 block of West Gladys and drove to the Homan Square police station with the three bags which she had purchased from defendant. She testified the items were in her continuous care and control from the time she received them from defendant until she inventoried them at the police station.

¶ 7 Officer Merritt described the inventory process as follows:

> "I put them in a narcotics bag that I heat[-]sealed. I then generated an inventory number. I put the inventory number and all the information that goes on the bag.
>
> I then took the bag to the front desk and dropped it in a narcotics bag that is sealed. It's a metal box that's sealed. No one can get in or out. "

Officer Merritt testified the inventory number 12788629 was assigned to the evidence bag which contained the items she recovered from defendant.

¶ 8 On cross-examination by Perkins' attorney, which was adopted by defendant's counsel, Officer Merritt estimated the street value of the suspect narcotics at $90 but acknowledged she paid defendant $30 total for the three bags. Officer Merritt responded affirmatively when asked if she "came up" with a weight of .6 gram for the three bags on a digital scale at the Homan Square station. Later in the colloquy, counsel again asked Officer Merritt about the weight of the narcotics:

"[Counsel for Perkins]: Now, Officer, from the time that you placed – after you weighed the three bags of heroin or the suspect narcotics, you said you then placed them in plastic bags; is that correct?

A. In a plastic narcotics bag, yes.

Q. And again, just to reiterate, that was .6 grams; is that right?

A. Yes, sir."

¶ 9 Chicago police officer David Bridges, a member of the surveillance team, testified he observed Officer Merritt's transactions with defendant from about 100 feet away. Officer Bridges identified both defendant and Perkins in court as the parties involved in the drug sale.

¶ 10 The parties stipulated that Linda Jenkins, a forensic chemist with the Illinois State Police crime laboratory, would testify she received an evidence bag with inventory number 12788629 in a sealed condition from the Chicago Police Department and that bag contained three items of powder. Jenkins would testify she performed certain tests commonly accepted in the area of forensic chemistry for ascertaining the presence of a controlled substance. Jenkins would testify that in her opinion, to a reasonable degree of scientific certainty, the items tested positive for the presence of 1.8 grams of heroin.

¶ 11 In closing argument, defendant's counsel argued the State failed to prove defendant's guilt beyond a reasonable doubt, pointing out Officer Merritt's testimony that she bought .6 gram of heroin in contrast to the stipulated weight of the tested items as 1.8 grams. The trial court noted inconsistencies in the testimony but found defendant guilty of delivery of more than 1 gram but less than 15 grams of a controlled substance (heroin).

¶ 12 Defendant filed a post-trial motion asserting, among other points, that an "unexplained discrepancy" existed between the amount of contraband purchased and the amount weighed and tested by the chemist. The court denied the motion and sentenced defendant a term of six years' imprisonment.

¶ 13 On appeal, defendant contends his conviction should be reversed because the State failed to establish beyond a reasonable doubt that the heroin he allegedly sold to the undercover officer was the same as that tested by the forensic chemist. Defendant frames his argument as a challenge to the sufficiency of the evidence warranting *de novo* review.

¶ 14 Our supreme court has set out the applicable standard of review for a chain-of-custody argument, which is a claim that the State failed to lay an adequate foundation for the admission of evidence. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). A chain of custody "establishes a foundation for such evidence as reliable and admissible" and, therefore, does not represent proof of an element of the crime. *People v. Alsup*, 241 Ill. 2d 266, 275 (2011). As such, a challenge to the chain of custody does not address the sufficiency of the evidence; rather, it is an attack on the admissibility of evidence. *Id*. The admissibility of evidence is a matter left to the discretion of the trial court, and the court's decision on that point will not be disturbed absent an abuse of that discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12. An abuse of discretion occurs when the ruling is arbitrary, fanciful or unreasonable or when no reasonable person would adopt the trial court's view. *People v. Ward*, 2011 IL 108690, ¶ 21.

¶ 15 To convict a defendant of unlawful delivery of a controlled substance, it is axiomatic that the State must prove the material recovered from the defendant is, in fact, a controlled substance.

People v. Anderson, 2013 IL App (2d) 111183, ¶ 22. In such cases, where the physical evidence is often not readily identifiable or may be susceptible to tampering, contamination or exchange, the State must establish a chain of custody. *Alsup*, 241 Ill. 2d at 274; *Woods*, 214 Ill. 2d at 467. To establish a chain of custody, the State must show that reasonable protective measures were taken to ensure the substance recovered from the defendant was the same substance tested by the forensic chemist. *Woods*, 214 Ill. 2d at 467. Accordingly, the State bears the burden of proving a chain of custody that is sufficiently complete to make it improbable that the evidence was tampered with, substituted or altered between the seizure and the forensic testing. *Id*. After the State has established that *prima facie* case, the burden shifts to the defendant to show actual evidence of tampering, alteration or substitution. *Id*. at 468. If the defendant makes a showing of actual tampering, alteration or substitution, the burden shifts back to the State to rebut the defendant's claim. *Id*.

¶ 16 In the State's *prima facie* case, if there is no proof that the evidence was compromised, the State does not need to "exclude every possibility of tampering" or contamination. *Id*. at 468; *Anderson*, 2013 IL App (2d) 111183,¶ 22. Rather, the State must demonstrate that reasonable measures were employed to protect the evidence from the time it was seized and that it was unlikely the evidence has been altered. *Woods*, 214 Ill. 2d at 467. The testimony of an officer, coupled with a stipulation from a forensic chemist, is sufficient to link the substances seized at the time of defendant's arrest to the substance tested by the chemist. *Woods*, 214 Ill. 2d at 473.

¶ 17 In the case at bar, Officer Merritt testified defendant handed her three zipper-top plastic bags with a design of red dice in exchange for $30. The officer testified those items were in her

continuous care and control until she completed an inventory of the items at the police station. The officer put the items into a heat-sealed bag with an inventory number of 12788629 and placed the bag into a metal box that was not generally accessible. The officer weighed the items on a digital scale, which displayed a weight of .6 gram.

¶ 18 The parties further stipulated that Jenkins, the forensic chemist, received a bag with the same inventory number of 12788629 in a sealed condition and that the bag contained three smaller bags containing powder determined to be 1.8 grams of heroin. Where the stipulated testimony established the evidence was received in a sealed condition with a matching inventory number, a detailed matching description is not necessary to establish that the integrity of the evidence had not been compromised. *People v. Paige,* 378 Ill. App. 3d 95, 99 (2007); *People v. Johnson,* 361 Ill. App. 3d 430, 442 (2005). The procedures set out above indicate that the State took reasonable protective measures to secure the evidence from the time it was seized and that it was unlikely that the evidence had been altered. The fact that Jenkins' stipulated description of the contraband did not describe the design on the plastic bags does not discredit the results of testing of their contents. Therefore, because the evidence demonstrated the measures taken to preserve and track the evidence and showed the unlikelihood of alteration, the State established a *prima facie* case as to the chain of custody.

¶ 19 Defendant argues the State's *prima facie* case was rebutted by the discrepancy between the weight of .6 gram reported by Officer Merritt and the 1.8 grams reported by the forensic chemist. He contends that difference in weights constituted evidence of tampering or substitution and thus shifted the burden back to the State to rebut his claim. Defendant has not presented

actual evidence of tampering, alteration or substitution. Absent any evidence of actual tampering, alteration or substitution, any deficiencies in the chain of custody go to the weight of that evidence, not its admissibility. *Woods*, 214 Ill. 2d at 467; *People v. Smith*, 2014 IL App (1st) 103436, ¶ 54.

¶ 20 The State suggests Officer Merritt's testimony that the narcotics weighed .6 gram referred to the weight of a single bag of heroin purchased from defendant, which would be consistent with the total weight of 1.8 grams, or three times that amount, for the three bags. The record supports that position, indicating Officer Merritt's estimation of weight occurred when she agreed with the representation of counsel on cross-examination. Officer Merritt did not expressly state that the three bags weighed a total of .6 gram.

¶ 21 Defendant compares the facts here to those in *People v. Terry*, 211 Ill. App. 3d 968 (1991), and *People v. Gibson*, 287 Ill. App. 3d 878 (1997), where the evidence submitted at trial differed substantially from the narcotics as they were described by the State's witnesses and, in both cases, a complete breakdown of the chain of custody occurred. In *Terry*, this court reversed the defendant's conviction for possession of a controlled substance where the arresting officer testified he recovered 32 bags of white powder weighing approximately 8 grams, but the forensic chemist received 42 packets weighing a total of 12 grams of a wet, yellow substance. *Terry*, 211 Ill. App. 3d at 971. Similarly, in *Gibson*, the officer testified he weighed the narcotics on a scale at the police station at 2 grams; however, the parties stipulated the drugs assigned to the matching inventory number weighed a total of 9.3 grams. *Gibson*, 287 Ill. App. 3d at 882. In reversing the defendant's conviction, the court in *Gibson* stated that in addition to the disparate

weights, no evidence was provided as to the handling and safekeeping of the evidence by the officer who recovered the drugs or during the time between the weighing and the testing. *Id*.

¶ 22 We do not find *Terry* and *Gibson* comparable to the facts at bar. Here, the evidence established the handling of the contraband by Officer Merritt. In addition, Officer Merritt testified she purchased three bags, and the forensic chemist indicated three bags were tested. Furthermore, the witnesses did not describe a disparity in the physical qualities of the bags' contents.

¶ 23 We agree with the State that this case more closely resembles *People v. Britton*, 2012 IL App (1st) 102322, which featured a tested quantity of narcotics that differed from the weight testified to by the undercover officer who bought the drugs. The purchasing undercover officer in *Britton* indicated four bags were recovered and estimated the weight of the narcotics at .4 gram; however, the forensic chemist attested five bags were submitted for testing containing a total of 1.2 grams. *Id*. ¶¶ 10-15. The court in *Britton* found the disparities in testimony did not "amount to such a breakdown in the chain of custody" that the trial court abused its discretion in allowing evidence of the narcotics, noting the testimony as to the handling and safekeeping of the contraband and the fact that the purchasing officer's testimony as to weight was an estimate. *Id*. ¶¶ 20-22 (also distinguishing *Terry* and *Gibson*).

¶ 24 Here, the State presented evidence of reasonable protective measures taken to ensure the substance recovered from the defendant was the same substance tested by the forensic chemist. The burden then shifted to defendant to show actual evidence of tampering, alteration or substitution. The difference in weights between the estimation of .6 gram provided by the

undercover officer and the stipulated testimony of 1.8 grams by the forensic chemist did not constitute evidence of tampering, alteration or substitution such that the burden reverted to the State to provide additional evidence to rebut defendant's claim. Any differences in testimony were to be weighed by the trial court, and the trial court did not abuse its discretion in finding the State established a proper chain of custody.

¶ 25 Accordingly, the judgment of the trial court is affirmed.

¶ 26 Affirmed.