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No. 2-14-0462
Order filed August 25, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MALCOLM J. BROWN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 11-CF-2596 Honorable Blanche Hill Fawell, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) By failing to raise it at trial, defendant forfeited his chain-of-custody challenge to the admissibility of drug evidence, and, because the asserted flaws did not raise the probability that the substance admitted at trial was not the substance the police recovered, plain error did not apply; (2) especially without the relevant exhibits, we could not say that defense counsel was ineffective for not raising a chain-of-custody challenge: in light of those exhibits, counsel could have reasonably decided that any challenge would have merely allowed the State to emphasize the meticulousness of its precautions.

¶ 2 This is an appeal by defendant, Malcolm J. Brown, after his conviction of drug-induced homicide (720 ILCS 5/9-3.3 (West 2010), 720 ILCS 570/401(c)(1) (West 2010)). He now for the first time asserts that the trial court erred in admitting the results of the forensic testing of

certain baggies recovered from a dumpster outside the apartment in which the victim died. He asserts that deficiencies in the chain of custody for the baggies resulted in an insufficient foundation for the test results' admission. Alternatively, he argues that counsel was ineffective for failing to object to the results' admission in the absence of a sufficient foundation. The State responds that defendant's challenge to the evidence is merely a technical challenge to the admissibility of the testing results and that, under the rule in *People v. Woods*, 214 Ill. 2d 455 (2005), such a challenge is forfeited if it is not properly raised in the trial court. It also denies that counsel was ineffective. We hold that defendant's evidentiary challenge cannot be read as going to the sufficiency of the evidence as such, and that defendant therefore waived or forfeited any objection when he failed to raise it below. We further hold that, as to his claim that counsel was ineffective, defendant has failed to overcome the presumption that counsel was employing sound trial strategy in declining to force the State to put on more detailed foundation evidence. We therefore affirm defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 A Du Page County grand jury indicted defendant on a single count of drug-induced homicide. The charges stemmed from the heroin-related death of Stephen Britson, which occurred sometime during the night of July 27, 2011, or early morning of the next day. The indictment specified that defendant had delivered heroin to Richard Brown (Brown)—a customer of defendant's—who then shared the heroin with Britson.

¶ 5 Defendant filed a motion seeking to suppress the evidence stemming from his arrest. The substance of the proceedings on that motion are not at issue here, but the evidentiary hearing introduced terminology that the parties used during defendant's bench trial, in particular "spade baggies."

¶ 6 According to the evidence presented at the suppression hearing, Carol Stream police officers arrested defendant when he responded to a phoned request from an informant (later identified as Richard Brown) who requested a meeting to purchase heroin. Brown was then in the custody of the Carol Stream police as a result of Britson's death and had told detectives that a dealer, known to him only by his cell phone number and the nickname "Mike," was his regular heroin dealer and the source of the heroin that killed Britson. The police had learned from Brown that defendant usually worked from the west side of Chicago but was willing to drive to the suburbs for a sale. Brown placed calls to "Mike's" cell phone, and defendant came to the arranged location where Brown identified the car to the police.

¶ 7 During defendant's arrest, two clear plastic bags fell from his waistband onto the pavement, and the police found a third bag in his waistband while searching him. The three clear bags contained a total of 38 smaller baggies. Each of the baggies was made of clear plastic printed with a black spade symbol. Each contained about 0.2 grams of a powder that resembled heroin. The police had recovered similar clear plastic baggies printed with a spade symbol from a dumpster adjacent to the apartment building in which Britson had died.

¶ 8 At defendant's bench trial, witnesses for the State testified that, on the night of July 27, 2011, Brown, Britson, and Charles Vosburgh were together in Vosburgh's apartment on the fourth floor of a building at 555 Gunderson in Carol Stream. Brown and Britson were using drugs. Vosburgh was intoxicated; he said that he had been drunk to the point of passing out, and he might have been using other drugs as well. The next morning, Vosburgh went to use the apartment's sole bathroom and discovered Britson unresponsive on the floor. Vosburgh shouted to get Brown's attention and the two tried to revive Britson. When they were unsuccessful, Vosburgh or Vosburgh and Brown quickly cleared the apartment of all evidence of drug use.

Once that was accomplished, Vosburgh called 911. Paramedics arrived within about three minutes. They soon determined that Britson was dead.

¶ 9 Officer Charles A. McGuire of the Carol Stream police was the evidence technician assigned to the case. He said that, after photographing Britson's body, he searched the apartment. Despite Britson's apparent death from a drug overdose, McGuire could find no drugs or drug paraphernalia in the apartment. However, he did notice several black plastic garbage bags on the floor. That discovery led him to search the building's dumpster; he discovered black garbage bags similar to the ones he had seen in the apartment. He and Detective Carol Cadle (then Detective Nickels) fished the bags out of the dumpster and opened them. The bags contained liquor bottles, "[n]umerous" syringes, a spoon with burnt residue, paraphernalia consistent with crack cocaine use, and many plastic baggies "consistent with the packaging of narcotics."

¶ 10 McGuire said that Cadle packaged the bulk of the evidence that they recovered from the dumpster into a bag that became State's exhibit No. 16, but placed the items with a likely direct relationship to heroin into separate bags. Exhibit No. 17 was the spoon with burnt residue; exhibit No. 18 was a syringe containing liquid; exhibit No. 19 was all the remaining syringes. This appeal centers on exhibit No. 20, which was divided into two sub-exhibits—exhibit No. 20-A and exhibit No. 20-B. Exhibit No. 20-A contained the baggies from the dumpster, most of them fully clear or lightly tinted, but several of them clear and printed with a spade symbol. Exhibit No. 20-B contained three square black Ziploc bags that McGuire found in the cup holder of Brown's car.

¶ 11 Detective Cadle also testified. She described her involvement in packaging the exhibits. She corroborated McGuire's description of the search of the dumpster. She also identified a recording of her interviewing defendant.

¶ 12 Jennifer Cones, a fingerprint examiner, testified concerning her handling of the baggies in exhibit No. 20, which occurred at the Du Page County Forensic Science Center. Exhibits Nos. 20-A and 20-B were in sealed, marked bags within the bag marked as exhibit No. 20. Cones testified that she recognized the exhibits from her markings, the laboratory case number, and a crime-lab exhibit number, which she assigned. She opened each of the police exhibit bags to examine the contents for latent fingerprints. The contents were in her control while she conducted the first part of the examination. When she was done with that, she did not repack and reseal the exhibits, but rather carried them to Jillian Baker, a forensic chemist who was also at the Du Page County Forensic Science Center. Cones repacked and resealed the bags only after Baker returned them; the seals, marked with Cones's initials, were intact when Cones examined the exhibit in court.

¶ 13 Baker testified concerning her chemical testing of the baggies. Baker received the items that made up exhibit No. 20 from Cones. The exhibit bags were open and the contents were outside of the packaging.

¶ 14 Baker described exhibit No. 20-A as "numerous plastic bags or Ziploc plastic bags or portions of plastic bags"; she received these in a plastic weigh boat—a single-use dish. (On cross-examination, she added that four of the small bags had a black spade symbol on them, but the other bags were "of various *** shapes," and were either clear or slightly tinted.) She rinsed all those small bags with solvent, and pooled and evaporated the rinse solution. Her preliminary testing of the concentrated residue suggested the presence of at least heroin; her confirmatory

testing was positive for both cocaine and heroin. Although Baker did not perform any quantitative testing as such, the confirmatory testing nevertheless was sufficient to show that the sample was composed of more cocaine than heroin. However, she had no way to tell which bag or bags contained heroin and which cocaine.

¶ 15 Baker described exhibit No. 20-B as "three black cut open plastic bags." She tested those bags in the same manner as those in exhibit No. 20-A. Both the preliminary and confirmatory tests were positive for the presence of heroin only.

¶ 16 Baker returned exhibit Nos. 20-A and 20-B to Cones for additional latent-print testing without first resealing the exhibit bags. As she completed the chemical testing, she saved the vials that she used and sealed them into exhibit bags. She delivered the packaged vials to Cones to include with the original exhibits.

¶ 17 The parties stipulated that the spade bags that had come from defendant's waistband at the time of his arrest contained heroin only.

¶ 18 George Behonick, a toxicologist and a manager of the laboratory that tested specimens collected at Britson's autopsy, testified to the results of that testing. The specimens tested positive for heroin metabolites, but negative for cocaine metabolites. However, the tests looked for those drugs only at or above toxicologically significant levels. The results were consistent with Britson having used heroin from a source mixed with a high proportion of cocaine. The results showed that Britson had also consumed alcohol.

¶ 19 The parties agreed to allow defendant's expert witness, James O'Donnell, a pharmacology professor, to testify after Behonick and during the State's case-in-chief. O'Donnell opined that, despite the testing thresholds used by Behonick's laboratory, had Britson

used heroin with as much cocaine as was found in the residue in the baggies from the dumpster, the autopsy samples would have shown the presence of cocaine.

¶ 20 The parties stipulated to the testimony of the forensic pathologist who performed the autopsy on Britson. According to that stipulation, the heroin metabolites in Britson's blood were at or above those associated with death by overdose. Further, Britson had consumed alcohol. Death was due to ethanol and heroin intoxication.

¶ 21 Brown testified for the State under a cooperation agreement. He said that defendant had been his regular dealer for at least a month before Britson's death. He had always gone "[o]ff Cicero Avenue" in Chicago to buy heroin, but, in early June 2011, he encountered defendant on his way back from making a purchase. Defendant flagged him down as he came off the Cicero Avenue entrance ramp onto the Eisenhower Expressway. (As defendant points out, Brown's story contained confusing or improbable details about this meeting. In particular, when asked how he knew that defendant was selling heroin, Brown ended up describing an extended conversation between himself and defendant while they were in separate cars moving at highway speeds.) Brown stopped and spoke to defendant, saying that he had already spent all his money. Defendant offered him a three-bag sample. Because of the sample, Brown's personal nickname for defendant was "Three Bag Mike," and that was how Brown's cell phone listed defendant. After the initial meeting, Brown would order heroin from defendant by calling and stating a number; that number was the number of baggies that Brown wanted. Brown would usually drive to meet defendant, but, when Brown did not have gas, defendant would come out to meet him. Brown typically bought heroin three times a week.

¶ 22 On July 27, 2011, Brown and defendant had arranged to meet at a gas station somewhere in the suburbs. Brown could not remember when he called or how much he said he wanted to

purchase. Brown was not sure what he did after the purchase, but he thought that he went to where Britson lived. He and Britson then drove to Vosburgh's apartment where they snorted and injected heroin. Brown gave Britson heroin from the purchase he had made that day. Brown fell asleep; he woke up with Vosburgh saying that Britson had collapsed in the bathroom. Brown first threw water on Britson's body and then attempted CPR. Vosburgh cleared the apartment of drug paraphernalia and then called 911.

¶ 23 Under police questioning, Brown initially denied seeing Britson use drugs or having been the source of Britson's heroin. However, after the police recovered the bags from the dumpster, Brown told them that he had been the source of Britson's heroin and agreed to help the police to arrest defendant. He and the State had an agreement that, in exchange for his assistance with the case against defendant, the State would charge him with possession only.

¶ 24 Brown's testimony under cross-examination tended to show that he was uncertain as to when he made his last purchase from defendant, whether defendant had been his exclusive dealer, and whether there had been heroin at the July 27 gathering other than the bags that he brought. He had arrived at Vosburgh's apartment with four or five baggies of heroin marked with a spade; he had snorted about half a bag in the car on the way over. He did not know what the 3 solid black baggies in his car had contained and he did not know anything about the 18 or so transparent baggies among those the police had found in the dumpster. He contradicted himself and stated that he had helped remove signs of drug use from the apartment.

¶ 25 Detective Jonathan Grey testified about the operation in which defendant was arrested and about the interview that took place thereafter. Grey participated in initially questioning defendant; during that interview, the police allowed defendant to remain unaware that a death had occurred. Defendant said that Brown would buy a "jab" (roughly 10 bags of 0.1 grams) of

heroin about three times a week and had last done so on July 27, 2011. Grey stated that, in his experience, dealers sometimes packaged cocaine in baggies similar to those used for heroin. Further, in some circumstances, dealers might cut heroin with cocaine or vice versa.

¶ 26 Defendant's first witness—after O'Donnell, who appeared out of order—was Vosburgh. For the purposes of this decision, his testimony was essentially similar to Brown's. Eugene Sanders, who had been in the Du Page County jail with Brown, followed Vosburgh as a witness. Sanders testified that Brown had discussed his case, telling him about the gathering and the attempt to dispose of the paraphernalia. However, Brown told Sanders that there were already drugs in the apartment when he and Britson arrived, and he further described having purchased his own heroin "off Cicero," in contradiction to his trial testimony about the purchase. Sanders had been housed with defendant and knew him slightly.

¶ 27 Defendant's closing argument did not address chain of custody, but did point out that the decision to pool the residue from the baggies found in the dumpster had resulted in ambiguous test results.

¶ 28 The court found defendant guilty, giving "great weight to the fact that on July 28th, 2011, the day after the defendant sold to Richard Brown, the defendant came prepared to deliver Heroin packaged in the same black spade bags to Richard Brown." Further, rather than defendant's theory that the cocaine in the baggies came from the heroin having been cut with cocaine, the court stated, "[I]t is far more likely that the black spade Heroin bags were tossed in the garbage with the other clear baggies which may have maintained [*sic*] Cocaine."

¶ 29 Defendant filed a motion for a new trial. He asserted that the evidence was insufficient to convict, focusing on Brown's credibility, but also on other weaknesses in the evidence. The

parties argued the issue at fair length. The court denied the motion. The court then sentenced defendant to 10 years' imprisonment. Defendant timely appealed.

¶ 30 Consistent with the default of Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994), the nondocumentary exhibits are not part of the record on appeal. Further, the record on appeal does not contain any photographs that document the appearance of those exhibits. Thus we, unlike counsel and the trial court, do not know specifically what indicators of chain of custody, such as tracking codes and custodians' markings, appeared on the packages. We do have an example of a Carol Stream police evidence bag; it contains documents taken from defendant's car, and was processed as physical evidence and has a detailed label that includes an apparent tracking code. We treat it as indicative of the degree of information available from examining the packaging.

¶ 31 II. ANALYSIS

¶ 32 On appeal, defendant initially identified two issues for review: (1) whether his conviction is subject to reversal because the State failed to show that the police and crime lab used reasonable measures to protect the baggies found in the dumpster from tampering or misidentification; and (2), whether counsel was ineffective for failing to raise a challenge to the chain of custody. The flaws defendant has identified in the chain of custody are (1) that the State did not show how the exhibit was transported from the Carol Stream police department to the crime lab, (2) that the "envelope that contained the bag that contained the baggies arrived in 'open condition' when delivered to Jillian Baker," and (3) that no evidence showed how the exhibits were handled between testing and the trial.

¶ 33 The State responds that defendant forfeited his purely evidentiary chain-of-custody claim by failing to raise it in the trial court. It further asserts that, under the supreme court's holding in *Woods*, a challenge to the sufficiency of the evidence cannot be based on a defect in the chain of

custody. Finally, it argues that, in any event, counsel was not ineffective, as the State presented a sufficient chain of custody.

¶ 34 Defendant now replies, suggesting that the flaws in the chain of custody are so serious that they are incompatible with proof beyond a reasonable doubt and that, to the extent that the issue is one of simple admissibility, first-prong plain error occurred.

¶ 35 We agree with the State that, under the rule in *Woods*, defendant has waived or forfeited his claim that the evidence was improperly admitted.[1] We do not deem the claim to be subject to review as plain error. However, as a matter of efficiency, we will address whether anything in the handling of the drug evidence cast significant doubt on the integrity of the testing results such that the evidence was insufficient to support the conviction; we hold that it did not. We will next conclude that defendant has failed to show that counsel was ineffective; the record is consistent with a strategic recognition that any attempt to elicit further details of custody would only highlight the meticulousness of police and laboratory procedure.

¶ 36 We start by considering which issues defendant has forfeited. The general rule is that, to preserve a claim of error for review, a defendant must both object to the State's actions at trial and specifically raise the matter again in his or her posttrial motion. *Woods*, 214 Ill. 2d at 470. The requirement for such objections gives the State and court the opportunity to correct specific errors contemporaneously; that opportunity is of particular value when the error is an easily

[1] Because we conclude that defense counsel could properly have made a deliberate strategic choice to avoid requiring the State to put on some details of the chain of custody, the term "waived," implying a voluntary relinquishment of a known right (*e.g.*, *People v. Phipps*, 238 Ill. 2d 54, 62 (2010)), might be the proper one here. However, as we cannot be certain of counsel's intent, we will use "forfeited," treating it as the more general term.

remedied one like a simple failure to provide a sufficient foundation for the admission of evidence. However, a claim that the State failed to prove the defendant's guilt beyond a reasonable doubt may be raised regardless of whether the defendant raised it in the trial court. *Woods*, 214 Ill. 2d at 470. We thus must consider the distinction between the technical evidentiary foundation required for the admission of narcotics-testing evidence and evidence necessary to prove the presence of narcotics.

¶ 37 The purpose of the evidentiary foundation for the admission of narcotics-testing evidence is "to ensure that the substance recovered *** was the same substance tested by the forensic chemist." *People v. Alsup*, 241 Ill. 2d 266, 274 (2011). Of course, if there is reasonable doubt that the substances were the same, the State will have failed to prove the presence of the substance. However, the foundation evidence goes beyond what would be required to establish the identity of the substance in many circumstances.

¶ 38 Absent a defendant's demand for a foundation, we see no bar to a trier of fact applying its general power to draw reasonable inferences from the evidence (*e.g.*, *People v. Bradford*, 2016 IL 118674, ¶ 12), to properly infer the identity between the substance recovered and the substance tested even in the absence of a technically correct foundation. For example, a trier of fact could use witnesses' repeated references to the use of standard protective measures such as sealed packaging and assignment of identifying numbers in discussing the handling of an exhibit to reasonably infer that the relevant agencies handled an exhibit carefully so that no reasonable doubt existed of the exhibit's integrity.

¶ 39 By contrast, courts have generally deemed that a proper formal foundation must be comprehensive. It need not necessarily include the testimony of every custodian, but the evidence must account for gaps, typically by showing that the exhibit remained at all relevant

times in a sealed container and was tracked with an identifying code. See, *e.g.*, *People v. Johnson*, 361 Ill. App. 3d 430, 441-42 (2005) (endorsing the use of evidence of a seal and tracking number to bridge gaps in the chain of custody); see also *Woods*, 214 Ill. 2d at 468. Thus, inferences permissible in the State's proof of the offense have little or no place in a formal chain-of-custody foundation. However, the strength of the chain-of-custody evidence goes to the weight of the overall evidence. See *Woods*, 214 Ill. 2d at 467 (quoting *People v. Bynum*, 257 Ill. App. 3d 502, 510 (1994), for the proposition that, once a minimal foundation is established, "deficiencies in the chain of custody go to the weight, not admissibility, of the evidence").

¶ 40 Because overlap exists between the foundation for narcotics-testing evidence and the evidence needed to prove the presence of narcotics, defendants have tried to equate the two kinds of evidence. The supreme court firmly rejected that equation in *Woods*.

¶ 41 In *Woods*, the parties entered a stipulation to the forensic chemist's testimony: she would report that she had received a numbered exhibit containing three packets in sealed condition and that the one package she tested had heroin in its contents. *Woods*, 214 Ill. 2d at 461. The State did not introduce other foundational evidence for the testing results; the defendant did not object. However, on appeal, the defendant argued that, because the State had failed to establish a sufficient chain of custody for the three packages, its evidence of defendant's possession of heroin was insufficient to support the conviction. That is, he suggested that the total absence of evidence of the packages' custody until it reached the chemist precluded sufficient proof that the chemist tested the same packages the police recovered. *Woods*, 214 Ill. 2d at 462-63, 469. The supreme court did not agree. Part of its reasoning was based on the interpretation of the parties' stipulation. It held that the defendant was attempting an after-the-fact narrowing of the scope of his stipulation and that he had, in fact, affirmatively waived his challenge to the State's chain of

custody. *Woods*, 214 Ill. 2d at 473-74. However, the court dealt directly with the defendant's argument that a challenge to the foundation for the admission of the narcotics-testing evidence was inherently a challenge to the narcotics-possession element of the defendant's offense.

> "We reject the notion that a challenge to the State's chain of custody is a question of the sufficiency of the evidence. A chain of custody is used to lay a proper foundation for the admission of evidence. Accordingly, a defendant's 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. [Citation.] Thus, a challenge to the chain of custody is an evidentiary issue that is generally subject to waiver on review if not preserved ***." *Woods*, 214 Ill. 2d at 471.

In other words, an argument that evidence should not have been admitted is not an argument that the evidence overall was insufficient, and only the latter is immune from forfeiture.

¶ 42 Defendant's argument here is clearly framed as a challenge to the admissibility of the narcotics-testing evidence. He makes no real attempt to argue that the asserted flaws in the chain of custody placed the association between the baggies from the dumpster and the testing results in serious doubt. Indeed, defendant concedes this point in his reply brief. However, because sufficiency issues are also relevant to our discussion of whether defendant's conviction is reversible as first-prong plain error, we will address the relationship of the flaws in the chain of custody to the sufficiency of the evidence.

¶ 43 Defendant points to Baker's receipt of the evidence envelopes "in open condition" as indicating a serious departure from standard protective measures. Although the receipt of a package open after transport could raise serious concern, what occurred here did not. The evidence suggested that Cones and Baker were simply coordinating their testing within the

controlled environment of the Du Page County crime lab. Such coordination might or might not be good lab practice, but it fails to raise any serious concern that the test results were not what they purported to be.

¶ 44 Defendant also notes the State's failure to provide any evidence of the exhibit's custody after testing. It is difficult to construct any plausible scenario in which post-testing mishandling would result in a failure of proof.

¶ 45 Defendant, in reply to the State's assertion that he forfeited his challenge to the admission of the narcotics-testing evidence, argues that that admission was plain error under the holding of *Woods*. To be sure, the *Woods* court acknowledged 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" (*Woods*, 214 Ill. 2d at 471):

> "[I]n 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 that 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. In such a case, a failure to present a sufficient chain of custody would lead to the conclusion that the State could not prove an element of the offense: the element of possession." *Woods*, 214 Ill. 2d at 471-72.

Thus, a defendant may challenge the admission of narcotics evidence in spite of forfeiture in essentially the same circumstances that he or she could challenge the sufficiency of the evidence

altogether. We concede uncertainty as to why a defendant might raise such a challenge to the admission of evidence when a successful challenge to the sufficiency of the evidence directly would bar retrial. Regardless of that, because the asserted flaws in the chain of custody here do not, for the reasons already stated, "rais[e] the probability that the evidence sought to be introduced at trial was not the same [as was] recovered," there could be no first-prong plain error here. *Woods*, 214 Ill. 2d at 471, 472.

¶ 46 Finally, we address defendant's claim that counsel was ineffective for failing to challenge the admission of the evidence on chain-of-custody grounds. We do not agree. To the extent that the chain-of-custody evidence was incomplete, counsel's decision not to require the State to put on more evidence was within the presumption of sound trial strategy.

¶ 47 To succeed on a claim of ineffective assistance of counsel, a defendant must show both (1) that counsel's performance was objectively unreasonable; and (2) that it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "In demonstrating, under the first *Strickland* prong, that his counsel's performance was deficient, a defendant must overcome a strong presumption that, under the circumstances, counsel's conduct might be considered sound trial strategy." *People v. Houston*, 226 Ill. 2d 135, 144 (2007).

¶ 48 Here, counsel had resources that we lack for judging whether the chain of custody was adequate. Counsel had a chance to examine the exhibits' packaging and to correlate the packaging with the lab reports. If the packaging, reports, and counsel's own knowledge of the practices of the relevant agencies strongly suggest that an effective system for the protection of

exhibits was in place, then counsel may reasonably decide that forcing the State to emphasize the meticulousness of the precautions is not in a defendant's interest. Thus, counsel may, as a matter of strategy, stipulate to admissibility. Similarly, counsel may, as a matter of strategy, decline to require the State to supply evidence as to every detail of the chain. Counsel may strategically focus on any elements of evidence-handling that tend to create reasonable doubt. Here, the pooling of residue from the different styles of baggies was such an element; the transfer from Cones to Baker was not. Moreover, nothing in the record suggests that the other aspects of the handling, such as the storage of the samples after testing, were such elements. We point out that, where counsel makes no move whatsoever to object to the admission of evidence—as opposed to raising the issue at some stage but failing to take all necessary steps for preservation—we have no foolproof way to distinguish deliberate, strategic waiver of an objection from the mistakes of ineffective counsel. The difficulty is particularly acute where, as here, we lack all the information available to counsel. It is because of this sort of knowledge gap that claims of ineffective assistance are often necessarily a matter for postconviction proceedings.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 51 Affirmed.