

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert Thurman
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 7, 2023

Court of Appeals Case No.
23A-CR-1020

Appeal from the Clark Circuit
Court

The Honorable Bradley B. Jacobs,
Judge

Trial Court Cause No.
10C02-1807-F3-22

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

- [1] Jeffersonville Police Officer Anthony Stewart initiated a traffic stop of a van, owned by Robert Thurman (and in which he was a passenger), after the driver had failed to signal a turn. After being given permission to search the van, Officer Stewart discovered three syringes, a set of scales, plastic baggies, two cellular telephones, and several baggies containing suspected narcotics (which the investigating officers originally believed to be crack cocaine). Officer Stewart also discovered methamphetamine in Thurman's sock. The State ultimately charged Thurman with Level 3 felony methamphetamine dealing, Level 5 felony methamphetamine dealing, Level 5 felony methamphetamine possession, Level 6 felony unlawful possession of a syringe, and Class C misdemeanor possession of paraphernalia and alleged him to be a habitual offender. A jury found Thurman guilty as charged, and the trial court sentenced him to an aggregate twenty-two-year sentence. Thurman asserts that the State failed to establish a chain of custody for the drug and related evidence sufficient to support admissibility. Because we disagree, we affirm.

Facts and Procedural History

- [2] On July 17, 2018, Officer Stewart conducted a traffic stop of a van after the driver had failed to signal a turn. Officer Stewart identified the driver as Donald Ryan. As Officer Stewart was speaking with Ryan, he discovered that another person was in the back of the van and requested that person to come to

the front-passenger seat. Officer Stewart identified that person as Thurman and determined that Thurman was the owner of the van.

[3] Thurman gave Officer Stewart permission to search the van. At that time, Detective Shawn Davis arrived to assist in searching the van. When Officer Stewart asked Thurman if he had any drugs on his person, Thurman responded by pulling down his pants “to expose his buttocks and private area to say that I have nothing on me.” Tr. Vol. II p. 140. While searching the van, the officers found three syringes stashed in the pocket of the back-passenger door; a set of scales; plastic baggies; two cellular telephones, neither of which belonged to Ryan; and, in the vent above the back-passenger seat, several baggies of suspected narcotics. Originally, the officers believed the drugs to be crack cocaine; however, subsequent laboratory testing revealed it to be methamphetamine, weighing a total of 7.44 grams.

[4] When asked again whether he had any drugs on his person, Thurman stated that he had “ice cream” in his sock. Tr. Vol. II p. 154. The officers asked if Thurman had meant “ice[,]” which is a street name for methamphetamine, and Thurman answered affirmatively. Tr. Vol. II p. 154. The officers removed a .16-gram rock of methamphetamine from Thurman’s sock and Thurman admitted that it was “my meth[.]” Tr. Vol. II p. 223. The State charged Thurman with Level 3 felony methamphetamine dealing, Level 5 felony methamphetamine possession, Level 6 felony unlawful possession of a syringe, and Class C misdemeanor possession of paraphernalia.

- [5] At the time of Thurman’s arrest and for the next few years, Officer Todd Wilson oversaw the Jeffersonville Police Department’s evidence room. In May of 2022, the State filed a *Brady* notice advising Thurman that Officer Wilson had been the subject of an internal investigation that included “concerns with Wilson’s truthfulness and veracity.” Appellant’s App. Vol. II p. 92. Shortly thereafter, Detective Ashley Humphries replaced Officer Wilson as the evidence-room officer.
- [6] On January 23 and 24, 2023, the trial court conducted a jury trial. At trial, Detective Humphries testified to the process by which officers secure and deposit evidence into a locker in the evidence room, logging the receipt of the evidence, and assigning it a unique storage number and location. Detective Humphries further testified that she had found the evidence used for this case in the correct location with nothing out of place or missing.
- [7] The chain of custody for the drugs found in the van and on Thurman’s person showed that Officer Wilson had received the drugs in the evidence room from Officer Stewart on July 18, 2018; the drugs had been taken by Officer Wilson to the laboratory on August 1, 2018; they had been returned to Officer Wilson on September 5, 2018; and they had remained in the evidence room until they had been checked out by a detective and brought to court for Thurman’s trial on January 23, 2023. The scales, baggies, and syringes had been received by Officer Wilson from Officer Stewart in the evidence room on July 18, 2018, and had remained there until they had been checked out and brought to court for Thurman’s trial on January 23, 2023.

- [8] Additionally, Officer Stewart testified that he had secured the evidence envelopes with tape and signed his initials over the tape and that the tape appeared to have been in the same condition with no evidence of tampering. Likewise, Detective Humphries testified that all of those evidentiary items were packaged correctly and that she had not identified any evidence of tampering. Moreover, the Indiana State Police laboratory chemist who had tested the items testified to the secure process by which such evidence is stored while in the laboratory's custody and identified the evidence by her markings on the envelopes when she resealed them after testing.
- [9] Thurman moved to suppress the evidence, claiming that the issues with Officer Wilson had cast doubt on the chain of custody. The trial court denied Thurman's motion, finding that his arguments addressed weight, not admissibility. At the trial's conclusion, the jury found Thurman guilty as charged, Thurman admitted to being a habitual offender, and the trial court sentenced him to an aggregate twenty-two-year sentence.

Discussion and Decision

- [10] "The admission and exclusion of evidence falls within the sound discretion of the trial court, and we review the admission of evidence only for an abuse of discretion." *Reed v. Bethel*, 2 N.E.3d 98, 107 (Ind. Ct. App. 2014). An exhibit is admissible "if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times." *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000). The State must give "reasonable assurances that the

property passed through various hands in an undisturbed condition.” *Id.* However, “the State need not establish a perfect chain of custody” and “any gaps go to the weight of the evidence and not to admissibility.” *Id.* at 1068. Moreover, we presume regularity in the handling of evidence by officers and that officers exercise due care in handling their duties. *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). To be successful in a chain-of-custody claim, a claimant must “do more than raise a mere possibility that the evidence may have been tampered with.” *Id.*

[11] Thurman argues that the prosecution failed to provide a sufficient chain of custody for the drug and related evidence. We, however, disagree. When it comes to “fungible items, such as blood and drugs,” the State lays an adequate foundation “when the whereabouts of an exhibit is shown from the time it came into possession of the police[,]” which the State did here. *Mateo v. State*, 981 N.E.2d 59, 66 (Ind. Ct. App. 2012), *trans. denied*. Detective Humphries testified to the following chain of custody: on July 18, 2018, Officer Stewart had delivered Exhibit 5 (the drugs found in the van) and Exhibit 6 (the drugs found in Thurman’s sock) to Officer Wilson in the evidence room; on August 1, 2018, Officer Wilson had delivered the exhibits to the laboratory for testing; on September 5, 2018, the exhibits had been returned to Officer Wilson in the evidence room where they had remained until brought to court for trial on January 23, 2023. Likewise, Detective Humphries testified that the scales, baggies, and syringes had been received by Officer Wilson from Officer Stewart

in the evidence room on July 18, 2018, and had remained there until they had been checked out and brought to court for Thurman's trial.

[12] Moreover, Thurman claims that he presented evidence suggesting the real possibility of tampering, especially considering Officer Wilson's investigation and removal and that the investigating officers originally had been mistaken about the drugs in Exhibit 5 prior to the laboratory results. However, Detective Humphries and the Indiana State Police laboratory chemist testified to the secure process by which the evidence had been handled and that there had appeared to be no signs of tampering. Additionally, Officer Stewart testified that Exhibits 5 and 6 were in the same condition at trial as when he had sealed and secured them prior to delivering them to the evidence room, with the exception of additional labels from the laboratory. Detective Humphries further testified that the evidence had been packaged correctly, the evidence had been found in the correct location in the evidence room to which it had been assigned, and nothing regarding the drug evidence appeared to be missing or misplaced.

[13] Thurman attempts to establish gaps in the chain of custody by relying on *Willis v. State*, 528 N.E.2d 486, 489 (Ind. Ct. App. 1988) and *Graham v. State*, 253 Ind. 525, 532, 255 N.E.2d 652, 655 (1970). That reliance is misguided. In *Willis*, the State had "utterly failed" to establish a proper chain of custody when the sealed evidence had been opened, the evidence bag had contained unknown initials, and the evidence had been visibly tampered with. 528 N.E.2d at 489. There was no such failure on the State's part here. Likewise, in *Graham*, the

seized evidence had been removed from the evidence room by one officer and returned to the evidence room six days later by another, without any explanation of where the evidence had been or how it had changed hands during those six days. 253 Ind. at 532, 255 N.E.2d at 655. Here, however, there is no point at which the evidence was unaccounted for. Consequently, these cases are readily distinguishable from this one, in which the State has established a well-documented chain of custody.

[14] Further, Thurman contends that the State’s failure to have Officer Wilson testify at trial created a gap in the chain of custody that renders the chain dubious. We find Thurman’s argument unavailing. We have previously held that “a proper chain-of-custody can be established without the testimony of every person who handled the exhibits.” *Evans v. State*, 566 N.E.2d 1037, 1041 (Ind. Ct. App. 1991). The record shows when the evidence had been secured in the evidence room, removed for laboratory testing, returned, and removed again for trial and that it had remained in an undisturbed condition except for the additional labels added during the secure laboratory-testing process. Thurman has failed to establish that the chain of custody is suspect or that there was any real possibility that the evidence had been tampered with. *See Richardson v. State*, 122 N.E.3d 923, 930–31 (Ind. Ct. App. 2019) (concluding that the defendant had failed to establish gaps in the chain of custody when the record had shown when the evidence had been placed in the evidence room, that it had remained there until taken for laboratory testing, had been returned to the evidence room, and had again remained there until removed for trial),

trans. denied. Thurman's alleged gap in the chain goes to weight and not admissibility, and we therefore cannot say that the trial court abused its discretion in admitting the evidence. *Id.*

[15] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.