

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Derrick W. Clark,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

July 31, 2024

Court of Appeals Case No.
23A-CR-3115

Appeal from the Delaware Circuit Court
The Honorable Kimberly S. Dowling, Judge
Trial Court Cause No.
18C02-2007-F1-10

Memorandum Decision by Judge May
Judges Brown and Pyle concur.

May, Judge.

- [1] Derrick W. Clark appeals following his conviction of Level 1 felony dealing in a controlled substance resulting in death.¹ Clark presents one issue for our review, which we revise and restate as whether the State presented a sufficient chain of custody to support admission of the victim’s autopsy report and toxicology results. We affirm.

Facts and Procedural History

- [2] Kieran Vorhees lived in a mobile home in Muncie, Indiana, with his grandmother Linda Conley. On July 1, 2020, Vorhees sent a text message to Clark: “Text Drew if he got any subs please[.]” (Tr. Vol. 4 at 201.) “Subs” meant suboxone. (Tr. Vol. 2 at 245.) At 4:35 p.m., Clark texted “Drew”:²

Clark: Do you have any subs? Kieran’s interested. More than that would you sell him ½ a pill? Its not for me, I don’t even want to mess with it, lol. I guess he only has like \$5.

Drew: Yes

Clark: He’s at work until 5, I guess I will get his money. I’ll let you know.

¹ Ind. Code § 35-42-1-1.5(a).

² As the record before us contains no additional information about this person’s identity, we refer to them simply as Drew.

Drew: Ok

(Tr. Vol. 4 at 210.) Clark then texted Vorhees: “You’re lucky, but I’m not getting anything for this, I need like a little gas money and whatever.” (*Id.* at 205.) Vorhees responded by saying that he would give Clark money for gas and chewing tobacco.

[3] Clark picked up Vorhees from work at approximately 5:00 p.m. and drove him to his grandmother’s mobile home. Vorhees gave Clark money, and Clark drove to a nearby park and purchased two “packs” of what he believed was heroin from Drew. (Tr. Vol. 2 at 246.) A “pack” is “heroin or fentanyl folded up in paper or foil” and refers to “the way it comes to you when you’re purchasing it.” (*Id.*) Clark went back to Conley’s mobile home and gave one of the packs of drugs to Vorhees. Clark then drove back to his house. Shortly thereafter, Clark texted Vorhees: “was your pack ok? He told me he added a little extra.” (Tr. Vol. 4 at 208.) Vorhees responded: “Yes. Stuff doesnt taste to cut either” (*Id.*) (errors in original).

[4] Later that evening, Conley called Vorhees’s aunt, Rachel Young, and asked her to immediately come to Conley’s home. When Young arrived, she saw Vorhees lying unresponsive on the floor, and she called 911. Young noticed an old candy tin, burnt tinfoil, and a lighter laying on Vorhees’s bed. There was also a substance that looked like vomit near Vorhees’s head. Deputy Scott Russell of the Delaware County Sheriff’s Office responded to the 911 call and attempted to resuscitate Vorhees. Paramedics also responded to the 911 call

and found Vorhees pulseless and not breathing. While Vorhees was unresponsive and the emergency personnel were tending to him, Clark sent three text messages to Vorhees:

Why is your grandma calling me?

Why aren't you answering my phone call?

I'm really concerned right now, I have no idea why you are not responding, what's going on?

(*Id.*) The paramedics transported Vorhees to the hospital. Deputy Russell noticed the smell of burnt marijuana in Vorhees's room, and Vorhees's family allowed Deputy Russell to collect Vorhees's cell phone.

- [5] The attending physician at the hospital emergency room ordered a blood draw from Vorhees at 7:37 p.m. Amber Cline, an emergency room nurse, explained that "when the doctor enters the order into the computer, we automatically get a label set printed out that instructs us which tubes to draw and we draw the blood." (Tr. Vol. 2 at 139.) Once the blood is drawn, the nurse places it in a vial, caps the vial, and attaches a label to the vial. Nurse Cline explained that the patient's name, date of birth, and medical record number are listed on the label as well as the date and time the blood draw was ordered. The nurse then

sends the vial of blood to the lab using a pneumatic tube system.³ The hospital did not give Vorhees any narcotics as part of his treatment until 2:00 a.m. on July 2, 2020. Doctors declared Vorhees brain dead at 5:58 p.m. on July 3, 2020. Doctors removed several of Vorhees's organs because he was an organ donor, and then they removed life support from Vorhees. He died on July 6, 2020. Dr. Jolen Clouse, a forensic pathologist, performed Vorhees's autopsy. One of Dr. Clouse's lab technicians received Vorhees's blood vials from the hospital laboratory and mailed those vials via FedEx to Axis Forensic Toxicology ("Axis") for testing. Axis required all biological samples submitted to it to be sealed and labeled, and upon receipt of each sample, Axis assigned the sample both a case number and a specimen number. Axis tested Vorhees's blood and determined it contained 5.6 nanograms per milliliter of fentanyl. That is a concentration large enough to cause a fatal overdose, and Dr. Clouse concluded in the autopsy report that Vorhees's cause of death was acute fentanyl intoxication.

[6] Sergeant Matthew Kubiak of the Delaware County Sheriff's Office interviewed Clark on July 14, 2020. During that interview, Clark admitted that on July 1, 2020, he arranged to purchase drugs from Drew, received money from Voorhees, used some of Vorhees's money to purchase what he thought was heroin, and delivered the product to Vorhees. He also allowed Sergeant Kubiak

³ Nurse Cline explained that the pneumatic tube system is "like going to the bank in the drive-thru." (Tr. Vol. 2 at 139.) The blood sample is placed in a canister and compressed air transports the canister to the lab.

to review his phone and take pictures of his text message conversations with Drew.

- [7] On July 17, 2020, the State charged Clark with Level 1 felony dealing in a controlled substance resulting in death. The trial court held a jury trial beginning on October 30, 2023. Clark objected to admission of both the autopsy report and the toxicology results. He asserted the State failed to properly establish an adequate chain of custody regarding the blood sample. The State noted it was not required to prove a perfect chain of custody and argued it sufficiently authenticated the sample through the testimony of Nurse Cline and other medical professionals. The trial court overruled Clark's objection and admitted the autopsy report and the toxicology results. The jury found Clark guilty of dealing a controlled substance resulting in death, and the trial court subsequently sentenced Clark to a term of thirty years in the Indiana Department of Correction.

Discussion and Decision

- [8] Clark contends the trial court erred in admitting the autopsy report and the toxicology results. He argues the State did not establish that the blood tested by Axis was the same blood that hospital staff drew from Vorhees upon his arrival in the emergency room. We review a trial court's decision on the admission of evidence for an abuse of discretion. *Smith v. State*, 190 N.E.3d 462, 465 (Ind. Ct. App. 2022), *reh'g denied, trans. denied*. "An abuse of discretion occurs if the trial court misinterpreted the law or if its decision was clearly against the logic

and effect of the facts and circumstances before it.” *Id.* We “may affirm the trial court’s ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court.” *Robey v. State*, 7 N.E.3d 371, 379 (Ind. Ct. App. 2014), *trans. denied*.

[9] “It is well established in Indiana that 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), *reh’g denied*. Thus, in submitting evidence, “the State must give reasonable assurances that the property passed through various hands in an undisturbed condition.” *Id.* This is particularly true when the State seeks “to establish the chain of custody of ‘fungible’ evidence, such as blood and hair samples, whose appearance is indistinguishable to the naked eye.” *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). “The State need not establish a perfect chain of custody, and any gaps in the chain go to the weight of the evidence and not to its admissibility.” *Jones v. State*, 218 N.E.3d 3, 9 (Ind. Ct. App. 2023), *trans. denied*. The defendant must do more than raise the mere possibility of tampering to have evidence excluded on chain of custody grounds, and “[t]here is a presumption of regularity in the handling of exhibits by public officers.” *Id.*

[10] Clark asserts Vorhees “was treated by the hospital with fentanyl, that the hospital lab sent multiple samples to Axis Laboratories for testing and that it was unclear which sample ultimately resulted in the 5.6 ng/mL reading for fentanyl[.]” (Appellant’s Br. at 9.) However, the hospital staff did not give Vorhees any narcotic medications until 2:00 a.m. on July 2, 2020, and

Vorhees's initial blood draw occurred shortly after he arrived at the hospital on July 1, 2020. Nurse Cline testified that when the attending emergency room physician ordered a blood draw from Vorhees at 7:37 p.m., the computer automatically created a label. Nurse Cline explained that when a blood draw was ordered, a nurse would draw the sample, apply the automatically generated label to the sample, and then send the sample to the hospital laboratory. Following Vorhees's death, one of Dr. Clouse's technicians obtained Vorhees's blood samples from the hospital laboratory and sent them to Axis for testing. Axis tested the sample labeled as collected at 7:37 p.m. on July 1, 2020, and found a potentially lethal level of fentanyl in Vorhees's blood. Axis's director and chief toxicologist testified that if Axis noticed any irregularities in a sample's packaging or labeling, it would list the observed shortcomings in the final report or in an affidavit shared with the client. No such irregularities were noted regarding Vorhees's samples. Clark points out that the State could not identify the precise nurse who drew the blood or the specific lab technician who mailed the blood sample to Axis. Even though those individuals were not precisely identified, the State still presented sufficient evidence accounting for the whereabouts of the blood sample from the moment it was drawn to when Axis tested it, and therefore, we hold the trial court did not abuse its discretion when it admitted the toxicology results or the autopsy report that relied on the

toxicology results.⁴ See, e.g., *Culver*, 727 N.E.2d at 1067-68 (holding State established a continuous chain of custody when it presented evidence regarding how evidence sent to an FBI lab was received and handled even though the lab's receiving clerk did not testify at trial).

Conclusion

[11] The trial court did not abuse its discretion when it admitted the autopsy report and toxicology results because the State presented sufficient evidence to demonstrate that the blood drawn by hospital staff upon Vorhees's admission was the same blood tested by Axis. Therefore, we affirm the trial court.

[12] Affirmed.

Brown, J., and Pyle, J., concur.

⁴ After the trial court overruled Clark's objection to the autopsy report, he did state: "I do want to state the objection is also to hearsay and the Sixth Amendment Confrontation Clause just for purposes of the record." (Tr. Vol. 2 at 180-81.) However, Clark did not expound upon these two grounds for objection. Likewise, Clark failed to include analysis in his brief on appeal related to hearsay or the Confrontation Clause. Therefore, any such claims are waived. See, e.g., *Carter v. Indianapolis Power & Light Co.*, 837 N.E.2d 509, 515 n.10 (Ind. Ct. App. 2005) (holding argument that utility company negligently placed utility poles was waived because of the appellant's failure to develop the argument on appeal), *reh'g denied, trans. denied*. Waiver notwithstanding, the autopsy report was admissible pursuant to the public record exception to the rule against hearsay. See, e.g., *Ealy v. State*, 685 N.E.2d 1047, 1055 (Ind. 1997) (holding autopsy report fell within the public record exception to the rule against hearsay). In addition, the report's admission did not violate Clark's rights under the Sixth Amendment's Confrontation Clause because the report was non-testimonial. Its purpose was to gather information regarding Vorhees's cause of death for public health purposes, not in anticipation of litigation. See, e.g., *Ackerman v. State*, 51 N.E.3d 171, 187 (Ind. 2016) (holding admission of autopsy report did not violate defendant's rights under the Sixth Amendment Confrontation Clause because it was not prepared with the primary purpose of establishing or proving past events for subsequent prosecution).

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