MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa Diane Manning
Plainfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David H. Jewell, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 9, 2022

Court of Appeals Case No. 21A-CR-2814

Appeal from the Putnam Circuit Court

The Honorable Matthew L. Headley, Judge

Trial Court Cause No. 67C01-1904-F5-331

Crone, Judge.

Case Summary

[1] David H. Jewell, II, appeals his convictions, following a bench trial, for level 5 felony possession of methamphetamine and class C misdemeanor possession of paraphernalia. The sole issue presented for our review is whether the trial court abused its discretion in admitting certain evidence. Finding no abuse of discretion, we affirm.

Facts and Procedural History

[2] On March 24, 2019, Cloverdale Police Department Officer Levi App observed a blue vehicle traveling with an unilluminated license plate. Officer App ran a check on the plate and discovered that the plate was registered to a green vehicle. Accordingly, Officer App initiated a traffic stop of the vehicle. Three persons were in the vehicle, including Jewell, who was seated in the front passenger seat. Officer App asked the driver for her license and registration. The driver appeared hesitant to open the glove box to obtain the registration. When she finally did open the box, Officer App observed two glass smoking devices inside the glove box that were consistent with what is used to smoke illegal substances. The driver quickly shut the glove box without retrieving the registration. When Officer App repeated his request for the registration, Jewell opened the glove box, which again exposed the glass pipes in plain view. Jewell leaned over with his left forearm in what appeared to be an attempt to obstruct Officer App's view of the contraband. Jewell then grabbed the registration and handed it to Officer App through the window.

[3] Due to seeing contraband in plain view, Officer App ordered Jewell and the other occupants out of the car. After exiting, Jewell was "fidgety" with the waistband of his pants. Tr. Vol. 2 at 44. Officer App ordered Jewell to "stop messing around" and to keep his hands visible. *Id*. at 45. Fearful that Jewell might be concealing a weapon, Officer App ordered Jewell to walk to the front of the police vehicle. As Jewell complied, he continued to reach toward his waistband multiple times. During a patdown search of Jewell's person for weapons, Officer App felt what he believed to be a handgun sliding down Jewell's leg. When Officer App pulled at the bottom of Jewell's right pant leg, two baggies containing a white crystal-like substance fell to the ground, as did a large butane lighter and a handgun. Officer App handcuffed Jewell and searched the vehicle. The search of the vehicle revealed boxes of ammunition, two glass pipes containing a burnt white residue, and a digital scale containing white crystalline material in the driver's purse. In addition to the items that fell to the ground during the patdown search of Jewell's person, Officer App recovered several empty plastic baggies and a second digital scale containing a white substance consistent with the appearance of methamphetamine. Subsequent testing revealed that one baggie recovered from Jewell's person contained 3.82 grams of methamphetamine and the other contained 3.44 grams of methamphetamine.

[4] On April 2, 2019, the State charged Jewell with level 5 felony possession of methamphetamine, level 5 felony carrying a handgun without a license, and class C misdemeanor possession of paraphernalia. A bench trial was held on

November 4, 2021. The trial court found Jewell guilty of level 5 felony possession of methamphetamine and class C misdemeanor possession of paraphernalia. The court imposed an aggregate four-year sentence. This appeal ensued.

Discussion and Decision

[5] Jewell asserts that the trial court abused its discretion in admitting, over his objection, the "purported methamphetamine recovered from [his] person" during the traffic stop. Appellant's Br. at 9. Specifically, he argues that the State failed to establish an adequate chain of custody for the evidence to support its admission. We disagree.

[6] Our standard of review of a trial court's admission or exclusion of evidence is an abuse of discretion. *Blankenship v. State*, 5 N.E.3d 779, 782 (Ind. Ct. App. 2014). A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id*. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006).

[7] Regarding chain-of-custody challenges, this Court has explained,

> An adequate foundation establishing a continuous chain of custody is established if the State accounts for the evidence at each stage from its acquisition, to its testing, and to its introduction at trial. Under the chain of custody doctrine, an adequate foundation is laid when the continuous whereabouts of

> an exhibit is shown from the time it came into the possession of the police.
>
> To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition. However, the State need not establish a perfect chain of custody, and once the State "strongly suggests" the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility. Moreover, there is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with.

Espinoza v. State, 859 N.E.2d 375, 382 (Ind. Ct. App. 2006) (citations and most quotation marks omitted).

[8] Here, to establish chain of custody, Officer App testified that after recovering the methamphetamine evidence at the scene of the traffic strop, the evidence was placed "into individual storage baggies" and then "listed into evidence at the Cloverdale Police Station and secured and placed in for transport to the Indiana State Police [(ISP)] Lab." Tr. Vol. 2 at 51. Officer App stated that he, with the aid of the Cloverdale Police Department's evidence technician, Officer Rick Lambert, placed the evidence in the "secured" storage locker in the station, and that Officer Lambert is the "only one that has access to the storage lockers after they're secured." *Id*. at 52. In addition to this testimony, the State introduced a chain-of-custody report generated by the ISP laboratory that indicated that the methamphetamine evidence was received from the

Cloverdale Police Department and logged in by evidence clerk Mary Blessing on March 29, 2019. The report indicated that the evidence was transferred within the ISP lab for testing before being returned to Blessing on November 19, 2019, and then to Officer Lambert on that same day. Officer App testified that he personally retrieved the evidence from Officer Lambert and brought the evidence to trial. The State also called ISP forensic scientist Brandy Cline as a witness, and she testified that she was the person who tested the substances received from the Cloverdale Police Department, marked as Items 001 and 002, and that those substances tested positive for methamphetamine.

[9] After considering Jewell's chain-of-custody objection in the context of the State's evidence, the trial court determined,

> [I]t would be better if [Officer Lambert] were to be here. However, … I think if you look at the totality of the circumstances … the totality of the evidence and the testimony, I find that [there is a] reasonable probability that the chain of custody has not been broken.

Id. at 70. Accordingly, the trial court overruled Jewell's objection and admitted the evidence.

[10] We agree with the trial court that the State presented an adequate chain of custody to provide reasonable assurances that the methamphetamine recovered from Jewell at the scene of the traffic stop remained in an undisturbed condition until trial. Jewell presented no evidence to overcome the presumption of regularity in the handling of this evidence by officers, and while the State failed

to account for "the exact whereabouts of the methamphetamine from the time it was recovered from Jewell until the date of trial over two years later[,]" Appellant's Br. at 12, a defendant must do more than raise a mere possibility that evidence may have been tampered with. Indeed, as stated above, to the extent that there are gaps regarding the exact whereabouts of the evidence at all times, such gaps go to the weight of the evidence and not to its admissibility. The trial court did not abuse its discretion in overruling Jewell's objection and admitting the methamphetamine evidence. Jewell's convictions are affirmed.

[11] Affirmed.

Vaidik, J., and Altice, J., concur.