

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

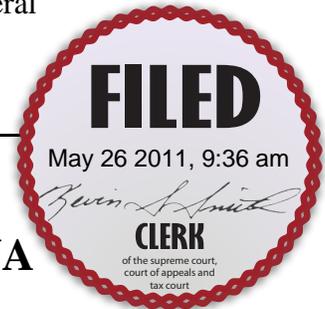
ATTORNEY FOR APPELLANT:

BETH ANN FOLZ
McFadin Higgins & Folz
Mt. Vernon, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

DONALD EMIL BUNTING,)

Appellant-Defendant,)

vs.)

No. 65A05-1009-CR-575

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause No. 65C01-0909-FA-85

May 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

This case involves a defendant who was living at a home where police found drugs and paraphernalia sufficient to indicate the operation of a methamphetamine (“meth”) lab. He told police that he was a user and was present when the meth was being cooked, but he claimed that he did not participate in the meth manufacturing process. Field tests conducted at the scene indicated that meth was present in a white powdery substance found at various locations on the property. In addition, a police laboratory expert conducted tests on more than ten grams of the white powdery substance seized from the property and found meth to be present in the collected portions.

As a result, the State charged the defendant, Donald Emil Bunting, with class A felony dealing in meth and class C felony possession of at least three grams of meth. A jury convicted him as charged, and he appeals, claiming that the State failed to prove a chain of custody over the bags of white powdery substance and that the evidence is insufficient to prove that he possessed at least three grams of meth. Finding a sufficient chain of custody and sufficient evidence to support his convictions, we affirm.

Facts and Procedural History

In July 2009, Bunting began living with Becky Wells at her Posey County residence. On September 21, 2009, Posey County Prosecutor’s Investigator Kenneth Rose and Posey County Detective Jeremy Fortune drove to Wells’s trailer home to inform her and Bunting that they did not have to appear for a deposition for which they had previously been served subpoenas. As Investigator Rose and Detective Fortune approached Wells’s trailer, they

passed by her barn and noticed a distinct odor of a meth lab. Wells answered the door, and Bunting emerged from the bedroom. After the officers informed them about the deposition, they obtained Wells's permission to search the property. In the bedroom, Detective Fortune found a glass plate sitting out on the bed. It contained a white powdery substance that looked like meth. Nearby, he found an aluminum pie plate also containing a white powdery substance. Shortly thereafter, Deputy Sheriff Kevin Bratton arrived on the scene and Mirandized Bunting. A further search of the trailer and the barn produced numerous items such as cold medication, lithium batteries, acetone, anhydrous ammonia, drain opener, isopropyl alcohol, mason jars, plastic tubing, glass paraphernalia pipes with burn residue, Tupperware containers, measuring cups, baggies (some with cut corners), coffee filters, and foil. Many of the items contained a white powdery substance or powdery residue. Finally, police found a burn pile in the yard.

Police then gathered all the evidence together to document and photograph it. They conducted field tests on the white powdery substance on the glass and aluminum plates, and both produced a positive result for meth. Police packaged and sealed all samples of the substance as well as the receptacles in which they were found. Police then transported the physical evidence to the State Police Laboratory for testing. Indiana State Police Chemist William S. Bowles, II, performed chemical testing on the baggies of the white powdery

substance, and each tested positive for meth. The total weight of the substance exceeded ten grams.¹

Based on their on-scene investigation, police concluded that there was an active meth lab on the property and that most of the manufacturing took place in the barn, with filtering taking place inside the trailer as well. At the scene, Investigator Rose asked Bunting about the meth lab, and Bunting said that he knew that meth was being manufactured there, that meth had been cooked as recently as the night before and finished that morning, and that he had been present at times during the meth manufacturing. He stated that he was a once-to-twice-a-week user and had used meth that had been manufactured there. However, he denied participating in the meth manufacturing. When police asked him who had cooked the meth, he would only say that it was “others.” Tr. at 32. He admitted to Investigator Rose that he had “carried [the glass dish of meth] in just prior to [the officers’] arrival and placed it inside the mobile home.” *Id.* at 32-33.

On September 22, 2009, the State charged Bunting with class A felony dealing in meth and class C felony possession of meth. On August 4, 2010, a jury found him guilty as charged. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

I. Chain of Custody

Bunting first contends that the trial court abused its discretion in admitting certain

¹ The police submitted for testing numerous baggies of the white powdery substance. The weights were as follows: 5.75 grams (St. Ex. 3); 3.61 grams (St. Ex. 5); 0.01 gram (St. Ex. 7); 0.011 gram (St. Ex. 14); 0.57 gram (St. Ex. 25); 0.06 gram (St. Ex. 26); and 0.08 gram (St. Ex. 28).

exhibits due to the State's alleged failure to establish a proper chain of custody. Questions regarding the admissibility of evidence are matters within the trial court's sound discretion. *Brooks v. State*, 934 N.E.2d 1234, 1240 (Ind. Ct. App. 2010), *trans. denied* (2011). As such, we review a trial court's decision to admit or exclude evidence using an abuse of discretion standard. *Covey v. State*, 929 N.E.2d 813, 819 (Ind. Ct. App. 2010). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Brooks*, 934 N.E.2d at 1240. In conducting such a review, "we do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling, although we must also consider any uncontested evidence favorable to the defendant." *Id.*

When the State offers physical evidence at trial, it must provide reasonable assurances that an exhibit that has passed through various hands has remained undisturbed. *Covey*, 929 N.E.2d at 819. Thus, to establish a proper chain of custody, it must provide proof that "strongly suggests the exact whereabouts of the evidence." *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002) (citation and quotation marks omitted).

Because the State need not establish a perfect chain of custody, slight gaps go to weight, not the admissibility, of the evidence. There is a presumption of regularity in the handling of exhibits by public officers. Thus, merely raising the possibility of tampering is insufficient to make a successful challenge to the chain of custody.

Covey, 929 N.E.2d at 819 (citation and quotation marks omitted).

Here, Investigator Rose, whose background included extensive training in investigating clandestine meth labs, testified at length about the procedures he followed in

collecting, securing, and labeling all physical evidence found at the scene. He sealed and initialed all the bags of evidence, and police delivered the baggies of white powdery substance, already field-tested to contain meth, to the state police lab. Although the State did not present testimony from the officer who transported the evidence, it is presumed to have been handled with regularity. *Id.*

At the lab, chemist Bowles conducted lab tests confirming the presence of meth. Bowles provided lengthy testimony regarding the lab's procedures to safeguard all evidence brought there for testing. For example, he testified that when evidence is first submitted for testing, it must meet certain standards before it is even accepted:

When it comes to the laboratory, evidence must meet some submission criteria. It has to be sealed properly. The evidence has to be marked identifiably, and the accompanying paperwork has to basically agree with what we are receiving. If any are [sic] those criteria are not met, then it is not accepted for analysis until corrections are made. If it is accepted, then a laboratory number is drawn and evidence barcode sticker is affixed to the evidence which allows us to scan it and track it while it is in our custody.

Tr. at 112-13. He emphasized that drug evidence is kept in an evidence vault to which only a few have access and that before he tests the evidence, he must notify an evidence clerk, who retrieves it from the vault. *Id.* at 112. The two then "document the transfer on the computer with each of [their] passwords so a record is kept of the transaction." *Id.* Bowles further testified that as a matter of practice, he checks each piece of evidence to ensure that it is sealed and in proper condition and emphasized that he would neither accept it nor actually conduct tests on it unless the criteria are met. *Id.* at 113. In this case, when Bowles tested the evidence, he removed the contents of the sealed bags while keeping the original seal

initialed “KRR” intact and cutting open a different corner of the bag. *Id.* at 117. Once he completed the testing, he re-sealed the substance into the bag with evidence tape and initialed the tape across the front and back. *Id.*

Based on the foregoing, we conclude that Bunting raised only the mere possibility of tampering. In contrast, the State presented testimony strongly suggesting the exact whereabouts of the physical evidence and thus sufficiently established the chain of custody. Because slight gaps concerning the transportation of the evidence go to its weight and not its admissibility, we conclude that the trial court acted within its discretion in admitting it.

II. Sufficiency of Evidence

Bunting also challenges the sufficiency of evidence to support his convictions. When reviewing an insufficiency claim, we neither reweigh evidence nor judge witness credibility. *Robertson v. State*, 877 N.E.2d 507, 515 (Ind. Ct. App. 2007). Rather, we look to the evidence and reasonable inferences supporting the verdict and will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

Bunting specifically asserts that the evidence is insufficient to establish the weight of the meth seized from his residence. He was convicted of class A felony dealing in meth and class C felony possession of meth, both of which require that the drug involved weigh at least three grams. Ind. Code §§ 35-48-4-1.1(b)(1), 35-48-4-6.1(b)(1)(A). As such, the weight of the drug is an essential element of each offense. However, both statutes also state that the meth may be “pure or adulterated.” *Id.*; see also *Hape v. State*, 903 N.E.2d 977, 998 (Ind. Ct.

App. 2009) (reiterating our supreme court’s long-held position that it is the total weight of the drug, not its pure component, that must be considered in prosecutions), *trans. denied*.

Here, Bowles found meth to be present in each of numerous baggies of substances seized from Bunting’s residence. The total weight of the substances exceeded ten grams. Bowles’s testimony that the substances were not “pure” meth is irrelevant, given the wording of the statutes. Moreover, Bunting’s reliance on Bowles’s statement that he could not say for sure whether the substances were intentionally adulterated or whether they contained by-products often present at clandestine lab sites is merely an invitation to reweigh evidence, which we may not do. Thus, the evidence most favorable to the verdict is sufficient to support Bunting’s convictions. Accordingly, we affirm.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.