

CASE SUMMARIES

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Criminal Law and Procedure/Illinois Supreme Court Case

Chain of Custody in Narcotics Cases

When dealing with narcotics cases, it is an important piece of the state's case to establish that the defendant was in possession of the controlled substance with which he or she is charged. It is axiomatic that the same items which were recovered from a defendant are tested, and a proper chain of custody is kept at all times. The Illinois Supreme Court, in reversing the appellate court, recently examined a case dealing with the testimony of the chain of custody in a possession of a controlled substance trial. *People v. Alsup*, No. 108354, 2011 WL 188847 (Jan. 21, 2011).

In *Alsup*, the defendant was arrested after Chicago police officers observed him making various narcotics transactions. Officers testified that on three occasions the defendant was observed taking an item near a garbage can and tendering it to unknown males in exchange for United States currency. Police detained the defendant, and from near the garbage can, officers recovered a Ziploc bag containing ten smaller Ziploc bags of suspected cocaine and five tinfoil packets of suspected heroin. The ten Ziploc bags had a total weight of 1.05 grams of cocaine and the five tinfoil packets contain a total weight of less than 0.1 gram of heroin. At trial, an officer testified that he received a unique inventory number and placed the narcotics inside a bag which had the inventory number on it. The officer then inventoried the bag in the narcotics vault.

At trial, the prosecution and the defense entered into an oral stipulation as to the testimony of Daniel Bryant, an expert in the field of forensic chemistry. The unique inventory was part of the stipulation; however, it was stipulated by the parties that there were ten items that tested positive for cocaine and nine items that tested positive for heroin, which differed from the testimony of the police officer who testified to only five tinfoil packets. The trial court subsequently found the defendant guilty of two counts of possession of a controlled substance with the intent to deliver – one for the cocaine and one for the heroin.

On appeal, the defendant contended that the officer testified he recovered five items of heroin, while the stipulation entered by the parties indicated the chemist tested nine items of heroin. The appellate court reversed the defendant's conviction, holding that the evidence failed to establish a link between the items seized at the time of the defendant's arrest and the items tested by the chemist, thereby constituting reversible plain error.

In granting the state's petition for leave to appeal, the Illinois Supreme Court first examined the general principles that the state must prove in a controlled substance trial.

The state must show that the police took reasonable protective measures to ensure that the substance recovered from the defendant is the same substance tested by the forensic chemist. *People v. Woods*, 214 Ill.2d 455, 828 N.E.2d 247, 293 Ill.Dec. 277 (2005). At trial, a judge must determine that the state has demonstrated that the chain of custody is sufficient to show that the evidence was not tampered or accidentally substituted. 828 N.E.2d at 255. Once the state has established this prima facie case, the burden shifts to the defendant to show the evidence at issue was tampered, altered, or substituted. 828 N.E.2d at 256. A challenge to the chain of custody does not serve as a challenge to the sufficiency of the evidence to support a conviction, but rather it is an attack on the admissibility of evidence and is subject to waiver and forfeiture. 828 N.E.2d at 258.

The defendant in the instant case argued that the *Woods* decision allowed for a review under plain error despite the fact the issue of the number of heroin items was waived during trial. In *Woods*, the Supreme Court acknowledged that there are a limited amount of times when a defendant can raise a chain of custody issue for the first time on appeal. 828 N.E.2d at 257. Notwithstanding that prior holding, the court held that the state proved the defendant guilty with the evidence provided. This case was not an example of a “rare” case in which there was a “complete breakdown” in the chain of custody as the defendant contended. *Alsup, supra*, 2011 WL 188847 at *7. The court found that both the testimony and the stipulation at trial established a probability that the items recovered by the officer were the same tested by the chemist. The officer sufficiently described the process he took in keeping the heroin items in his custody, care, and possession, detailing the unique inventory number and packaging procedure. Additionally, the parties both stipulated that it was the same bag from which the chemist tested the items. All of this evidence established for the state a prima facie case that the evidence was not tampered or altered. There was no evidence presented by the defense to raise the issue of alteration or substitution of the items. The court held the appellate court should have applied the waiver rule to bar the defendant, for the first time on appeal, from raising the issue of the discrepancy in the stipulation.

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