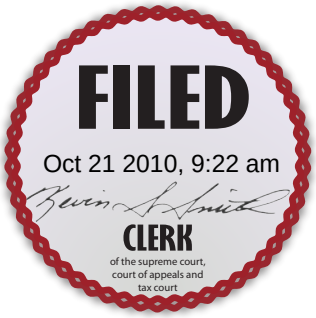

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IN THE
COURT OF APPEALS OF INDIANA

STACY PRICE,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 34A02-1004-CR-366
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0603-FA-70

October 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Stacy Price appeals his conviction, following a jury trial, of dealing in cocaine, a Class A felony. Price raises one issue on appeal: whether State's Exhibits 3 and 9 were properly admitted into evidence. Price argues the State failed to show a sufficient chain of custody for Exhibit 3, the baggie that tested positive for cocaine, and Exhibit 9, the laboratory report, should therefore have been excluded as well. Concluding the chain of custody was sufficient and the trial court did not abuse its discretion by admitting the evidence, we affirm.

Facts and Procedural History[1]

On March 30, 2006, Kokomo police officer Bruce Rood and confidential informant Tim Fording arranged a controlled buy of cocaine from Price. Fording called Price and told him he was interested in buying two "8 balls," or three-gram baggies, of cocaine. Transcript at 22.[2] Price indicated he would sell that amount of cocaine for $300. Later that day, Price came to Fording's apartment, where officers, including Agent Lamont Johnson of the Drug Enforcement Administration ("DEA"), had set up surveillance. Fording handed Price $300 in cash, and Price handed Fording a baggie, identified at trial as State's Exhibit 3. When Price left a few minutes later, Fording gave the baggie to Agent Johnson. Agent Johnson put the baggie inside a DEA envelope bag, took it to the Kokomo Police Department ("KPD"), and later that night gave it to Officer Rood. Officer Rood re-sealed the sample in a KPD bag, gave it a property tag with the

[1] We heard oral argument on October 6, 2010, at Benton Central Junior-Senior High School in Oxford, Indiana. We thank Benton Central for its hospitality and counsel for their advocacy.

[2] "Eight ball" is "street slang for approximately 3.5 grams of crack cocaine or cocaine," roughly one-eighth of an ounce. Tr. at 177.

number 06-2153, and placed the sample in a safe in the Drug Task Force office to which only he had access. The next day, March 31, 2006, Officer Rood entered the sample into the KPD property system. While in the property system locker, only "Inspectional Services Unit personnel," but not police officers, have access to the locker. Id. at 161.

On Thursday, April 6, 2006, DEA agent Robert Bella received the sample from Officer Rood after KPD inspectional services manager Tamara Burge opened the locker. At that time, the sample was in a sealed condition. That same day, Bella transported the sample to a DEA facility in Chicago and placed it in an evidence drop vault that evening.[3] While in the drop vault over the weekend, the sample would have been accessible to one or more drop vault custodians, whose names Bella did not recall. Bella testified there were procedures, involving receipts and a log book, for checking evidence into and out of the drop vault. On the following Monday, April 10, 2006, Bella retrieved the evidence from the drop vault custodian and transported it to DEA's North Central Laboratory, also located in Chicago about three blocks from the drop vault. At the laboratory, Bella gave the sample to evidence technician Pamela Triplett, who did not testify at trial. When Bella turned the sample over to the laboratory, it was in a sealed condition.

On May 8, 2006, the sample was subjected to analysis by DEA forensic chemist Kenneth Booker, who testified at trial. Booker identified Exhibit 3 and testified it was

[3] Officer Rood testified that although ordinarily a drug sample would be sent to the Indiana State Police Lab for testing, in this case DEA required that its own agents take possession of the sample for testing at its lab, because DEA supplied the buy money.

retrieved from an evidence technician, Deitra Haywood, according to standard protocol.[4] Booker identified Exhibit 9 as the chemical analysis report prepared by him or someone under his direction. According to the report and Booker's testimony, the gross weight of the sample, including packaging, was 72.9 grams, and the net weight of the substance, excluding packaging, was 5.1 grams. The "reserve weight," or amount remaining after testing, was 4.7 grams, due to 0.4 grams being consumed, and based on 33 percent purity, the amount of cocaine remaining in the sample was 1.6 grams. Id. at 128. After testing, Booker placed the sample in an additional baggie, which weighed 2.77 grams, and added an additional label to the packaging. The gross weight including packaging, after testing, was 75.5 grams. On May 9, 2006, Booker returned the sample to evidence technician Haywood for storage in the main vault, where it remained until May 2007.

On May 8, 2007, Bella retrieved the sample from the DEA laboratory, and it remained in his control and custody until he turned it over to Officer Rood. At the time of obtaining the sample from the laboratory and at the time of turning it over to Officer Rood, the sample was in a sealed condition. Upon receiving the sample, Officer Rood returned it to a locker in the KPD property system. The following day, Officer Rood brought the sample to Howard Superior Court for Price's first trial.

[4] Haywood did not testify at trial. Booker described the protocol as follows: When evidence comes into the laboratory, it is logged in, given a laboratory number, stored in the main vault, and assigned to a chemist. The chemist will formally request the evidence from the evidence technician, with paper and electronic logs keeping track of the date the evidence is transferred from the evidence technician to the chemist. Each chemist has an individual steel lock box with his or her own combination in which to store evidence, and there is a separate "in-process vault" to store evidence while in the custody of the chemist. After the analysis is complete, the process is reversed, and the evidence is brought to the evidence technician for return to the main vault where the chemist no longer has access to it. See Tr. at 114-16. Booker also testified the protocol requires evidence to be in a sealed condition when it is submitted to the laboratory, when it is retrieved from the evidence technician, and when it is returned to the evidence technician.

The State charged Price with dealing in cocaine by delivering cocaine in an amount of three grams or more, a Class A felony. Price's first trial was in May 2007 and resulted in a mistrial. The retrial commenced on August 5, 2008. Price objected to the admission of State's Exhibits 3 and 9 on the grounds that no adequate chain of custody had been established. The trial court overruled the objection and admitted both exhibits, and the jury found Price guilty as charged. The trial court sentenced him to forty years executed. Price now brings this belated appeal.

Discussion and Decision

I. Standard of Review

The trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. Embry v. State, 923 N.E.2d 1, 7 (Ind. Ct. App. 2010), trans. denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

II. Chain of Custody

Physical evidence 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). To substantiate a chain of custody, "the State must give reasonable assurances that the property passed through various hands in an undisturbed condition." Id. An adequate 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." Espinoza v. State, 859 N.E.2d 375, 382 (Ind. Ct. App. 2006). However, the State need not establish a perfect chain of custody, and minor gaps go to

the weight of the evidence and not its admissibility. Culver, 727 N.E.2d at 1067. "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." Filice v. State, 886 N.E.2d 24, 34 (Ind. Ct. App. 2008) (citation omitted), trans. denied.

The testimony presented at trial is, at the least, strongly suggestive that the cocaine sample was in the exclusive control of DEA agents and employees during the entire time it was in Chicago. At all other times prior to its arrival at the courthouse for Price's first trial, the sample was in the exclusive custody of KPD officers and employees. It is presumed, and there is no evidence to the contrary, that all of these agents and employees utilized due care to avoid any contamination or tampering with the sample. See Espinoza, 859 N.E.2d at 382 (applying presumption of due care to DEA officers operating in the State of Washington). Further, Booker testified there were standard protocols for handling evidence at the DEA laboratory and to the best of his knowledge, the protocols were followed in this case. Although not every single person who had access to the sample at the laboratory was called as a witness or otherwise accounted for, given the number of investigative steps used in this case, it would be unreasonable to require the State to obtain every such person as a witness. The gaps in the chain of custody, if any, are sufficiently minor as to not affect the admissibility of the evidence.

Perhaps anticipating this conclusion, Price focuses his argument on the difference in the weight of the sample before and after testing and argues this discrepancy is evidence of tampering or mishandling. However, all but a small fraction of the difference

in weight before and after testing is explained by Booker's testimony that the sample with packaging weighed 72.9 grams to start with, 0.4 grams were consumed in the testing, but Booker added a 2.77 gram additional baggie and an additional label. Subtracting and adding these numbers indicates the final weight should have been 75.27 grams, plus any weight added by the additional label, whereas Booker reported the final weight as 75.5 grams. Even disregarding any weight added by the additional label, only 0.23 grams of excess weight remain unaccounted for. That is not enough of a difference, given that Booker reported 4.7 grams of adulterated cocaine remained after testing, to raise an issue as to whether Price was responsible for at least three of those grams as required to prove a Class A felony. See Ind. Code § 35-48-4-1. Therefore, while we could hypothesize scenarios where an unexplained discrepancy in weights of a drug sample would be so substantial as to undermine any assurance of an undisturbed chain of custody, this is not such a case. The State demonstrated a sufficient chain of custody. See Cockrell v. State, 743 N.E.2d 799, 809 (Ind. Ct. App. 2001) (concluding chain of custody was sufficient where weight discrepancy on the order of one gram was explained by part of cocaine sample being consumed in testing, and State demonstrated sample was twice taken from Carmel Police Department to Indiana State Police Lab and back again, which "provided a reasonable assurance that the evidence was undisturbed as it passed from the custody of one person to the next"). The trial court therefore did not abuse its discretion by

admitting Exhibits 3 and 9 into evidence.

Conclusion

The trial court did not abuse its discretion in admitting evidence of cocaine. Price's conviction is therefore affirmed.

Affirmed.

BAKER, C.J. and BOEHM, S.J., concur.