MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mya L. Moody,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No. 22A-CR-1658

Appeal from the Delaware Circuit Court

The Honorable Marianne L. Vorhees, Judge

Trial Court Cause No. 18C01-2201-F1-3

Bailey, Judge.

Case Summary

[1] Mya Moody ("Moody") appeals her conviction of Dealing in a Controlled Substance Resulting in Death, as a Level 1 felony.[1] She presents the issue of whether the trial court abused its discretion by admitting toxicology evidence absent a proper chain of custody. We affirm.

Facts and Procedural History

[2] On October 13, 2021, Moody was arrested for driving while her license was suspended and having drug paraphernalia in her possession. Moody smuggled a balloon containing a white powdery substance into the Delaware County Jail, and she shared the substance with her cellmates.

[3] On the following day, Moody agreed to provide her cellmate Dianna Pace ("Pace") with more of the substance in exchange for electronic cigarettes and commissary credit. Moody handed Pace a spoon containing what appeared to be heroin or a heroin/fentanyl mix, and Pace snorted the contents. Pace began to contort as if in a seizure and her skin turned blue. When jail officers responded to calls for help, they found Pace unresponsive. Pace was transported to Ball Memorial Hospital, where she was declared deceased.

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[1] Ind. Code § 35-42-1-1.5(a).

[4] On January 20, 2022, Moody was charged with Dealing in a Controlled Substance Resulting in Death. A jury trial commenced on May 23, 2022, and was concluded three days later. Dr. Jolene Clouse, who performed the autopsy of Pace's body, testified that she had obtained blood, urine, and vitreous fluid samples. Dr. Clouse explained that she did not perform toxicology testing on the sample; rather, "those samples are sent off to a lab for that to be done." (Tr. Vol. III, pg. 95.) Dr. Clouse opined that, based upon toxicology results, Pace's cause of death was acute fentanyl intoxication. Dr. Clouse's autopsy report was admitted without objection.

[5] Moody was convicted as charged and adjudicated a habitual offender. She was sentenced to thirty-four years imprisonment, enhanced by six years due to her status as a habitual offender. Moody now appeals.

Discussion and Decision

[6] Moody contends that the trial court abused its discretion by admitting into evidence State's Exhibit 22, a toxicology report, absent a proper chain of custody of Pace's specimens. More specifically, Moody claims: "the State failed to present *any* evidence of the exact whereabouts of the samples taken from Dianna Pace during the autopsy by Dr. Clouse. Dr. Clouse testified that the samples were merely sent for toxicology testing. She did not specify any [thing in] particular." Appellant's Brief at 11 (emphasis in original.) Moody suggests that the lead investigator, who did not testify, may have taken possession of the samples during the autopsy.

[7] Dr. George Behonick, the chief toxicologist for Axis Forensic Toxicology, testified that Pace had died of acute fentanyl intoxication. The prosecution proffered State's Exhibit 22, which indicated that a specimen taken from Pace was tested and found to contain a lethal level of fentanyl. Defense counsel requested leave to ask Dr. Behonick foundational questions outside the presence of the jury. Dr. Behonick described measures taken in a laboratory setting to maintain the physical integrity of a specimen and agreed with defense counsel that storage in a locker or police facility could be "problematic." (*Id.* at 134.) There was no evidence elicited as to the storage of Pace's specimens in particular.

[8] Moody then objected to the admission of State's Exhibit 22 on chain of custody grounds: "[I]t's a perishable item and we have absolutely no change [sic] in custody other than the fact that Dr. Clouse collected the blood." (*Id.*) The prosecutor responded – incorrectly – that Dr. Clouse had testified that Pace's specimen had been transported to the Axis laboratory, in particular. The trial court then questioned the lack of testimony regarding "the process" and the absence of "initials on the sample." (*Id.* at 134-135.) Ultimately, however, the trial court agreed with the State that any such deficiencies "goes to the weight of the evidence and not the admissibility." (*Id.* at 135.) State's Exhibit 22 was admitted into evidence over Moody's chain of custody objection.

[9] The decision to admit or exclude evidence lies with the trial court's sound discretion and is afforded great deference on appeal. *Filice v. State*, 886 N.E.2d 24, 34 (Ind. Ct. App. 2008), *trans. denied*. 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). In other words, the State must give reasonable assurances that the property passed through various hands in an undisturbed condition. *Id*. Because the State need not establish a perfect chain of custody, once the State strongly suggests the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to its admissibility. *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). Moreover, there is a presumption that officers exercise due care in handling their duties. *Id*. 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. *Id*.

[10] It is readily apparent that the State did not establish a detailed chain of custody. Indeed, the State made minimal effort toward "strongly suggest[ing] the exact whereabouts of the evidence at all times." *Culver*, 727 N.E.2d at 1067. Because the State did not provide the requisite showing of location, we turn to consider whether the admission of State's Exhibit 22 was inconsistent with substantial justice. *See* Indiana Trial Rule 61 (providing in relevant part that: "[n]o error in either the admission or the exclusion of evidence … is ground for … setting aside a verdict … unless refusal to take such action appears to the court inconsistent with substantial justice.")

[11] The theory of Moody's defense was that an inmate other than Moody provided the substance resulting in Pace's death. Moody did not challenge Dr. Clouse's opinion testimony that Pace died of acute fentanyl intoxication. Nor did

Moody challenge Dr. Behonick's opinion testimony of the same. In closing argument, defense counsel conceded that Pace died from fentanyl ingestion:

> [According to witness] Kenneth Swift, again, Mya's drug of choice, heroin. The cause of death here, fentanyl. They are not interchangeable things. And I'll say it again. They are distinct chemical different substances.

(Tr. Vol. III, pg. 215.) In these circumstances, where Moody did not contest the cause of death testimony and affirmatively urged the jury to consider that Pace died of fentanyl but Moody was known to prefer heroin, we cannot say that admission of an exhibit documenting the fentanyl level was inconsistent with substantial justice.

Conclusion

[12] Moody has not demonstrated reversible error in the admission of evidence.

[13] Affirmed.

Riley, J., concurs.
Vaidik, J., concurs in result without opinion.