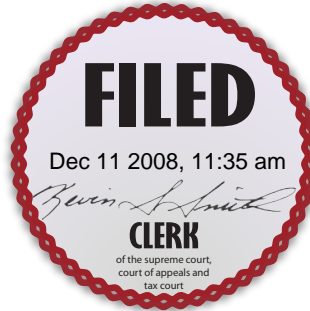


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KENNETH A. SNOW,)
)
Appellant-Defendant,)
)
vs.) No. 34A04-0808-CR-469
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Judge
Cause No. 34D01-0706-FA-470

December 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kenneth A. Snow appeals his convictions for three counts of class A felony Dealing in Cocaine,¹ as well as his adjudication as a Habitual Offender.² He presents the following restated issue for review: Did the trial court abuse its discretion by admitting Indiana State Police Property Record and Receipt forms into evidence?

We affirm.

In 2007, a confidential informant for the Indiana State Police was provided with an apartment in Garden Square Apartments, a federally subsidized housing complex in Kokomo, in order to assist law enforcement in controlled substance investigations there. On March 12, 25, and 27, the confidential informant made controlled buys of cocaine from Snow. Following each of these buys, the confidential informant turned the cocaine over to Detective Larry Mote. Mote field-tested the substances obtained during the controlled buys, which tested positive for cocaine on each occasion.

Mote testified that he adhered to the following protocol in handling the cocaine evidence after each buy. He immediately placed the substance(s) into a plastic evidence bag. On the outside of the bag Mote recorded his name, the date, Snow's name, the case number, and other identifying information. He sealed the plastic evidence bag, with the evidence inside, and signed his initials across the seal. Mote then filled out a property record and receipt form and a lab request form. Finally, he sealed these forms and the evidence bag into an envelope and sent it by U.S. certified mail to the State Police laboratory for testing. The

¹ Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2008 2nd Regular Sess.).

² Ind. Code Ann. § 35-50-2-8 (West, PREMISE through 2008 2nd Regular Sess.).

record indicates that when the laboratory received each piece of evidence for testing in this case, the evidence bag was still sealed. It remained sealed in a secure vault until it was requested by an analyst for testing. Further, the respective analyst for each piece of evidence testified that she received the evidence in a sealed condition prior to testing.

At trial, Snow asked Mote on cross-examination whether he had the certified mail receipts or green cards associated with each piece of evidence. Mote testified that he could obtain them but that he did not have them with him at trial. On redirect, the State submitted into evidence, over Snow's objection, the property record and receipt forms³ (State's Exhibit 5) for the cocaine evidence. These forms contained, among other things, the certified mailing numbers and an indication of when and by whom the mailings were received.

On appeal, Snow claims the trial court erred in admitting State's Exhibit 5 into evidence. He claims that the exhibit contained hearsay assertions as to who accepted the certified mailings at the lab and that no foundation was laid for the exhibit's admission as a business record.

Our standard of review is well settled. The admission or exclusion of evidence is a matter within the sound discretion of the trial court. *Rolland v. State*, 851 N.E.2d 1042 (Ind. Ct. App. 2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Hearsay is generally not admissible unless it falls within one of the hearsay

³ The forms are titled "Indiana State Police Property Record and Receipt" and are marked as "State Form 23964". *State's Exhibit 5*.

exceptions. Ind. Evidence Rule 802. As set forth above, Snow claims that the documents contained in the exhibit did not qualify under the business records exception, Ind. Evidence Rule 803(6). Specifically, he claims the documents were not properly authenticated because “no testimony or affidavit of a custodian or other qualified witness was presented by the state to indicate that the evidence was in fact a business record” as required by business records exception.⁴ *Appellant’s Brief* at 7.

The State responds that regardless of whether the business records exception applied, the documents were admissible under the public records exception. We agree with the State. Evid. R. 803(8) provides:

Public Records and Reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form, of a public office or agency, setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (a) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (b) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (c) factual findings offered by the government in criminal cases; and (d) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

⁴ This hearsay exception provides:

Records of Regularly Conducted Business Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, *all as shown by the testimony or affidavit of the custodian or other qualified witness*, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term “business” as used in this Rule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Evid. R. 803(6) (emphasis supplied).

The property record and receipt forms contained in State's Exhibit 5 fall squarely within the public records exception, as "records...of a public office or agency, setting forth its regularly conducted and regularly recorded activities". *Id.* Further, none of the exceptions listed in the public records rule applies in this case.

Evid. R. 803(8) does not contain several of the foundational requirements for business records found in Evid. R. 803(6). *Bailey v. State*, 806 N.E.2d 329 (Ind. Ct. App. 2004), *trans. denied*. Most notably, Evid. R. 803(8) requires no affidavit or testimony from a records custodian or other qualified witness, as is required under Evid. R. 803(6). Thus, Snow's argument that Detective Mote was not the custodian of these records and, therefore, could not authenticate them is not applicable to the public records exception. The trial court did not abuse its discretion by admitting State's Exhibit 5 into evidence.

Moreover, any error in the admission of the exhibit would certainly be harmless. Snow's meager attack on the chain of custody for the cocaine evidence was based upon the fact Detective Mote did not have the certified mailing receipts or green cards with him at trial. On appeal, Snow claims the admission of State's Exhibit 5 amounted to reversible error because it closed this gap in the chain of custody. We do not find this argument persuasive.

It is well established that the State need not demonstrate a perfect chain of custody. Rather, the State need only give "reasonable assurances that the property passed through various hands in an undisturbed condition." *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000). Any gaps in the chain of custody go to the weight of the evidence and not to

admissibility. *Culver v. State*, 727 N.E.2d 1062.

In this case, despite the fact that Detective Mote did not have the certified mail receipts and wholly apart from State's Exhibit 5, the State presented ample evidence that there had been no tampering with the cocaine prior to the evidence bags being opened by the respective lab analysts for testing. As set forth in detail above, Detective Mote documented and sealed the evidence in a plastic evidence bag before sending it to the State Police laboratory by certified mail. One of the lab analysts testified that it is the practice of the lab to store all evidence in a secure vault until it is requested by an analyst for testing. Each analyst testified that she opened the sealed bag assigned to her and tested the substance(s) inside. Further, Detective Mote specifically identified the cocaine and evidence bags at trial. Under the circumstances, we are confident that Snow's chain-of-custody attack on the reliability and weight of the cocaine evidence would have failed regardless of whether State's Exhibit 5 was excluded from evidence.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur