COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00303-CR

ARTHUR YAMAL RODRIGUEZ — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1416797D

MEMORANDUM OPINION[1]

Appellant Arthur Yamal Rodriguez appeals his conviction for possessing less than a gram of methamphetamine.[2] In one issue, he contends that the trial court abused its discretion by admitting the package containing the

[1]*See* Tex. R. App. P. 47.4.

[2]*See* Tex. Health & Safety Code Ann. § 481.115(a)–(b) (West 2010).

methamphetamine because the State did not establish a proper chain of custody. We affirm.

Background Facts

One night in June 2015, Fort Worth Police Department Officer Kent Bickley found appellant lying within a grassy median. Appellant was passed out and had a forty-ounce beer in his hand. Officer Bickley attempted to wake appellant for several minutes and eventually did so. Appellant had a strong odor of alcohol and slurred speech. Officer Bickley arrested appellant for public intoxication and for a pending warrant.

When appellant arrived at a jail, a jailer searched him and found a small blue baggie in one of his pockets.[3] The baggie contained a white crystal substance that Officer Bickley believed was methamphetamine. The jailer handed the baggie to Officer Bickley, who placed it in an envelope, sealed the envelope, initialed the envelope, placed a unique "report number" on the envelope, and put the envelope in a property room. A forensic scientist later tested the substance in the baggie and determined that it was methamphetamine.

A grand jury indicted appellant for possessing less than a gram of methamphetamine. He received appointed counsel and pled not guilty. After considering the parties' evidence and arguments, a jury convicted appellant. The

[3]A video from appellant's entry into the jail shows the jailer searching him, finding the baggie, and holding up the baggie in view of a video camera.

trial court considered evidence and arguments concerning his punishment and sentenced him to twelve months' confinement. He brought this appeal.

Chain of Custody

In his only issue, appellant contends that the trial court abused its discretion by admitting the methamphetamine, the baggie containing it, and the envelope containing the baggie. He argues that the State failed to establish a proper chain of custody of these items.

At trial, the State asked Officer Bickley whether he had brought the envelope in which he had placed appellant's blue baggie with him to court. Officer Bickley said that he had, and the State asked him to take the baggie out of the envelope. Officer Bickley did so and confirmed that the baggie was the same one that he had put inside the envelope in June 2015. Officer Bickley also stated that the baggie had not been tampered with, but he explained that the baggie had marks on it made by a processing lab. When the State asked the trial court to admit the envelope and baggie as exhibits, appellant objected on the ground that a chain of custody had not been established. The trial court sustained appellant's objection at that time.

Later, when the State showed the envelope to the forensic scientist who tested the crystal substance, the forensic scientist testified that he had put marks (including his initials and a case number) on the outside of the envelope and on the baggie. The State again asked the trial court to admit the envelope and

baggie as exhibits, appellant again objected, and the trial court overruled the objection and admitted the exhibits.

A trial court's decision to admit evidence will not be disturbed on appeal absent an abuse of discretion. *Gonzales v. State*, 477 S.W.3d 475, 479 (Tex. App.—Fort Worth 2015, pet. ref'd). A trial court abuses its discretion if its decision falls outside the zone of reasonable disagreement. *Id.* A trial court does not abuse its discretion unless its ruling is arbitrary and unreasonable, and the fact that a trial court may decide a matter within its discretionary authority in a different manner than an appellate court would in a similar circumstance does not demonstrate that an abuse of discretion has occurred. *Foster v. State*, 180 S.W.3d 248, 250 (Tex. App.—Fort Worth 2005, pet. ref'd) (mem. op.).

Proof of chain of custody authenticates evidence under rule of evidence 901(a). *See* Tex. R. Evid. 901(a); *Druery v. State*, 225 S.W.3d 491, 503 & n.30 (Tex. Crim. App.), *cert. denied*, 552 U.S. 1028 (2007); *Washington v. State*, No. 02-13-00526-CR, 2015 WL 505172, at *6 (Tex. App.—Fort Worth Feb. 5, 2015, pet. ref'd) (mem. op., not designated for publication). Proof that validates the beginning and the end[4] of a chain of custody

> will support the admission of evidence, barring any evidence of tampering or alteration. Without evidence of tampering or commingling, gaps or theoretical breaches in the chain of custody go

[4]Appellant contends that the "seizing officer failed to testify that he *retrieved* the item of evidence from the property room." But Officer Bickley testified that he was the person who brought the envelope to court on the date of the trial.

> to the weight of the evidence, not its admissibility. Additionally, a mere showing of the opportunity for tampering or commingling, absent affirmative evidence of such, is not sufficient to require exclusion of the evidence.

Patel v. State, No. 02-08-00032-CR, 2009 WL 1425219, at *2 (Tex. App.—Fort Worth May 21, 2009, no pet.) (mem. op., not designated for publication) (citations omitted); *see Druery*, 225 S.W.3d at 503–04 ("Absent evidence of tampering or other fraud, . . . problems in the chain of custody do not affect the admissibility of the evidence. Instead, such problems affect the weight that the fact-finder should give the evidence, which may be brought out and argued by the parties." (footnote omitted)); *Asante v. State*, No. 02-15-00280-CR, 2016 WL 3021976, at *5 (Tex. App.—Fort Worth May 26, 2016, no pet.) (mem. op., not designated for publication) ("The State established the beginning and the end of the chain of custody, which is all that is required for admissibility." (footnote omitted)).

Officer Bickley testified that after the jailer found the baggie of methamphetamine in appellant's pocket and gave the baggie to him, he placed it in an envelope, sealed the envelope, put his initials and unique personal identification number on the envelope, and "tag[ged] it as evidence at [a] property room." The envelope that the trial court admitted—State's Exhibit 8A—contains Officer Bickley's personal identification number. Officer Bickley testified that he recognized the envelope as the one that he put the baggie into. He also testified that he recognized the baggie that was inside the envelope as the one that he retrieved on the night of appellant's arrest. Finally, Officer Bickley testified that

other than for testing of the methamphetamine, the baggie had not been tampered with in any way. Appellant contends that this testimony is insufficient to establish authentication through a chain of custody because neither the jailer who found the baggie nor Officer Bickley placed identifying marks on the baggie itself (as opposed to placing identifying marks on the envelope containing the baggie) and because there was "no testimony as to where the envelope [and] the baggie inside it . . . had been before they were presented in court."[5]

We resolved similar arguments in *Whitehead v. State*, Nos. 02-15-00161-CR, 02-15-00162-CR, 2016 WL 3960585, at *1 (Tex. App.—Fort Worth July 21, 2016, no pet.) (mem. op., not designated for publication). There, when Whitehead arrived at a jail, an officer found a baggie containing methamphetamine. *Id.* at *2. The officer placed the baggie in another baggie, sealed the second baggie, placed the baggie-within-a-baggie into an envelope, and wrote his initials on the envelope. *Id.* at *4. At trial, the officer identified the envelope and identified the baggie containing methamphetamine. *Id.* We rejected Whitehead's chain-of-custody argument on appeal, holding that a proper chain of custody was shown by the officer's "testimony that he found the baggie of methamphetamine . . . in [Whitehead's] wallet, sealed it in an envelope . . . , and wrote his initials on the sealed envelope." *Id.* We rejected Whitehead's

[5]We note that the scientist who tested the substance inside the baggie testified that when he completes such tests, he picks up the evidence from a police property room prior to testing and returns the evidence to the property room after testing.

contention that the officer was required to "initial the baggie containing contraband for the drugs to be admissible in court." *Id.*

Like in *Whitehead*, Officer Bickley testified that he retrieved a baggie containing methamphetamine, sealed it in an envelope, and wrote his initials on the sealed envelope. *See id.* Based on our holding in *Whitehead,* the authority cited therein, and the decisions cited above, we conclude that the State presented an adequate chain of custody of the envelope and baggie by showing the beginning and end of the chain and that the trial court did not abuse its discretion by admitting those items. *See id.*; *see also Elliott v. State*, 450 S.W.2d 863, 864 (Tex. Crim. App. 1970) (holding that a proper chain of custody was proven by testimony of a police officer that he obtained a driver's license, placed it into an envelope, sealed the envelope, wrote identification information on the envelope, and placed it in the police property room); *Sneed v. State*, 875 S.W.2d 792, 794 (Tex. App.—Fort Worth 1994, no pet.) ("Generally, tagging an item of physical evidence at the time of its seizure and then identifying it at trial based upon the tag is sufficient for admission barring any showing by the defendant of tampering or alteration."). We overrule appellant's sole issue.

Conclusion

Having overruled appellant's only issue, we affirm the trial court's judgment.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; GABRIEL and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 11, 2017