

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-10,252
:
vs. : CRIMINAL
:
DAVE MITCHELL, : Omnibus Pretrial Motion/
Defendant : Motion to Suppress

ORDER

AND NOW, this ___ day of December 2004, the Court DENIES the defendant's Motion to Suppress. The defendant asserted the Commonwealth could not establish a chain of custody for the drugs involved in this case, because the drugs were sent to the lab utilizing UPS instead of using the US mail or having a police officer personally deliver the drugs. Defense counsel argued that since the rules of procedure governing service authorize personal service or utilization of the United States mail, but do not mention other methods of mailing or delivery, such as UPS, the Pennsylvania Supreme Court has implicitly found that other methods are not sufficiently reliable for the Commonwealth to establish the chain of custody in this case. This Court cannot agree.

The Pennsylvania Appellate Courts have held that the Commonwealth presents sufficient evidence for the chain of custody if the Commonwealth's evidence establishes a reasonable inference that the identity and condition of the exhibits remain unimpaired. Commonwealth v. Bennett, 827 A.2d 469, 481-82 (Pa. Super. 2003); Commonwealth v. Cugini, 307 Pa. Super. 113, 117, 452 A.2d 1064, 1065 (1982); Commonwealth v. Kaufman, 307 Pa. Super. 63, 70, 452 A.2d 1039, 1042 (1982). The Commonwealth is not required to produce every individual who came in contact with the evidence, nor must it eliminate every possibility of tampering. Cugini, *supra*; Kaufman,

supra. “Any gaps in testimony regarding the chain of custody go to the weight to be given the testimony, not its admissibility.” Cugnini, supra, citing Commonwealth v. Bolden, 486 Pa. 383, 388-89, 406 A.2d 333, 335-36 (1979).

At the hearing on the defendant’s motion, Corporal Thomas Ungard of the Williamsport Police Department testified that an undercover officer purchased suspected marijuana from the defendant. The substance field-tested positive. The marijuana was placed in an evidence envelope and the time and date the evidence was collected was noted. Corporal Ungard sealed each seam of the envelope with special tamper resistant tape and affixed his signature on each seam. Corporal Ungard then put that envelope and the lab request form in another envelope, sealed the outer envelope and sent it to the Wyoming Regional Lab via UPS.

Debra Walters, an employee of the lab, received the envelope. She opened the outer envelope and entered the information from the request form into her computer. Before placing the still sealed evidence envelope into their evidence vault, Ms. Walters examined it for signs of tampering, but did not observe any. When the forensic scientist is ready to test the evidence, he or she comes to Ms. Walters, who retrieves it from the evidence vault.

William Kupstas was the forensic scientist who tested the drugs in this case. Mr. Kupstas received the evidence from Ms. Walters. Mr. Kupstas saw no signs of tampering. He opened the evidence envelope and took out the suspected marijuana. He determined the substance was marijuana and weighed it. When he finished his analysis, he re-sealed the evidence envelope and affixed his signature and the date. He returned the evidence to Ms. Walters, how put it back into their evidence vault until she sent the lab

report and re-sealed evidence envelope containing the marijuana back to Corporal Ungard via UPS.

When the evidence envelope came back to Corporal Ungard, he placed it in the Williamsport Police Department's evidence locker. Again, there were no indications of tampering. In fact, at the time of the hearing, Mr. Kupstas' signature on the re-sealed evidence envelope was still intact.

Based on this evidence, the Court finds the Commonwealth established a reasonable inference that the identity and condition of the evidence remained unimpaired. Therefore, the Court must deny the defendant's Motion to Suppress.

By The Court,

Kenneth D. Brown, P.J.

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