

IN THE COURT OF APPEALS OF IOWA

No. 4-522 / 94-136

FILED

FEB 28 1995

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

GREGG QUIGLEY,

Appellant.

Appeal from the Iowa District Court for Page County,
J. C. Irvin, Judge.

Gregg Quigley appeals from his conviction, following a jury trial, of introduction of a controlled substance into a correctional facility. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Angelina M. Smith, Assistant Attorney General, and Verd R. Bailey, County Attorney, for appellee.

Considered by Hayden, P.J., and Habhab and Huitink, JJ.

HAYDEN, P.J.

Gregg Quigley was charged with introduction of a controlled substance into a correctional facility, in violation of Iowa Code section 718.9 (1991).

In January 1993 Quigley was a resident of the Clarinda Correctional Facility. Another inmate at the same facility was Dewey Allison. Allison was interested in obtaining parole and asked correctional officers if they could help him if he assisted in getting information about drugs brought into the prison. Donald J. Clark, the correctional security manager, told Allison he would write a letter of commendation if Allison obtained such information.

Allison made inquiries within the prison and was told Quigley could obtain marijuana. Allison approached Quigley and told him he wanted to purchase marijuana. Allison testified he agreed to have his wife transfer money to Quigley's sister in order to pay for the marijuana.

During this period of time, Quigley was assigned to work in the laundry, which was located nearby at the Clarinda Mental Health Institute. While he was working at the laundry, he became acquainted with Connie Troxel, a civilian who worked at the laundry.

Troxel testified Quigley asked her to purchase some marijuana for him, which she did. She brought it to him on January 14, 1993. She stated she had cut two fingers off a rubber glove and secured the marijuana within the two fingers. She testified Quigley took the marijuana and

borrowed some Vaseline. She stated Quigley then went to the bathroom and when he returned he informed her he had placed the marijuana in his anus. Quigley finished his duties at the laundry and returned to the prison.

On the same day, Allison gave Clark marijuana in the cut-off finger of a rubber glove. Allison told Clark he had obtained the marijuana from Quigley. A subsequent search of Quigley and his cell revealed no additional marijuana.

After Clark obtained the cut-off rubber finger from Allison, he performed a field test and found the substance inside tested positive for marijuana. Clark placed the object in a paper sack and placed it in the armory, which is a locked room within the facility's control center. On January 26, 1993, Clark was present when a prison official obtained the object from the armory and it was given to Wright Smith, an agent of the Department of Criminal Investigation (DCI).

Smith testified he placed the object in an envelope and sealed the envelope. He stated he secured the object within his office in Council Bluffs, but he could not remember where in his office. On February 1, 1993, he gave the object to another DCI agent, Kirk Nielsen. Nielsen testified he took the object to the DCI laboratory in Des Moines on February 3, 1993. The lab report showed the object contained marijuana.

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Quigley testified Allison had asked him to acquire marijuana. He also testified he knew Troxel had access to marijuana because he had seen her give some to other inmates who worked in the laundry. He stated he had never received marijuana from Troxel.

A jury found defendant guilty of the crime charged. He was sentenced to a term of imprisonment not to exceed five years. Because defendant was committed to a penal institution at the time of the offense, the sentence is to run consecutive to the sentence he was already serving. Defendant appealed.

Defendant contends the district court abused its discretion in admitting evidence of the marijuana and the DCI lab report because the record fails to establish a proper chain of custody. He claims there is an insufficient chain of custody because many correctional officers had access to the armory, Clark did not give the object directly to Smith, and Smith could not remember where he secured the object within his office.

Admission of evidence over a chain-of-custody objection is a matter within the trial court's discretion, and reversal is warranted only upon a clear showing the court abused its discretion. State v. Gibb, 303 N.W.2d 673, 681 (Iowa 1981).

The State has the burden to establish it is reasonably probable tampering or substitution did not occur. State v. Mehner, 480 N.W.2d 872, 877 (Iowa 1992). This burden is

heavier when the exhibit offered is an item which is very susceptible to tampering, such as drugs. Id. The trial court must determine whether the identification of physical evidence is sufficient in light of the article's nature, the circumstances surrounding its custody, and the likelihood an intermeddler has tampered with it. State v. Ramirez, 485 N.W.2d 857, 858-859 (Iowa App. 1992). The trial court may be aided in this determination by presuming State agents or officials would not tamper with evidence in their custody. Id. at 859.

We find the State has established it is reasonably probable tampering or substitution did not occur. First, Clark testified only correctional officers had access to the armory. We may presume these State officials would not tamper with the evidence. Second, while Clark did not give the object directly to Smith, Clark was present when Smith received the object. Third, Smith testified he could not remember whether he had secured the object within a locked desk drawer or within a safe, but stated he had secured the object within his office.

We find no abuse of discretion in the district court's conclusion the object was admissible because the State had adequately shown the chain of custody. Once this showing has been made, contrary speculation affects only the weight to be given the evidence, not its admissibility. State v. Lamp, 322 N.W.2d 48, 59 (Iowa 1982). We conclude

defendant's concerns about the chain of custody go only to the weight of the evidence.

We affirm defendant's conviction for the crime of introduction of a controlled substance into a correctional facility.

AFFIRMED.