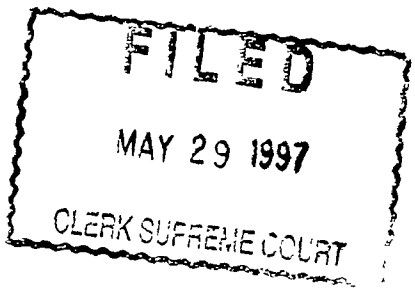
IN THE COURT OF APPEALS OF IOWA

No. 7-218 / 96-0735 000435



STATE OF IOWA,

Appellee,

vs.

DEANO J. PUCCIO,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for aiding and abetting in the delivery of LSD. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Fred H. McCaw, County Attorney, and Timothy J. Gallagher, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

STREIT, J.

This is an appeal by a defendant challenging his conviction for aiding and abetting in the delivery of LSD, in violation of Iowa Code section 124.401(1)(b) (1995). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In March 1995, Deano Puccio sold some marijuana to a confidential informant. On March 15, 1995, Puccio participated in the sale of LSD to the informant and Jeffrey Rayburn from the Dubuque Area Drug Task Force. After the sale, Rayburn placed the LSD in an envelope, sealed it, and gave it to the evidence officer. At the criminal trial, the State sought to show Rayburn received the lab report on the LSD in the ordinary course of business. The district court sustained Puccio's objection based on lack of chain of custody and the lab report was not admitted into evidence at that time.

The State then filed additional minutes of testimony in an attempt to show the chain of custody of the LSD. The district court allowed the additional minutes of testimony because they were only foundational. The evidence officer, Officer Terrence Driscoll of the Dubuque Police Department, testified he received the evidence from Rayburn. Officer Jeffrey Pillard testified he obtained the drugs from the evidence room and sent them to the Department of Criminal Investigation (DCI). The LSD and lab report were then admitted into evidence over Puccio's objections.

Puccio was convicted of two counts of delivery of marijuana, one count of possession of marijuana with intent to deliver, and one count of aiding and abetting the delivery of LSD. He appeals only the conviction involving the delivery of LSD.

Puccio contends the district court erred in allowing Officers Pillard and Driscoll to testify regarding the chain of custody of the LSD. Iowa Rule of Criminal Procedure 18(2) provides that the prosecutor should inform the defendant of additional minutes of testimony at least ten days prior to trial. In the present case, the additional minutes were filed during the course of the trial.

Noncompliance with the notice requirements of rule 18(2) does not, in all instances, require exclusion of the testimony of the witnesses. *State v. LeGrand*, 501 N.W.2d 59, 62 (Iowa App. 1993). Rule 18(3) provides that when the prosecutor does not give notice of additional minute of testimony at least ten days prior to trial:

> [T]he court may order the state to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the defendant from undue prejudice, order the exclusion of the testimony of any such witnesses.

We review the trial court's decision to allow additional minutes of testimony for abuse of discretion. *State v. Braun*, 495 N.W.2d 735, 741 (Iowa 1993).

We find no abuse of discretion in the present case. The additional minutes of testimony did not substantially alter the case. They provided additional detail showing the chain of custody of the LSD as it was sent from the Dubuque Area Drug

Task Force to the DCI lab. The original minutes of testimony showed Rayburn would testify he turned the LSD over to the evidence officer. Also, Robin Woolery, a DCI agent, would testify about the lab report on the LSD. The additional minutes included the testimony of the evidence officer, Driscoll, who turned the drugs over to Pillard, who mailed them to the DCI. We find Puccio was not prejudiced by the additional minutes of testimony because they showed more precisely the chain of custody which had already been alluded to in the original minutes.

We affirm Puccio's conviction for delivery of LSD. Costs of this appeal are assessed to Puccio.

AFFIRMED.