



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 25, 1987
vs.	)	
BARRY MICHAEL GLICK,	)	<u>7-38</u>
Defendant-Appellant.	)	86-880

Appeal from the Iowa District Court for Scott County (No. 1200750-1)
- Jack F. Broderick, District Associate Judge.

The defendant appeals from his conviction, following a jury trial, of possession of cocaine. **AFFIRMED.**

Michael J. McCarthy of McCarthy & Lammers, Davenport, for defendant-appellant.

Thomas J. Miller, Attorney General; Bradley V. Black, Assistant Attorney General; and Gerald P. Schutte, Assistant Scott County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Schlegel, JJ.

PER CURIAM

The defendant, Barry Michael Glick, appeals from his conviction, following a jury trial, of possession of cocaine. Glick contends that the trial court erred in admitting two vials of cocaine into evidence over his chain-of-custody objection. We affirm.

On March 26, 1985, between 3 p.m. and 4 p.m., the defendant Glick and Art Stowe entered a Bettendorf cleaning shop and dropped off some clothes in Stowe's name. Glick supplied all the necessary information and searched through the pockets of a pair of pants. Rhonda Goode, a cleaner employee, found two small vials in one of the trouser pockets and suspected they might contain cocaine. When she was unable to reach her supervisor, Ms. Goode placed the vials in her purse. The purse remained in the immediate vicinity for the rest of her shift. Another employee also was present for part of her shift. Ms. Goode went home and showed the vials to her stepfather, Francis Lemon, at about 6:20 p.m. Mr. Lemon then placed the vials in a sealed envelope and called the police. When the police arrived, he turned the envelope over to a police lieutenant.

While Ms. Goode testified that one vial was clear and the other was amber, Mr. Lemon testified he believed that both vials were clear. Neither Goode nor Lemon identified the exhibits at trial, nor were they questioned as to whether the cocaine vials were in substantially the same condition as when they had them.

The defendant was accused of possession of cocaine, in violation of Iowa Code section 201.401(3) (1985). He objected to the introduction into evidence of the vials at trial on the ground that there was no continuous chain-of-custody, especially in the absence of testimony by Goode and Lemon as to the identity, condition, and custody of the vials. The trial court overruled this motion along

with the defendant's subsequent motions for judgment of acquittal. On September 17, 1985, the jury found the defendant guilty as charged. On May 19, 1986, the trial court overruled the defendant's motion for new trial and sentenced him to six months in jail.

The admissibility of physical evidence is within the sound discretion of the trial court, and reversal is warranted only when there has been a clear abuse of that discretion. State v. Collier, 372 N.W.2d 303, 308 (Iowa Ct. App. 1985); State v. Hutchison, 341 N.W.2d 33, 37 (Iowa 1983). The purpose of requiring a chain of custody is to insure that tampering, substitutions, or alterations do not occur. State v. Lamp, 322 N.W.2d 48, 59-60 (Iowa 1982). The object's susceptibility to alteration or substitution determines the sufficiency of the showing. State v. Gibb, 303 N.W.2d 673, 681 (Iowa 1981). The Iowa Supreme Court has recognized that substances such as illegal drugs are susceptible to tampering or substitution. State v. Lunsford, 204 N.W.2d 613, 616 (Iowa 1974). The State must therefore establish a more elaborate foundation to satisfy the chain-of-custody requirement. Id.

It is not, however, essential for admissibility that the State negative the possibility of tampering or substitution absolutely. State v. Kantaris, 280 N.W.2d 389, 392 (Iowa 1979); Lunsford, 204 N.W.2d at 617. All that is required is that the State must show a reasonable probability that tampering or substitution did not occur. Kantaris, 280 N.W.2d at 392. Contrary speculation affects the weight of the evidence but not its admissibility. Collier, 372 N.W.2d at 308; Kantaris, 280 N.W.2d at 392; Lunsford, 204 N.W.2d at 617.

It is also a general rule that it is preferable to establish identification by direct testimony of each witness who was involved in the chain of custody. Lunsford, 204 N.W.2d at 617. In some cases, such as the present, where there

is no direct testimony as to the chain of custody, the chain of possession may be established by circumstantial as well as direct evidence. Id.

In the present case, we believe the trial court had before it sufficient evidence to reasonably reach its conclusion that the evidence was adequately identified. We initially note that there was no evidence of any improper motive which may have resulted in alteration or substitution on the part of Ms. Goode or Mr. Lemon. Next, the record reveals that Ms. Goode found the vials almost immediately after Glick and Stowe left the cleaners. Not knowing what to do with the vials, Ms. Goode put the vials in her purse and placed them in a secure place in the back of the store. Her purse remained secure and undisturbed for approximately 2½ to 3 hours. Only one other employee was on the premises, that being for approximately 1 hour. Ms. Goode then brought her purse containing the vials to her stepfather, Mr. Lemon. Mr. Lemon placed the vials in a sealed envelope and called the police. When the police arrived, Mr. Lemon gave the sealed envelope to Lieutenant John Fogarty. Ms. Goode testified she saw Mr. Lemon give the envelope to Lieutenant Fogarty.

Though Ms. Goode and Mr. Lemon did differ as to the color of the vials, we do not believe this fact alone negates admissibility. Ms. Goode testified one vial was clear, the other amber. Mr. Lemon testified that he wasn't sure, but thought both vials were clear. Lieutenant Fogarty, however, testified that one vial was clear, the other amber. Ms. Goode testified that the vials they possessed were the same that were handed over to Lieutenant Fogarty, and Fogarty testified that the two vials presented into evidence were the same two he received from Mr. Lemon.

We therefore hold that the trial court did not abuse its discretion in admitting the two vials of cocaine into evidence.

AFFIRMED.