

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Chain of custody goes to weight not admissibility.[In the Matter of J.M.A.B.](07-1-7)

On November 30, 2006, the Eastland Court of Appeals held that when the proponent of evidence shows the beginning and the end of the chain of custody, any gaps in between go to the weight and credibility of the evidence rather than the admissibility of the evidence.

¶ 07-1-7. **In the Matter of J.M.A.B.**, MEMORANDUM, No. 11-05-00104-CV, 2006 Tex.App.Lexis 10341 (Tex.App.— Eastland, 11/30/06).

Facts: The evidence at the modification hearing showed that appellant was a student at Midland Freshman School. Guadalupe Sanchez, a Midland ISD police officer, received a tip from another student at Midland Freshman that appellant was in possession of marihuana. Officer Sanchez called appellant into the school office and asked him to empty his pockets. Appellant removed a tin canister from one of his pockets. A rolled cigar containing what appeared to be marihuana was inside the canister. Tests performed on the contents of the cigar showed that the contents contained marihuana.

Officer Sanchez testified that the contents of State's Exhibit Number One were the tin canister appellant took out of his pocket and the cigar that was inside the tin canister. He further testified that he marked the bag containing the evidence with the date, time, place of recovery, and appellant's name. Officer Sanchez also testified that, after marking the bag, he sealed it and placed it in the evidence locker. He further testified that the evidence offered as State's Exhibit Number One was in the same or a substantially similar condition as it was when he placed it in the bag.

Bob Wheeler, a supervisor and lab technician for the Texas Department of Public Safety, testified that he analyzed [the evidence offered in State's Exhibit Number One. He testified that he received State's Exhibit Number One from Ken Moten, an employee of the Midland County District Attorney's Office. Wheeler testified that the bag containing the evidence was sealed and that he broke the seal. He further testified that he marked the bag with the lab case number, his initials, and the date that he resealed the bag after taking out a sample for testing.

Appellant contends that the State did not show a proper chain of custody because it did not present testimony from the person who transported the evidence from the school to the DPS laboratory.

Held: Affirmed

Memorandum Opinion: As a condition precedent to admissibility, the party offering an item into evidence must show that the item is what the party represents it to be. *TEX. R. EVID. 901(a)*. When an item lacks unique characteristics, a chain of custody is required to show that the item offered is the same as the item involved in

the events at issue. *Avila v. State*, 18 S.W.3d 736, 739 (Tex. App.--San Antonio 2000, no pet.). The chain of custody is conclusively established when the person seizing the evidence testifies that he seized the evidence, tagged the evidence, placed an identifying mark on the evidence, placed the evidence in evidence storage, and retrieved the evidence for trial. *Lagrone v. State*, 942 S.W.2d 602, 617 (Tex. Crim. App. 1997). If the evidence is sent to a lab for testing, the proponent of the evidence must introduce testimony that the lab handled the evidence in the same way. *Avila*, 18 S.W.3d at 739. When the proponent of the evidence shows the beginning and the end of the chain of custody, any gaps in between go to the weight and credibility of the evidence rather than the admissibility of the evidence. *Beck v. State*, 651 S.W.2d 827 (Tex. App.--Houston [1st Dist.] 1983, no pet.).

This testimony clearly shows the beginning and the end of the chain of custody of State's Exhibit Number One. There was no evidence that the evidence had been tampered with prior to trial. The testimony established that the evidence was in the same or a substantially similar condition at the time it was offered at trial as it was when Officer Sanchez took it from appellant's possession. Proof of the beginning and the end of the chain of custody absent any showing of tampering or alteration is sufficient to support admission of the evidence. *Stokerv. State*, 788 S.W.2d 1,10 (Tex. Crim. App. 1989). The trial court did not abuse its discretion in admitting State's Exhibit Number One. We overrule appellant's second issue.

Conclusion: The trial court's judgment is affirmed.