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Recent Developments: Wheeler v. State

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RECENT DEVELOPMENT

WHEELER V. STATE: IN A CRIMINAL PROCEEDING, THE STATE NEED ONLY ESTABLISH A CHAIN OF CUSTODY THAT NEGATES A REASONABLE PROBABILITY OF ALTERING OR TAMPERING IN ORDER FOR EVIDENCE TO BE DEEMED ADMISSIBLE.

By: Meghan McDonald

The Court of Appeals of Maryland held that the trial court did not err in admitting evidence absent the testimony of all members in the chain of custody, as the State sufficiently negated a reasonable probability of tampering. *Wheeler v. State*, 459 Md. 555, 569, 187 A.3d 641, 650 (2018). The court found the testimony of an officer and state chemist was sufficient to authenticate the evidence as a controlled dangerous substance and properly establish the chain of custody in a criminal proceeding. *Id.* at 566, 187 A.3d at 648. The court further held that Cts. & Jud. Proc. § 10-1001, 10-1002, and 10-1003 operate as mere procedural shortcuts to establishing the chain of custody, and that Maryland Rule 5-901 only requires sufficient evidence to support a finding that a substance is what it is purported to be as a condition precedent to admissibility. *Id.*

On September 21, 2015, Baltimore City Detective Ivan Bell (“Bell”) was solicited by Robert Wheeler (“Wheeler”) in an attempt to purchase heroin as part of an undercover drug operation. After Wheeler solicited Bell, two additional individuals sold Bell three baggies of suspected controlled dangerous substances. After the purchase, Wheeler was arrested and charged with conspiracy to distribute heroin and distribution of heroin, and Bell was instructed to return to the police station with the suspected drugs. While at the station, Bell transcribed a report and turned the drugs over to Detective Justin Trojan (“packaging officer”). The packaging officer then transferred the substances to the Evidence Control Unit, where they were tested by the state chemist. The test positively identified the substances as heroin.

Prior to the start of trial, Wheeler made a timely demand for the presence of all members of the chain of custody pursuant to CJP § 10-1003. However, the State was unable to call the packaging officer as he no longer worked for the city of Baltimore. The controlled dangerous substances were then admitted after the trial court determined that the testimony from Bell and the state chemist was sufficient to establish the chain of custody. Wheeler was found guilty of conspiracy to distribute heroin and distribution of heroin.

Wheeler filed a timely appeal to the Court of Special Appeals of Maryland, alleging that the State did not properly establish the chain of custody pursuant to CJP § 10-1003. The Court of Special Appeals affirmed, ruling that collectively, the statutes act as procedural shortcuts used to establish chain of custody. The Court of Special Appeals further held that the absence of one

member of the chain of custody, was not necessarily a *prima facie* violation of CJP § 10-1002.

Wheeler filed a petition for a writ of *certiorari*, which the Court of Appeals of Maryland granted. The issue before the court was whether the trial court abused its discretion in admitting the suspected controlled dangerous substances without all persons in the chain of custody present at trial. Specifically, the court was asked to determine whether it is a legal error for the trial court to admit drug evidence when a criminal Defendant made a timely demand under CJP §§ 10-1002 and 10-1003 for the presence of all persons in the chain of custody, and yet the State failed to call the packaging officer as a witness.

The Court of Appeals of Maryland began by assessing the admission of suspected controlled dangerous substances at common law. *Wheeler*, 459 Md. at 562, 187 A.3d at 648. Under common law principles, suspected controlled dangerous substances were admissible if there was clear evidence, beyond a degree of reasonable probability, that the substances were what they were purported to be. *Id.* Furthermore, if there was any doubt as to whether the chain of custody had been established, the decision was on the weight of the evidence rather than the question of admissibility. *Id.* Therefore, so long as the State was able to meet its burden by negating the reasonable possibility of tampering, suspected controlled dangerous substances were admissible at trial. *Id.*

The court next addressed CJP §§ 10-1001, 10-1002, and 10-1003, which were enacted in 1974 as alternative method to establish the chain of custody. *Wheeler*, 459 Md. at 563, 187 A.3d at 646. CJP § 10-1003 provides that in a criminal proceeding, the prosecution shall require the presence of a chemist, analyst, or any person in the chain of custody as a prosecution witness, pursuant to a timely demand made by the defendant. *Id.* at 565, 187 A.3d at 647. While Wheeler argued that the chain of custody was not established pursuant to CJP § 10-1003, the court noted that these statutes merely created procedural shortcuts to the common law requirement that the state negate a reasonable probability of alteration or tampering. *Id.* at 563, 187 A.3d at 646. As a result, the statutes did not repeal the common law rule, but rather simplified the formal requirements for admitting suspected controlled dangerous substances. *Id.* at 566, 187 A.3d at 648. The court explained that because no new obligation was imposed on the State, the admissibility of the suspected controlled dangerous substances could be assessed in accordance with common law principles. *Id.*

In rendering a determination as to whether the trial court abused its discretion, the court relied on Maryland Rule 5-901 under the common law standard for admissibility of evidence in a criminal trial. *Wheeler*, 459 Md. at 566, 187 A.3d at 648. Maryland Rule 5-901 states that evidence is properly authenticated when the evidence is sufficient to support a finding that the matter in question is what it is purported to be. *Id.*

Here, Bell testified that the color of the baggies containing the controlled dangerous substances offered in court appeared physically to be the same

baggies seized on September 21, 2015. *Wheeler*, 459 Md. at 568, 187 A.3d at 649. Additionally, the state chemist testified that the complaint number listed on the sealed bags matched the one on Bell's report, that the color of the baggies matched Bell's description, and that the substance was tested and identified as heroin. *Id.* The court further noted that during the time gap identified by Wheeler, the substances were entirely within police custody. *Id.* Therefore, in rendering its conclusion, the court found that the testimony of Bell and the state chemist was sufficient to establish a proper chain of custody that negated the reasonable probability of tampering, and that the suspected heroin was what it was purported to be. *Id.* at 569, 187 A.3d at 650.

The concurring opinion further stated that the trial court did not abuse its discretion by noting the long-standing importance of circumstantial evidence versus direct evidence. *Wheeler*, 459 Md. at 576, 187 A.3d at 654. According to the concurring opinion, circumstantial evidence is of the same quality as direct evidence. *Id.* Although there was no direct evidence indicating that anyone observed the actual packaging of the suspected heroin, the court asserted that the circumstantial evidence presented at trial sufficiently established the integrity of the suspected controlled dangerous substances. *Id.* at 577, 187 A.3d at 654.

The Court of Appeals of Maryland affirmed the judgment of the Court of Special Appeals of Maryland, holding that the trial court did not abuse its discretion in relying on the testimony presented to support the admission of the suspected controlled dangerous substances. *Wheeler*, 459 Md. at 569, 187 A.3d at 650. Further, the court affirmed that under common law principles, the State need only show beyond a reasonable probability that the suspected substances are what they are purported to be in order to negate the possibility of tampering. *Id.* This holding allows for a criminal proceeding to progress efficiently and timely while still emphasizing the importance of the validity of evidence. The court clarified that there are two ways to authenticate evidence of suspected controlled dangerous substances, and the state can authenticate evidence under statutory or common law.