

13-08: Testing Individual Baggies for Drugs in Trafficking Cases

Case: *Greenwade v. State*, 2013 WL 5641794 (Fla. 2013)

Date: October 17, 2013

Subject: Testing Individual Baggies for Drugs in Trafficking Cases

FACTS: Officers executed a search warrant at a Jacksonville home. The officers found and detained Mr. Greenwade while executing the warrant. After he was detained, Greenwade told the officers, "I know why you're here.... What you are looking for is in the garage." He then led the detectives to the garage, and showed them a digital scale sitting next to a green bag; white residue could be seen on top of the bag. Greenwade admitted that he owned the bag, and he admitted that the bag contained cocaine. When the detectives searched the bag, they found nine smaller one-ounce baggies inside the larger green bag. Each of the smaller baggies contained a white powder. All nine baggies were individually field tested; however, the records do not reveal the results of this test. The baggies were then submitted to FDLE for testing. However, the FDLE chemist did not receive nine individual bags; instead, she received one Ziploc bag that comingled or contained the entire contents of each of the individual bags. It is unclear from the record how or when the individual bags were comingled. Ultimately, FDLE detected the presence of cocaine in the Ziploc bag, and calculated the total weight all contents as 234.5 grams.

The defendant was charged with Trafficking in Cocaine in an amount exceeding 200 grams. Greenwade was later convicted at trial and sentenced to fifteen years in prison. On appeal, Greenwade argued that he was entitled to a judgment of acquittal because the State never tested each individual bag for cocaine before comingling the contents and weighing them. The First District Court of Appeals affirmed his conviction. However, the Florida Supreme Court reversed the conviction for Trafficking and ordered that the defendant be convicted of and sentenced on the lesser charge of Possession of Cocaine.

RULING: If a defendant is charged with Trafficking based on multiple containers of a white, powdery substance, the State is required to prove that each individual packet contains a controlled substance.

DISCUSSION: This opinion resolves a conflict among Florida's intermediate appellate courts. In this case, the First District Court of Appeal had upheld Greenwade's conviction. The First District emphasized that Greenwade admitted to owning the green bag that was found in the garage, and he admitted that the bag contained cocaine. Thus, the First District concluded that the defendant had implicitly admitted that all of the individual, smaller baggies contained cocaine.

However, the Florida Supreme Court rejected this reasoning. The Court was worried that if the State is allowed to comingle individual baggies without testing each bag, there is a significant risk that one or more of the smaller containers may contain a non-controlled substance or a counterfeit controlled substance. According to the Court, that risk is especially great when the suspected substance is white powder: the white powder could be anything, including many non-controlled substances. Therefore, when law enforcement seizes multiple containers of white powder, each container must be tested to ensure the presence of a controlled substance. In reaching this conclusion, the Court emphasized that this rule applies only to white powder or other substances that carry a substantial risk of misidentification. Earlier cases held that marijuana and even rock cocaine do not carry a

substantial risk of misidentification and do not need to be tested individually. The Court's opinion leaves those cases intact.

David H. Margolis
Regional Legal Advisor
Florida Department of Law Enforcement

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.

Orlando Regional Operations Center