IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DONALD R. DOYON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12463 Trial Court No. 1KE-15-233 CR MEMORANDUM OPINION No. 6651 — July 5, 2018

Appeal from the Superior Court, First Judicial District, Ketchikan, Trevor N. Stephens, Judge.

Appearances: Olena Kalytiak Davis, Attorney at Law, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Terisia K. Chleborad, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

Donald R. Doyon was convicted of second-degree controlled substance misconduct, AS 11.71.020(a)(1), after he sold heroin to a police informant.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Before Doyon's trial, his attorney asked the superior court to suppress the heroin upon which the charge was based. The defense attorney argued that there was a substantial possibility that the heroin in the State's possession — *i.e.*, the heroin that was delivered to the State Crime Lab for weighing and testing — was not the same substance that the police informant handed over to the police after the alleged sale.

Doyon's suppression motion was based on the fact that when the police officer described the alleged heroin sale in his report, and later when he described the sale in his grand jury testimony, the officer declared that the informant handed him a small plastic bag containing heroin — and that this heroin weighed 1.8 grams. But according to the report generated later by the crime lab, the heroin delivered to the crime lab weighed only .88 grams (that is, a little less than half of 1.8 grams).

Given this discrepancy in the weight, Doyon's attorney argued that the State could not meet its burden under Alaska Evidence Rule 901(a) to demonstrate a "reasonable certainty" that the heroin in the crime lab's possession had not been substituted, modified, or otherwise tampered with.

The superior court held an evidentiary hearing to investigate this matter. At this hearing, the police officer testified that his earlier descriptions had been inaccurate: the weight of "1.8 grams" referred to the heroin *together with* the small plastic bag that the heroin was packaged in. To support this assertion, the officer pointed out that he had taken a photograph of the bag with the heroin inside, sitting on a scale. The reading on the scale showed that the bag and the heroin together weighed 1.8 grams.

In contrast, when the technician at the crime lab weighed the heroin, the technician removed the heroin from the bag and weighed only the heroin itself. By itself, the heroin weighed only .88 grams.

Based on this evidence, the superior court concluded that the discrepancy in the weights was adequately explained, and that the requirements of Evidence Rule 901(a) were met.

On appeal, Doyon challenges the superior court's ruling on this issue. But the evidence, viewed in the light most favorable to the superior court's ruling,[1] supports the court's conclusion that the State had proved to a reasonable certainty that the heroin received from the informant and the heroin later delivered to the crime lab were the same.

Accordingly, the judgement of the superior court is AFFIRMED.

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[1] *See Stumbaugh v. State*, 599 P.2d 166, 172 (Alaska 1979) (when an appellate court reviews a trial court's ruling on a suppression motion, the appellate court must view the evidence in the light most favorable to the trial court's ruling).